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Draft international covenants on human rights (*continued*) 103

Chairman: Mr. Jiří NOSEK (Czechoslovakia).

AGENDA ITEM 58

**Draft international covenants on human rights
(A/2714, A/2686, chapter V, section I, E/2573,
A/C.3/574) (*continued*)**

GENERAL DEBATE (*continued*)

1. Mr. HOOD (Australia) said that he agreed with the suggestion made by the Chairman of the Commission on Human Rights that delegations not represented on that Commission should express their Governments' position with regard to the draft covenants before the members of the Commission did so. As it appeared, however, that some of the States not members of the Commission were not yet ready to express their views, the Australian delegation was submitting some general but fundamental considerations.

2. It was six years since the United Nations had decided to define in international covenants the inalienable rights stated in the Universal Declaration of Human Rights, so that the signatories to those instruments would be legally bound to guarantee the free and lawful expression and fulfilment of the rights.

3. The Commission on Human Rights had been working for five years on the drafting of the covenants and had been unable to come to decisions on some very important questions. The draft covenants were now before the Third Committee. In the course of the procedural discussion on the method of examining them, the Australian delegation had proposed that the Committee begin with a general discussion, in order to enable delegations which had not had the opportunity of assisting in the drafting to express their positions and their views on certain basic questions, such as reservations, and to comment on the text of the instruments as a whole. Many of the articles in the instruments were interrelated. Moreover, the attitude of any delegation to many of the substantive articles would be conditioned by its attitude to the proposed measures of implementation and to the question whether or not reservations were to be permitted. For some delegations, the important question of the territorial application article had to be taken into account.

4. During the procedural discussion, a suggestion, which had also been made in the Commission on Human Rights, had been put forward, concerning the

convening of a conference of plenipotentiary representatives. He did not think that the Committee was ready to decide on that suggestion; in any case, no rigid decision on procedure should be taken until a general discussion had been held.

5. Four members of the Human Rights Commission had made suggestions that the General Assembly should give the draft covenants two separate readings at two consecutive sessions. Differences of opinion had arisen in the Committee as to the meaning of the phrase "first reading". As there were no formal precedents to follow in discussions of that kind, it was not surprising that there should be some difficulty in the definition of the term. Although the Australian delegation was concerned that the Committee should complete one section of its work on the draft covenants at the current session, it had not thought there was any need at that stage of the debate to take definite decisions on the procedure for further consideration of the instruments or on a formal definition of the term "first reading". That should be left until there had been a general exchange of views.

6. His Government had taken a very active part in the Commission's work on the draft covenants. Australia had been among the countries which had agreed that the United Nations should not rest content with the preparation of the Universal Declaration of Human Rights but should go on to the task of framing its principles in binding international instruments. His Government was fully aware of the difficulty of that task: agreements had to be produced giving a binding and comprehensive expression to the rights enumerated in the Declaration and had to be couched in such terms as to permit the adherence of countries whose forms of government, legal systems and history, and political, philosophical and social traditions differed very widely. When wide differences of opinion and interpretation on matters on which unanimity of outlook might be expected existed among groups of countries which shared the same cultural and political traditions, it was not to be wondered at that, in a task of legal definition such as the covenants, it was much more difficult to reach unanimous agreement.

7. The first part of the United Nations work on the covenants had been done. It was now particularly necessary to take into account not only the willingness, but the ability, of Governments to accede to the covenants. The United Kingdom representative had made two fundamental observations on the covenants: first, that the rights enumerated therein should be expressed in terms which clearly described their content and scope, and, secondly, that the obligations which the covenants would impose should not be impossible for States to accept and put into force. He thought it desirable that the Committee should be frank in discussing any particular provisions in the draft covenants which would make it difficult, or perhaps impossible,

for certain Governments to accede to them in the form in which they stood. Representatives might suggest revisions or additions to the texts which their Governments considered essential before acceding to them; that was the intention of the Australian delegation.

8. The precise points to which he referred were: first, the question of reservations; secondly, the federal State clause; thirdly, the self-determination article; and fourthly, the territorial application article. Those were all questions of major importance. Some representatives of States which had an enviable record for their observance of human rights had said that the enunciation of some of those principles in the covenants, or the manner in which they were expressed in the draft covenants as they stood, might prevent ratification of the covenants by their Governments. In no partisan spirit, he wished to bring to the Committee's attention the unfortunate consequences which would almost certainly follow from a rigid insistence on the inclusion in the covenants of certain ideas or principles in such a form that they could not be accepted by some States which sincerely wished to accede to them. Several provisions had been adopted by a very small majority, and when the result of such votes purported to determine the nature of legally binding articles, then it was unwise and unrealistic to regard a majority decision as being the ultimate arbiter of a contentious issue.

9. With regard to the question of reservations, the General Assembly, in resolution 546 (VI), had requested the Commission on Human Rights to prepare, for inclusion in the two draft covenants, one or more clauses relating to the admissibility or non-admissibility of reservations and to the effect to be attributed to them. The records of the discussions on that matter at the tenth session of the Commission on Human Rights revealed a serious divergence of opinion among its members, all of whom were experts on the subject, and showed that the Commission was unable to reach a decision on that vital question. Four proposals had been made (E/25/3, annex II), one of which, submitted by the United Kingdom representative, would permit reservations only in respect of part III of the covenant on civil and political rights, and only on condition that not less than two-thirds of the States parties to the covenant accepted them. The Australian member of the Commission on Human Rights had supported that proposal, as he had felt that, while it afforded adequate safeguards against the use of an article on reservations by any State as a means of avoiding its obligations under the covenants, it took due account of the case of a State which, in all good faith, might find it impossible to accede to all the provisions of the covenants. The Soviet representative had proposed some amendments to the draft article submitted by the United Kingdom, but, in the Australian delegation's opinion, those amendments were quite unacceptable because they would set virtually no limits to the reservations which a State might make to the covenants. The Australian member of the Commission on Human Rights had also been unable to accept the joint proposal submitted by the representatives of China, Egypt, Lebanon and the Philippines for reasons clearly shown in the Commission's records. Lastly, the representatives of Chile and Uruguay had submitted a draft article which provided that no States parties to the covenants could make reservations in respect of the provisions of the covenant in question. There again, the Australian delegation had been unable to support the proposal, be-

cause its Government thought that, regrettable as that fact might be, few Governments would be able to accede to the covenants as they were then drafted if no provision was made for some form of reservation. He felt that the Committee should study the question of reservations very closely before examining the draft covenants article by article, for it would be useless to present to the world instruments designed to protect and guarantee human rights if only a small minority of countries could accede to them. It might perhaps be advisable to raise a procedural question concerning the method to be followed, at the close of the general debate, in dealing with the draft covenants. He wondered whether the Committee should settle the question of reservations once and for all before giving final form to the texts of the draft covenants, or whether it should first complete its work on the substantive articles. He was aware that a number of delegations considered that the question of reservations should be settled first because they felt that they could not take a final decision on several of the articles until they knew whether or not it would be possible for their Governments to make reservations to some of the articles.

10. There was another question which was bound up with that of reservations—the question of the federal clause or the article dealing with the application of the covenants in States with federal constitutions. At its tenth session the Commission on Human Rights had decided by a very small majority to include the text appearing as article 27 in the draft covenant on economic, social and cultural rights and as article 52 in the draft covenant on civil and political rights. That article was quite at variance with the decision taken by the General Assembly in its resolution 421 (V), section C. In that resolution the Commission was requested to study the question of the federal State article and to prepare recommendations which would have as their purpose the securing of the maximum extension of the covenants to constituent units of federal States, and the meeting of the constitutional problems of federal States. The article adopted by the Commission conflicted with the General Assembly's intention. Not only did the article in question prevent the inclusion of a federal clause in the draft covenants, but it denied States with federal constitutions the possibility of making reservations designed to meet their particular constitutional difficulties. Furthermore, the article was absurd from the constitutional point of view. The constitutions of certain federal States were such that the provisions of a covenant of that nature could not extend to all the constituent parts without any limitations or exceptions. Important elements of the internal sovereignty of some federal States resided in the constituent units of the federation. That principle was inherent in the very nature of federal States. It was true that there were not many federal States, but it was surely a discriminatory act not to take their particular constitutional problems into account when drawing up draft covenants.

11. Strict limitations on the powers of the federal Government were laid down in the Australian Constitution. It therefore followed that the central Government's actions could not bind the constituent units of the federation in matters in which they were sovereign in the sense intended in the text of the articles as they stood in question. It appeared from some of the previous discussions of the matter that certain

delegations believed that the statements made on the federal structure of the United States of America also applied to Australia. That opinion was incorrect since, for example, there was no provision in the Australian Constitution whereby treaties made under the authority of the Commonwealth Government should be the supreme law of the land. The observance of the Constitution was subject to judicial review. Lastly, basic civil rights were secured by common law and by primary statutory laws of each state and not by the federal Constitution.

12. The Australian federation had an international juridical personality, but the constituent states did not. In the Australian Constitution there was a separation between the Parliament, the Executive and the Judiciary, and under the Constitution the powers of the federation were prescribed, but otherwise the Constitution of each of the six constituent states of the Commonwealth and every power of each state continued as at the establishment of the Commonwealth in 1901. As the internal sovereignty of the Australian Commonwealth was divided between the federal Government and the governments of the states, it had to be decided whether questions covered by certain international commitments came within the federal jurisdiction or within the jurisdiction of the states. Even the most cursory examination of the draft covenants showed that most of their provisions fell within the competence of the state governments. He was therefore compelled to say firmly that the text of article 27 of the draft covenant on economic, social and cultural rights and of article 52 of the draft covenant on civil and political rights would make it impossible for his country to adhere to the covenants. He urged the members of the Committee to reconsider the question of the federal clause. At an appropriate time he would submit to the Committee the draft article on that matter which had already been submitted to the Commission on Human Rights by the Australian and Indian delegations and amended by the delegations of Belgium and France (E/2573, paragraphs 246 to 248).

13. He associated himself with the United Kingdom representative's remarks on article 53 of the draft covenant on civil and political rights, referred to as the "territorial application clause". Article I of both covenants, the article on self-determination, dealt with a right which was not an individual human right; it set forth a principle which could be applied only collectively. Although that principle was proclaimed as a fundamental principle in the United Nations Charter, it had no place in a covenant on human rights. He therefore reserved his right to refer to the two articles in question later in the debate.

14. The questions he had referred to had particular relevance to the problems of certain States. He wished to make a few general observations.

15. The Australian delegation supported the principle of having two separate covenants, first because there were essential differences between economic, social and cultural rights and civil and political rights, and secondly, because the former expressed aspirations to be achieved, over a period of time, and could therefore be implemented progressively, while civil and political rights, because of their very nature, became operative when a State acceded to the covenant. The Australian delegation was therefore happy to note that the Commission on Human Rights had not decided to include in the draft covenant on economic, social and cultural

rights provisions relating to the setting up of a human rights committee, as it had done in the case of the draft covenant on civil and political rights. That procedure was not suitable for the implementation of the covenant on economic, social and cultural rights. Furthermore the procedure provided in the draft covenant on economic, social and cultural rights, the reporting system, was not applicable to the draft covenant on civil and political rights, because to admit that those rights could be implemented progressively would permit a signatory State merely to promise that it would endeavour, in its own good time, to carry out the provisions of the covenant. The Australian delegation could not therefore support the inclusion of article 49 in the draft covenant on civil and political rights.

16. The provisions of article 2 of the draft covenant on civil and political rights also raised an important question of implementation. That article had been interpreted in many different ways at the most recent session of the Commission on Human Rights, and the controversy turned on whether or not it was possible to admit an element of progression in the implementation of the covenant. The Australian delegation thought that in order to settle that question satisfactorily, the article should be re-examined in relation to the question of reservations.

17. In conclusion, he wished to make it clear that he had thought it necessary to emphasize the difficulties caused by the text of the draft covenants in their existing form because, in his opinion, particular attention should be given to the two following principles: first, the rights proclaimed in the draft covenants should be defined in a sufficiently precise manner and, secondly, the draft covenants should be drafted in such a way that if possible all States would be able to adhere to them sincerely. The Third Committee was carrying out what might be called an experiment, but an experiment which carried heavy responsibilities. The whole world was watching it and would judge it in the light of the results of that experiment. It was with that consideration in mind that the Committee should take a decision on the next step to ensure the adoption and application of the covenants, which offered so much hope to the world.

18. Mr. MACHTENS (Belgium) emphasized that, for the first time, the work of the Commission on Human Rights had reached the stage where the General Assembly would be able to discuss the draft covenants; it was fortunate that the Third Committee had decided to start that work. The method selected for the examination of the texts was sensible; immediate study of the articles would have led quickly to great confusion. A well-conducted general debate would make examination of the drafts, article by article, easier and would in the long run save time. The Belgian delegation would therefore confine itself to general observations while reserving the right to speak again during the detailed study of the drafts.

19. Belgium attached particular importance to respect for human rights. Its remarks, in the various organs of the United Nations which had dealt with that question, had been prompted by a desire to produce the texts most likely to guarantee fundamental rights, but in a manner consistent with the current stage of civilization and of a kind which could be accepted by the maximum number of countries. Recently, Belgium together with other European countries had concluded

at Strasbourg the Convention for the Protection of Human Rights and Fundamental Freedoms which was based on the same considerations.

20. It was apparently to be feared that only a few countries could accede to the draft covenants as they stood. It seemed that the majority of the members of the Commission on Human Rights had not given sufficient attention to that important question and the General Assembly should consider it without mental reservations and in complete frankness. The Belgian delegation warned the Assembly that the covenants had to be primarily practical instruments which would contribute to the progress of mankind; they should not become an element of discord between countries. Otherwise they would miss their aim and do more harm than good.

21. Some members of the Commission on Human Rights seemed sometimes not to have been calm enough and to have yielded to a fighting spirit, which was reflected in some provisions of the drafts. He drew the Committee's attention to the articles which showed a desire to take particular aim at the Powers administering the Non-Self-Governing or Trust Territories. The Belgian Government considered that those provisions concerned not only the seven States which transmitted the information provided for under Article 73 c of the Charter, but also all the States, which were much more numerous, on whose territories there were peoples who were not fully self-governing. In that respect, the draft covenants tended to add to the United Nations Charter while departing from its spirit; they could not be accepted by the administering Powers as they stood. Nor could they be honestly approved by the other countries concerned.

22. In that connexion, the Belgian delegation emphasized the importance of the question of reservations, on which the Commission on Human Rights had not taken a decision. Belgium intended in due course to submit once more the proposal it had submitted on that subject (E/2573, paragraph 294), a proposal which the Commission on Human Rights had not transmitted to the General Assembly. The problem of reservations would be studied in detail at a later stage. For the moment, it should be noted that reasonably drafted provisions on that subject would help to give the covenants the desired universality by enabling

States at different stages of evolution in the matter of human rights to assume the bonds of the covenants.

23. So far as the metropolitan territory of Belgium was concerned, there was no difficulty. Most of the rights proclaimed in the draft covenants were recognized by the national legislation and observed. That applied, for example, to social security and, generally speaking, to all labour rights; Belgium was one of the most advanced countries in the world in that respect. In other respects, progress was being made; the provisions on equal pay for equal work for men and women was one of the aims of Belgian policy.

24. As regards the Congo and Ruanda-Urundi, it would be absolutely false to allege that Belgium intended to prevent the application of human rights there, either by means of a colonial clause or by means of reservations. In general, the provisions of the draft covenants had either already been fulfilled or were short or long-term aims of Belgian policy. The application of the covenants, however dynamic, could only be gradual in those territories, as in all the others which were inhabited by backward peoples. It was not possible immediately to apply all human rights in the territories of tropical Africa, America or Asia, where primitive indigenous peoples still lived under the tribal systems. Nor could it be done in the territories of Asia or America which were officially described as "inaccessible" or "non-administered".

25. If the covenants included adequate provisions for reservations, it would be easier for countries which were in any way responsible for backward populations to accede to them. The clauses inserted in the conventions concluded under the auspices of the International Labour Organisation, which had proved effective in the light of experience, would be a useful guide. If Belgium had some scruples about the draft covenants as they stood, it was only because it had always scrupulously observed the international undertakings into which it had entered.

26. The Belgian delegation hoped that its appeal to the other delegations would be heeded and that the work of the Commission on Human Rights, in many respects remarkable, could be improved and made more efficient during the examination which the General Assembly was undertaking and in which Belgium intended to take an active part.

The meeting rose at 11.55 a.m.