UNITED NATIONS

ECONOMIC AND SOCIAL COUNCIL

Distr.
GENERAL

E/CN.4/SR.390
21 October 1953

ENGLISH
Original: ENGLISH and FRENCH

Dual Distribution

COMMISSION ON HUMAN RIGHTS

Ninth Session

SUMMARY RECORD OF THE THREE HUNDRED AND NINETIETH MEETING

held at the Palais des Nations, Geneva,
on Monday, 18 May 1953, at 3 p.m.

CONTENTS:

(26 p.)

Present:

Chairman: Mr. AZMI (Egypt)

Rapporteur: Mr. KAECKENBEECK (Belgium)

Members:

Mr. WHITLAM	Australia
Mr. DIAZ-CASANUEVA	Chile
Mr. CHENG PAONAN	China
Mr. ABDEL-GHANI	Egypt
Mr. CASSIN	France
Mrs. CHATTOPADHYAY	India
Mr. INGLÉS	Philippines
Mr. DRUTO	Poland
Mrs. RÖSSEL	Sweden
Mr. KRIVEN	Ukrainian Soviet Socialist Republic
Mr. MOROSOV	Union of Soviet Socialist Republics
Mr. HOARE	United Kingdom of Great Britain and Northern Ireland
Mrs. LORD	United States of America
Mr. PEROTTI	Uruguay
Mr. MELOVSKI	Yugoslavia

Also present:

Mr. ROY	Chairman of the Sub-Commission on Prevention of Discrimination and Protection of Minorities

Representatives of specialized agencies:

International Labour Organisation	Mr. BLAMONT
United Nations Educational, Scientific and Cultural Organization	Mr. BAMMATE

Representatives of non-governmental organizations:

Category A

World Federation of United Nations Associations	Mrs. SALMON

Category B

Catholic International Union for Social Service	Miss de ROMER
Commission of the Churches on International Affairs	Mr. NOLDE
Consultative Council of Jewish Organizations	Mr. BRUNSCHWIG
Co-ordinating Board of Jewish Organizations	Mr. WARBURG
International Council of Women	Mrs. SCHRADER-RIVOLLET
International Federation of Friends of Young Women	Mrs. FIECHTER
International Federation of University Women	Mrs. FIECHTER
Pax Romana	Miss ARCHINARD
Women's International League for Peace and Freedom	Mrs. BAER
World Jewish Congress	Mr. RIEGNER
World Union of Catholic Women's Organizations	Miss de ROMER

Secretariat:

Mr. Humphrey	Representative of the Secretary-General
Mr. Das) Mrs. Bruce)	Secretaries to the Commission

1. PROGRAMME OF WORK (resumed from the 388th meeting)

The CHAIRMAN said that, before he requested the Commission to resume its work on the additional articles to the draft covenant on civil and political rights he wished to make some suggestions about the programme of work. The Commission had still to examine three new articles proposed for Part IV (measures of implementation); it had also to take a vote on whether it should examine at the present session the proposals for a federal State article and an article on reservations. The Commission had also agreed to hear the United States representative on her delegation's three draft resolutions relating to annual reports, advisory services and specific aspects of human rights (E/CN.4/L.266, E/CN.4/L.267 and E/CN.4/L.268). There remained the Soviet Union draft resolution on the division of the draft covenant on human rights into two separate covenants (E/CN.4/L.272), the Reports of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, and items 11 and 20 of the agenda. Finally, the Commission would have to examine the Rapporteur's report on the work of the session.

As to the immediate problem, he understood that the Egyptian representative needed a full hour to introduce on behalf of his own and the Indian delegations their proposed new article on non-self-governing territories (E/CN.4/L.250). He therefore suggested that the present meeting be devoted to the new articles proposed by the Philippines and the United States delegations (E/CN.4/L.249 and E/CN.4/L.229), the vote on the federal State and reservation articles, the Soviet Union draft resolution and, if time allowed, the United States representative's statement on her three draft resolutions. The next meeting, and the next meeting only, would be reserved for the new article proposed jointly by the delegations of Egypt and India (E/CN.4/L.250), the Commission dealing with the Reports of the Sub-Commission on Prevention of Discrimination and Protection of Minorities in the afternoon of the next day.

In view of the heavy programme of work outstanding, and of the fact that the Commission had only nine more working days at its disposal before the end of the session, which was fixed for 29 May, he had requested the representative of the Secretary-General to enquire whether it would be possible to prolong the session. The Commission would have to take a decision in the light of the result of that enquiry.

Mr. HUMPHREY (Secretariat) said that his enquiries had elicited the information that after 29 May, no room equipped for simultaneous interpretation would be available at the European Office of the United Nations. Such a room could, however, be placed at the Commission's disposal in the city of Geneva itself for a period of two weeks. The prolongation of the session by two weeks would cost 16,000 dollars - a sum which could be made available if the Commission formally requested that the session be prolonged, and if that request were duly approved by the Advisory Committee on Administrative and Budgetary Questions.

Mr. MOROSOV (Union of Soviet Socialist Republics) said that previous commitments would make it impossible for him to remain in Geneva for another two weeks. The Commission could complete its work provided that it adhered to the agreement reached at a previous meeting, namely that each speaker should be allowed ten minutes for a first statement on any given subject and three minutes for subsequent statements.

Mr. CASSIN (France) regretted that he was unable to vote for prolongation of the session. Previous engagements would prevent him from attending any meetings after 29 May. However, the Commission might perhaps sit on Saturday, 30 May, if necessary, to consider its report.

Mrs. LORD (United States of America) said that she, too, had previous commitments which it would be difficult for her to abandon at the present late stage.

The CHAIRMAN said that the Commission was clearly opposed to the session's being prolonged. It would therefore remain for him to impose a strict time-limit on speakers.

Answering a question by Mr. MOROSOV (Union of Soviet Socialist Republics), the CHAIRMAN recalled that at its 380th meeting the Commission had decided to defer the vote on whether it should allocate time for the consideration of the federal State article and the article on reservations until it had concluded its work on part IV of the draft covenants (see document E/CN.4/SR.380, page 11). The question of any possible substantive discussion of those articles at the present stage did not therefore arise.

The Commission agreed to the programme of work suggested by the Chairman.

2. COMMUNICATIONS (item 20 of the agenda)(resumed from the 385th meeting):

Point of order raised by the Polish representative concerning the provisional summary record of the 381st (closed) meeting (E/CN.4/SR.381)

Mr. DRUTO (Poland), speaking on a point of order, stated that, as he had already intimated at the 385th meeting[1], the provisional summary record of the 381st (closed) meeting was in his delegation's view inaccurate, in that it was implied therein that the Commission had taken note of the confidential list of communications drawn up by the Secretary-General in accordance with Council resolution 75 (V), as amended by resolution 275 B (X). The proper formula would be that the Commission had heard the statement of the representative of the Secretary-General. It was impossible for the Commission to take note of communications which were not in its possession. He would be glad if the appropriate correction could be made in the final summary record of the closed meeting.

Mr. KRIVEN (Ukrainian Soviet Socialist Republic) supported the Polish representative, and pointed out that had his delegation realized what the true position had been it would have abstained from voting at the subsequent (382nd) meeting when the Chairman's interpretation of the Commission's action had been upheld by 14 votes to none, with 4 abstentions.[2]

The CHAIRMAN said that the question of the vote did not arise; the only question for the Commission was the precise meaning of the term "take note" (in French "prendre acte"). He did not agree that as used in the present case it meant the acceptance of a list of cases enumerated in a certain document. It simply meant that the Commission had had that list before it. The representative of the Secretary-General had made a statement, and the list had been distributed. That was what had taken place and what was implicit in the expression "prendre acte". It could certainly not be interpreted as meaning that the Commission had read the document and taken cognizance of every case mentioned therein.

Mr. MOROSOV (Union of Soviet Socialist Republics) recalled that he had not been present at the closed meeting, but had also felt some doubts on hearing, when he

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(1) See the summary record of the 385th meeting (E/CN.4/SR.385), page 4.

(2) See summary record of the 382nd meeting (E/CN.4/SR.382), page 4.

had arrived at the open meeting immediately afterwards, the Chairman's explanation of what had occurred.(1) He agreed with the Polish and Ukrainian representatives that he provisional summary record of the 381st meeting was inaccurate. The English text thereof read as follows:

> "The CHAIRMAN proposed that, if there were no objections, the Commission should take note of the confidential list of communications."

He had asked for an official translation into Russian of the expression "take note", and was, as a result, satisfied that the Russian equivalent was identical in meaning with the English. The relevant passage in the provisional summary record of the 382nd meeting read as follows:

> "The CHAIRMAN explained that, no objection having been raised when he had proposed that the Commission take note of the two documents, ...".(2)

Clearly, the reference was to the confidential list of communications and the addendum thereto, and not to the statement made by the representative of the Secretary-General. All the members who had been present knew that he had spoken, and what he had said, but the contents of the list was an entirely different matter. There was no suggestion whatsoever that any change be made in the account of the Chairman's statements. The point at issue was that the summary records should be amended in the light of those statements, despite the fact that the proceedings that were now taking place would also be placed on record and the whole situation thus ultimately made clear.

He would urge that the relevant passages in the provisional summary records of the 381st (closed) and 382nd meetings be amended to read:

> "The Commission took note of the statement made by the Secretary-General's representative and of the distribution of the confidential list of communications."

In that way all possible misunderstanding would be averted.

The CHAIRMAN said that in his view the provisional summary records required no modification at all. Both records clearly reflected exactly what had happened, and could not be changed. The term "take note" ("prendre acte") had the meaning which he had explained. If there were any difference between the French term and the Russian, he would ask that the Russian summary records be so corrected as to include a literal translation of "prendre acte". The summary record of the present meeting would provide an account of present explanations.

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(1) Loc. cit.

(2) Ibid.

Mr. MOROSOV (Union of Soviet Socialist Republics) was unable to interpret the term "prendre acte", for he did not know French. There being no summary records in Russian, he was obliged to use the English texts. He noted that no French-speaking representative had commented on the Chairman's interpretation of the French term. He must ask his English-speaking colleagues to help him with its English meaning. He himself could only interpret it as meaning that the Commission had examined the list of communications. That it had not done, and could not have done, for lack of time. That was why the only correct account of what had taken place was the one he had just proposed.

The CHAIRMAN suggested that the Soviet Union representative leave the collation of the English and French texts in the capable hands of the Rapporteur; but for certainty's sake he would ask Mr. Morosov which English-speaking member or members of the Commission he would like to help him in interpreting the meaning of "take note". Would he choose the Australian, Chinese, Indian, Philippine, United Kingdom or United States representative?

Mr. MOROSOV (Union of Soviet Socialist Republics) pointed out that he had not started the discussion, but had merely supported the Polish and Ukrainian representatives, who had first raised the issue. He would like all his English-speaking colleagues to help him. For the nonce, he took their silence to mean consent, and assumed therefore that his interpretation of the meaning of the expression "take note" was correct. The next step, therefore, was to put matters right in the records. It went without saying that he had entire confidence in the Rapporteur's judgment, but the Rapporteur could only make changes in the report, and not in the summary records, unless he were specifically requested to do so.

He hoped that the Polish and Ukrainian representatives agreed with his views, and that the discussion could now be brought to an end.

The CHAIRMAN said that his impression was that the Polish and Ukrainian representatives had found his (the Chairman's) explanations wholly adequate.

Mr. DRUTO (Poland) was prepared to agree that the Rapporteur should take the necessary steps to make the English text of the summary records tally with the facts.

The CHAIRMAN said that the Rapporteur would collate the French and English texts of the two summary records in respect of the expression "take note" ("prendre acte"), and ruled that the discussion was closed.(1)

3. DRAFT INTERNATIONAL COVENANTS ON HUMAN RIGHTS AND MEASURES OF IMPLEMENTATION (item 3 of the agenda)(resumed from the 389th meeting):

Measures of implementation (E/2256)(continued):

(i) Proposed new article submitted by the Philippines delegation, and French amendment thereto (E/CN.4/L.249, E/CN.4/L.279)

Mr. INGLÉS (Philippines) said that in the light of the amendment to article 59 which had been adopted at the previous meeting, the reference to that article in the new article proposed by his delegation (E/CN.4/L.249) was no longer relevant. The words: "the provisions of article 59 notwithstanding" should therefore be deleted.

In submitting the proposed new article, he would draw attention to the fact that, according to the original text of article 57, the Human Rights Committee should, if it failed in its conciliatory efforts, state in its report its conclusions on the facts. Under the United Kingdom amendment to that article, however, the Committee would in all such cases be bound to express an opinion as to whether the facts disclosed a breach by a contracting State of its obligations under the covenant. His delegation considered that States which, in the Committee's opinion, had committed a breach, should enjoy all the guarantees that a judicial procedure offered, and consequently proposed that such States should be entitled to bring the case before the International Court of Justice. It went without saying

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(1) In due course, the Rapporteur proposed that the English text should read "the Commission should note the distribution of the confidential list of communications", which rendered more faithfully than did the words "take note" the interpretation which the Chairman had placed on the expression "prend acte".

See also the following summary records:

381st meeting (E/CN.4/SR.381), pages 3 and 4, and footnote to page 4.
382nd meeting (E/CN.4/SR.382), page 4 and footnote.
385th meeting (E/CN.4/SR.385), page 4.

that if a State were found to have committed a breach of its obligations, its honour and reputation would be at stake. Although it had been argued that the Human Rights Committee was a non-judicial organ in so far as it was entrusted with conciliatory functions, yet in its fact-finding and reporting activities its functions became judicial, or at least quasi-judicial, to take the term used by the United Kingdom representative. It was essential, therefore, to provide machinery for appeal, since it was presumably not the intention of the Commission that the opinion of the Committee should be final and conclusive on issues which might have very grave consequences for the party concerned.

Under article 59 as amended a State might bring any dispute as to the interpretation or application of the covenant before the Court, either by unilateral application or by special agreement with the other State party to the dispute, depending on whether or not the parties had accepted the compulsory jurisdiction of the Court under the optional clause of Article 36 of the Court's Statute. His delegation's proposal went further, inasmuch as it would allow a State, against which an adverse finding had been made by the Committee, to bring the case before the Court by means of a unilateral application, irrespective of whether or not the State in question had accepted the Court's compulsory jurisdiction. It would certainly be unjust to prevent such a State from taking a case to the Court unless it could secure the special agreement of the complaining State. In other words, the purpose of the Philippines proposal was to place all States parties to the covenant on an equal footing in respect of right of appeal to the International Court of Justice.

That was not the same as compelling States parties to the covenant to accept the compulsory jurisdiction of the International Court of Justice, because the accused State would obviously be free to decide for itself whether to appeal to the Court against an adverse judgment by the Human Rights Committee. Of course, as soon as the State charged lodged an appeal, the complaining State would be automatically subjected to the compulsory jurisdiction of the Court, but that was a situation against which the complaining State should not object if it had really acted in good faith in making the complaint in the first instance.

According to the terms of his proposal, the right of appeal could be exercised only after the Committee had concluded its work, so that it would be impossible to by-pass that body. Hence the proposed new article would enhance the Committee's

restige and at the same time permit the development of an international jurisudence concerning human rights.

He would reserve his position on the French amendment (E/CN.4/L.279) until it had been formally introduced.

Mr. CASSIN (France) attached great importance to the new article proposed by the Philippines delegation, to which the French delegation had proposed what it felt to be two essential amendments (E/CN.4/L.279). The purpose of the second was simply to furnish a necessary clarification, namely, that the right of appeal laid down in the new article could only apply after the report provided for in article 57, paragraph 3, of the covenant had been drawn up.

The object of the first French amendment was to ensure that the State lodging a complaint and the State complained of enjoyed equal right of appeal. It was essential that a State which was alleged to have violated human rights should be given the opportunity of exonerating itself if the report drawn up by the Human Rights Committee upheld the charge. But it was equally important that the State making the complaint should have the right of appeal in the event of the Committee's reaching conclusions which amounted to a dismissal of the charge. At the preceding meeting, following an observation by the Uruguayan representative, he had reminded the Commission that States accepting the clause on compulsory jurisdiction, let alone other States, should be given the utmost possible latitude to try to settle a dispute out of court. Hence the first French amendment was, as it were, the outcome of the decisions taken at the preceding meeting.

As President of a national supreme court, he felt too that such a provision would show due respect for such courts. If, at international level, States wished to deal with an issue by means of conciliation, the national courts might have no objection. But it might unsettle them to know that the conciliation body was one which had the last word, and was therefore liable to overrule them; but the assurance that the last word would lie with the International Court of Justice would certainly dispel any misgivings they felt on that score.

Mr. KAECKENBEECK (Belgium) considered that the Philippines proposal was of major importance, and personally thought it excellent. The Belgian delegation had had some misgivings about voting for the United Kingdom amendment to article 57, which provided that if efforts to settle a dispute by conciliation proved

unsuccessful, the Human Rights Committee should state its opinion as to whether or not the facts found disclosed a breach by the State concerned of its obligations under the Covenant. Those misgivings would be removed if the State complained against and regarded by the Committee as guilty of a breach were given the opportunity of vindicating itself by appeal to the International Court of Justice, and such a provision would not be superfluous, even in face of the amendments made by the Commission to article 59. Obviously, attempts at conciliation could not always be crowned with success. Where they did prove successful, the solution was frequently dictated by common sense and humanitarian considerations, and was not always flawless from a legal standpoint. It might also happen that in its anxiety to show a conciliatory spirit, a State might go a long way in making concessions, but at the same time insist that should the attempts at conciliation break down its concessions should not be regarded as a fait accompli, thus distorting the entire background to the problem. For that reason, it was extremely important to provide for recourse to a supreme court.

He fully approved of the second French amendment, which provided a helpful and necessary clarification.

The first French amendment seemed more debatable. Logically speaking, it might well seem desirable that the State complained of and the State lodging the complaint should enjoy equal treatment. But the two States were not in the same position. Moreover, if a charge brought against a State was dismissed by the Committee, would it be desirable to allow the complaining State to bring the case a second time before a court of higher instance? He thought not, since that would mean establishing compulsory jurisdiction in favour of the State bringing the complaint.

For those reasons he would vote for the Philippines proposal and the second French amendment thereto, but not for the first French amendment.

Mr. HOARE (United Kingdom), speaking in support of the Philippines proposal, said that it was a logical extension of the Commission's decision to preserve the competence of the International Court of Justice, despite the fact that certain jurisdiction had been awarded to the Human Rights Committee. It was right that a State which had been found guilty by the Committee should not be in a

ıe position because the other State party to the dispute was not willing to go re the Court.

He also supported the French amendments. While admitting, with the Belgian .resentative, the undesirability of requiring a State acquitted by the Committee to run the gauntlet again before the Court, he thought that there would be little risk of the Court's being invoked as an additional tribunal by the accusing State if the Committee's decisions were clear and well-reasoned.

On the other hand, the fact could not be overlooked that in the course of its fact-finding the Committee would have to interpret the articles of the covenant, and that it would not always or necessarily seek advisory opinions from the International Court of Justice on such points. An accusing State might therefore find it necessary to seek a ruling by a higher tribunal, not out of vindictiveness, but out of concern at what it considered an erroneous interpretation by the Committee which might have important consequences for the protection of human rights in general. For that reason, as well as on the ground of equality of rights of the two States concerned, he thought the balance of advantage lay with the French amendments. He suggested, however, that the first could usefully be shortened by substituting for the phrase following the word "may" the words: "if no solution has been reached within the terms of paragraph 1 of article 57".

Mr. CASSIN (France) accepted that suggestion.

Mr. WHITLAM (Australia) said that the Australian Government, which in the past had stood out for a court of human rights as a judicial organ, was still of the opinion that the development of jurisprudence in that field would ultimately end in the establishment of such a tribunal. He would therefore support the Philippines proposal as giving a final judicial character to the corpus of the covenants' provisions. He was inclined to agree with the United Kingdom representative on the French amendments, which he would accordingly support as well. The equality of parties before the International Court of Justice was a sound principle in international jurisprudence. The Human Rights Committee was not a judicial tribunal as such, but would be required to act judicially, and appeal from its findings to a real court of law should be available.

Mr. CASSIN (France) pointed out to the Belgian representative that the Constitution of the International Labour Organisation recognized the right of both

parties to a dispute to appeal to a supreme court in the event of conciliation failing. If a dispute could not be settled by conciliation, the Governing Body of the International Labour Office, as well as the State complained against, coul refer the case to the International Court of Justice. Failing such equality of treatment in the sphere of human rights, what would happen if a State lodging a complaint agreed not to invoke the compulsory jurisdiction clause, so as to enable the case to be brought before a conciliation tribunal, that was, the Human Rights Committee? Was one to conclude that the State lodging the complaint would not have the right to appeal to a higher court if the Committee found the State complained against not guilty? If so, it was highly probable that States would be unwilling to forgo their rights under the compulsory jurisdiction clause.

Mr. KAECKENBEECK (Belgium) observed that what would happen would depend on the procedure prescribed in the agrément between the two States concerned; they could agree that the dispute should not be submitted to the International Court of Justice at all, or they could agree that the dispute should not be submitted to the Court until a certain stage in the conciliation procedure had been reached.

On the other hand, he had no personal objection to general provision being made for recourse to the International Court of Justice. He had emphasized the difference between the position of the State complained against and that of the State lodging a complaint because, if a body such as the Human Rights Committee, which was not really a judicial body at all, examined a case and came to conclusions which amounted to the condemnation of a State, it was natural that that State should have a right to appeal to a supreme court. The same did not apply to the State lodging a complaint, which had no need to attempt to justify itself. It might be well to remember that States had been extremely circumspect in agreeing to submit to the compulsory jurisdiction of the International Court of Justice. If a provision were inserted in the covenant making States subject to what might be called a "two-stage" jurisdiction, he feared that it might be difficult for certain States to accede to it. There was no doubt that theoretically the principle of equality of treatment as between the State lodging a complaint and the State complained against was perfectly sound, but matters would turn out differently in practice, and it might be rather rash to include a clause providing for compulsory jurisdiction.

Mr. INGLÉS (Philippines) said that his proposal restricted the right of appeal to the International Court of Justice to the State complained against because in his country's jurisdiction the right of appeal was conceded only to the accused, and not to the accuser. There was a certain analogy between the procedure of the Commission and that of a criminal court, because the Committee's judgment would in a sense be a decision. To give equal right of appeal to the complaining State would be tantamount to forcing the parties to accept compulsory jurisdiction of the Court as a consequence of ratification of the covenants.

There was, however, the further consideration that it was not merely disputes between States that were in question; the Commission was concerned just as much with the protection of the individual whose human rights might have been violated. From that point of view, it might be advisable to allow an appeal against a judgment of the Committee absolving a State from a charge of violating human rights. Therefore, his delegation, in agreement with the Belgian point of view, would abstain from voting on the first French amendment, and bow to the wishes of the majority.

Mr. MELOVSKI (Yugoslavia) reminded the Commission that his delegation had on several occasions stated its view that the International Court of Justice should not be the authority for settling a dispute concerning violation of an article of the covenant. It was the Human Rights Committee that should discharge that function. The provisions of article 52 of the draft covenant on civil and political rights, according to which States alone were empowered to submit petitions to the Human Rights Committee, showed that the only relevant violations would be those serious enough to endanger international security. Such violations would be political rather than legal in character, and in suggesting the International Court of Justice as the authority for settling a dispute in the final instance if the conciliation machinery broke down, the Commission did not appear to be choosing the body that was really best qualified. The Yugoslav delegation thought that the General Assembly should hear the final appeal, after a case had been heard by the Human Rights Committee. However, he wondered whether, in order to reconcile the two divergent views, the Commission would be prepared to consider a suggestion intended to supplement the Philippines proposal by the addition of a sentence indicating that the General Assembly of the United Nations must be regarded as the supreme authority best qualified to take a final decision on any dispute concerning violation of human rights.

Mr. INGLÉS (Philippines), commenting on the Yugoslav representative's remarks, said that he thought that the text of article 58 clearly recognized the competence of the General Assembly. The Philippines proposal merely allowed a matter to be brought before the International Court in certain cases, after which the General Assembly could intervene, if necessary, once the Court had rendered judgment. He would point out that, although the General Assembly, on the basis of the Committee's reports, might make recommendations, they would not be binding on any State, whereas a judgment of the Court would be so binding and, under Article 94 of the Charter of the United Nations, measures of enforcement could be undertaken by the Security Council.

The CHAIRMAN put to the vote the French amendments to the proposed additional article submitted by the delegation of the Philippines.

The first French amendment, as amended, by which the words "which has been found by the Committee to have committed a breach of its obligations under the covenant may" be replaced by the words "complained against or lodging a complaint may, if no solution has been reached within the terms of paragraph 1 of article 57," was adopted by 6 votes to 3, with 7 abstentions.

The second French amendment, to add to the Philippines proposal the words "after the report provided for in paragraph 3 of article 57 of this covenant has been drawn up", was adopted by 13 votes to 3.

The additional article proposed by the Philippines delegation (E/CN.4/L.249), as amended, was adopted by 11 votes to 3, with 2 abstentions.

(ii) Additional article 51 bis submitted by the United States delegation (E/CN.4/L.229)

Mrs. LORD (United States of America) said that if other representatives wished to defer consideration of her proposed new article until Part V of Section D (measures of implementation), to which it was closely related, was discussed elsewhere, she would have no objection, because she had no wish to provoke a controversy or to hold up the work of the Commission. Whereas Part V had been designed to provide a system of reporting in the covenant on economic, social and cultural rights, no provision had been made for any kind of reporting in the covenant on civil and political rights. In view of the request made by the General Assembly, her delegation was submitting the proposed article 51 bis in order to fill the gap.

Although similar in purpose to the other provisions in Part IV, it was different in detail. Part V contemplated a series of reports spread over a long period - which was essential in view of the slower rate at which economic, social and cultural rights were being achieved - whereas her proposal envisaged a minimum of reports, possibly only one, because civil and political rights could be given effect to immediately, as was made clear by paragraph 2 of article 2 of the draft covenant on civil and political rights.

The reporting procedure should not place any undue burden on governments, for all or most of the rights set forth in the draft covenant on civil and political rights were already being given effect to by many national constitutions. The proposed article was consistent with the previous practice of the United Nations by which governments had been asked to furnish information of that nature for inclusion in the Yearbook on Human Rights, and she believed that it accorded with the request of the General Assembly that similar provisions for reporting should be included in both the draft covenants.

Mr. CASSIN (France), speaking on a point of procedure, felt that it might be preferable to defer the discussion on the substance of article 51 bis until after Part V had been examined, since as the United States representative had herself pointed out, her proposal was directly linked with the questions dealt with there. Furthermore, delegations could hardly take a definite stand on the draft article until the Commission had voted on the Soviet Union draft resolution (E/CN.4/L.272) concerning the preparation of a single covenant covering both civil and political rights and economic, social and cultural rights.

The CHAIRMAN, pointing out that it had previously been agreed to regard Part V as virtually complete, said that he had doubts of the propriety of including the proposed new article.

Mr. HOARE (United Kingdom), recognizing that it had been agreed that there would be no time to study Part V further, said that he wished to put it on record that the United Kingdom delegation had several amendments to propose to that part. The United States proposal was a variant of the reporting system devised for the draft covenant on economic, social and cultural rights, and should therefore be discussed in relation to the general question how far such procedures could or should be applied to the draft covenant on civil and political rights. Since it

had been agreed that that question should not be discussed at the present session, he agreed with the French representative that consideration of the United States proposal should be deferred.

Mr. DIAZ-CASANUEVA (Chile) said that, although the United States proposa was designed to fill a gap in the covenants, he thought that the text was in general too vague. Under the provisions of Part V, progress reports would be furnished not only according to national standards, but also in accordance with recommendations made by the Economic and Social Council and the General Assembly. That broader aspect of reporting was missing from the United States proposal. Moreover, it was not specified whether the reports were to be rendered regularly and, if so, at what intervals, what was to happen to them, or what body would study them. He reminded the Commission that the proposed reports could not, as in Part V, be made dependent on the collaboration of the specialized agencies. Although he supported the idea in principle, he doubted whether the text as presented fully expressed the United States delegation's meaning.

The CHAIRMAN said that it had already been agreed that there would be no time for the discussion of Part V at the present session, even if the Soviet Union proposal on the number of covenants were adopted. The linking of the United States proposal to Part V was neither logical nor feasible.

Replying to the point made by the United Kingdom representative about his amendments to Part V, he assured the United Kingdom representative that there would be ample opportunity for submitting observations for inclusion in the report, even after the end of the session.

Mrs. LORD (United States of America), replying to the criticisms of the Chilean representative, agreed that lack of time would make it impossible to work out procedural details at the present session. However, she felt that it would be helpful if the principle of a system of reports could be accepted, thereby filling a gap in the covenant on civil and political rights.

After discussion in which Mr. ABDEL-GHANI (Egypt), Mr. KAECKENBEECK (Belgium), Mr. CHENG PAONAN (China) and the CHAIRMAN took part, Mrs. LORD (United States of America) said that she would accept the Chairman's suggestion that she should withdraw her proposal and re-introduce it in the Economic and Social Council.

'iii)Votes on whether the Commission should allocate time for consideration of the proposals for a federal State article and an article on reservations.

The CHAIRMAN invited the Commission to vote on the question whether time should be allocated during the current session for consideration of the proposals for articles on federal States and on reservations.

Mr. MOROSOV (Union of Soviet Socialist Republics) said that he would vote in favour of time being given to the consideration of both articles. The Commission had never yet examined the articles, and the task of both the Economic and Social Council and the General Assembly would be greatly facilitated by having the Commission's decisions as a basis upon which to work. He requested that a separate vote be taken for each article.

The Commission decided by 8 votes to 3, with 4 abstentions, not to allocate time for consideration of the proposals for a federal State article.

The Commission decided by 6 votes to 3, with 7 abstentions, not to allocate time for consideration of the proposal for an article on reservations.

Mr. CASSIN (France) explained that while his delegation would have been very glad to have had an opportunity of taking part in the discussion on the federal State article and the article on reservations, it unfortunately had no option, in view of the limited time at the Commission's disposal, but to vote against consideration of those questions.

Mr. HOARE (United Kingdom) said that he was in entire agreement with the French representative. The United Kingdom delegation had proposals to make on the very important subject of reservations, which raised many highly technical issues, and he would himself have preferred the Commission to have given the subject priority. But at the present stage it was clearly impossible, for lack of time, for the Commission to give the subject adequate consideration.

Mr. WHITLAM (Australia) said he had voted against the allocation of time for consideration of the proposals for a federal State article and an article on reservations for the same reasons as the United Kingdom representative.

Mr. KAECKENBEECK (Belgium) said that he had voted against consideration of both questions, because they were so complex and so technical as to require

lengthy discussion on which the Commission was not in a position to embark at the present juncture.

(iv) Soviet Union draft resolution on the division of the draft covenant on Human Rights into two separate covenants (E/CN.4/L.272)

Mr. MOROSOV (Union of Soviet Socialist Republics) said it was becoming increasingly evident that the division of the draft covenant on human rights into two separate covenants was a mistake, and that there was growing opposition to the General Assembly's recommendation. The covenant had been originally planned as one, and the artificial splitting of it into two could only result in weakening its international impact. As his delegation and others had frequently pointed out, economic, social and cultural rights and civil and political rights were linked together in General Assembly resolution 421 (V). The only argument put forward to justify the utterly unnecessary dichotomy that had been made was that different kinds of right would call for differences in implementation. That, however, was a thoroughly untenable position. Even accepting the hypothesis that economic, social and cultural rights could be acceptable only after a long period involving social change, all human rights could still be acknowledged in a single covenant, provided the obligations undertaken by States in respect of each were specified in detail. There were certainly no legal objections to the inclusion in a single covenant of obligations at present enumerated in detail in the two covenants separately. All that was required was the enumeration of a minimum number of economic, social and cultural rights. The French representative's remark at the preceding meeting that the proliferation of four or five covenants would shock world opinion was precisely an argument against that representative's own thesis.

He would appeal to all the members of the Commission to support his delegation's proposal, for by so doing they would strengthen the international significance of the provisions of the covenant and justify the hopes placed in the Commission by the world at large.

Mr. CASSIN (France) said he had listened most attentively to the Soviet Union representative's arguments in favour of the principle of a single covenant. The French delegation's feeling was that the Universal Declaration of Human Rights

represented on a world scale what the constitutions of the different countries represented in the national sphere. No-one surely would suggest that in each country all the legislation concerned with the implementation of the constitution should be embodied in a single instrument.

The constitution of any particular country was a comprehensive document with something of a mystical significance, the embodiment of a faith, whereas the laws laying down the measures necessary for the implementation of the declarations in the constitution must be matter-of-fact instruments, essentially practical in character. Consequently, however true it might be that human rights were a single entity and however necessary it was for the individual to be able to exercise sooner or later the whole series of his rights, it was quite obvious that from a practical standpoint, it was desirable to proceed by stages and to deal with the various difficulties one by one.

As everyone was aware, he had done his utmost to try to keep the covenant intact, and his Government would never have agreed to accede to a covenant on civil and political rights unaccompanied by a covenant on economic, social and cultural rights. But it had become clear when the attempt was made to frame a single covenant incorporating the whole body of rights that it would inevitably have to be split up into two parts, for the very good reason that while there were undertakings which could be made legally binding within a relatively short period, there were other rights the proclamation of which constituted a more or less long-term programme to be implemented by way of subsidiary conventions; that applied in the main to economic rights. The intervention of the specialized agencies, for example, was far more frequent in the matter of economic, social and cultural rights than in the matter of civil and political rights. Hence it was essential to adjust implementation methods to the nature of each category of rights.

Commenting on the Soviet Union representative's reference to the French statement at the preceding meeting to the effect that if the Commission produced four or five different covenants it might have a disconcerting effect on public opinion, he feared that his statement had been misinterpreted. He had been referring to

covenants in which the measures of implementation were fundamentally different and were based on a variety of empirical methods. The essential point was that the two covenants should as far as possible apply the same measures of implementat Moreover, the discussions during the present session had convinced him that while civil and political rights were not essentially different from economic, social and cultural rights, there were differences between them which were of great importance where implementation was concerned, and which ruled out the possibility of a single covenant. Such an instrument was inconceivable unless it consisted of separate parts; it would have no advantages, but would certainly have the serious drawback of lessening the chances of ratification. He would continue to repeat that it was better to obtain a large number of ratifications for each of the two covenants, even though the lists of signatory States were not absolutely the same, than to produce a single ideal covenant, extremely wide in scope, which failed to secure ratifications.

The CHAIRMAN said that the history of the consideration of the question by different United Nations organs showed that the balance was fairly even between those in favour and those against a single covenant. The opposing points of view had been excellently expressed by the statements of the Soviet Union and the French representatives. In view of the unyielding attitudes taken by governments further discussion would be useless, and he therefore suggested that a vote be taken immediately.

Mr. DIAZ-CASANUEVA (Chile) felt that although the discussion would take time, account should be taken of all opinions, especially for the benefit of new members of the Commission.

Mr. MELOVSKI (Yugoslavia) said that his delegation's views as to whether there should be one or two covenants were well known, and he reminded the Commission that General Assembly resolution 421 (V) had been based in part on a Yugoslav proposal. Human rights were an indivisible whole, and the fact that even those members of the Commission who advocated two covenants had recognized that the covenants must have a single preamble, was an unanswerable argument in favour of the view his delegation had always held. The Yugoslav delegation would accordingly vote for a single covenant.

Mr. DRUTO (Poland) thought that the question whether it was preferable to keep to a single covenant or to draw up two, was of capital importance. In his opinion, the proposal made at the Commission's seventh session, for the division of the covenant into two separate parts, one covering civil and political rights, the other economic, social and cultural rights, was tantamount, in effect, to a proposal to defeat the purpose of General Assembly resolution 421 (V).

It would be remembered that, after being rejected by the Commission, that proposal had been resubmitted to the Economic and Social Council, and subsequently to the sixth session of the General Assembly, which had adopted it by a small majority. He had noticed that, at the current meeting, the delegations favouring two separate covenants had been unable to find any new arguments in support of their view. It seemed, in fact, difficult to argue convincingly that the principle "Everyone has the right to life" did not entail, as an immediate corollary, the affirmation that "Everyone has the right to work". For the vast majority of mankind, work was obviously the essential condition of life. Similarly, the principle "No one shall be held in slavery or servitude" could not easily be implemented unless the worker was guaranteed equal pay for equal work, social insurance, holidays with pay and other conditions set out in articles 7, 8, 9, 10 etc., of the draft covenant on economic, social and cultural rights.

Replying to the argument that the principles laid down in a country's constitution need not necessarily be embodied in a single legislative instrument, he pointed out that his country's legal experts had sought and found formulas which expressed the existing state of affairs. Chapter VII of the Polish Constitution dealt with the rights and duties of citizens both in the political and civil sphere and in the economic, social and cultural fields. Poland had not found it necessary to adopt two constitutions. He emphasized, for the information of the French representative, that there was nothing mystical about the Polish Constitution; on the contrary, it was the national basic law governing the practical application of concrete rights.

The artificial division of the covenant on humnn rights into two separate instruments complicated and distorted the sense of the Commission's work on human rights. He reminded representatives that, when the question of equal rights in

marriage was under consideration, the French representative had asked in which covenant the pertinent article could best be inserted. Such doubts showed clearly that it was difficult to classify certain rights as civil and political rather than as economic, social and cultural since, in fact, they belonged to both categories. That was surely an argument in favour of a single covenant.

In that connexion, the final decision did not rest with the Commission, for the General Assembly was the supreme authority in the matter. Nevertheless, it was plainly the Commission's duty to set out, for the benefit of the supreme authority of the United Nations, the difficulties inherent in a question of sufficient complexity to require further study both by the Economic and Social Council and by the General Assembly. The fact should be squarely faced that the only true safeguard for human rights was to treat them as one and indivisible. For those reasons the Polish delegation would strongly support the Soviet Union representative's draft resolution.

Mrs. CHATTOPADHYAY (India) said that the views of governments, already freely ventilated in the Economic and Social Council and General Assembly, had become crystallized. Her delegation supported the proposal for two covenants for the practical reason that the limitations under which certain governments were working enabled obstacles to be overcome only gradually. It would be impossible for her Government to implement all the measures if they were included in a single pact.

Mr. DIAZ-CASANUEVA (Chile) said he could not accept the idea of the rigidity of votes already adopted; such a conception was antagonistic to the whole conception of the Commission's work. He reaffirmed his delegation's support of a single covenant. Rights were bred by injustices, and the Commission was concerned, not with the philosophical discussion of principles, but with the practical application of human rights. Those rights could be differentiated, but not split. Civil and political rights could not be fully enjoyed without economic, social and cultural rights, such as the right to education; the latter were the guarantee of the former. The division of the covenant into two would destroy the essential inter-relationship of human rights. He would support the Soviet Union proposal.

Mr. KRIVEN (Ukrainian Soviet Socialist Republic), associating himself with the Soviet Union proposal, said experience both inside and outside the Commission had shown that unity of purpose in the implementation of human rights could be achieved only by combining the provisions recognizing those rights in a single covenant.

Mr. FORTEZA (Uruguay) said that although the question raised no problems in Uruguay, his delegation recognized the difficulties which would be encountered in including all rights in one instrument, since covenants created practical obligations. It maintained its previous attitude and would vote against the Soviet Union proposal.

The CHAIRMAN put the Soviet Union draft resolution to the vote.

At the request of Mr. MOROSOV (Union of Soviet Socialist Republics) the vote was taken by roll-call.

The representative of Chile, having been drawn by lot by the Chairman, was called upon to vote first.

The result of the voting was as follows:

In favour: Chile, Egypt, Poland, Ukraine, Union of Soviet Socialist Republics, Yugoslavia.

Against: China, France, India, Sweden, United Kingdom, United States of America, Uruguay, Australia, Belgium.

Abstained: Philippines.

The Soviet Union draft resolution (E/CN.4/L.272) was rejected by 9 votes to 6, with 1 abstention.

Mr. INGLÉS (Philippines), speaking in explanation of his vote, said that although the Commission was competent to address recommendations to the Economic and Social Council and the General Assembly on whether there should be one or two covenants on human rights, his delegation took the view that the power of decision on that matter had passed from the Commission and the Economic and Social Council to the General Assembly. It therefore reserved its position with regard to any debate on that issue in the General Assembly.

4. DEVELOPMENT OF THE WORK OF THE UNITED NATIONS FOR WIDER OBSERVANCE OF, AND RESPECT FOR, HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS THROUGHOUT THE WORLD (item 7 of the agenda):

Draft resolutions submitted by the United States of America on Annual Reports, Advisory Services and Specific Aspects of Human Rights, together with statements of the financial implications thereof (E/CN.4/L.266 and Add.1, E/CN.4/L.267 and Add.1, E/CN.4/L.268 and Add.1).

The CHAIRMAN invited representatives to take up item 7 of the agenda and hear the statement of the United States representative on her delegation's draft resolutions.

Mrs. LORD (United States of America) expressed some hesitation about making a statement which would take between 20 and 25 minutes at so late an hour.

Mr. CHENG PAONAN (China) moved that the meeting adjourn, and that the Commission meet at 9.30 the following morning to hear the United States representative's statement.

The Chinese representative's motion was carried nem. con.

The meeting rose at 7.40 p.m.