

UNITED NATIONS
ECONOMIC
AND
SOCIAL COUNCIL



GENERAL

E/CN.4/353/Add.3
16 January 1950

ORIGINAL: ENGLISH



COMMISSION ON HUMAN RIGHTS

Sixth session

COMMENTS OF GOVERNMENTS ON THE DRAFT INTERNATIONAL COVENANT
ON HUMAN RIGHTS AND MEASURES OF IMPLEMENTATION

The Secretary-General has the honour to circulate the following comments:

4. The Republic of the Philippines*

Comments and proposals of the Republic of the
Philippines on the Draft International
Covenant on Human Rights received by
the Secretary-General on
13 January 1950

PREAMBLE

It is proposed that the preamble be worded thus:

"The State parties hereto, having resolved to take further steps toward the consummation of the high objectives of the United Nations Charter and bearing in mind the general principles enunciated in the Universal Declaration of Human Rights, approved by the General Assembly of the United Nations on 10 December 1948, agree to reinforce certain of the principles of the Declaration, as follows:"

*In transmitting the comments and proposals of the Philippine Government, the Executive Secretary of the Philippine delegation stated:

"I take pleasure in transmitting herewith a copy of my Government's comments and proposals on the Draft Covenant and proposed answers to a Questionnaire on Implementation of said Covenant, as submitted by Dr. Jorge Bocobo, Chairman of the Committee on Culture of the National Commission on Educational, Scientific and Cultural Matters, to whom the Draft Covenant was referred for study.

"The National Commission has accepted the enclosed report and the Department of Foreign Affairs agrees with the views of Dr. Bocobo."

The phrase "to give effect in this Covenant" found in the text contained in the Report of the Third Session of the Commission, as well as in the text proposed by the French representative, might imply that the principles in the Declaration of Human Rights, though already approved by the General Assembly, are not yet effective. "To reinforce" is therefore submitted as more accurate.

The text suggested by the representative of the United States does not convey the idea that the Covenant is to reinforce the Declaration of Human Rights.

None of the three proposed texts conveys the thought that the Covenant is a mere continuation of previous effort. Hence, the suggested words: "To take further steps."

ARTICLE 1

The concluding words "general principles of law recognized by civilized nations" should be changed to "general principles of right and justice," for these reasons:

1. The word "law" is not broad enough.
2. Many of these principles, which are implanted in man's conscience, are also recognized in backward nations. There ought to be no implication of disdain toward these less progressive countries.

ARTICLE 2

The following sentence should be added to Par. 2:

"The perpetrators shall be duly and swiftly repressed, specially when they are public officials."

This addition places upon the State the responsibility of taking the initiative in the investigation and prosecution of abusive acts. The victim is too often under the influence of fear, so the government itself should act with energy to bring the criminals swiftly to justice.

The last words, "specially when they are public officials" are designed particularly to curb abuse of power by such government agents.

ARTICLE 4

This article should read thus:

"1. In time of war or other public emergency gravely threatening the interests of the people, a State may take measures derogating from its obligations specified in Arts. 9, 11, 12, 17 and 19 to the extent strictly limited by the exigencies of the situation, and always with the restrictions laid down by law.

"2. Any State party hereto availing itself of this right of derogation shall at once inform the Secretary - General of the United Nations fully of the measures which it has thus enacted and the reasons therefor. It shall also inform him as and when such measures cease to operate and the provisions of the Articles mentioned in the first paragraph of the Covenant are being fully executed."

Derogation should be permitted only in certain cases, instead of a general reference to the entire Part II. This will emphasize the restrictive character of Art. 4. In consequence, par. 2 of the original article should be omitted, and the second sentence of par. 3 has been revised.

The words "at once" have been inserted in par. 3 to insure timely action by the corresponding United Nations instrumentality.

ARTICLE 5

It is proposed that this article be revised to read thus:

"1. In countries where capital punishment exists, sentence of death may be imposed only for the most serious crimes, and only under extraordinary circumstances.

"2. No one may be executed save in virtue of the final sentence of a competent court and in accordance with a law in force at the time of the commission of the crime and not contrary to the principles expressed in the Universal Declaration of Human Rights.

"3. Amnesty, pardon or commutation of the sentence of death may be granted in all cases."

Par. 1 of the original article is unnecessary, as the subject is covered in par. 2.

The phrase "and only under extraordinary circumstances" has been added because there is a growing tendency all over the world either to abolish or restrict the death sentence.

The word "final" has been inserted before "sentence", and the words "at the time of the commission of the crime" have also been inserted. The reasons are evident.

ARTICLE 6

This article should read as follows:

"1. No one shall be subjected to torture or to cruel, unusual or degrading treatment or punishment.

"2. No excessive fines shall be imposed."

The word "unusual" has been used instead of "inhuman" which conveys the same idea as "cruel". "Unusual" is a historic word in many bills of rights.

The second paragraph on excessive fines has been added. This is also one of the well-established guaranties in many countries.

ARTICLE 7

In so far as this article seems to permit physical mutilation provided the subject consents, it should be revised, because no person should be allowed even voluntarily, to submit to any form of physical mutilation. Therefore the word "any form of physical mutilation" should be deleted.

ARTICLE 8

Pars. 1 and 2 should be merged into a single one, which will read thus:

"1. Slavery, servitude and the slave trade in all their forms shall be prohibited. No one shall be allowed to enter into any contract of slavery or servitude."

The prohibition thus extends not only to the master but also the slave or worker, because no person has any right to traffic with his dignity as such.

From par. 3 the word "to such punishment" should be eliminated. The idea of punishment for a crime has been abandoned by the most enlightened criminologists.

It is proposed that the following paragraph be added at the end of the article:

"4. Every labour performed by prisoners shall be compensated at the rate prevailing in the community, but the cost of their maintenance shall be deducted from such compensation."

It is but just and humane that prison labor should be paid for by the State.

ARTICLE 9

This Government indorses the idea of the representatives of Australia, Denmark, France, Lebanon and the United States that the cases where an arrest or detention may be effected should be clearly defined and enumerated. However, the specification of such exceptional cases should be carefully formulated. Thus, in Art. 9 proposed by said countries, the words "security measure" in sub-division (a) are vague; and sub-division (d) should include lepers, persons suffering from venereal disease, opium addicts, and drunkards, for treatment.

As for par. 4, bail in case of prosecution for some crime for which the law prescribes death should not be a matter of right.

Concerning par. 6, the following should be added:

"In case he has been unlawfully killed, his family shall be entitled to compensation."

If unlawful arrest gives rise to compensation, unlawful killing should, with greater reason, also create liability for the same.

ARTICLE 10

This article should be clarified by adding these words: "unless he is guilty of fraud."

ARTICLE 11

The exception in par. 1 should be eliminated. The words "Subject to any general law, adopted for specific reasons of national security, public safety or health" might be availed of by a dictator. The plain statements of Art. 13 of the Declaration of Human Rights are preferable.

ARTICLE 12

It is suggested that the following paragraph be added:

"2. Extradition shall not be applied to political crimes."

Asylum from persecution, which is recognized in the Declaration of Human Rights, should not be forgotten in the Covenant.

ARTICLE 13

The first sentence of par. 2 should read thus:

"Every one charged with a criminal offense has the right to be presumed innocent until proved guilty beyond reasonable doubt according to law".

The word "penal" has been changed to "criminal", to exclude the idea of punishment.

Proof beyond reasonable doubt should be required in criminal cases for the protection of the innocent. In a dictatorship, flimsy evidence is sufficient to find the accused guilty.

Par. 3 should read as follows:

"Every one who has served a sentence of imprisonment, in whole or in part, as a result of an erroneous conviction of crime shall have an enforceable right to compensation. This right shall be recognized only in either one of the following cases:

"(a) That the real culprit has voluntarily confessed, and there are no reasonable grounds to doubt his confession; or

"(b) That the fact or event which was the basis of the conviction is shown beyond reasonable doubt never to have existed or taken place, as when, in a murder or homicide case, the person alleged to have been killed is living."

Without the limitations just proposed, the administration of justice would seriously suffer.

It is proposed that the following paragraph be added:

"4. No one shall be compelled to testify against himself, or to confess guilt, or be induced to make such confession by a promise of reward or immunity, except in the last case when the person confessing becomes a State witness."

ARTICLE 14

The word "penal" should be changed to "criminal", and the term "penalty" should not be used; in its place, "repression" should be employed.

The second sentence should be worded as follows:

"Nor shall a different repression be imposed from the one that was applicable at the time the criminal offense was committed."

It is evident that the judge can not impose a heavier or lighter repression than that fixed by law at the time of the commission of the crime. If the word "heavier" is used, the provision does not prohibit the judge from imposing a lighter repression than that prescribed by law.

ARTICLE 16

Par. 2 should be omitted, in the same way that the exceptions therein stated do not appear in the Declaration of Human Rights. Religious persecution or intolerance was and is always based on the pretext of public safety, order, health, or morals, especially the last. At least the word "morals" should be deleted.

The following paragraph should be added:

"3. Persons who conscientiously object to war as being contrary to their religion shall be exempt from military service."

ARTICLE 17

Freedom of expression should be included in the Covenant on Human Rights in order that this Covenant may be complete. However, the limitations on such freedom should be agreed upon in a separate Covenant after the work of the Conference on Freedom of Information shall have been completed. Therefore, Art. 17 should be formulated as follows:

"Art. 17. Subject to such limitations as may be agreed upon in a separate Convention, every person shall have the right to freedom of thought and of expression without interference by governmental action. These rights shall include freedom to hold opinions, to seek, receive, and impart information and ideas regardless of frontiers, either orally or by written or printed matter, in the form of art, or by legally operated visual or auditorial devices."

This text is based upon the formula submitted by the United Nations Conference on Freedom of Information.

ARTICLE 18

The following paragraph should be added:

"2. Every one has the right to petition the government for the redress of his grievances."

The right of petition is fundamental and should not be omitted from this Covenant.

ARTICLE 19

The words "or for the prevention of war" should be added to paragraph 2. This idea is not necessarily included in the words "national security."

ARTICLE 20

Economic opinion and educational attainment should be added to paragraph 2. Therefore Art. 20, par. 2 should be revised so as to read as follows:

"2. Every one shall be accorded all the rights and freedoms defined in this Covenant without discrimination on any ground such as race, colour, sex, language, religion, political, economic or other opinion, national or social origin, property, educational attainment, birth or other status."

The sponsorship of any economic reform should not be any ground for discrimination. Nor should illiteracy or little education constitute a pretext for inequality before the law.

ARTICLE 21

This article should be formulated as follows:

"Every act which tends to stir up hatred or violence against any person or group of persons by reason of race, colour, sex, language, religion, political, economic or other opinion, national or social origin, property, educational attainment, birth or other status, shall be prohibited by the law of the State."

If freedom of speech and of the press is included in this Covenant, as it should be included, then Art. 21 is necessary.

ARTICLE 24

The text proposed by the representative of India seems to be the most satisfactory.

ARTICLE 25

The text proposed by the representative of the Philippines should be adopted. It reads as follows:

"The provisions of the present Covenant shall extend or be applicable to a signatory metropolitan State as well as all the territories, be they non-self-governing, trust, or colonial territories, which are being administered or governed by such metropolitan State."

ARTICLE 26

The text proposed by the representative of the United States together with the amendment suggested by the representatives of Iran and the Philippines is preferable. This article should therefore read as follows:

"An amendment to this Covenant shall come into force when it has been ratified by two-thirds of the States parties to this Covenant. Such an amendment shall be binding only on those parties which have ratified it.

"Any signatory State or member State of the United Nations shall have the right to initiate amendments to this Covenant."

Additional Articles

Two kinds of additional articles are necessary:

- (1) On economic and social matters; and
- (2) On other subjects.

The Government of the Republic of the Philippines proposes, concerning the first type, the following:

ADDITIONAL ARTICLES ON ECONOMIC AND SOCIAL MATTERS

1. No one shall be unjustly deprived of his citizenship nor for any cause denied the right to change his citizenship. (Revised form of Art. 15, Declaration of Human Rights)

2. Men and women of the age fixed by law, without any limitation due to race, nationality, religion, or social or economic condition, have a right to marry and to form a family. (Revised version of Art. 16 of the Declaration of Human Rights)

3. Every child is entitled to parental care, to receive at least free elementary education, and to live in an atmosphere conducive to his physical, moral and intellectual development. (From Art. 356, New Civil Code of the Philippines)

4. (1) Every person has a right to work under just terms and conditions.

(2) The State shall provide for the fixing of minimum wages, which shall afford every one and his family a safe and worthy existence. There shall

be equal pay for equal work. (From Art. 23, No. 2, Dec. of Human Rights)

(3) The State shall fix the hours of work so that they shall neither be excessive nor unreasonable. There shall be holidays with pay. The work of women and children shall be strictly regulated for their protection.

(4) The State shall establish, in so far as practicable, a social security system for old age, sickness, disability, accident, unemployment, orphanhood, widowhood and other causes of need.

(5) Trade unions shall not be interfered with, except for the maintenance of public order and the prevention of fraud or intimidation.

ADDITIONAL ARTICLES ON
OTHER SUBJECTS

The following are additional articles on other subjects:

1. "No one shall be subjected to arbitrary and unlawful interference with his privacy, home or correspondence, nor to attacks on his honour and reputation."

This text is derived from Article 12 of the Declaration of Human Rights, with the insertion of the word "unlawful" before the word "interference".

2. "No one shall be deprived of his property without due process of law."

This guaranty is found in many constitutions. No Covenant on human rights is complete without such a safeguard against confiscation.

3. "No private property shall be taken unless just compensation has first been paid."

This is also an important guaranty against confiscation of property.

ANSWERS OF THE REPUBLIC OF THE PHILIPPINES
TO THE QUESTIONNAIRE ON MEASURES OF IMPLE-
MENTATION

Part I

PRELIMINARY QUESTIONS

1. It is necessary to have in a separate document articles providing for international measures and the setting up of international institutions for the implementation of human rights and freedoms.
2. Implementation should be entrusted to the Economic and Social Council.
3. In a separate instrument.

Part II

INITIATION OF PROCEEDINGS

Chapter 1

1. Yes.
2. To a body appointed by covenanting States.
3. Without limitation.
4. A preliminary examination.
5. Yes.

Chapter 2

- A. Right of Petition.
1. Not to individuals.
- B. Conditions.
1. Yes.
 2. Yes.
 3. Not to grievances of individuals.
 4. Yes to both (a) and (b).
 5. Yes.
 6. Yes.
 7. Yes.
 8. Yes to both (a) and (b).

Part III

ESTABLISHMENT OF PERMANENT AND AD HOC BODIES

1. Permanent and Ad Hoc Bodies.
 - A. Establishment.
 1. By the signatory States.
 - B. Manner of establishment.
 1. Elected.
 2. By the signatory States.
 - C. Composition.
 1. A combination of such representatives and persons.
 2. No.
 3. No.
 4. Yes.
 5. No.
 - D. Secretariat.
 1. Yes to (a), (b), (c), (d) and (e).
 - E. Functions.
 - (1) General
 1. Yes to (a), (b) and (c).
 - (2) Collection of Information
 1. Yes to (b).
 2. Yes to all sub-divisions.
 - (3) Commencement of Action
 1. Yes to all sub-divisions, except (e).
 2. Yes.
 3. Yes to both (a) and (b).
 4. Yes, but petitions from individuals should not be acted upon.
 - (4) Procedure
- No answers.
- (5) Powers
 1. Yes.
 2. Yes.

3. Yes.
4. Yes.
5. By the organ itself.
6. Either (a) or (b). But the matter may be referred to the International Court of Justice, after consultation with the Commission on Human Rights, if arbitration fails.

(6) Advisory Opinions

1. Yes to (a), after consultation with the Commission on Human Rights.

II. Ad Hoc and Fact-Finding Bodies.

No answers.

Chapter 4

1. Yes, but its powers should not interfere with those of the international organ charged with supervision of the observance of the Covenant.
2. No, but it may make recommendations to the international organ referred to in the next preceding answer.

Part IV

JUDICIAL SETTLEMENT

General

1. Yes.
2. Yes to (a).

Chapter 5

A. General

1. Yes.
2. Yes.
3. Yes.
4. Yes.
5. Yes, by the Commission on Human Rights, on request of the other party.
6. Yes.
7. No.
8. Yes.

B. Statute of the Court

(1) General

1. Yes.

(2) Competence

1. By (a), (c), or (d).

2. Yes.

3. Yes to both (a) and (b).

4. No.

(3) Advisory Opinions

1. Yes.

Part V

GENERAL PROVISIONS

General

1. Yes.

2. Yes, to any of the three methods.

Chapter 6

1. Yes to (a).

2. Yes.

A. Powers of United Nations organs

1. Yes.

2. Yes, but not as to implementation of economic and social articles in the Covenant. These matters should be under the responsibility of the Economic and Social Council.

B. Status of non-member States

1. Yes to (b).

2. Yes to both (a) and (b).

C. Adherence

1. Yes.

D. Dependent and other Territories

1. Yes.
