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COMMISSION ON HUMAN RIGHTS  
Seventh session  
Item 3 of the provisional agenda

OBSERVATIONS OF GOVERNMENTS OF MEMBER STATES ON THE DRAFT INTERNATIONAL COVENANT  
ON HUMAN RIGHTS AND MEASURES OF IMPLEMENTATION, AS DRAFTED AT THE SIXTH SESSION  
OF THE COMMISSION ON HUMAN RIGHTS, RECEIVED BY THE SECRETARY-GENERAL UNDER  
GENERAL ASSEMBLY RESOLUTION 421 H (V) AND ECONOMIC AND SOCIAL  
COUNCIL RESOLUTION 303 I (XI)

14. Canada

(Note dated 14 March 1951 from the Permanent  
Representative of Canada to the United Nations)

The Permanent Representative of Canada to the United Nations presents his compliments to the Secretary-General of the United Nations, and has the honour to refer to the Secretary-General's note No. SOA 317/1/01 (1) of 12 January 1951, addressed to the Secretary of State for External Affairs of Canada, regarding the draft Covenant on Human Rights, in which the Secretary-General, in accordance with a resolution of the General Assembly of 4 December 1950, requested the observations of the Government of Canada on the draft Covenant on Human Rights for transmission to the Commission on Human Rights.

The Permanent Representative of Canada has been instructed by the Secretary of State for External Affairs to transmit to the Secretary-General the enclosed Statement containing the observations of the Government of Canada on the draft Covenant on Human Rights.

/CANADIAN STATEMENT ON  
E/CN.4/515/Add.13

CANADIAN STATEMENT ON DRAFT COVENANT  
ON HUMAN RIGHTS

Under the Canadian constitutional and legal system, human rights and freedoms have been protected by judgments of the courts and by specific statutes rather than by general declarations, statements of principles or a bill of rights. Indeed, it would appear that residents of Canada enjoy in fact all the rights set forth in the draft covenant on human rights, apart from the provision for compensation in the event of a miscarriage of justice, dealt with in Article 10(3). In Canada these rights have been observed and enforced on a rather different basis than in some other countries.

2. The existence of different methods and procedures for defining and protecting human rights has inevitably given rise to some divergence of views on the draft covenant, as expressed by the representatives of various countries in the General Assembly and other organs of the United Nations. It must thus be recognized that there are many difficulties and obstacles to be overcome in reaching a general understanding on an international treaty or agreement dealing with human rights.

3. Certainly Canada could not support any draft covenant, or become a party to any covenant which was framed in such a way as to run counter to the policies and principles of any large and representative group of the nations of the free world. This requires, among other things, that full recognition be given to the constitutional difficulties of federal states and states with dependent territories. Canada, for its part, could not even consider approving any covenant in the absence of a satisfactory federal clause. Furthermore, the proposed attempt to include economic and social rights will jeopardize the completion and coming into force of the covenant.

THE FIRST EIGHTEEN ARTICLES OF THE DRAFT COVENANT

4. The content or scope of the first eighteen articles of the present draft text of the covenant appears to be generally satisfactory, in the sense that they cover the essential or fundamental civil rights. It would not appear to be wise to attempt to add at this stage to the basic principles embodied in these articles, as any endeavour to do this might well result in lengthy delays in establishing the text of the covenant and limit substantially the number of

/states

states prepared to ratify it.

5. Indeed, it might be advisable to consider the deletion of certain rather more secondary provisions in the first eighteen articles, such as the provision in paragraph 2, sub-section (b) of Article 10 to grant free legal aid, and the provisions in paragraph 6 of Article 6 and paragraph 3 of Article 10, to accord compensation in the case of unlawful arrest or a miscarriage of justice in the courts. Other countries interested in the formulation of the covenant have pointed out that these provisions have extensive administrative and financial implications. It might therefore be advisable not to include them at the present stage.

6. As regards the form or quality of drafting of the first eighteen articles, the present draft text requires substantial revision. The articles are very unevenly formed. Some contain very detailed provisions while others are expressed in terms of general principles. The criticisms made of the text by different governments have been of a conflicting nature, as some have wished to have more detailed provisions with lengthy enumerations of exceptions to, or limitations on, the basic rights as defined in the covenant, while other governments have expressed a desire to confine the text to general provisions without spelling out restrictions and exceptions in detail. Since it is necessary for the purpose of a general international convention to find some common ground between the various legal systems in existence in the free world, technical terms and detailed provisions should be eliminated as far as possible, and the definitions of rights in the covenant should be expressed in general terms, while at the same time avoiding ambiguity or vagueness as far as possible.

7. In an annex to this statement some comments are made on a few articles to illustrate the unsatisfactory form of the first eighteen articles.

#### FEDERAL STATE CLAUSE

8. The comprehensive resolution of the General Assembly of 4 December 1950, concerning the future work of the Commission on Human Rights contains a reference to the federal state clause and provides that the Commission shall make recommendations for the purpose of securing the maximum extension of the covenant to the constituent units of federal states, and meeting the constitutional problems of federal states. The inclusion of a federal clause recognizing the special position of federal states in the covenant is of the greatest importance

/to Canada.

to Canada. Indeed, as stated above, in the absence of a satisfactory federal clause, Canada, because of the nature of its constitution, which distributes legislative powers over the field of human rights between the national parliament and the provincial legislatures, could not become a party to the Covenant.

#### COLONIAL APPLICATION CLAUSE

9. On 4 December, the General Assembly also adopted a separate resolution concerned with the application of the covenant to dependent territories. This not only records a decision against the inclusion of a colonial application clause in the covenant, but presents the text for an article which would require that the provisions of the covenant apply automatically and immediately to all dependent territories of metropolitan states which become parties to the covenant. Many delegations voted in favour of this resolution in the belief that the benefits and rights under the covenant should not be withheld from colonial peoples. The majority decision is, however regrettable since, if it is maintained, it will undoubtedly make it very difficult, if not impossible for a number of states with non-self-governing territories to become parties to the covenant, even after lengthy delays.

10. Under a colonial application clause, such as Article 12 of the Genocide Convention, the provisions of the covenant would not be automatically binding on overseas territories at the time of ratification, but the state responsible for the international relations of the territories in question would be able at any time by notification to extend the application of the covenant to any or all of these territories. In a social and humanitarian convention of the character of the draft covenant, which concerns many matters of local legislative jurisdiction, a clause should be included to facilitate the adherence of states with dependencies, as these states frequently have constitutional difficulties in applying conventions to their territories and as they attach great importance to respecting the autonomy and measure of self-government enjoyed by colonial governments and legislatures.

#### SELF-DETERMINATION OF PEOPLES AND NATIONS

11. The principal resolution adopted by the Assembly on 4 December contains a part whereby the Commission is to be requested to study ways and means which would ensure the right of peoples and nations to self-determination, though the

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resolution does not specifically state that articles for this purpose are to be included in the draft covenant. The principle of self-determination, which is recognized in the Charter of the United Nations itself, is of the greatest importance. The right of self-determination and independence is, however, not so much a matter of individual human rights and fundamental freedoms as a collective right and is therefore inappropriate for inclusion in the covenant.

#### ECONOMIC SOCIAL AND CULTURAL RIGHTS

12. The General Assembly decided to include economic, social and cultural rights in the covenant, and the Commission is to be instructed to make provision for them in the draft covenant. It is to be hoped that the General Assembly will reconsider, and indeed reverse, this decision.

13. The advancement of economic, social and cultural rights is a matter of great importance. The traditional civil liberties cannot be fully exercised in the modern world, unless economic and social rights are also promoted and enjoyed. There is therefore a close relationship between the two categories of rights. Generally speaking, however, economic and social rights cannot be protected and encouraged in the same way as civil and political rights. The latter involve limitations on the powers of governments and legislatures to interfere with the rights of the individual. Economic, social and cultural rights, on the other hand, are not so much individual rights as responsibilities of the state in the field of economic policy and social welfare which usually require for their effective implementation detailed social legislation and the creation of appropriate administrative machinery. There is thus a fundamental difference in the nature of the two categories of rights.

14. An attempt to include economic and social rights in the first covenant will jeopardize, if not make impossible, its completion. It will be extremely difficult to reach any general agreement, at least without lengthy delays, on the formulation of these rights in a way that will give rise to workable and enforceable legal remedies.

#### MEASURES OF IMPLEMENTATION

15. The resolution of the General Assembly under consideration did not, unfortunately, deal adequately with the part of the draft covenant which concerns the measures of implementation. The resolution is limited to a request that consideration be given to the insertion, in the draft covenant or in separate

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protocols, of provisions for the receipt and examination of petitions from individuals and organizations with respect to alleged violations of the covenant, in addition to the existing provisions for the laying of complaints by signatory governments.

16. Great and novel difficulties are raised by the proposal to include the right of petition from individuals or non-governmental organizations and it is to be hoped that the Commission on Human Rights will decide not to recommend the inclusion of provisions for the receipt and examination of petitions. It may be noted that only states can at present be parties in cases before the International Court of Justice and it is considered that the draft covenant, as it now stands, contains adequate provisions on implementation.

17. Complaints between states would, under the draft covenant, be investigated by a Human Rights Committee of seven members who shall be persons of high standing and of recognized experience in the field of human rights. The covenant might usefully provide that the Committee should, like the judges of the International Court, be representative of the main forms of civilization and of the principal legal systems of the states parties to the covenant. Consideration might again be given by the Commission to including paragraphs designed to reduce or avoid overlapping between the activities of the Human Rights Committee and those of other organs of the United Nations, and also to provide for a more effective and closer relationship between the functions of the International Court and the Committee.

#### PROVISIONS FOR AMENDMENT

18. A minor modification of the final article of the draft covenant, which deals with the process of amendment, might be desirable. In its present form it gives power to a third plus one of the members of the General Assembly to veto a proposed amendment to the covenant. This group might well be comprised entirely of states not parties to the covenant. In order to avoid such a situation the states parties to the covenant should be given more control over the amendment of the instrument. This could be done by redrafting the last sentence of paragraph 1 of Article 45 and paragraph 2, to read as follows:

"... Any amendment recommended by a two-thirds majority of the States present and voting shall be transmitted by the Secretary-General to the Members of the United Nations and to other States Parties to the Covenant.

2. Unless the General Assembly within twelve months expresses its disapproval of a proposed amendment by a two-thirds majority of the Members present and voting, the amendment shall come into force when ratified in accordance with their respective constitutional processes by two-thirds of the States Parties to the Covenant".

ANNEX TO CANADIAN STATEMENT ON DRAFT  
COVENANT ON HUMAN RIGHTS

Comments on some of the first eighteen articles

1. Paragraph 1 of Article 1 reads as follows:

"Each State party hereto undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in this Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status"; while Article 17 reads: "All are equal before the law: all shall be accorded equal protection of the law without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." These provisions are expressed in similar language but are apparently intended to convey different meanings. If so, this should be made clear by the use of more precise language in each article.

2. Article 4 of the present draft now reads: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected against his will to medical or scientific experimentation involving risk, where such is not required by his state of physical or mental health." The second sentence suggests, particularly in the final phrase, a dangerous exception which might be abused, although without this exception the sentence might be interpreted to stand in the way of genuine medical progress. The first sentence of the Article appears to cover adequately the subject of prohibition of torture or cruel punishment. The second sentence should therefore be deleted. With this change the article would be similar to Article 3 of the Convention for the Protection of Human Rights drawn up by the Council of Europe.

3. Article 8 reads:

"1. Subject to any general law, consistent with the rights recognized in this Covenant:

- (a) Everyone legally within the territory of a State shall, within that territory, have the right to (1) liberty of movement and (2) freedom to choose his residence;
- (b) Everyone shall be free to leave any country including his own.

/2. (a) No one



2. (a) No one shall be subjected to arbitrary exile.
- (b) Subject to the preceding sub-paragraph anyone shall  
be free to enter the country of which he is a national."

This constitutes a satisfactory definition of freedom of movement, but it is introduced by the vague phrase "Subject to any general law, consistent with the rights recognized in this Covenant". While such a proviso is necessary, it should be more precisely formulated as the phrase has already given rise to different interpretations.

4. Articles 13, 14, 15 and 16 contain formulas providing for limitations on freedom of thought, religion and expression and the rights of assembly and association defined therein, but the formula employed is not uniform and in the interests of good drafting and ease of interpretation, the limitation clause should be expressed in the same way in the four articles, except where a difference in substance is intended. Furthermore, the rights defined in Articles 15 and 16 are expressed in a less direct way than the rights in Articles 13 and 14. It would be better if the form of the first two were followed throughout. The comparable articles in the Council of Europe Convention, namely 9, 10, and 11, appear in some respects to be better drafted and might serve as models for the revision work of the Commission on Human Rights.

5. Several phrases are used in various articles which may be given different meanings under different legal systems or when expressed in different languages. These include the terms, in the English text, "self-defence" in paragraph 2 of Article 3, "arbitrary arrest" in paragraph 1 of Article 6, and "order" or "public order" in Articles 13, 14, 15 and 16. These expressions should be avoided, and the concepts involved stated in other terminology.

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