UNITED NATIONS

ECONOMIC AND SOCIAL COUNCIL

GENERAL

E/CN.4/552
24 April 1951

ORIGINAL:ENGLISH

Dual Distribution

COMMISSION ON HUMAN RIGHTS

Seventh session

Item 3 of the provisional agenda

COMPILATION OF THE 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

(Memorandum by the Secretary-General)

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INTRODUCTION

1. Upon the request of the Economic and Social Council contained in its resolution 303 I(XI), the Secretary-General, in a note of 26 October 1950, invited Member Governments to send their observations on the Draft International Covenant on Human Rights as drafted at the sixth session of the Commission on Human Rights. A similar request has been formulated by the General Assembly in its resolution 421 H(V) and the Secretary-General addressed accordingly an invitation to Member Governments in a note of 12 January 1951.

2. By 16 April 1951, observations from the following eighteen Governments had been received by the Secretary-General:

Luxembourg	(E/CN.4/515)
Union of South Africa	(/Add. 1)
The Phillippines	(/Add. 2 & Corr.1 in English only)
United States of America	(/Add. 3)
Chile	(/Add. 4)
Australia	(/Add. 5)
Israel	(/Add. 6 & Corr.1)
Burma	(/Add. 7)
United Kingdom of Great Britain and Northern Ireland	(/Add. 8)
Union of Soviet Socialist Republics	(/Add. 9)
Czechoslovakia	(/Add.10)
Ukranian Soviet Socialist Republic	(/Add.11)
New Zealand	(/Add.12)
Canada	(/Add.13)
India	(/Add.14)
France	(/Add.15)
Egypt	(/Add.16)
Denmark	(/Add.17)

3. Five of the replies, the replies of Luxembourg, Burma, the United States of America, Australia and Denmark do not contain any comments or suggestions.

4. The replies of Luxembourg and Denmark state that the Governments of Luxembourg and Denmark do not find occasion to submit observations on the draft International Covenant on Human Rights, as drafted at the sixth session of the Commission on Human Rights.

5. The reply of Burma also states that the Government of the Union of Burma have no observations to make regarding resolution 303 I (XI) of the Economic and Social Council. It adds, however, that "a further communication will be made in respect of the observations, if any, as requested in the resolution of the General Assembly".

6. The reply of the United States of America advises that the United States Government is still engaged in a review of its position relating to the matters raised by the Council and General Assembly resolutions and, accordingly, intends to submit its views with respect to the draft International Covenant on Human Rights directly to the next session of the Commission on Human Rights.

7. The reply of Australia similarly states that in view of the short period of time available and, furthermore, in view of the rather complicated nature of the provisions contained in General Assembly resolutions 421 and 422 (V), the Commonwealth Government regrets to say that it will not be in a position to submit its comments on the draft Covenant by 15 February 1951. However, an earnest endeavour is being made to prepare the Australian views at the earliest possible moment.

8. One of the replies, the reply of Chile, refers to the Draft Covenant on Human Rights as drafted at the fifth session of the Commission on Human Rights (document E/137/ Annex I). In addition the reply of Chile contains a reply to the Questionnaire on Measures of Implementation (same document, Annex III). The Commission may wish to take into consideration when redrafting the various parts of the Covenant on Human Rights the views expressed by the Government of Chile in its comments on the Draft Covenant on Human Rights as drafted at the fifth session of the Commission and in its reply to the Questionnaire on Measures of Implementation. These views have been inserted under the corresponding Articles of the Draft Covenant as drafted at the sixth session of the Commission. As already mentioned, the reply of Chile is reproduced in document E/CN.4/515/Add.4.

9. The Secretary-General has the honour to present to the Commission on Human Rights this compilation of the comments of Governments on the draft International Covenant on Human Rights as drafted by the Commission at its sixth session. The comments of Governments are reproduced herein according to the order in which they were received.

10. By its resolution 303 I (XI), the Economic and Social Council transmitted the draft Covenant on Human Rights, together with relevant documentation and records of the discussions in the Council, to the General Assembly at its fifth session for consideration with a view to reaching policy decisions on the four following points: (a) the general adequacy of the first eighteen articles; (b) the desirability of including special articles on the application of the Government to federal States and to non-self-governing and trust Territories; (c) the desirability of including articles on economic, social and cultural rights; and (d) the adequacy of the articles relating to implementation. As explained in document E/CN.4/513 (paragraph 10) the General Assembly's resolution 421 (V), is organized around these four questions.

For the convenience of the Commission, the observations of Governments contained in the present compilation have been classified in accordance with the four questions which were submitted to the General Assembly by the Council. In addition to the four chapters each of which is devoted to one of the four questions, a first chapter reproduces the remarks of a general character made by Governments. A sixth and last chapter is added, in which are reproduced certain proposals which do not fall within the general framework of the Compilation and which concern the final clause of the Draft Covenant.

Chapter I: Observations of a general character

1. Union of South Africa.

In the opinion of the Union Government, the discussions showed that there still exists a wide divergence of views as to which rights and freedoms are susceptible to enforcement by international machinery. Furthermore, a great deal of further study is necessary of the actual drafting of each article in order to find a text which would effectively cover an enormous variety of differing standards, conditions and circumstances. Finally, the Union Government believes that if the tendency to expand the field to be covered by an international instrument carrying with it full legal obligations continues, the position will be reached where any such instrument will in practice prove unenforceable or that it may not command allegiance of a sufficient number of States so as to permit of its being regarded as of universal international application.

.....

Having regard to the very complex difficulties in finding formulae and words to cover all circumstances, the Union Government is of the opinion that the most earnest consideration should be given to arrangements whereby it would be possible for Member States to accede to the Covenant with reservations as to particular articles. The Union Government believes that on this basis more articles of the Covenant would become effective of application in a larger number of States than would be the case on a basis which did not permit of reservations since if a State is not permitted to accede to the Covenant with reservations in respect to one or two articles, it will in practice not be able to accede to the Convention at all.

2. United Kingdom of Great Britain and Northern Ireland.

Introduction

Under the terms of Resolution No. 303 (XI) adopted by the Economic and Social Council on the 9th August, 1950 (final paragraph), transmitted to Governments under cover of the Secretary-General's Note No. SOA.317/1/01(1) of the 26th October, and the Resolution adopted by the General Assembly on

4th December (paragraph H), Member Governments have been requested to provide, by the 15th February, 1951, a further statement of their views on the United Nations Covenant on Human Rights.

Previous Statements

His Majesty's Government have previously submitted written statements on this subject on two occasions, the first in the interval between the Fifth and Sixth Sessions of the Human Rights Commission (printed in E/CN.4/353/Add.2 and in E/CN.4/365 of the 7th January and 23rd March, 1950) and the second at the conclusion of the Sixth Session of the Commission (printed in the Commission's Report: E/1681 pp. 24 and 25). The first statement outlines in considerable detail their observations on the draft text drawn up at the Fifth Session of the Commission, on the proposals for Articles referring to measures of implementation and to the territorial application of the Covenant, and on the proposals for additional Articles incorporating economic, social and cultural rights. The second statement took account of the amendments to the draft text made at the Sixth Session of the Commission. The text of the Covenant then adopted has not been subject to further amendment and the considered views of His Majesty's Government on its main aspects are therefore already known to the Commission. As will be appreciated from the statements of the United Kingdom Delegations to the Eleventh Session of the Economic and Social Council and to the Fifth Session of the General Assembly, which are also available in printed form in the summary records, His Majesty's Government's views on the principal questions at issue have not altered since the last meeting of the Commission.

Scope of the Present Statement

His Majesty's Government assume that the invitation contained in the two Resolutions under reference is primarily intended to enable Governments which have not submitted any recent statement of their views and especially those Member States not represented on the Human Rights Commission, to assist the future work of the Commission in this way. This Memorandum therefore merely sums up the views of His Majesty's Government on important issues relevant to the developments which have taken place since May, 1950, and which led up to the Assembly's

Resolutions of the 4th December, 1950.

.....

(ii) His Majesty's Government fully endorse and support the recommendation that all rights incorporated into the Covenant and any limitations to these rights should be defined with the greatest possible precision.

(iii) Attention is drawn to the passages on this subject in the speech made at the Third Committee of the Fifth Session of the General Assembly by Lord Macdonald (A/C.3/SR.288, paragraphs Nos. 8-13; of the 18th October) which the Commission may find helpful as a supplement to the written statements previously submitted."

3. Union of Soviet Socialist Republics

The delegation of the Union of Soviet Socialist Republics to the United Nations presents its compliments to the United Nations Secretariat and has the Honour to point out in reply to the Secretariat's letter No. SOA 317/1/01/1 of 12 January 1951 that the views of the Government of the Union of Soviet Socialist Republics on the Draft International Covenant on Human Rights were stated by the USSR delegation at the fifth session of the General Assembly, and are set forth in the draft resolution (document A/C.3/L.77/Rev.1) submitted by the USSR delegation.

4. Czechoslovakia

In reference to the note of the Secretariat of the United Nations SOA 317/1/01/1 of October 26, 1950 containing the resolution 303 I (XI) of 9 August 1950 of the Economic and Social Council and requesting the observations of Member States, I have the honour to transmit the following:

The Government of Czechoslovakia is not going to make any further observations to the above-mentioned resolution because the opinion of the Czechoslovak Government on the Draft Covenant on Human Rights was sufficiently expressed in the statements made in this connection by the delegates of Czechoslovakia during the Fifth Regular Session of the General Assembly.

5. Ukrainian Soviet Socialist Republic

In reply to letter No. SOA 317/1/01(1) of 12 January 1951 from the United Nations Secretariat concerning the draft covenant on human rights and measures of implementation, the Ministry of Foreign Affairs of the Ukrainian Soviet Socialist Republic hereby states that the position of the Government of the Ukrainian SSR on the draft covenant was set forth in the statements on that subject made by the delegation of the Ukrainian SSR during the fifth session of the General Assembly, and that the Government of the Ukrainian SSR, confirming the position set forth by its delegation, considers that the covenant on human rights should contain the following provisions:.....

6. Canada

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.

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.

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.

7. France

The views of the French Government on the Draft Covenant on Human Rights have already been made known. They were stated in the detailed comments submitted to the United Nations in early March 1950 (document E/CN.4/353/Add.8), the speeches of the French Representative at the sixth session of the Commission on Human Rights and the analytical comments made by the French representative in writing immediately after that session. They were re-stated in the speeches of the French representatives at the eleventh session of the Economic and Social Council (summary records of the 147th, 148th, 149th, 150th, 151st, 152nd and 153rd meetings of the Social Committee) and at the fifth session of the General Assembly (summary records of the 298th, 300th and 311th meetings of the Third Committee).

The Government of the Republic might therefore have refrained from acceding to the invitation, contained in paragraph H of the general resolution adopted on 4 December 1950 by the General Assembly (document A/1620), to comment on the Draft Covenant on Human Rights, Moreover, this paragraph would seem to apply chiefly to Governments which are not represented on the Commission on Human Rights or which have not yet clearly stated, in writing, their position regarding the Covenant.

Nevertheless the French Government has been led to comply with the request, for two principal reasons:

1. The new situation created by the above-mentioned resolution of the Assembly, not all the provisions of which meet with the French Government's unqualified approval but with regard to which it will refrain from making any criticism, being anxious to confine itself to making a completely positive contribution at this juncture;

2. The opportunity with which it is now provided to restate certain principles which must, in its view, be respected if the Covenant is to be a useful instrument.

8. Egypt

The Royal Egyptian Government wishes to congratulate the Commission on Human Rights on the substantial work it has so far accomplished and to express its confidence that the Commission will continue to give priority to the completion of the draft International Covenant on Human Rights and measures for its implementation as steadfastly as hitherto.

.....

Since Egypt is represented on the Commission on Human Rights, the Royal Egyptian Government confines itself to the above observations and will instruct its representative to submit further details in the Commission itself.

Chapter II: The General Adequacy of the First Eighteen Articles.

As stated in document E/CN.4/513, paragraph 13, the consideration of the general adequacy of the first eighteen articles raises two major questions:

i) Whether the catalogue of rights contained in the first eighteen articles is adequate, i.e. whether any rights other than those at present dealt with in the first eighteen articles should be made the subject of provisions to be included in the covenant; and

ii) whether the existing eighteen articles as drafted are adequate to protect the rights to which they relate.

The observations of Governments relating to each of the two questions above are reproduced in two separate sections.

Section I: The adequacy of the catalogue of rights

Sub-Section I: General views on the adequacy of the catalogue of rights.

1. The Philippines

Proposals for Additional Articles

In addition to proposals for additional articles previously submitted by the Philippines (see E/CN.4/507, p.26), provisions for the protection of the following rights are suggested: the right to marry, and the right against double jeopardy.

2. United Kingdom of Great Britain and Northern Ireland.

The First 18 Articles of the Draft Covenant.

His Majesty's Government still consider that the subject matter of this Covenant as drafted is already sufficiently inclusive.

.....

ii) His Majesty's Government fully endorse and support the recommendation that all rights incorporated into the Covenant and any limitations to these rights should be defined with the greatest possible precision.

iii) Attention is drawn to the passages on this subject in the speech made at the Third Committee of the Fifth Session of the General Assembly by Lord Macdonald (A/C.3/SR.288, paragraphs Nos. 8-13; ... of the 18th October) which the Commission may find helpful as a supplement to the written statements previously submitted.

3. New Zealand

Subject to qualifications made below, the New Zealand Government do not consider that the scope of the draft Covenant should be extended by the introduction of new articles dealing with additional rights.

(Note: the reservation above concerns the question of the inclusion in the draft Covenant of Articles on Economic, Social and Cultural Rights. See Chapter IV below.)

4. Canada

The First Eighteen Articles of the Draft Covenant

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 prepared to ratify it.

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.

.....

Sub-Section II - Additional rights proposed for inclusion in the Draft Covenant*

a) Rights of minorities

Ukrainian Soviet Socialist Republic

.... The Government of the Ukrainian Soviet Socialist Republic, confirming the position set forth by its delegation /at the fifth session of the General Assembly/ considers that the Covenant on Human Rights should contain the following provisions:

.....

.... The State shall ensure to national minorities the right to use their native tongue and to possess their national schools, libraries, museums and other cultural and educational institutions.

b) Right of Persons in Detention

Chile

All persons deprived of their liberty shall be treated with humanity. Accused persons shall be preserved form any corrupting influence.

The penitentiary system shall comprise treatment directed to the fullest possible extent towards the reformation and social rehabilitation of prisoners.

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* It will be noted that in this section are reproduced only proposals for inclusion of additional rights other than economic, social and cultural rights. Proposals for the inclusion of these rights will be found in Chapter IV.

c) Right Against double jeopardy

The Philippines

The Philippines is gratified to note that under the Covenant, pending the trial of an accused, "detention shall not be the general rule, but release may be subject to guarantee to appear for trial." (Art. 6, par. 4). Also noteworthy is the provision which states that "No one shall be compelled to testify against himself, or to confess guilt." (Art. 10, par. 2, sub-par. (3).) These two guarantees were not included in the Declaration but were taken up in the Covenant.

However, it is to be observed with regret that the right against double jeopardy has been twice forgotten. In Philippine law, this right is so important as to merit a constitutional provision: "No person shall be twice put in jeopardy of punishment for the same offence. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act."

It has been said that this principle is such an ancient one that instead of having specific origin, it has simply always existed. And so well established is it as a law of reason, justice and conscience that it is doubtless embodied in every system of jurisprudence.

The Governments should not be allowed to split a cause of action and to deluge an accused by putting him in jeopardy for every incident included in his crime, for in this way, his penalty could be compounded far beyond that prescribed for the one crime he is guilty of. Nor should an accused be harassed by prosecutions starting from the highest crime, followed by a chain of accusations for every crime necessarily included therein, or vice versa.

This could be prevented only by a guarantee against double jeopardy so that any conviction or acquittal of an accused would constitute res adjudicata on the charge and, therefore, a bar to any other prosecution for the offence charged, or for any offence which necessarily includes it or is included therein.

d) Right to the Protection of the Home

Israel

Additional Article

It is proposed that the following new Article be inserted after Article 7:

"The dwelling of every person is inviolable and shall not be entered or searched except in accordance with the law and in the manner therein prescribed. Private correspondence, as well as telegraphic and telephonic communications, shall not be intercepted, except when authorized by law in the interests of national security, public safety and the economic well-being of the country."

It is further proposed that this Article shall not be included among those which under Article 2 (2) are not susceptible to derogation in a state of emergency.

This Article corresponds to some extent to Article 12 of the Universal Declaration of Human Rights. It does not, however, cover the prohibition of attacks upon a person's honour and reputation contained in that Article. It is considered that the object of the Covenant is to protect the individual from incursions into his private sphere by organs of the State, not from attacks by his fellow-citizens, against which he is protected by the ordinary civil law. Otherwise, every conceivable rule of civil law might have to be inserted into the Human Rights Covenant.

e) Right to Marriage

The Philippines

The Philippines invites attention to the fact that the Universal Declaration of Human Rights contains provisions on the right to marry, the right to found a family and the importance of the family. One may with reason wonder why these were taken up in the Declaration but forgotten in the Covenant.

The right to marry is a natural right, one among the first given to man. Without it, there could be no family. Without the family there would be no state and society, without the state and society there would be no need for the Covenant at all.

This right should not be left out in any enumeration of civil rights which is meant to be comprehensive. Therefore, it is proposed that an article on this right be drafted along the lines of its counterpart in the Declaration for inclusion in the Covenant.

f) Right to own Property

The Philippines

... The Philippines propose to reword the section, under the title "Philippines", page 26, Document E/1681 and E/CN.4/507 (Report of the sixth session of the Commission on Human Rights) as follows:

"2. Everyone shall have the right to own property and may not be deprived of his property without due process of law."

It is suggested that the right of private ownership is fundamental and that it would profit human society little to give the individual employment, leisure and other rights and to deny to him the fruits of his labour.

g) Right to participate in government

Ukrainian Soviet Socialist Republic

... The Government of the Ukrainian Soviet Socialist Republic, confirming the position set forth by its delegation [at the fifth session of the General Assembly], considers that the Covenant on Human Rights should contain the following provisions:

Every citizen, irrespective of race, colour, nationality, social position, property status, social origin, language, religion or sex, shall be guaranteed by the State an opportunity to take part in the government of the State, to elect and be elected to all organs of authority on the basis of universal, equal and direct suffrage with secret ballot, and to occupy any State or public office. Property, educational or other qualifications restricting the participation of citizens in voting at elections to representative organs shall be abolished.

h) Right to free expression of opinion and interdiction of certain propaganda.

1. Ukrainian Soviet Socialist Republic

... The Government of the Ukrainian Soviet Socialist Republic, confirming the position set forth by its delegation [at the fifth session of the General Assembly] considers that the Covenant on Human Rights should contain the following provisions:

.....

In the interests of democracy, everyone must be guaranteed by law the right to the free expression of opinion, in particular, to freedom of speech, of the press and of artistic representation, under conditions ensuring that freedom of speech and of the press are not exploited for war propaganda, for the incitement of hatred among the peoples, for racial discrimination and for the discrimination of slanderous rumours.

Any form of propaganda on behalf of Fascist or Nazi views, or of racial and national exclusiveness, hatred or contemp, must be prohibited by law.

2. Chile

Chile suggests the following text:

"The propagation of totalitarian ideas or the commission of totalitarian actions in any form whatsoever, and the propagation of racial and national superiority, hatred and contempt shall be

i) Right to organize assemblies, meetings, street processions and demonstrations, etc.

Ukrainian Soviet Socialist Republic

... The government of the Ukrainian Soviet Socialist Republic, confirming the position set forth by its delegation [at the fifth session of the General Assembly] considers that the Covenant on Human Rights should contain the following provisions:

In the interests of democracy, the right to organize assemblies, meetings, street processions and demonstrations and to organize voluntary societies and unions must be guaranteed by law. All societies, unions and organizations of a Fascist or anti-democratic nature, and any form of activity by such societies, must by prohibited by law, subject to penalty.

j) Right of peoples and nations to self-determination *)

1. The Philippines

The Philippines supports the view upheld by the General Assembly at its Fifth Session for the ensuring of the right of peoples and nations to self-determination in the future work of the Commission on Human Rights.*

2. United Kingdom of Great Britain and Northern Ireland

In view of His Majesty's Government the right of peoples to national self-determination cannot be described as a right of the individual. It is therefore not appropriate for inclusion in this Covenant.

3. Ukrainian Soviet Socialist Republic.

... The Government of the Ukrainian Soviet Socialist Republic, confirming the position set forth by its delegation /at the fifth session of the General Assembly/ considers that the Covenant on Human Rights should contain the following provisions:

Every people and every nation shall have the right to national self-determination. States which have responsibilities for the administration of Non-Self-Governing Territories shall promote the fulfilment of this right, guided by the aims and principles of the United Nations in relation to the peoples of such territories.....

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* This question forms a separate item of the Provisional Agenda of the seventh session of the Commission on Human Rights (Item 4).

4. Canada

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 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. *)

5. India

(d) Ways and means to ensure the right of peoples and nations to self-determination.

The Government of India are of the view that provision should exist in the Covenant to include the right of self-determination. *)

Section II: The Adequacy of the first eighteen articles to protect the rights to which they relate.

Note: The replies of certain Governments contain expressions of views of a general character concerning the present drafting of the eighteen first articles. These expressions of views are reproduced in Sub-Section I below.

Other replies contain, either in addition to expressions of views of a general character, or solely remarks on the drafting of particular articles, or suggestions for their re-drafting. These remarks and suggestions are reproduced in Sub-Section II.

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* This question forms a separate item of the Provisional Agenda of the Seventh Session of the Commission on Human Rights (Item 4).

Sub-Section I: General views on the first eighteen articles

1. Union of South Africa

The vast majority of rights and freedoms described in the Human Rights Commission's draft are in principle, and subject to details of drafting, acceptable to the Union Government for inclusion in an instrument of full legal validity but there are certain articles to which the Union Government could not fully subscribe in their present form. The Union Government feels that this is no doubt true of a number of other states. The heterogeneous nature of communities, traditional customs and circumstances of nations which comprise United Nations membership should be fully recognised.

Having regard to the very complex difficulties in finding formulae and words to cover all circumstances, the Union Government is of the opinion that the most earnest consideration should be given to arrangements whereby it would be possible for Member States to accede to the Covenant with reservations as to particular articles. The Union Government believes that on this basis more articles of the Covenant would become effective of application in a larger number of States than would be the case on a basis which did not permit of reservations since if a State is not permitted to accede to the Covenant with reservations in respect to one or two articles, it will in practice not be able to accede to the Convention at all.

2. United Kingdom of Great Britain and Northern Ireland

.....

ii) His Majesty's Government fully endorse and support the recommendation that all rights incorporated into the Covenant and any limitations to these rights should be defined with the greatest possible precision.

iii) Attention is drawn to the passages on this subject in the speech made at the Third Committee of the Fifth Session of the General Assembly by Lord Macdonald (A/C.3/SR.288, paragraphs Nos. 8-13; of the 18th October) which the Commission may find helpful as a supplement to the written statements previously submitted.

3. New Zealand

... the New Zealand Government do not regard the wording or form of some Articles of the present draft as satisfactory or adequate to protect the rights to which they refer. While reserving their detailed comments, the New Zealand Government desire to make observations on certain of the first 18 Articles ....

4. Canada

.....

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.

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

5. India

(b) Adequacy of the first eighteen articles of the Covenant

The Government of India are of the opinion that articles are inadequate and need modifications at places to achieve greatest common measure of agreement.

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* See Sub-Section II below

6. France

On the whole, the French Government is in agreement with the text adopted by the Commission for the first 18 articles. While expressing this agreement, it has nevertheless made a number of criticisms on previous occasions. It reserves the right to re-state them -- and it is the intention of the representative of France to submit further criticisms at the Commission's forthcoming session. For the moment, its observations will relate exclusively to questions of method and the two most important modifications which follow from the method it advocates.

The French Government believes that, in general, the synthetic method is imperative for the preparation of a Covenant so wide in scope and with so many different aspects as the Covenant on Human Rights, which ideally would one day cover all points where friction might occur between man and the State. To attempt, by a method of exhaustive enumeration, to draft a covenant so exact as to allow no loophole for a State acting in bad faith to contravene it would be to commit the Commission on Human Rights to a task for which it has neither the time nor the technical resources and one which is, moreover, not that assigned to it. Such a covenant, which would be not a covenant but an aggregate of individual conventions, might well become not so much a covenant on the rights of man as a systematic catalogue of all the rights denied to him. In the view of the French Government, the Covenant should be an instrument that is sufficiently clear to ensure that its meaning is always beyond doubt, sufficiently concise to be at once striking and easily manageable and sufficiently general to make it possible for the rights or groups of rights it defines to be embodied subsequently in the necessary special convention -- which may in certain cases be very numerous -- without thereby having to undergo constant delicate amendments which might well be difficult to obtain.

Owing to this desire for clarity and synthesis, the French Government regards two amendments to the present text of the first 18 articles as essential:

(a) The words "public order" should be qualified by the phrase "in a democratic society"; since it is only by means of the idea contained in this phrase that it is possible to limit, in a sense consistent with that of the Declaration -- in Article 29 of which the words are used -- and without having to proceed to a necessarily incomplete enumeration, the excessively wide context of the first phrase;.....

Sub-Section II: Remarks and suggestions concerning the Preamble

Preamble

Chile

Of the three texts submitted by the Commission on Human Rights we prefer the first part of the French text and the second part of the United States text, as being a more detailed statement of the intention to legislate on human rights on the basis of the United Nations Charter and the Universal Declaration of Human Rights. We therefore propose the following text:

> The States parties hereto, determined to conform to the United Nations Charter and bearing in mind the general principles proclaimed in the Declaration of Human Rights, agree upon the following articles with respect to certain human rights and fundamental freedoms.

Sub-Section III: Remarks and suggestions concerning the drafting of the first eighteen articles

Article 1

Paragraph 1

Canada

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.

Paragraph 2

Philippines

From the point of view of the Philippine Government, this paragraph is unnecessary for the reason that under Philippine law a treaty to which the Government is signatory becomes automatically a part of the municipal law.

The words "undertakes to take" are not very felicitous and the paragraph therefore should be reworded as follows:

> "2. Where not already provided for by existing legislative or other measures, each State undertakes to adopt within a reasonable time, in accordance with its constitutional processes and with the provisions of this Covenant, such legislative or other measures as may be necessary to give effect to the rights recognized in this Covenant."

"To take the necessary steps" may mean a number of things not helpful to the implementation of the Covenant while, on the other hand, "adopt" is more precise and explicit.

Paragraph 3, sub-section (b)

1. Israel

It is proposed that the words "competent authorities, political administrative or judicial" be deleted and that the following words be substituted therefore: "a court of law or by a tribunal whose decisions have the force of law".

It is considered that the function of adjudging any claim in respect of an alleged violation of human rights is essentially judicial, and should be exercised exclusively by a judicial body. It is not held desirable that any such claim, which in the nature of things will normally be directed against political and administrative authorities, should be determined by other political or administrative agencies of that State.

2. New Zealand

Sub-paragraph (b) of paragraph 3 of this Article is unacceptable, since it could be held to justify action by political or administrative authorities in cases where, in the spirit of the Universal Declaration of Human Rights, a judicial remedy should be available. For this reason the following text is preferred for this sub-paragraph:

"That any person claiming such a remedy shall have his right thereto determined by national tribunals whose independence is secured."

Article 2

Paragraph 1

1. Philippines

Insert "and for a period" between "extent" and "strictly" to read:

"1. In the case of a state of emergency officially proclaimed by the authorities or in the case of public disaster, a State may take measures derogating, to the extent and for a period strictly limited by the exigencies of the situation, from its obligations under article 1, paragraph 1, and Part II of this Covenant."

It is important to specify that the duration of a derogation should be limited to the exigencies of the situation. "Extent" refers to the degree of the measure of derogation, which may be either partial or full; the duration of the application of the measure is another thing and may be unduly prolonged.

Article 2

Paragraph 1

2. Chile

The word "derogating" is not appropriate here: perhaps the word "suspending" should be used.

Paragraph 2

Israel

It is proposed that Article 10 be included among those from which no derogation may be made.

There appears to be no reason why, even during a state of emergency, accused persons should not receive a fair hearing by an independent and impartial tribunal established by law. The Article provides in any case that in the interest of public order or national security, the press and the public may be excluded from all or part of the trial. There is, therefore, no need for any derogation on the ground that a public hearing of the case might be to the detriment of national security or public order. All other safeguards provided for in the Article for the defence in criminal proceedings can be fully maintained even during a state of emergency without this involving any risk to national security or public order. Equally, the requirement of compensation in case of a miscarriage of justice provided for in paragraph 3 need not be set aside during a state of emergency.

3. It is further proposed that a provision be inserted in Article 2, paragraph 2, to the effect that the prohibition of measures of discrimination on grounds of race, colour, sex, language and religion, contained in Articles 1 and 17, should not be susceptible to derogation in a state of emergency.

The Charter specifically lays down the principle of non-discrimination in respect of race, sex, language or religion (Articles 1 (3), 55 (c), 62 (2) and 76 (c)). Article 56 of the Charter imposes on all Member States an obligation to promote the observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion. Hence, any derogation from the principle of non-discrimination on these grounds would be repugnant to the express terms of the Charter. There may be need, in time of war, for suspending the principle of non-discrimination on grounds of "political or other opinion, national or social origin, property, birth or other status."

There can, however, be no justification, even in a state of war, for the suspension of the freedom of religion and language, or for measures of discrimination on grounds of race or sex.

The first sentence of Article 2, paragraph 2 should be amended to read as follows:

"No derogation from Article 3, except in respect of deaths resulting from lawful acts of war, or from Articles 4, 5 (paragraphs 1 and 2), 7, 11, 12 and 13, may be made under this provision."

Paragraph 3

Philippines

Place a comma after "derogated" in fourth line and then insert between "derogated" and "the date ..." the words "the reasons therefor" to read:

"Any State Party hereto availing itself of the right of derogation shall inform immediately the other States Parties to the Covenant, through the intermediary of the Secretary-General, of the provisions from which it has derogated, the reasons therefor, and the date on which it has terminated such derogation."

The reasons for a derogation are clearly a matter for the satisfaction of the other Contracting States. An emergency even "officially proclaimed" may be open to various interpretations, and so is a "public disaster." It is always better that the reasons be stated beyond equivocation.

Article 3

Paragraph 3

Chile

In paragraph 3 the meaning of "the most serious crimes" should be made clear; and a provision should be included to the effect that in no case should the death penalty be imposed for political crimes included.

Paragraph 3 should be worded as follows: "No one may be executed save in virtue of the unanimous sentence of a competent court, and in accordance with a law in force and not contrary to the principles expressed in the Universal Declaration of Human Rights"; the object of introducing the safeguard of unanimity is to avoid arbitrary or wanton application of the penalty.

Article 3

1. Israel

It is submitted that this article be amended to read as follows:

"1. Everyone's right to life shall be protected by law.

2. Capital punishment may be inflicted only as a penalty for the most serious crimes, pursuant to the sentence of a competent court of law pronounced in accordance with law not contrary to the Universal Declaration of Human Rights.

3. Anyone sentenced to death shall have the right to appeal and to seek amnesty, or pardon, or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

4. To take life shall be a crime save when it results from:

(a) the execution of a sentence of death pronounced by a competent court in accordance with law not contrary to the Universal Declaration of Human Rights;

(b) the use of force which is no more than absolutely necessary

(i) for the defence of any person or group of persons from unlawful violence; or

(ii) for effecting a lawful arrest or preventing the escape of a person lawfully detained; or

(iii) for any action lawfully taken for the purpose of quelling a riot or insurrection; or

(iv) for preventing unlawful entry to a clearly defined place or area to which access if forbidden on grounds of national security and in respect of which a public and clearly discernible warning has been issued."

The amendment is designed to meet the criticism expressed by several delegations concerning the drafting of this Article.

In paragraph 3 the right to appeal has been added to the right to amnesty, pardon and commutation of sentence.

Paragraph 4 is based on the proposals of the United Kingdom delegation and is designed to define in exact terms the cases in which the taking of life is not to be regarded as a crime. The words "in respect of which a public and clearly discernible warning has been given" have been inserted with a view to preventing danger to innocent persons who may be unaware that access to the area in question is prohibited.

2. New Zealand

The text of paragraph 2 is unsatisfactory. It would be preferable to redraft the Article so as to state more precisely the categories of cases in which the taking of life shall not be a crime.

3. Canada

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,...These expressions should be avoided, and the concepts involved stated in other terminology.

Article 4

1. The Philippines

Delete "inhuman or" in the first line, then insert "or unusual" between "degrading" and "punishment" in second line, to read:

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

The conception of cruelty covers what is "inhuman" and for this reason the latter term is unnecessary. The term "unusual" appears in the Philippine Bill of Rights (sub-section 19, Section 1), and should cover new devices calculated to punish an accused person, such as the use of drugs to induce confession, that may be neither cruel nor degrading.

The term "unusual punishment" has a definite connotation in the jurisprudence of many countries including the Philippines, and the use of the term "inhuman punishment" in its place would introduce certain difficulties of interpretation. While it is recognized that the term "unusual punishment" may not be susceptible of accurate literal translation into other languages, like French and Spanish, the remedy would seem to lie in using for the French text of the Covenant a word of equivalent meaning.

2. Canada

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.

Article 5

Israel

It is proposed to delete sub-section 3 (c) (ii) and to substitute therefore the following words: "Any service of a military character or any work or service imposed by law as part of, or as an alternative to, military service."

The purpose of this amendment is to extend the scope of the exception beyond compulsory national service exacted in lieu of military service to include other forms of national service imposed as part of military service. A case in point is the provision of the Israel Security Service Act of 1949, section 6, of which required that part of the period of military service shall be devoted to "agricultural training."

Article 6

Paragraph 1

Canada

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, ... "arbitrary arrest" in paragraph 1 of Article 6... . These expressions should be avoided, and the concepts involved stated in other terminology.

Paragraphs 1 and 2

1. Philippines

As these two articles stand, they say the same thing, for any deprivation of liberty which is not "on such grounds and in accordance with such procedure as are established by law" (paragraph 1) must necessarily be arbitrary. It is therefore proposed that the two paragraphs be combined so that the present paragraph 2 amplifies paragraph 1, as follows:

> "1. No one shall be subjected to arbitrary arrest or detention, or shall in any manner be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law."

2. New Zealand

The general limitations in Paragraphs 1 and 2 expressed by the use of words "arbitrary" and "except on such grounds and in accordance with such procedures as are established by law" are not sufficiently precise. The New Zealand Government would prefer a statement of specific limitations to the general principle that no one is to be deprived of his liberty.

Article 6

Paragraph 4

Chile

Paragraph 4: The meaning of "within a reasonable time" should be defined, as the object is to bring the accused before a judicial authority in the

shortest possible time in order to avoid arbitrary action or indefinite imprisonment without trial. In the same paragraph, a stipulation should be inserted whereby conditional release would not be granted "in accordance with national law"; so that in Chile release would only take place in accordance with and in the cases prescribed by Chilean legislation.

Paragraph 5

Philippines

The apparent purpose of this paragraph is to provide a remedy similar to habeas corpus by which a person illegally detained may test the legality of his detention. As the paragraph is presently worded, the right is limited to persons deprived of their liberty "by arrest or detention." This seems to contemplate only arrests or detentions effected by public officers.

There appears to be no reason for this limitation. Under Philippine law, the remedy of habeas corpus extends not only to arrests by police officers, but to "all cases" of illegal confinement or detention by which any person is deprived of his liberty, or by which the rightful custody of any person is withheld from the person entitled thereto (Rules of Court, Rule 102, Sec. 1).

"5. Anyone who is deprived of his liberty in any manner, whether by public officers or private individuals, shall be entitled, etc....."

Under this proposed wording, the person held in involuntary servitude or peonage may also avail himself of the remedy. Likewise, a woman wrongfully held by her parents from her husband. These are only a few of the persons who would benefit from a broadening of the remedy.

Article 7

No comments

Article 8

Paragraph 1

1. Israel

It is proposed that the opening clause of sub-section 1 be amended to read

as follows: "Subject to any restrictions consistent with this Covenant."

Sub-paragraphs (a) and (b) secure rights and freedoms. If the intention of the provision is to limit these rights and freedoms, it should not subject them to any "general law consistent with the rights recognized in this Covenant" but to such "restrictions as are not inconsistent with the Covenant." Such rephrasing, it is submitted, would make the legal import of the provision more clear.

2. New Zealand

A fuller statement of the limitations to this right is required. The following text is suggested for Paragraph 1:

> "(a) Every person legally within the territory of a State shall be free to move and choose his place of residence within the borders of that State, subject to any general law not contrary to the purposes and principles of the United Nations Charter and adopted for specific reasons of national defence or in the general interest.
> (b) Any person who is not subject to any lawful deprivation of liberty or to any outstanding obligations with regard to national service or taxation shall be free to leave any country, including his own".

3. Canada

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 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.

Paragraph 2

Israel

It is ..... proposed that sub-section 2 (b) be amended to read: "Anyone not lawfully exiled shall be free to enter the country of which he is a national."

The Sub-paragraph is designed to secure the right of entry to the country of which one is a national. The introductory words are intended to permit of some restriction of this right. But that restriction cannot be found in the preceding sub-paragraph which, in its turn, secures a right by prohibiting arbitrary exile. It should, instead, be made subject to a lawful derogation from the right secured in the preceding sub-paragraph (a). This is brought out in the proposed amendment.

Article 9

No comments

Article 10

Paragraph 1

1. The Philippines

It is suggested that the word "only" be inserted between "trial" and "for" in the fifth line.

2. Chile

For the first sentence of paragraph 1 Chile recommends the adoption of the idea and wording, without any indication of its origin, of Articles 11 and 12 of the Chilean Political Constitution. Accordingly, the proposed text would read:

"No one may be sentenced unless he be legally tried in accordance with a law promulgated prior to the act for which he is tried, and no one may be tried by special commissions, or otherwise than by the tribunal designated and previously constituted by law."

3. Israel

It is proposed that in the first sentence of sub-section 1 the words "judicial tribunal" be inserted in place of "tribunal".

The term "tribunal" is not free from ambiguity. In the Convention on the Declaration of Death of Missing Persons it has been defined as including administrative authorities. The amendment is suggested to exclude the possibility of any doubt under this head.

Paragraph 2, sub-paragraph c

Philippines

The right of a defendant to obtain compulsory attendance of witnesses should also cover the compulsory production of evidence. It is suggested that the semi-colon in the last line of this sub-paragraph be changed into a comma and that the following words be added thereafter:

"as well as compulsory production of evidence which he may need in his defence."

Paragraph 3

1. Philippines

This paragraph seeks to compensate a person who, being innocent, is erroneously convicted of an offence. Strangely, it does not provide for relief from the sentence or punishment. Thus, the innocent person would have to serve out his jail sentence, if one has been meted out, and is merely compensated later. Or so it appears from the substance of the provision.

It is believed that no amount of money can compensate an innocent man for the loss of his liberty, honour and peace of mind. The anomaly must and could be

rectified, as follows:

"3. In any case where by a final decision a person has been convicted of a criminal offence and where subsequently a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be provided with relief from the remainder of his sentence, if any, and shall be compensated. This compensation shall be awarded to the heirs of a person executed by virtue of an erroneous sentence." (Underscored words inserted.)

2. Israel

As regards sub-section 3, it would appear that prior to the payment of compensation "the new or newly discovered facts" would have to be established by legal proceedings in a retrial of the case based on such new material.

It is accordingly proposed that the first sentence should be amended to read as follows: "In any case here by a final decision a person has been convicted of a criminal offence and where subsequently a retrial of the case, based on a new or newly discovered fact, has proved conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated."

Article 11

Paragraph 1

Israel

It is proposed that sub-section 1 be amended to read as follows:

"No one shall be convicted of any infringement of the law which did not constitute an offence, under national or international law, at the time when it was committed. Nor shall any amendment of the law increasing the penalty for any offence or altering the rules of evidence to the detriment of the accused have retrospective effect. If subsequent to the commission of the offence provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby."

The purpose of the proposed amendment is to extend the benefit of the prohibition of ex post facto legislation to all offences, and not merely to those which are of a "criminal" nature in the technical sense of that term.

In the second place, the amendment is designed to prevent the position of the accused from being changed for the worse by an ex post facto change of the judicial rules of evidence. Experience has shown this matter to be fraught with grave consequence.

Article 12

New Zealand

The usefulness of an Article stating merely that everyone shall have the right to recognition everywhere as a person before the law is doubtful. The New Zealand Government maintain their preference for the following text proposed by them to the Third Session of the Human Rights Commission, which states the right of access to the courts, and the right to enter into legal relationships:

> "No person shall be prevented from having access to the courts to obtain redress for any infringement of his civil rights, nor shall any person, unless he is one of a class of generally recognized incapacity, such as minors, persons of unsound mind, and persons undergoing imprisonment, be deprived in whole or in part of his legal capacity to enter into lawful contracts or other legal relationships".

Article 13

1. India

The Government of India have no comments to offer on article 13 of the draft Covenant.

2. Egypt

The Royal Egyptian Government attaches particular importance to the texts of Articles 13 and 14 of the draft Covenant.

With regard to Article 13 which deals with the right to freedom of religion, the Egyptian Government wishes to state that freedom of religion is an immutable right in Egypt, guaranteed under its Constitution and embodied in the chapter on rights and freedom, which, by the terms of the Constitution itself, cannot be altered in any way.

The freedom to change one's religion or belief which freedom of religion necessarily implies is also recognized in Egypt and is moreover governed by administrative regulations ensuring to those changing their religion full protection against pressure or hasty decisions..

Such, however, is not the case everywhere. In many countries, the provisions relating to civil status and the rules of public or private morality are based on rigid concepts of a religious or traditional nature. For example, while those countries recognize the principle of "freedom of religion", they will refuse to sign a document explicitly stating "the freedom" to change one's religion despite the fact that it is implicit in the first concept.

In order to make the Covenant more universally acceptable, the Royal Egyptian Government would prefer to have the reference to freedom to change one's religion or belief deleted from paragraph 1 of Article 13 of the draft Covenant.

Article 14

1. New Zealand

The limitations in Paragraph 3 are so wide that it is doubtful whether the Article could afford any guarantee of the freedoms to which it refers. The New Zealand Government would support a proposal that the expression "for the protection of ... public order" should be replaced by the wording "for the prevention of disorder or crime". This amendment should apply also the use of the expression in Articles 13, 15 and 16.

2. India

With regard to Article 14, although the Committee set up by the General Assembly (V) are at present charged with the responsibility of drafting a convention on freedom of information, it is felt that the principles on freedom

of information set out in Article 14 are in order and should not be altered. The existence of the phrase 'public order' in paragraph 3 of Article 14 is also necessary.

3. Egypt

With regard to Article 14, the Royal Egyptian Government places the strongest emphasis on the desirability of adding to the guarantees stated in paragraph 2 of that Article of the draft International Covenant on Human Rights the further concepts of the maintenance of peace and of friendly relations between States.

The main objective of the United Nations is the maintenance of peace which in turn implies the maintenance of friendly relations between States. The daily events of recent years have demonstrated the harmful effects of defamatory and slanderous press and radio campaigns on relations between States and consequently on the maintenance of peace. The Royal Egyptian Government, which is concerned for peace and cherishes friendly feelings towards all other States, would like that concern and those feelings to be made universal in the interests of world stability and the welfare of mankind, by the inclusion of those concepts in paragraph 2 of Article 14 of the draft International Covenant.

The Royal Egyptian Government is aware of the distinction between restricting freedom of information and restricting the abuse of that freedom. In proposing an addition to Article 2, it is not guided by any consideration of the first restriction, which is pointless and should be condemned; rather its proposal is based on the second restriction which it finds helpful and essential.

Article 14

Paragraph 3

Chile

Chile considers that while the Convention should provide for freedom of information in broad terms, it should also set forth the restrictions essential

for safeguarding the interests of society and the democratic system of government should also be indicated. The following text is proposed:

"The freedoms referred to in the preceding paragraphs carry with them corresponding duties and consequently the exercise of these freedoms may be regulated and restricted by statute for the purpose of preventing abuses of those rights, such as offences against morality, public order, national security, public decency and especially for the defence of democratic principles in relation to the human rights proclaimed by the United Nations in the Universal Declaration of Human Rights".

Comments in common with Articles 10 (paragraph 1), 13 (paragraph 2), 14 (paragraph 3), 15 and 16 (paragraph 2).

Canada

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.

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, ..., "order" or "public order" in Articles 13, 14, 15 and 16. These expressions should be avoided, and the concepts involved stated in other terminology.

France

Article 17

(b) All that part of Article 17 which deals with non-discrimination should be omitted for this question is covered satisfactorily by Article 1 in its proper context.

This omission would remove the ambiguity in the text which in its present form is open to the objection of being either redundant or of seeking to extend to all rights and to all cases - which is impossible - the requirement that the law must not discriminate, a requirement initially contemplated with reference to the "rights recognized in this Covenant".

Article 18

No comments

CHAPTER III. THE APPLICATION OF THE COVENANT TO FEDERAL STATES AND TO NON-SELF-GOVERNING AND TRUST TERRITORIES

Note:

The second of the four questions submitted by the Economic and Social Council to the General Assembly with a view of reaching policy decisions read as follows: "the desirability of including special articles on the application of the Covenant to federal States and to Non-Self-Governing and Trust Territories" (Council resolution 303 I (XI)). The General Assembly dealt separately with the problem of the inclusion of a "federal clause" in the Covenant and with the problem of the application of the Covenant to Non-Self-Governing and Trust Territories, The first problem forms the subject matter of Section..... General Assembly resolution 421 C(V), whereas as the second problem has been resolved by resolution 422 (V).

The comments of Governments concerning each of these problems will form the subject matter of a separate Section.

Section I: The question of a federal state article

1. United Kingdom of Great Britain and Northern Ireland

His Majesty's Government support the proposal for further study of the Federal State Article.

2. Ukrainian S.S.R.

... all the provisions of the Covenant must be extended without any exceptions or restrictions to the peoples of federal states ...

3. Canada

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 ... Canada, for its part, could not even consider approving any covenant in the absence of a satisfactory federal clause.

.....

Federal State Clause

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. 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.

4. India

The Government of India are of the view that provision should exist in the Covenant for federal state article and support the text proposed by the Indian representative on the Human Rights Commission (page 57 of document E/1681). The application of federal clause may in theory imply that more than half the world's population will escape obligations of the Covenant, but without such provision, the same number of people may not accept the Covenant at all. The people in federations such as the United States, India, the Soviet Union are all free to decide for themselves and while it is necessary for the central governments to do all in their power to make the Covenant uniformly applicable in their territories, there is no reason to force it on them against their declared wishes.

5. Egypt

The Royal Egyptian Government would like the federal states Article to state the principle that the Covenant should be fully applicable to the constituent territorial units of federal States and to leave it to those States themselves to seek solutions of the constitutional problems arising therefrom.

Article 43

Chile

Each State Party hereto undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in this Covenant, without distinction of any kinds, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Section II. The Territorial Application of the Covenant

1. The Philippines

The Philippines ... notes with deep satisfaction that through its initiative the so-called Colonial clause has been eliminated from the draft Covenant. ...

2. United Kingdom of Great Britain and Northern Ireland

.....

(ii) His Majesty's Government regret the failure of the Assembly to accept the inclusion of an Article designed to enable the territories for whose international relations Member States are responsible to be brought within the scope of the Covenant in an orderly and constitutional manner. They also regret the Assembly's proposal to incorporate into the Covenant the draft Article contained in A/1622 which would mean that the consent of all territories for whose international relations His Majesty's Government are responsible must be obtained prior to acceptance of the Covenant by His Majesty's Government in the United Kingdom. Their views on the necessity for a suitable Application Article remain as set out in E/CN.4/353/Add.2 and E/1681. A clear statement of the constitutional position of the United Kingdom in this respect may also be found in the summary records of the Council and of the Third Committee of the Assembly (E/AC.7/SR.152 and 153 and A/C.3/SR.294).

3. Ukrainian S.S.R.

... All the provisions of the Covenant must be extended without any exceptions or restrictions to the ... populations of non-self-governing and Trust Territories.

4. Canada

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 ... states with dependent territories.

.....

Colonial Application Clause

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.

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.

5. India

Territorial application clause (document A/1622)

The Government of India are in agreement with the General Assembly's resolution on the subject.

6. Egypt

The Royal Egyptian Government unreservedly supports the resolution of the Fifth General Assembly requesting the Commission on Human Rights to include in the draft International Covenant on Human Rights an article extending its provisions or making them applicable equally to a signatory metropolitan State and to all the territories, be they Non-Self-Governing, Trust or Colonial Territories, which are being administered or governed by such metropolitan State.

CHAPTER IV - THE INCLUSION OF ARTICLES ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Note:

A certain number of governments stated merely in their reply their attitude towards the question if the inclusion of articles on economic, social and cultural rights is desirable. Other Governments have given more or less detailed indications as to the scope of the economic, social and cultural rights, which in their opinion should be included in the Covenant. The present chapter is accordingly divided into two sections.

Section I - The Desirability and Feasibility of the Inclusion of Economic, Social and Cultural Rights in the Covenant

1. United Kingdom of Great Britain and Northern Ireland

.....

(ii) His Majesty's Government remain of the opinion that the definition of

economic, social and cultural rights and the permissible limitations thereto, in terms which are of sufficient precision to constitute an effective guarantee of such rights and which are at the same time likely to obtain general acceptance, is a difficult if not impossible task, and one which is unlikely to be accomplished in a single session of the Human Rights Commission. It is in any event undesirable to attempt to incorporate them in this Covenant. See also E/CN.4/353/Add.2 page 8.

2. Ukrainian S.S.R.

... the Government of the Ukrainian S.S.R., confirming the position set forth by its delegation (at the fifth session of the General Assembly), considers that the Covenant on Human Rights should contain the following provisions ...

3. New Zealand

While the New Zealand Government are anxious to see provision made for the protection of economic, social and cultural rights in a binding international instrument, they are sure that the preparation of additional Articles dealing in detail with specific rights of this nature will cause undesirable delay in the completion of the first Covenant. They believe that such detailed provisions should be considered for inclusion in a separate instrument. The direction given by the General Assembly in Resolution A/1620 of 5 December 1950, Part E, Paragraph 7 (b) could be fulfilled by the inclusion in the first Covenant of a general Article forbidding discrimination in regard to economic, social and cultural rights, it being understood that detailed provisions on these rights will be included in a later Covenant. If such a general Article in suitable form were proposed by the Commission, the New Zealand Government would support its inclusion in the first Covenant.

4. Canada

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.

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.

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.

5. India

The Government of India are of the view that the social, economic and cultural rights should not be included in the present Covenant which includes only political and civil rights. It is because financially weak countries where these rights are not justiciable will not be in a position to implement them. It is preferable therefore, to have a separate Covenant or Covenants for the inclusion of the rights other than political and civil. The economic and social rights are not, however, of less importance than the civil and political ones, but the fight for the latter began centuries before and it is logical that something should be achieved right now in political field in preference to the economic and social fields. The Government of India have no other comments to offer.

6. France

Even before the Assembly resolution, the position of the French Government regarding the inclusion of these rights had been clearly stated by the representative of France on the Social Committee of the Economic and Social Council: "A covenant which did not include them or which was not accompanied, either by another instrument relating to those rights and presented simultaneously to the Assembly or, if for technical reasons such a general instrument could not be established, by special conventions relating to those rights and by an Assembly resolution clearly indicating the obstacles to the conclusion of a general covenant on the subject - such a covenant might well be regarded in the twentieth century as an anachronism that could not easily be accepted."

Accordingly, the French Government is in favour of including these rights. It is, however, fully aware of the difficulties which this raises both from the point of view of the definition of these rights, the nature of which is such that all the material provisions cannot be expressed in the form of simple principles and also from the point of view of their implementation which must take into account the possible role of the specialized agencies. Before making a final decision, it wishes to consider any proposals that may be made by the joint working groups (consisting of representatives of specialized agencies and members of the Commission on Human Rights) which the International Labour Organisation and the French delegation at the twelfth session of the Economic and Social Council recommend should be established by the Council as likely to offer the most satisfactory means whereby the Council might give effect to Section E, paragraph (d), of the resolution, in which the Assembly:

> "Requests the Economic and Social Council to consider, at its twelfth session, the methods by which the specialized agencies might co-operate with the Commission on Human Rights with regard to economic, social and cultural rights".

7. Egypt

The Royal Egyptian Government deems it essential to include in the Covenant articles on economic, social and cultural rights similar to those in

the Universal Declaration of Human Rights which was proclaimed on 10 December 1948 at the third session of the General Assembly. To that end, it recommends that existing treaties dealing with those rights should be consulted and that the assistance of the competent specialized agencies should be requested.

Section II: Economic, Social and Cultural Rights the Inclusion of which has been proposed in the Covenant

1. Ukrainian S.S.R.

... The Government of the Ukrainian S.S.R. ... considers that the Covenant on Human Rights should contain the following provisions:

.....

The State shall ensure the development of science and education in the interests of progress and democracy and in the interests of ensuring international peace and co-operation.

Access to education shall be open to all without distinction of race, sex, language, economic situation or social origin and this right shall be ensured by the State by the provision of free elementary education, a system of scholarships and the requisite system of schools.

It is the duty of the State to guarantee to every person the right to work and to choose his occupation in such a manner as to create conditions which will exclude the threat of death from hunger and from exhaustion.

The right to rest and leisure shall be guaranteed by the State to every person employed in enterprises and institutions, either by law or on the basis of collective agreements providing, in particular, for a reasonable limitation of working hours and for periodic holidays with pay.

Social security and social insurance for workers and employees shall be effected at the expense of the State or at the expense of the employers in accordance with the laws of each country.

The state shall take all necessary measures, legislative measures in particular, to ensure decent living accommodation to every person.

.....

Trade Union Rights

(a) The implementation of trade union rights, which are inviolable and essential for improving the life and economic welfare of workers, shall be guaranteed to all hired workers without distinction as to nationality, race, religion, sex, occupation, political or philosophical views.

(b) All regulations of whatever kind directed against trade union organizations by hired workers and employees shall be prohibited.

(c) Trade union organizations shall have the right freely to elect all their representatives, to make their own administrative arrangements and democratically to fulfil their functions and tasks in the interests of their members, and shall be protected against any interference on the part of public authorities or officials. Public authorities or officials may not attempt to exert pressure of any kind whatsoever, whether directly or indirectly, upon trade unions and their members. Public authorities or officials shall be required to abstain from founding, financing, or interfering in the direction of, trade union organizations.

(d) The right to strike shall be guaranteed.

(e) Legislative measures shall be adopted to enable trade union organizations to participate in the determination of economic and social policy in undertakings and on the local, regional and national levels.

(f) Trade union organizations shall have the right to amalgamate on a trade, inter-union, local, regional and national basis and to affiliate to international trade union organizations.

(g) No one may prevent an international trade union organization from fulfilling its functions and communicating with the organizations affiliated to it.

2. New Zealand

The direction given by the General Assembly in resolution A/1620 of 5 December 1950, Part E, Paragraph 7(b) could be fulfilled by the inclusion in the first Covenant of a general article forbidding discrimination in regard to economic, social and cultural rights, it being understood that detailed provisions on these rights will be included in a later Covenant. If such a general Article in suitable form were proposed by the Commission, the New Zealand Government would support its inclusion in the first Covenant.

CHAPTER V. ARTICLES ON IMPLEMENTATION

While some Governments made a general statement as to the adequacy of the articles on implementation included in the draft Covenant as revised by the Commission on Human Rights at its sixth session, other Governments submitted, either in addition to such a statement or separately, proposals for inclusion of new provisions concerning implementation. This chapter shall accordingly be divided into two sections.

Section I. General Statements concerning Implementation

1. United Kingdom of Great Britain and Northern Ireland

(i) His Majesty's Government remained opposed to the admission of petitions from individuals and from non-governmental organizations.

(ii) A complete statement of the views of His Majesty's Government concerning implementation procedures generally is to be found in E/CN.4/353/Add.2, page 11. His Majesty's Government substantially approve the implementation procedure contained in the present Articles 19 to 41 of the draft Covenant.

2. Ukrainian S.S.R.

Articles 19-41 of the draft covenant should be deleted, since their inclusion would constitute an attempt at intervention in the domestic affairs of States and would encroach on their State sovereignty. In addition, these articles are inadequate, as they do not solve the problem of implementation of the provisions of the Covenant.

3. New Zealand

The New Zealand Government support in principle the provisions of the present draft for dealing with complaints by States concerning alleged violations of the Covenant. They desire at this stage to reserve their views on the subject of petitions by individuals and organisations pending consideration of this subject by the Commission in accordance with General Assembly Resolution A/1620, Part F.

4. Canada

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 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.

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.

5. India

The Government of India are of the view that some of the articles on implementation need modification. As regards the right of petition, the Government of India are of the opinion that the right of petition in cases of violation of human rights should be thrown open to individuals and non-governmental organizations.

The Government of India have no other comments to offer.

6. France

The representative of France on the Commission on Human Rights has at all times stressed that it is the primary responsibility of each State to organize within its jurisdiction a regime affording effective respect for human rights and remedies in case of violation.

Yet, important as national measures for the protection of human rights may be, quite recent events prove that the international community should not regard them as sufficient in themselves and that international implementation is

imperative. In the absence of such implementation, a covenant, being merely a weakened version of the Declaration, might do more harm than good.

Such implementation should obviously be based on the principles of the equality of reciprocity of the rights of States, and in a convention on human rights under the United Nations those rights can be effectively guaranteed only if all or almost all the Members of the Organization become parties to the convention. As the French Government stated in its "Comments" of 1 March 1950 (E/CN.4/353/Add.8):

> "If it were not general, a convention on human rights which implied for the contracting State at least partial surrender of its sovereign rights for an indefinite period to an international body would lead, de facto if not de jure, to the establishment of two parallel systems: one system under which the individual would escape the jurisdiction of the State, in a considerable number of cases at least, and another system under which he would continue to be covered by that jurisdiction alone. The recognized co-existence of these two fundamentally different systems would be particularly out of place in an organization based on the equality and reciprocity of the rights of States — which are deemed to be subject to the same rules of law and are able, through common organs, to influence each other. The effect of the co-existence of the two systems would be to create, in the name of the rights of individuals, minorities or other groups, a category of privileged States — these States, paradoxically, being precisely those which gave us State jurisdiction over the individual to the exclusion of a right to an international existence on the part of the individual — which, having rejected any international supervision for themselves, could at any time, through the agency of States, organizations or private intermediaries, interfere in the domestic affairs of States which had accepted such supervision."

This being so, the Government of the Republic, regarding the universal or at least sufficiently wide application of the Covenant as an essential prerequisite for its entry into force, was led to the conclusion that the desired universality might be obtained if the agency for international implementation were

surrounded by the maximum safeguards with respect to independence and impartiality. It was in order to obtain those safeguards that the French Government proposed to associate the International Court of Justice in the selection of the members of the "Human Rights Committee"; the members of the Committee would be nominated for their competence and high moral standing by the States signatory to the Covenant while their final appointments would be left to the International Court. It is again submitting this proposal, since it considers the essentially political formula for which a majority of the Commission expressed a preference last year likely to make the Covenant unacceptable to States of good faith wishing to adhere to it, likely to distort the working of justice, and consequently not likely to protect either the future of the Covenant or the interests of the signatory States or, what is most important, those of man.

Moreover, the French Government wishes to urge that in the measures of implementation account should be taken of the competence of existing organs. To its mind, the measures of implementation provided by the Covenant should operate only if there were no special conventional undertakings, whether regional or at the specialized agencies level.

In any event, the Government of the Republic reserves the right to propose at the proper time through the representative of France on the Commission on Human Rights, any measures it may deem appropriate to ensure that the difficult question of implementation is examined by the Commission with the care its importance warrants.

7. Egypt

With regard to measures of implementation, the Royal Egyptian Government considers that the articles on that subject already contained in the draft Covenant are generally adequate.

Nevertheless, it wishes to place on record, with respect to petitions and complaints dealing with alleged violations of the international Covenant, that it prefers not to extend the right to submit such petitions to private persons and to restrict it for the time being to Member States, non-governmental organizations accredited to the Economic and Social Council and various associations duly constituted in their countries.

8. Chile*

General Observations on Implementation

The Chilean Government is of the opinion that it is necessary for the International Bill of Rights to contain articles providing for international measures and the setting up of international institutions for the implementation of human rights and freedoms. These provisions should be included in a separate instrument in view of the consideration that measures of implementation should gradually be perfected in the light of experience and that if they were included in the text of the Covention itself they could not easily be revised. The Government of Chile holds it to be fundamental to its attitude to the question of measures of implementation that any international machinery established could only come into operation after all judicial and other remedies granted by the domestic legislation of each State had been exhausted.

Right to initiate proceedings

The right to initiate proceedings before the international body responsible for the implementation of the Covenant should not be limited to signatory States. This right should be open to individuals, groups of individuals and non-governmental organizations. The right to initiate proceedings should not be restricted to such of the last-mentioned categories as were at the time of an alleged violation within the jurisdiction of a signatory State, nor should such petitions relate only to alleged violations committed in a territory subject to the jurisdiction of a signatory State. Chile is in favour of including detailed regulations concerning the receivability and the preliminary examination of petitions from individuals, groups of individuals and non-governmental organizations, but does not agree that the consideration of such petitions should be conditional upon the preliminary favourable opinion of one of the non-governmental organizations granted consultative status by the Economic and Social Council which are included in a special list approved by the implementation organ for this purpose. It is considered that

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* The following observations and comments of Chile have been summarized from its reply (E/CN.4/515) Add.4) to the Questionnaire on Measure of Implementation (E/1371, Annex III p.p. 49-60)

petitions should be transmitted in the first instance to the Secretary-General of the United Nations who should be under an obligation to request such information from signatory States as he deems necessary with a view to the submission of a petition together with any documentation thereon to the implementation organ. Chile is in favour of conferring on non-governmental organizations granted consultative status in category A, B and C by the Economic and Social Council and included in the list of organizations approved by the implementation organ for this purpose the right to petition without any other condition except that such petition must relate to an alleged violation committed in a territory or place within the jurisdiction of a signatory State.

Establishment of Permanent and ad hoc conciliation bodies

With regard to the establishment of a permanent and ad hoc body for conciliation of disputes arising out of violations of the Covenant Chile is in favour of a body which should be elected by a two-thirds majority of the General Assembly of the United Nations including at least two-thirds of the signatory States. The implementation body should be composed of independent (non-government) persons elected for their personal qualifications and ability. Chile does not favour the setting up an implementation body which would supervise the observance of the provisions of the Covenant or make recommendations to the other organs of the United Nations and to other international organization, or which would have the right to propose amendments to the Covenant. In its opinion the function of the body should be to submit an annual report to the Economic and Social Council concerning its activities, difficulties, any omissions and queries it has to note in connection with the exercise of its functions in implementing the Covenant, and implementation procedure, with the right to propose amendments thereto. The implementation organ should have the right to keep itself and the United Nations informed with regard to all matters relevant to the observance and enforcement of human rights within various States. Such information should include legislation, judicial decisions and reports from various States. The organ should have the right to act on complaints received from signatory States; on petitions from all non-governmental organizations; and on petitions from individuals and groups of individuals. Where a complaint is

submitted otherwise than by a signatory State the consideration of any petition should be conditional upon a favourable preliminary examination as to its receivability. A preliminary examination on petitions from non-governmental organizations or individuals should be conducted on the basis of the documentation submitted by the General Assembly thereon with a view to deciding whether such petitions are to be considered by conciliators or if not the manner in which it will dispose of them.

Procedure of the implementation body

The implementation body should have its headquarters and should meet at the headquarters of the United Nations, but it should be authorized to send commissions of enquiry to places outside its headquarters. Its rules of procedure should be established by itself and approved by the Economic and Social Council. It should be enabled to conduct its proceedings in open or private meeting as it decides. Furthermore, it should have the right to draw upon any source of information it deems necessary; to request reports from signatory States; and to appoint committees of enquiry. Chile would accept in principle a proposal that the implementation body should also have the right to carry investigations on the spot without the consent of the State or States concerned, but considers that under the present circumstances such a proposal could not be put into operation.

Powers of the implementation body

The main fuction of the implementation organ should be that of conciliation, and for this purpose in consultation with the parties concerned, the organ should have the right to appoint not more than three conciliators recommended by States for that purpose. It should also have the right to make recommendations to the parties concerned and should be under an obligation to submit a report on each particular case to the Commission on Human Rights. The reports of the organ should be made public by the Commission on Human Rights. In the event of failure to reach a settlement the implementation organ should have the right to refer the matter to an arbitrator subject to the agreement of the parties concerned. Chile is in favour of a reference of the matter to the

International Court of Justice so long as such a reference does not prejudice Chile's attitude to its acceptance of the compulsory jurisdiction of the International Court of Justice under Article 36 of its Statute. Similarly, Chile is in favour of authorizing the implementation organ to request the Economic and Social Council to secure an advisory opinion from the International Court of Justice on any legal question.

Establishment and composition of adhoc fact finding bodies

With regard to proposals for the setting up of ad hoc fact finding bodies Chile is in favour, without prejudice to its attitude concerning the existence of a permanent body, of the establishment of such ad hoc bodies to be composed of persons who would serve in their personal capacity and would be nominated from a panel of persons of high moral character designated by signatory States from among their nationals.

Judicial settlement

Because every opportunity should exist for the settlement in accordance with law and justice of disputes arising out of violations of human rights, Chile is in favour of giving signatory States the right to refer a matter to the International Court of Justice notwithstanding any provisions which may be prescribed for implementation provided that such a right should not prejudice the acceptance by Chile of the compulsory jurisdiction of the International Court of Justice under Article 36 of its Statute. Although Chile rejects outright the idea of establishing an international court of human rights, it considers that any question concerning the Covenant should be referred to a special chamber of the International Court of Justice.

General provisions

Signatory States should have the right by common consent to employ procedures other than those that may be provided. But in the case of a dispute between signatory States there should be no right to submit the question to any conciliation procedure other than that prescribed in the Covenant or to arbitration or to judicial settlement because such procedures would facilitate collusion between States to evade the implementation of human rights.

Relationship of the United Nations to the implementation body

The Secretary-General should in the opinion of the Chilean Government have the right to request information from signatory States in accordance with any procedure which may be laid down by a permanent implementation body. The Secretary-General should also have the right under the authority of a resolution of the General Assembly to request the Government of a signatory State to supply an explanation as to the manner in which the law of that State gives effect to any of the provisions of the Covenant.

Chile favours the inclusion in the Covenant of a clause to the effect that whatever measures of implementation may be adopted, the powers of all the organs of the United Nations in the Charter should remain intact. The Covenant should be open for accession to every State which is a party to the Statute of the International Court of Justice and which the General Assembly may by resolution declare to be eligible. Allegations of violations against non-signatory States should be dealt with in accordance with the prescribed procedure if the General Assembly so determines.

Section II. Proposals for inclusion in the Covenant of new Provisions on Implementation

1. Israel

Article 41

It is proposed that after the word "facts" in line 2, the following words be inserted: "and suggest such remedies as it deems advisable."

The purpose of the amendment is to require the Committee not merely to ascertain the facts and offer its good services for the solution of the matter, but to propose remedies of its own towards such a solution.

New Article

It is proposed that the following new Article be inserted after Article 41: "(a) The right to bring cases of non-compliance with the provisions of the Covenant to the attention of the Human Rights Committee shall be granted also to such non-governmental organizations enjoying consultative status with the Economic and Social Council as

are included in a list to be drawn up for this purpose by the Secretary-General in conjunction with the Chairman of the Human Rights Committee.

(b) The provisions of articles 38-41 shall be applicable to such cases mutatis mutandis."

This new Article is designed to ensure that the right to bring cases of non-compliance with the provisions of the Covenant to the attention of the Human Rights Committee shall be vested not only in member States but also in authoritative and recognized non-governmental organizations. It is evident that the raising of such a complaint by one State against another is likely to be interpreted by the latter as an unfriendly act, and that for this reason States will feel most hesitant to take such action even when they are convinced that an infringement of human rights has taken place. They will, on the other hand, readily do so if relations between them and the State accused of such infringement are strained. In some cases such complaints may be used in order to encourage irredenta among the heterogeneous part of a population. This would, in fact, mean that the Covenant, whose purpose is essentially humanitarian, would be turned into an instrument of international strife and controversy. The effect of limiting the right to lodge such complaints before the Human Rights Committee to member States would thus be either to reduce the implementation section of the Covenant, in practice, to a dead letter, or to turn it into a means by which States may carry their controversies into the international sphere. This is clearly the opposite of what is intended by the Covenant. For these reasons it is proposed that the right to submit such petitions should be vested also in a limited number of non-governmental organizations which enjoy consultative status with the Economic and Social Council and are included in a list to be drawn up for this purpose by the Secretary-General in conjunction with the Chairman of the Human Rights Committee. Such limitation, it is submitted, will obviate the possibility of this right being abused by irresponsible agencies.

New Article

It is proposed that after Article 41 a second additional Article be inserted reading as follows:

"(a) The Human Rights Committee may by decision reached in accordance with article 33 (b), be seized of cases of non-compliance with the provisions of the Covenant by parties thereto on its own motion when the facts before the Committee appear in its view to warrant such consideration.

(b) The provisions of articles 38-41 shall be applicable mutatis mutandis."

The purpose of the Article is to make it possible for the Human Rights Committee to take action in cases of non-compliance with the provisions of the Covenant when the Committee itself has become aware of the facts without any action having been taken by any member State to draw its attention to it. This is motivated by the same consideration as stated in the preceding paragraph, viz., that member States may be reluctant to draw the attention of the Committee to infringements by fellow members even though the facts are public and within the knowledge of the Committee itself. In such cases it is proposed that the Human Rights Committee may take action on its own motion by a decision reached in accordance with the provisions of Article 33 (b) of the Draft Covenant.

New Article

It is proposed that after Article 41 a third additional Article be inserted reading as follows:

"(a) In urgent cases the Human Rights Committee may deviate from the provisions of articles 39 and 41 and may recommend to the State or States concerned the adoption of measures designed to give immediate effect to the provisions of the Covenant.

(b) As urgent within the meaning of the foregoing provision shall be considered cases in which the lives, liberties and other rights of persons enumerated in Article 1, paragraph 1, are directly threatened by the action or non-action of persons and authorities referred to in article 1, paragraph 3 (a) or 3 (b)."

The purpose of this Article is to enable speedy and effective action to be taken in cases of grave urgency in order to stop an infringement of the Covenant. The procedure envisaged in Articles 38-41 of the draft Covenant is clearly very slow and cumbersome. The complaint has in the first instance to be brought to

the attention of the State which is alleged to be guilty of an infringement of the Covenant. Thereafter a period of six months is allowed to that State to adjust the matter. When that period has elapsed without any action having been taken, the matter goes to the Human Rights Committee. It may even then take no action until all domestic remedies have been exhausted. The Committee has to ascertain the facts and use its good offices with a view to a friendly solution of the dispute. Then another eighteen months may pass before the Committee draws up its report to the States concerned and to the Secretary-General for publication. This means that practically two years may elapse from the time of infringement to the authoritative publication of the matter by the Human Rights Committee. It is well known that cases of this kind may involve the lives, rights and liberties of individuals and groups, and by the time this period has elapsed, the harm done by the infringement may be beyond repair and redress. For this reason, it is proposed that in the urgent cases specified in the resolution the Human Rights Committee may recommend to the State or States concerned the adoption of measures designed to give immediate effect to the provisions of the Covenant.

2. Canada

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.

3. India

As regards the right of petition, the Government of India are of the opinion that the right of petition in cases of violation of human rights should be thrown open to individuals and non-governmental organizations.

4. France

..... the Government of the Republic, regarding the universal or at least sufficiently wide application of the Covenant as an essential pre-requisite for its entry into force, was led to the conclusion that the desired universality might be obtained if the agency for international implementation were surrounded by the maximum safeguards with respect to independence and impartiality. It was in order to obtain those safeguards that the French Government proposed to associate the International Court of Justice in the selection of the members of the "Human Rights Committee"; the members of the Committee would be nominated for their competence and high moral standing by the States signatory to the Covenant while their final appointments would be left to the International Court. It is again submitting this proposal, since it considers the essentially political formula for which a majority of the Commission expressed a preference last year likely to make the Covenant unacceptable to States of good faith wishing to adhere to it, likely to distort the working of justice, and consequently not likely to protect either the future of the Covenant or the interests of the signatory States or, what is most important, those of man.

Moreover, the French Government wishes to urge that in the measures of implementation account should be taken of the competence of existing organs. To its mind, the measures of implementation provided by the Covenant should operate only if there were no special conventional undertakings, whether regional or at the specialized agencies level.

In any event, the Government of the Republic reserves the right to propose at the proper time through the representative of France on the Commission on Human Rights, any measures it may deem appropriate to ensure that the difficult question of implementation is examined by the Commission with the care its importance warrants.

5. Egypt

(The Egyptian Government) wishes to place on record, with respect to petitions and complaints dealing with alleged violations of the international Covenant, that it prefers not to extend the right to submit such petitions to

private persons and to restrict it for the time being to Member States, non-governmental organizations accredited to the Economic and Social Council and various associations duly constituted in their countries.

CHAPTER VI: PROPOSALS CONCERNING THE FINAL CLAUSES OF THE DRAFT COVENANT

Section I: Proposal for the Inclusion of Provisions on Reservations.

Union of South Africa

Having regard to the very complex difficulties in finding formulae and words to cover all circumstances, the Union Government is of the opinion that the most earnest consideration should be given to arrangements whereby it would be possible for Member States to accede to the Covenant with reservations as to particular articles. The Union Government believes that on this basis more articles of the Covenant would become effective of application in a larger number of States than would be the case on a basis which did not permit of reservations since if a State is not permitted to accede to the Covenant with reservations in respect to one or two articles, it will in practice not be able to accede to the Covenant at all.

Section II: Proposal for the Amendment of the Final Article dealing with the Amendments to the Covenant.

Canada

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 constituional processes by two-thirds of the States Parties to the Covenant".