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Chairman: Mr. G. J. VAN HEUVEN GOEDHART (Netherlands).

Draft first international covenant on human rights and measures of implementation (A/1384, A/C.3/534, A/C.3/535 and E/1681) (*continued*)

[Item 63]*

1. Mr. CHANG (China) noted that four main controversial issues had developed in the debate on the desirability of including special articles on economic, social and cultural rights in the draft first international covenant on human rights: the relative importance of individual rights and economic and social rights, the relative priority to be given to the latter, the relative complexity of defining them and the relative urgency of including them in the first draft covenant.

2. The French representative had produced a solution of the question of relative urgency by proposing (298th meeting) that two separate covenants should be prepared simultaneously before the sixth session of the General Assembly. The principal difficulty inherent in such a solution, admirable as it was in intention, was that it would be extremely difficult to obtain general agreement on the choice of the economic, social and cultural rights to be included in a separate covenant.

3. He wondered, however, whether there were really cogent arguments for speed in drafting and adopting the covenant before the Committee. Urgency had been more or less assumed on the ground that, the Universal Declaration of Human Rights having only a moral force, it must be supplemented as soon as possible by a covenant with mandatory force, if human rights were to be effectively protected. The Commission on Human Rights had wisely decided to begin by preparing the Declaration rather than the draft covenant, as had originally been proposed; but every effort must be made to see that the covenant did not detract from the value of the Declaration, which had already acquired greater force and prestige than had been expected.

4. Before it accepted the assumption that the completion of the draft covenant was really urgently re-

quired, the Committee should ask itself how large a majority of its members would be able to approve the draft at the following session, how many would be able to sign and how many to ratify. Unless a new approach was found, it seemed that members would be fairly equally divided on the first question.

5. It had been argued that the number of initial signatures was unimportant; that others would gradually accede by force of example. A covenant on human rights was not, however, on the same level as a technical convention; it was something much more lofty and concerned the cause of international peace much more closely.

6. There was a real danger that the covenant on human rights might actually augment the causes of international dispute. Although the word "covenant" gave the impression that something sacrosanct was intended, a covenant in fact was merely a convention and had only the status of a treaty. If relatively unimportant technical conventions gave rise to disputes, such a sweeping document would be likely to cause even greater contention. Breaches of the covenant would take place within the domestic jurisdiction of States; complaints would, therefore, be regarded as infringements of national sovereignty and there would probably be no means of obtaining redress without causing international disputes. That was no imaginary danger; the Commission on Human Rights had already received hundreds of petitions and complaints from individuals invoking the Universal Declaration of Human Rights. A covenant signed at the existing stage of developments in international relations might, therefore, not only fail to protect human rights but might become the direct cause of an increase in international tension. Until there was some method of controlling a State's domestic behaviour without infringing its sovereignty, the provision of disciplinary measures appeared to be premature.

7. The Committee seemed to have failed to envisage that aspect of the problem clearly; both the Commission on Human Rights and the Economic and Social Council

* Indicates the item number on the General Assembly agenda.

should be asked to take that view into account before they proceeded further with the preparation of the draft covenant on human rights.

8. Mrs. MENON (India) said that she did not share the Chinese representative's misgivings. She did, however, have serious misgivings about the implications of the Mexican representative's remarks at the 298th meeting to the effect that political rights were meaningless without economic and social rights.

9. It was essential that a special article should be written into the existing draft of the covenant specifically guaranteeing the participation of all citizens in political life on an equal basis, in accordance with the principles of the Charter and the Universal Declaration of Human Rights. The absence of such an article might be used as a pretext for political discrimination against women; and it was noteworthy, in regard to the Mexican representative's statement, that women in Mexico did not have the right to vote in national elections. Even Belgium and France, whose delegations had boasted of the extent to which human rights were protected in those countries, had granted votes to women only within the past few years.

10. When the Indian delegation had supported the inclusion of articles on economic, social and cultural rights in the Declaration, it had been fully aware — as it still was — that they must also be embodied in a legally binding instrument. It was prepared, however, to await their inclusion in a subsequent, separate covenant, not because it believed them to be less important than the rights embodied in the first eighteen articles, but because any delay in enforcing the basic individual rights should not be countenanced.

11. She could not agree with the United Kingdom representative's view that the illusion that a gesture alone would suffice to transform the structure of States from top to bottom should be combated; such a gesture had in recent times transformed the spirit and structure of a government.

12. The main argument for including the proposed articles only in a later covenant, however, was the more practical one that it would require considerable time to obtain approval of the first eighteen articles, although they embodied only the basic rights without which no civilized society could exist. They concerned rights for the violation of which there were legal remedies and upon which there was a consensus of agreement. There was, however, no direct legal remedy for the violation of economic and social rights and no existing machinery for their protection and enforcement. Their effectiveness depended rather on the extent to which governments honoured their obligations and they might also entail material and financial commitments which it would be beyond the power of many governments to fulfil.

13. All governments should, however, strive to implement such rights; her own government was already doing so. She cited in evidence articles from the Directive Principles of State Policy in part IV of the Indian Constitution, particularly article 39.

14. Her delegation was sceptical about the amount of help available from the specialized agencies. The real effectiveness of the many conventions prepared by the International Labour Organisation was less impressive than their number. That showed that economic rights

embodied in various conventions became relatively meaningless unless all human rights fell into a single integrated pattern. The basis of rights in ILO conventions was protection, not equality of opportunity. For example, the immediate effect of the convention on the abolition of night work for women had been the discharge of a large number of telephone operators; but ILO had shown little concern to provide other work for them.

15. The only way to remedy such injustice was to include the principle of equality of opportunity in the covenant. The International Labour Organisation and other specialized agencies need not fear that that would restrict their programmes or spheres of action. The work of defining that right and providing for its implementation would remain the province of the specialized agencies. Nor need ILO fear that a statement of general principles would not provide adequately for the extension of economic and social rights; it would act as a stimulus and have great educative value and moral force.

16. Much of the social unhappiness consequent upon the ratification of the ILO conventions might have been avoided had the modern expanded conception of social justice been taken into due account. That organization was compelled by its Constitution to represent the three differing interests of government, of workers and of employers. In consequence, despite years of discussion, it had not been able even to approach the preparation of a convention on equal pay for equal work; the employers were against that.

17. The drafting of articles on economic, social and cultural rights must not, therefore, suffer any delay as a result of negotiation with the specialized agencies although priority should be given to the completion of the draft covenant on individual and political rights pending the drafting of a second covenant.

18. Mr. KOUSSOFF (Byelorussian Soviet Socialist Republic) maintained that the draft covenant would be meaningless and a disappointment to people generally if it failed to include articles on such economic, social and cultural rights as the right to leisure, education, decent housing, social security and the equal treatment of men and women.

19. Certain delegations had stated that those rights were already embodied in their constitutions; if so, they should welcome their inclusion in the draft covenant. The Iraqi representative had, however, correctly observed (298th meeting) that it was precisely those delegations which opposed their inclusion in the first draft covenant.

20. The argument that there would not be time to examine the articles relating to economic and social rights thoroughly before the draft covenant was submitted to the General Assembly at its sixth session was not convincing; there was a whole year for such discussion. That was ample time to see to the inclusion of articles, the desirability of which, in principle, had not been questioned.

21. Such an attempt at delay constituted a violation not only of the relevant provisions of the United Nations Charter but also of General Assembly resolution 217 E (III). That resolution, moreover, did not refer to a series of covenants, but to a single covenant;

and the single covenant must embody all basic human rights, individual, political, economic, social and cultural. Any attempt to oppose the inclusion of articles on economic and social rights might well be construed as an attempt to avoid the granting of all basic rights to the mass of people, because the individual and political rights were meaningless if not supplemented by the economic and social.

22. Under the Constitution of the Byelorussian SSR all political, economic, social and cultural rights were guaranteed. He had quoted the relevant provisions at the 296th meeting. That evidence could be complemented by the figures showing the appropriations for social and cultural purposes in the Byelorussian budget for 1950; 65.7 per cent of the whole budget had been devoted to such purposes.

23. Appropriations of that magnitude were not peculiar to his country; at the 298th meeting, the Ukrainian representative had given very similar figures for the Ukrainian budget and much the same was true of the other Republics of the USSR. Obviously, not all countries had reached a similar level of social advancement, as their economic and political structures differed from those of the USSR; but all countries could afford to agree to the inclusion of minimum provisions for the protection of economic, social and cultural rights in the draft covenant, regardless of their social structure.

24. Mr. KOHN (Israel) remarked that the elaboration of articles on economic, social and cultural rights to be included in the draft covenant would certainly delay for an indefinite period the adoption of the first eighteen articles, on which a large measure of agreement had already been reached. The preparation of articles dealing with economic, social and cultural rights would require exhaustive studies and submission to the specialized agencies, to the Commission on Human Rights and to the governments of Member States. One year was clearly inadequate for that process; yet any postponement of the adoption of the first eighteen articles would be disastrous from every point of view.

25. While inclusion of economic, social and cultural rights in the draft first covenant was precluded for technical reasons, every emphasis should be laid on the vital urgency of preparing a supplementary covenant embodying them. The view, held in certain quarters, that such rights were in the nature of a luxury to be considered at leisure was erroneous. The free exercise of them was in fact essential for the effective protection of the individual rights contained in the eighteen articles of the draft before the Committee. An illiterate person could derive little benefit from the right to vote; only men who were economically and socially free and had been educated to exercise their own judgment would be capable of maintaining civic freedom and of governing themselves by democratic processes.

26. The fact was that the guarantees of individual rights contained in the first eighteen articles were of limited value in normal times; they served largely to protect minorities against arbitrary action by governments and against the excesses of majority rule. Their full value was felt only in times of political stress and social transformation. The importance of economic, social and cultural guarantees, on the other hand, lay in the impetus which they gave to the normal, steady

growth of civilized society. If they were phrased in generally applicable and acceptable provisions, which could be translated into workable legislative and administrative measures, a long step would be taken towards avoiding the tensions against which the first eighteen articles were to act as a safeguard. The task was complex and would have to be worked out by progressive stages, but its successful completion would be an important factor in the promotion of social and international peace.

27. Mr. BAROODY (Saudi Arabia) said that two divergent views had become manifest in the course of the debate. The majority was strongly in favour of the inclusion in the covenant of guarantees of economic, social and cultural rights. He agreed that with the help of the specialized agencies and other expert bodies it should be possible to formulate articles dealing with such rights in time to include them in the first draft covenant. Others, however, took the view that it was inadvisable to burden the first covenant with articles which, in view of the unequal development of various countries, it would be difficult and perhaps impossible to implement, and advised patience. Unfortunately, a covenant such as they wanted would have no more force than a declaration.

28. It was not surprising that most of those who took that cautious position were representatives of colonial Powers. It was plainly not in their interest to accelerate the implementation of an effective covenant, since the result in dependent territories might be to awaken the population from its lethargy. Hence the representatives of countries which themselves enjoyed the free exercise of economic, social and cultural rights were unwilling to extend the benefits of those rights to populations which lived and laboured in a morass of backwardness.

29. If the colonial peoples, which were already seething with unrest, were given a covenant which guaranteed political rights without providing economic and social security, they would revolt and fight and would die fighting so that those who came after them might at last live on terms of equality with their fellow men. It would be a tragedy if reform could be obtained only through revolt.

30. He therefore appealed to those who had the means of improving the lot of the colonial peoples to share their wealth and knowledge with them generously and of their own free will. Only then would all nations become partners in a progressive civilization based on brotherly love.

31. Mr. HOFFMEISTER (Czechoslovakia) recalled that his delegation had already stated (290th meeting) that the first eighteen articles of the draft covenant were neither adequate nor satisfactory. Like the majority of the speakers who had preceded him, he was in favour of the inclusion, in the covenant, of economic, social and cultural rights, which would make that document more satisfactory and effective and would bring it up to date.

32. The type of rights which was most essential changed with a changing society. The basic rights of contemporary society were plainly the economic, social and cultural rights; most of the political and civil rights already included in the draft covenant, in fact, depended for their exercise on economic and social conditions.

33. Mankind was still afflicted with illiteracy, unemployment, hunger and need; scientific research was misused for inhuman purposes, and true freedoms were too often replaced by the false freedoms of misinformation, discrimination and incitement to war. Since the corner-stones of modern society were work and education, the right to both should be proclaimed in the covenant. Among its provisions should be the right to equal, compulsory and free basic education, the right to creative expression, the freedom of scientific research, the right to join trade unions with its concomitant rights, the right and duty to work, the principle of equal pay for equal work at fair wages, the right of women to special privileges in connexion with pregnancy, maternity and child care, the right to leisure and medical care, and old-age insurance.

34. He urged the Committee to take a realistic view. Unless the economic, social and cultural rights, which would make all other rights effective, were included in the covenant, there would result a document suitable, perhaps, for past generations but wholly inadequate for modern man.

35. Mr. SABA (United Nations Educational, Scientific and Cultural Organization) said that articles 26 and 27 of the Universal Declaration of Human Rights laid down a number of cultural principles, the attainment of which was one of the main objectives of UNESCO. In fact, one of the duties under its constitution was to prepare special recommendations and conventions on those subjects for submission to member States. The organization had initiated a study of the complex problems involved and its General Conference had decided to transmit the results to the Secretary-General and to various organs of the United Nations. A preliminary report (E/1752 and Corr.1) had been submitted to the Economic and Social Council. The General Conference had also instructed the Director-General of UNESCO to ensure the closest possible collaboration with the Commission on Human Rights in drafting articles on those principles for inclusion in the covenant.

36. The preliminary report stated that in the view of UNESCO, the covenant would be incomplete and would fail to meet the aspirations of mankind if it omitted provisions covering economic, social and cultural rights, which had been sanctioned by the United Nations in principle.

37. He wished to make it clear, however, that the implementation of all the principles contained in articles 26 and 27 of the Declaration could be achieved only by means of a number of technical conventions which could not be formulated immediately, and the preparation of which was, under its Constitution, the task of UNESCO. The problems raised in article 26, paragraph 1, alone would require several conventions. Furthermore, implementation by means of conventions was not always the best method. Thus, access to the cultural life of the community, predicated in article 27 of the Declaration, was frequently not in the power of governments to grant and could best be attained by collaboration with international professional organizations — an approach employed by UNESCO in such cases.

38. There was general agreement that economic, cultural and social rights should be guaranteed by the

United Nations. The question was whether they should be included in the draft first covenant or in a subsequent instrument. In his opinion, it would not be possible in one year's time to prepare elementary provisions dealing with cultural rights for inclusion in the first covenant. If, however, it were decided to put such provisions in later covenants, it should be remembered that the series of covenants would constitute an indivisible whole, as all the rights guaranteed by them were interdependent and none had been ranked higher than another in the Declaration.

39. It was plain, however, that such provisions must be reduced to a minimum which could be generally applicable. It would be difficult to translate the entire potential content of articles 22 to 27 of the Declaration into positive law. Much should be left for technical conventions to be prepared by the specialized agencies, whose competence had been recognized by the United Nations as primary in their respective fields. Furthermore, formal reference should be made either in a special resolution or, better still, in one of the articles dealing with economic, social and cultural rights, to the effect that those rights would be more fully implemented by technical conventions to be elaborated by the specialized agencies.

40. Mr. RODRIGUEZ ARIAS (Argentina) reiterated the appeal made by his delegation in 1948 for the inclusion of economic, social and cultural rights. While it was true that in practice some States might find it difficult to implement those rights because of technical complexities, such obstacles should not discourage the United Nations, whose duty it was to promote progress.

41. The example of Argentina itself showed that the difficulties were not insuperable: its Constitution of 1949 guaranteed the economic, social and cultural rights of the individual. Argentina had approached the question entirely from the legal point of view, basing itself on a realistic conception of the human being with all his needs and aspirations. It had been possible to guarantee those rights without encountering any great legal or practical difficulties. True, under-developed countries which were still in the process of developing their economy might find the operation less simple; therefore, the United Nations must make every effort to find a technical formula which would permit the universal application of economic, social and cultural rights.

42. He was convinced that none of the dominant political philosophies was opposed to the granting of such rights and he relied on the goodwill and common sense of Member States not to attempt to divide the indivisible by separating such rights from the political and civil rights already included in the draft first covenant.

43. Mr. CASSIN (France) referred to the Polish representative's comment at the 297th meeting on certain charges and allegations made by the World Federation of Trade Unions about conditions in French West Africa. The more important of the allegations had been refuted by the French representative in the Economic and Social Council. One of the most serious charges — an allegation of the existence of forced labor — had been based on a document which had been superseded even before the charges were made. Forced labour had been prohibited by a French law of 1946 which went beyond international conventions. He would note in

passing that the WFTU representative who had made the charges was himself a French citizen, a Negro, who had of course been free to act as he did without fear of discrimination or reprisal. That was a proof that France respected human rights as well as international institutions.

44. He feared that he had been misunderstood by the representative of the Ukrainian SSR (298th meeting). It had been his intention, not to criticize but to praise the accomplishments of the USSR in the fight against illiteracy. He had cited that struggle as evidence of the fact that elimination of illiteracy could not be accomplished overnight. Far from desiring the continuation of illiteracy, he ardently hoped for its early eradication. His point was that it would not be enough simply to reproduce the Universal Declaration of Human Rights or the preamble to the Constitution of ILO but rather that definite commitments must be made. No fewer than forty ILO conventions and recommendations dealt with the subject-matter covered in just one of the articles of the Declaration. Clearly, the issues were very complex and much time and thought were required to bring true progress.

45. In the course of the debate some had argued that the draft covenant need not include economic, social and cultural rights, while others had expressed a contrary opinion. He himself desired a positive conciliation of the divergent points of view.

46. He had been impressed by the statement of the ILO representative (298th meeting), which had been largely an historical *exposé*. He did not, however, believe that a unilateral warning against encroaching upon the sphere of action of ILO was enough. He attached the greatest importance to the work and experience of ILO and would therefore welcome a complementary statement from the ILO representative indicating concretely how that organization envisaged co-operation with the Commission on Human Rights.

47. He hoped that the Commission on Human Rights might benefit from the debate in progress, but feared that the Commission's task would be most difficult without very positive co-operation from ILO, UNESCO, WHO and other specialized agencies, not only in respect of the drafting of the rights concerned, but also in respect of their implementation.

48. Mr. PHELAN (International Labour Organisation) hoped that the remarks he was about to make in compliance with the request of the French representatives would not be misconstrued as being anticipatory of decisions which the Committee had yet to take.

49. The International Labour Organisation believed that the specialized agencies concerned with the clauses under discussion should co-operate with the Commission on Human Rights in drafting appropriate clauses in a "combined operation", for subsequent consideration by the General Assembly.

50. Relations between the United Nations and ILO were governed by the Agreement entered into by both. In practice, ILO had closely co-operated with the Economic and Social Council. He could assure the Committee that any resolution on relevant issues adopted by the General Assembly or the Economic and Social Council would inevitably enlist the ready and whole-hearted co-operation of ILO. He assumed that the

appropriate one of its own organs would act on behalf of ILO in the co-operative enterprise of drafting suitable clauses on economic and social rights. He anticipated that existing instruments bearing on those topics would be borne in mind during such drafting.

51. He might request the Committee at a later stage to permit him to explain more specifically the attitude of ILO on particular recommendations which might be made after the conclusion of the current debate.

52. In reply to requests from Miss BERNARDINO (Dominican Republic) and Mr. CASSIN (France), the CHAIRMAN said that the texts of the statements made by the UNESCO and ILO representatives would be circulated to the members of the Committee.

53. Mr. KAYALI (Syria) thought that articles on basic economic, social and cultural rights should form an integral part of the draft covenant, which would be incomplete without them. Such rights were the logical sequel to the obligation set forth in the Charter to promote universal respect for, and observance of, human rights and freedoms.

54. At the 295th meeting, the Belgian representative had accused several of the delegations which favoured the omission of a colonial clause of suffering from a "resentment complex" vis-à-vis their former colonial rulers. Syria had long since forgiven the colonial Powers for all the harm they had done to it. It was, however, determined not to allow colonialism to continue and, since the colonial clause would interfere with the application of the draft covenant in Non-Self-Governing Territories, his delegation had been opposed to it and would continue to oppose it.

55. He would ask the colonial Powers to stop acting as superiors in the discussion of economic, social and cultural rights. All human beings were equal; they were all born free and had the right to equal opportunity to live, work and develop in society. No one, surely, could be said to enjoy the right to freedom of thought, conscience and religion, if the draft covenant failed to provide that, irrespective of race, colour or sex, he was entitled to participate in the government of the State, to elect and be elected, to work and not to be exploited. The draft covenant should include a provision granting everyone the right to speak his own language and to study and develop his own culture. While that point might not be of great concern to the inhabitants of countries enjoying those rights, it was vital to the inhabitants of many Non-Self-Governing Territories, where Administering Authorities were making every effort to stifle the use of indigenous languages and to substitute the language of the metropolitan country. He wondered whether behind the advice of patience in respect of granting those rights there did not lurk the fear that their inclusion in the draft covenant and implementation might make the future position of certain colonial Powers rather difficult.

56. The opposition of some Powers to the inclusion of articles on essential economic, social and cultural rights arose either from a superiority complex or from a keen sense of selfish colonial interest. Some Powers, for example, could not accept the principle of the right to equal pay for equal work because its application in the colonies would interfere with exploitation. Those imbued with the colonial mentality could argue that such rights were good for the inhabitants of the metro-

politan country but not for the natives of the colonies. However liberal and God-fearing they might be at home, the colonial Powers seldom practised virtue abroad. He would mention, as an illustration of the kind of thing he had in mind, that some 1,200 foreign journals and publications had been placed on an official list of proscribed literature in French Morocco. Many of the publications in question were in Arabic and came from Arab countries.

57. French literature and culture were justly famous, but the French authorities should permit people under their administration to study and cultivate their own cultural heritage. The peoples of Asia and Africa were well aware that colonial policy in cultural matters was almost the same everywhere: it was one of assimilation and as such always aimed at some form of annexation of the colony. Nor could the essence of colonialism be made to disappear merely by substituting some other word for the word empire.

58. His delegation regretted the omission of the right to self-determination from the draft covenant. That was a serious wrong, which should be redressed forthwith.

The right to self-determination was the first fundamental human right and was essential for the existence of man as well as of society. The omission of that right from the draft covenant would make it an incomplete instrument.

59. The CHAIRMAN noted that the statement just made had concluded the debate on the advisability of including economic, social and cultural rights in the draft covenant.

60. The CHAIRMAN suggested that the time limit for the submission of draft resolutions on the draft first international covenant on human rights and measures of implementation should be 3 p.m. on Thursday, 2 November 1950.

It was so agreed.

61. The CHAIRMAN reported that the Fifth Committee would soon have to consider the financial implications of the refugee problem. He hoped therefore that the Third Committee would take that into account when considering its future work.

The meeting rose at 5.50 p.m.