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SOCIAL COMMITTEE

SUMMARY RECORD OF THE HUNDRED AND FORTY-SEVENTH MEETING

Held at the Palais des Nations, Geneva,
on Monday, 24 July 1950, at 3 p.m.

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Draft First International Covenant on Human Rights (continued)
(a) General Discussion

/Present:
E/AC.7/SR.147

Present:

Chairman:

Mr. DEHOUSSE (Belgium)

Members:

Australia

Mr. BALLARD

Belgium

Mr. de RAEMMAEKER

Brazil

Mr. SILOS

Canada

Mr. DAVIDSON

Chile

Mr. VALENZUELA

China

Mr. YU

Denmark

Mr. BORBERG

France

Mr. LEROY-BEAULIEU

India

Mrs. SWAMINATHAN

Iran

Mr. KHALATBARY

Mexico

Mr. CALDERÓN PUIG

Pakistan

Mr. BROHI

United Kingdom of Great
Britain and Northern Ireland

Mr. HOARE

United States of America

Mr. CATES

Representatives of specialized agencies:

International Labour Organisation

Mr. FLORES

United Nations Educational,
Scientific and Cultural
Organization

Mr. TERENZIO

International Refugee Organization

Mr. WEIS

Representatives of non-governmental organizations:

Category A:

International Confederation of
Free Trades Unions

Miss SENDER

World Federation of United Nations
Associations

Mrs. EVANS

Representatives of non-governmental organizations (continued)

Category B and Register

Commission of the Churches on International Affairs	Mr. REES
Co-ordinating Board of Jewish Organizations	Mr. RAPPAPORT
International Catholic Union of Social Services	Miss de ROMER
International Co-operative Women's Guild	Miss ROSSIER
International Council of Women	Mrs. DREYFUS-BARNEY
International League for the Rights of Man	Mr. BEER Mr. de MADAY
International Union of Catholic Women's Leagues	Miss de ROMER
International Union for Child Welfare	Miss DINGMAN
Liaison Committee of Women's International Organizations	Mrs. DREYFUS-BARNEY
World Jewish Congress	Mr. RIEGNER
World's Young Women's Christian Association	Mrs. HEREFORD ROX

Secretariat:

Mr. Laugier	Assistant Secretary-General in charge of the Department of Social Affairs
Mr. Humphrey	Director, Division of Human Rights
Mr. Dumontet	Secretary to the Committee

REPORT OF THE COMMISSION ON HUMAN RIGHTS (SIXTH SESSION) (item 19 of the agenda) (E/1681, E/1681/Corr.1, E/1681/Corr.2, E/1681/Add.1, E/1721, E/1732, E/1752, E/1752/Corr.1 and E/L.68) (continued)

Draft First International Covenant on Human Rights (continued)

(a) General Discussion

The CHAIRMAN recalled the various decisions taken by the Committee at the 146th meeting, in connection with the debate on the draft First International Covenant on Human Rights and, before opening the general discussion on the subject, asked members in accordance with the decision of the Council to hear a statement by Miss SENDER, representative of the International Confederation of Free Trade Unions.

Miss SENDER (International Confederation of Free Trade Unions) said that the Confederation attached the greatest importance to the safeguarding of basic human rights. It had followed, and participated in, with the greatest attention, the work of the Commission on Human Rights in all its phases. She emphasized that all governments represented on the Commission had worked earnestly and devotedly to prepare an instrument, the principles of which their countries would be in a position to respect. She considered, however, that that strong feeling of responsibility had made governments over-cautious, and had led them to accept only such texts as were in agreement with their national legislation.

All those who were intently following the preparation by the United Nations of the draft First International Covenant on Human Rights desired to see some progress made, in order that it might be clearly shown that, in the titanic struggle in which the United Nations was engaged, progress and humanism were on the side of what might be called the free world.

The countries of eastern Europe and the non-governmental organizations belonging to that area had not taken part in the final phase of the discussions on the draft Covenant. She felt that their absence was not accidental, and that fact increased the responsibilities of other member States.

The criticisms which her organization wished to make were inspired solely by a desire to see the fight for freedom intensified.

She regretted that she must say that the draft First International Covenant on Human Rights did not comply fully with the principles laid down in the Universal Declaration of Human Rights; nor was it a legally binding, enforceable instrument, owing to the unsatisfactory wording of the articles relating to its implementation. National legislation was mentioned again and again in the draft Covenant. In that connection, she wished to point out that it was obvious from what had happened under the Nazi and Fascist regimes, that a totalitarian regime might introduce national laws in flagrant contradiction with the principles of the Universal Declaration of Human Rights, while formally asserting that it was complying with the provisions of the Covenant. The draft Covenant should therefore make it clear that, so far as its articles were concerned, national legislation could not conflict with the Universal Declaration of Human Rights. The Covenant should therefore give more specific indications as to the circumstances in which human rights might be circumscribed.

The very important right to asylum was mentioned only indirectly in articles 8 and 9 of the draft Covenant, and even then only those nationals or aliens legally admitted to the territory of a State enjoyed protection. It was obvious that a person persecuted on political grounds and fleeing for his life could not wait until a Consul had carried out all the formalities necessary for the issue of a visa in the regular way.

Referring to the necessity for protecting "public order", which was mentioned in many articles, she pointed out that that term might be given a very elastic interpretation. A more precise term should be found.

When the Universal Declaration of Human Rights had been adopted by the General Assembly, it had been pointed out that it contained one chapter which made it particularly valuable by comparison with any previous instruments of similar character. That feature - the inclusion of economic and social rights among the basic human rights and fundamental freedoms - had aroused enthusiasm, especially among the working people of the free world. Great disappointment

was therefore felt that such rights had not been included in the draft Covenant. It had been said that they had been omitted because of the short time at the disposal of the Commission on Human Rights. She pointed out, however, that the International Confederation of Free Trade Unions had made every effort to have such rights discussed, and had submitted a draft to the Commission covering the most basic rights, on which there was no controversy in civilized countries. Those efforts had aroused the sympathy of only a few members of the Commission, although that body had finally adopted a resolution which pledged it to take up the question of economic and social rights at its seventh session.

Referring to the implementation of the draft Covenant, she emphasized that it must be a legally binding instrument; but the Confederation, after its representatives had attended all the meetings dealing with implementation had decided that the Covenant would not be enforceable.

The proposed Human Rights Committee would not have much work to do, as governments alone would have the right to bring before it complaints of violation of human rights, and even so would only be able to take such action after they had brought the violation to the attention of the State charged with the offence. Six months would then have to elapse before either of the States concerned would be able to submit the matter to the Committee. The latter would have then to establish all the facts, and make available its good offices to the States concerned with the object of reaching an amicable solution of the dispute. After a further lapse of time, the Committee would draw up a report for communication to the States concerned. Thus, two years might well elapse before any solution was reached, during which time further injustices might be committed. She emphasized, as the representative of the World Jewish Congress had done, that the persons threatened might lose their lives before even the report was made public by the Human Rights Committee.

The draft Covenant not only denied to individuals the right to petition - it also denied that right to non-governmental organizations. She felt that in practice a government would hesitate to bring a case against another government with which it had friendly relations, as such action might impair diplomatic relations and eventually lead to a conflict.

The Confederation realised that at the present time, when the world was neither at war nor at peace, great caution was needed with regard to any action taken; it therefore suggested that the right to petition should be allowed at least to non-governmental organizations in States Members which ratified the Covenant, even if it was not granted to individuals. If the Covenant limited the right of petition to governments, it could not be called a Covenant. Finally, she considered that the draft Covenant should not be transmitted to the General Assembly until that basic defect had been removed.

Mr. de RAEYMAEKER (Belgium) said that his delegation would have preferred the draft First International Covenant on Human Rights to be returned to the Commission on Human Rights without discussion. Since, however, the Committee had been instructed to consider it, his delegation felt obliged to formulate certain general observations arising out of the text submitted by the Commission.

The draft Covenant in question was based on the Universal Declaration of Human Rights, adopted by the General Assembly in December 1948, a declaration containing basic principles which constituted what might be considered as the common heritage of all civilised nations, and which would without any doubt have immense moral repercussions throughout the world. The Declaration was the product of prolonged reflection, the Commission having devoted several sessions to its preparation. Furthermore, the events of the second world war had graven a consciousness of the basic rights of man with such painful clarity on the mind of all, that the Commission on Human Rights had been able to work in an atmosphere particularly favourable to the elaboration of the principles enunciated in the Declaration.

The text of the Declaration constituted a well-balanced and coherent whole, guaranteeing the basic rights of individuals and of certain groups, such as the family. The United Nations had succeeded in finding a common denominator for those principles on which fundamental agreement had been reached. Such an agreement constituted one of the two conditions essential to the harmonious development of collaboration between peoples, namely: consciousness of the essential unity of the human race; and concordance of opinion on the principles

of international society and on the aims to be pursued. While the very existence of the United Nations might be said, to a certain extent, to meet the first of those conditions, the Universal Declaration of Human Rights was a contribution towards the second.

Far from representing the final result of the efforts put in hand within the United Nations, however, the Declaration was only one stage in that process. The Covenant, on the other hand, might constitute a second stage, provided that to the moral scope of the Universal Declaration it added the force of a first legal instrument. Such a legal instrument must of necessity be of a fairly general character, and the various aspects thereof would require elaboration in special conventions on each of the groups of rights for which it provided the legal guarantee.

Unfortunately, the draft Covenant before the Committee represented, in many respects, only a rather rudimentary outline. In that connection, it was worth while comparing the method of work in the matter of human rights favoured by certain people with that adopted by some specialized agencies, and by the International Labour Organisation in particular.

During the first thirty years of its existence, the International Labour Organisation had drawn up a large number of conventions and recommendations relating to one particular field of human rights. The secret of the success of the method followed by that organisation was its tripartite structure, and the system of double discussion which it had always practised. That formula, which multiplied exchanges of views on particular subjects and which, at first sight, appeared to be rather slow, none the less enabled balanced and considered conclusions to be reached.

His delegation considered that, in the matter of the draft Covenant, it would be dangerous to move too quickly and to obtain results at any cost. Consideration must be given, of course, not only to the noble aims pursued by the United Nations, but also to the legitimate demands of world opinion. It was necessary however to strike a fair balance between those factors. If the Commission contented itself with hastily concluding an incomplete and imperfect work, world public opinion would judge it much more severely than if it took

the time necessary to do things as perfectly as possible. He accordingly thought that if the Commission wished to produce a lasting document, it should make of the first Covenant what was known in his country as "une loi de cadre", namely, a law which confined itself to defining general principles, and to outlining the framework of legal regulations in a particular field, leaving it to the legislative power and to the administration to elaborate the details and conditions of application.

The document submitted to the Committee contained such lacunae and such imperfections that, after the magnificent effort which had found its expression in the Universal Declaration of Human Rights, it was impossible to regard it as satisfactory. In fact, certain articles of the Universal Declaration, such as the provisions relating to economic and social rights, or article 14, relating to the right of asylum, were not even mentioned in the draft First Covenant, a fact which constituted a retrograde step.

The draft Covenant, moreover, showed evidence, in many respects, of a lack of balance in the drafting of the texts. Whereas certain rights were not mentioned, others formed the subject of two or three articles constituting more or less detailed, but necessarily incomplete, rules. Such a method was a rather dangerous one, since the illusion might thus be created that in those two or three articles all States and all men might find a sufficient guarantee of the right in question.

Finally, the draft Covenant contained too large a number of vague terms, on the content of which there was not even general agreement. He was thinking, in particular, of such terms as "arbitrary arrest", "a person before the law", and "public order". There were many examples in history of flagrant abuses sanctioned by the use of such a vocabulary. He would draw the Committee's attention to the Memorandum by the Secretary-General (E/L.68) pointing out the same defects, and would like to pay tribute to the conscientious work carried out in that field by the Secretariat. He had also been very pleased to observe that the excellent statement submitted by the World Jewish Congress likewise dealt with certain specific aspects of the terminology used in the draft Covenant.

A still more radical lack of balance existed between the various parts of the draft Covenant. Whereas certain parts were in more or less final form, others were hardly more than rough sketches. To confirm that fact, it was sufficient to compare the first part, which had already been severely criticised, with the part dealing with implementation and with the manifold proposals relating to the federal State and colonial clauses. Such disequilibrium showed that the very idea of the Covenant had not yet attained that stage of maturity which would enable a legal instrument which was both well-knit and complete to be elaborated.

As for economic and social rights, they were rights of a new type, for which guarantees needed to be established with particular care. It was, perhaps, for that reason that such rights were dealt with at some length in the Universal Declaration of Human Rights, and that they were preceded therein by a general article, as if they constituted a special, distinct group to which it was particularly desired to draw attention.

The full thirty years' achievement of the International Labour Organisation was embodied in the social and economic articles of the Universal Declaration. When it was realised, for example, that, in spite of all the efforts of the International Labour Organisation, a final solution had not yet been found to the problem of a Convention on Equal Remuneration for Equal Work - a special aspect of the whole question of economic and social rights - it must be recognized that it would be premature to attempt, during a single session of the Commission on Human Rights, to draw up a convention providing effective guarantees for such rights. The very complexity of the problem, which embraced a great number of very difficult questions, such as social security, full employment, the struggle against unemployment, collective negotiations etc., sufficed to show the impossibility of embodying an effective guarantee in a general text, or of establishing that guarantee in detail in a single convention.

We therefore considered that it was impossible, during the current session, to arrive at a draft covenant which, while being sufficiently complete would also be sufficiently well-designed. The simple fact that the Council had before it only a report on the federal State and colonial clauses provided further

proof that those two questions had not yet reached the stage where it would be possible to draft a text relating to them which would be acceptable to all.

His delegation was of the opinion that the First Covenant should reproduce as faithfully as possible the provisions of the Universal Declaration of Human Rights, so as to present a first legal instrument to those who would be called upon in the future to complete the so complex construction of international law in all the fields covered by the Universal Declaration.

His delegation sincerely felt that the Commission had done good work, but that within the time-limits imposed on it, it had not had the requisite means at its disposal for the successful completion of the delicate and complex task with which it had been entrusted. It was such considerations that had led his delegation to conclude that it would be wise to return the draft Covenant to the Commission.

He would like, in concluding, to remind the Committee of the words of Mr. Charles Malik, of Lebanon, who, as Rapporteur of the Commission on Human Rights, had described the Universal Declaration of Human Rights as the point of departure for twenty years' work. The results that the United Nations had been able to obtain through that Declaration in so short a time should not be underestimated. The very quality of that document made it a duty to make the Covenant as effective an instrument in the legal field as the Declaration had become in the moral sphere. The fact that it had proved possible to reach agreement on a body of basic principles should inspire a cautious optimism among all members of the United Nations, since the fact that the need to conclude a covenant to consolidate what had already been attained on the moral plane had made itself felt after so short a time, was in itself a proof of the vitality of the international organs set up within the framework of the United Nations.

Mr. BALLARD (Australia) said the Australian delegation had reached the conclusion that, although the work of the Commission on Human Rights had resulted in notable progress, the draft First International Covenant on Human Rights was still unfinished. Had the draft left the Commission relatively

complete, his delegation would have preferred not to see a duplication of discussion in the Council and in the General Assembly, but as the document was deficient in certain respects, his delegation felt that those defects could and should be removed by the Commission on Human Rights.

The draft Covenant had not been submitted to the Council because it was a complete document, or because the Commission on Human Rights wished for further directives. It had been submitted to the Council because the sixth session of the Commission had been unable to complete it in the time at its disposal. He briefly reviewed the various steps taken by the Commission in examining the draft Covenant, and pointed out that, for lack of time, it had adopted at the second reading only those amendments to which no objections had been raised by any member of the Commission. Many members had, however, relied on the second reading for making changes of substance and, having been unable to do so, had only been able to indicate the outlines of those changes by stating their reservations, which appeared in Annex II to the report of the sixth session of the Commission on Human Rights (E/1681). The Australian delegation therefore considered that all the articles of the draft Covenant must be considered as provisional. Referring to article 3 (protection of right of life), article 8 (liberty of movement) and article 14 (freedom of information), he emphasized the controversial character of their content, and the basic differences of approach thereto, which would call for substantial reconciliation of points of view before the document could be submitted to the General Assembly.

The Commission on Human Rights had rejected a proposal that it should transmit the draft Covenant to the Council with a recommendation that it be submitted forthwith to the General Assembly, and had submitted it to the Council without recommendations.

Referring to the question of the federal State and colonial clauses, he pointed out that those clauses had not even been considered at the sixth session of the Commission, which had decided that they should be referred to the Economic and Social Council. The Australian delegation considered that

the Commission had thereby recognized that it would not be able to achieve a complete draft of the Covenant at its sixth session. The Commission was the appropriate body for carrying out that work, as experience had shown that a political body, such as the General Assembly or the Council, found it difficult to agree on final texts of highly technical clauses. Such clauses should be drafted by an expert body, such as the Commission, and he would point out in passing that most of the principal federal States were represented on the Commission.

The expectations raised at the Commission's fifth session that a complete text of a draft Covenant would be ready for consideration by the fifth session of the General Assembly had been disappointed, but it should be remembered that they had been based on the fulfilment of certain conditions which had proved impossible of fulfilment. Those conditions were: first, that a draft First International Covenant on Human Rights would be acceptable without articles on economic and social rights; secondly, that if such a covenant were not acceptable, there would be a wide measure of agreement on what rights in that sphere should be included; and, thirdly, that there should be general agreement on the provisions for implementation. Many members had vigorously opposed a convention which failed to deal with economic and social rights. The Australian Government had submitted proposals in that connection which dealt, not with such rights alone, but also with the concomitant obligations. The Commission had not renounced its functions in that field. It had given the subject priority for its forthcoming seventh session, and had secured the co-operation of the International Labour Organisation in considering it.

Referring to part III of the draft Covenant, relating to implementation, he pointed out that the measures contained therein could only be considered as a first draft, since they had not been studied by any government as a co-ordinated whole. It was only too clear that the measures of implementation would need to be reviewed, if, as some members wished, articles on economic and social rights were included in the draft Covenant.

The Commission had taken a stand on certain fundamental issues; one of those

was the type of supervisory body to be set up. It had been decided that that body should be permanent, and should not be of a judicial and semi-judicial nature.

On the very important question of whether States alone, or individuals and groups also, might submit petitions relating to violations of human rights, and initiate proceedings, the Commission had, by a clear majority, taken the stand that that right should for the time being be granted only to States. The Australian delegation considered that effective measures for implementation should be an integral part of the Covenant and that the Commission on Human Rights had been perfectly entitled to build the rest of the structure around the framework indicated.

The Commission's work had been of considerable value, and it would not hamper the development of the draft Covenant if it were sent back to that body for further elaboration. He hoped that members of the Committee would agree with that point of view.

Mr. HOARE (United Kingdom) said his delegation was not satisfied with the draft First International Covenant on Human Rights. The Belgium representative had stated that the draft Covenant was the counterpart in the juridical field of the Universal Declaration of Human Rights in the field of enunciation of moral principles. The United Nations was creating a juridical instrument which would impose certain obligations and duties on the States which acceded to it. The human rights to be covered by the Covenant had been the subject of conflict and controversy in countries of Europe for generations past, and had literally been bought with blood; in the New World they had been the subject of one of the first declarations of the free republic of the United States of America - the Declaration of Independence.

In drawing up such a Covenant, the utmost care should have been taken to define both the nature of those human rights and the limitations which in course of time it had been found necessary to impose on the exercise of those rights in order to make sure that they were enjoyed by others. Neither of those criteria had been respected in drawing up articles 1 to 18 of the draft Covenant.

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and when those articles came to be considered by the Social Committee he would cite cases in which the articles were defective from both points of view.

Although his delegation recognized the fruitfulness and value of the work done by the Commission on Human Rights, he pointed out that the colonial clause and the federal State clause had not even been considered by that body. His Government did not think, therefore, that the draft Covenant should go forward to the General Assembly as a final document.

Referring to the question whether the draft Covenant should be submitted to another body for consideration, he felt that by the end of the discussion in the Social Committee members would be better able to take a decision as to what action should be taken.

With regard to economic and social rights, he emphasized that the draft Covenant had occupied the Commission on Human Rights for two full sessions. He did not consider, therefore, that it would be possible at the present stage for the Social Committee, the Council or the General Assembly to dovetail into an incomplete covenant satisfactory provisions on that subject.

He reserved his right to give fuller reasons for the opinions held by his delegation when the various points were discussed in detail.

Mr. CATES (United States of America) was of the same opinion as the United Kingdom representative. He ventured to make a brief general statement because of the great importance attached by his delegation to the draft Covenant.

He had not had the privilege of taking part in the work of the Commission on Human Rights, but wished to emphasize that the position taken by his delegation in the debates in that body and in the Council, that the draft Covenant should go forward to the General Assembly, reflected neither disinterest in perfecting the Covenant, nor a belief that the Council was not the competent body to consider such matters.

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It was the feeling of the United States delegation that the draft Covenant was one of the most important documents on which the United Nations had been asked to take action. It hoped that the Covenant would succeed in establishing the basic human rights referred to by General Marshall at the time of the adoption of the Universal Declaration of Human Rights by the General Assembly, in Paris, in 1948. Those rights were: freedom of thought, conscience and religion; freedom of opinion and expression; freedom from arbitrary arrest and detention; the right of a people to choose their own government, to take part in its work, and, if they became dissatisfied with it, to change it; and the obligations of governments to act through law.

The draft Covenant before the Committee was concerned with basic civil and political rights. The question which faced members of the Committee was whether any delay in dealing with the Covenant in the hope of producing a perfect text might not only lead to nothing, but even lose what had already been achieved. His delegation considered that the Commission on Human Rights had already achieved a great deal by drafting the Covenant in its present form. The argument that, as the draft Covenant merely incorporated generally accepted individual practices, it should not be adopted in its present form, did not appear particularly compelling. There was a wide gap between national practices on the one hand, and agreement between nations that they would put those practices into effect internationally as between themselves and other countries for the benefit of citizens of other countries, on the other.

The gulf between the extent to which any government was bound to act towards its own citizens and the extent to which it would be bound to protect citizens of another country was a wide one. The difficulties should be kept in mind of reconciling a system such as that in force in the United States of America, which had a basic Constitution enumerating in broad terms, subject to legal interpretation, the civil and political rights of its citizens, and a system, or theory, such as obtained in other countries which had no basic constitution in the sense in which the term was used in the United States, but whose cherished rights had grown up through the structure of case law. That reconciliation had been achieved in the draft before the Committee.

The United States delegation accordingly felt that the draft Covenant marked a fine beginning, and that Member States should be proud of the agreement reached so far. It hoped that those individuals and organizations who had fought in the crusade for an even broader extension of human rights would continue to do so. It remained the less spectacular task of government representatives to agree on the extent to which sovereign States could accept their proposals. The agreement reached on the first steps to draft a covenant on basic human rights should serve to encourage governments to seek agreement on the next. There was no reason to be ashamed of that first step.

He hoped that, in speaking before the Committee on the various points in the draft Covenant, all representatives would keep in mind the measure of agreement which had already been reached.

Mr. LEROY-BEAULIEU (France) said that if the Universal Declaration of Human Rights had not already been proclaimed, his delegation might possibly have understood the desire of certain governments to sacrifice the perfection of the Covenant to speed in concluding it, as evidence of their concern for human rights.

But since December 1948, when the Universal Declaration had been adopted, mankind had been in possession of a document, the scope of which was constantly found to be wider and wider, and which showed most clearly the importance attached by the General Assembly of the United Nations to respect for human rights.

Hence, the French delegation felt that it was important first and foremost to perfect the legal instrument which the Commission on Human Rights had been instructed to draw up. Clearly, only those States anxious to undertake commitments of that kind, and already practising respect for the rights and liberties recognised in the Covenant, would undertake to bind themselves by it. With regard to the others, the Economic and Social Council had no means of forcing them to accede.

Hence it was important to draft a text sufficiently perfect to encourage such States to recognise the value of the instrument offered to them, and

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therefore to sign and ratify it.

He did not think the draft Covenant prepared by the Commission on Human Rights came up to those standards.

At the Commission's sixth session, the French delegation had had occasion to express its views on the draft. It had found the following points unsatisfactory: first, the addition of the words "within its territory" to the words "subject to its jurisdiction" (article 1 - formerly article 2); secondly, the insertion in article 3 (formerly article 5) of a preliminary sentence introducing a somewhat legal notion into the text, whereas the second sentence was quite sufficient in itself; thirdly, the omission of the words "in a democratic society" following the words "public order" in articles 14, 15 and 16; fourthly, in article 17 (formerly article 20), the adoption of an ambiguous formula apparently intended to extend all rights to all cases; fifthly, the deletion of the earlier version of article 21; and, sixthly, the fixing of the number of ratifications required before the Covenant could come into force at twenty - in his opinion a distinctly inadequate number (article 42, formerly article 23).

The French delegation also felt that it should point out that the Commission had been wrong in referring articles 43 and 44 (formerly articles 24 and 25) on the federal State and colonial clauses, to the Economic and Social Council, without studying them beforehand; while in regard to implementation, his delegation wished to re-iterate its general reservations as to the composition, election and functions of the "Human Rights Committee", and on the deletion of articles 21 and 25 of the joint proposals submitted by the representatives of France, India, the United Kingdom and the United States of America (E/CN.4/174) restricting the competence of that organ to matters for which special procedures were provided within the framework of the United Nations or specialized agencies and making reference to the International Court of Justice conditional on the conclusion of a special compromise.

Turning to the definition of the rights recognised, he thought that part of the Commission's work was generally satisfactory and could therefore now be

discussed, not from the technical point of view, but from the political point of view, which was that of the General Assembly. Incidentally, the satisfactory state of that part of the work was not surprising, as in 1947, 1948 and 1949 the Commission had managed to draft texts which on each occasion had been submitted to governments. The French delegation would therefore not attempt to start any discussion on the point, unless other delegations adopted a different attitude. He did, however, propose to explain at rather greater length his delegation's reasons for opposing the part of the Covenant dealing with implementation, and to point out that the draft Covenant had not been thoroughly prepared.

Not until the sixth session of the Commission on Human Rights had the text called forth comments from the various governments. In its latest comments forwarded to the Secretary-General, the French Government, to bridge the gap between its initial proposals and those of other governments, had agreed that the organ set up to examine and advise should have less ample powers than it had advocated for that body during the consideration of previous drafts. The members of that body were to be appointed by the signatories to the Covenant for their knowledge of the law and their high personal standing, and were to be elected by the International Court of Justice, the object of that method of appointment being to ensure independence, impartiality and competence, and hence authority.

His delegation reserved the right to take up that question again at a later date.

He would like to draw the attention of the Committee to two facts which bore special witness to the lack of maturity of the part of the report dealing with measures for its implementation.

At its sixth session, after rejecting several proposed amendments, the Commission had decided by 8 votes to 6 to delete article 21 which defined the competence of the Human Rights Committee, and ran in part as follows:

"The Committee shall have no power to deal with matters for which special procedure has been provided within the framework of the United Nations or the specialized agencies, when the States concerned are governed by such procedure."

During the discussion on that article, certain representatives had diverted the discussion into the field of trusteeship. The representative of his country had, however, emphasized the need, in trusteeship matters, for respecting the provisions of the Charter relating to the constitutions of the various organs of the United Nations on the one hand, and to the principle of equality of States on the other. The French representative had also pointed out that the special procedure covered by the article being criticized was essentially that provided for, or to be organized, by certain specialized agencies, among them the International Labour Organisation. Nevertheless, the Commission had taken the summary course of deleting the article without attempting to perfect it by appropriate amendment.

The second fact related to article 25, which had been worded as follows:

- "1. A matter before the Committee may not be referred to the International Court of Justice while it is still under consideration by the Committee or at any time before the expiration of three months after the publication of the report of the Committee.
- "2. Even after the expiration of the above period, the Court may be seized of a point of law concerning the interpretation of the Covenant only by virtue of a special agreement between one of the States concerned and any other State."

The aim of the article had been to regulate the competence of the Human Rights Committee in relation to the International Court of Justice on the one hand, and to avoid injury to the interests of the State signatories of the optional clause of compulsory justice, and any prejudice to the principle of equality, on the other. While not perfect, the text had been capable of amendment. That, however, would have required, as in the case of article 21, enough time to enable a reply to be made to the requests for further clarification made by certain representatives, among them one of the most brilliant. However, the solution finally adopted had again been the most rapid one, namely, the deletion of the article.

After those two decisions had been taken, the French representative had entered the most explicit reservations, and had drawn attention to the chaos

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which would inevitably result from the absence of any provision limiting the competence of the supervisory body envisaged in the draft Covenant.

All he had just said went to show that the question of implementation had not yet been subjected to the profound examination that it deserved. That it required such examination was clear, since it was only when one settled down to prepare an accurate text on a particular subject that one discovered the gaps in one's knowledge.

The Council, however, had a text before it, and that text should be communicated to Governments with a request that they should transmit to the Secretary-General the written observations and suggestions of their experts, so that the Commission on Human Rights might study them at its next session.

That procedure would be better than transmitting the text to the General Assembly, even for examination only, and not for decision. It would also have the advantage of obviating any step by the Assembly in advance of what was desirable in the present circumstances; and it would leave the door open for well-thought out technical observations, instead of giving political improvisation a free hand.

The French delegation felt that the necessity for the Commission on Human Rights to make a new study of implementation procedure would in no way prevent that body from carrying out the programme already fixed for it. Certain States had recommended that the Commission's seventh session should last for three weeks only. No doubt they considered that would give the Commission ample time to complete its agenda. It followed that, if the Commission were allowed to sit for the normal period of six weeks, it could devote three weeks to a concentrated study of the methods by which the Covenant could best be implemented.

Thus there were a number of reasons in favour of referring the articles on implementation to the Commission on Human Rights. Still further reasons were to be found in the Commission's programme of work for its seventh session, as laid down in the two resolutions (III and IV) it had adopted on the subject.

At its sixth session, held earlier in the year, the Commission had decided to consider the inclusion of certain additional articles relating mainly to economic, social and cultural rights.

Certain representatives, such as those of Yugoslavia and Chile, had submitted that those rights should be set forth, for historical reasons, in the First International Covenant on Human Rights. The representatives of certain non-governmental organizations (for instance, of the International Confederation of Free Trade Unions and of the International League for the Rights of Man) had expressed the same opinion.

However, the majority of the members of the Commission had considered that the articles relating to economic and social rights required closer study than it had proved possible to give them at the sixth session. The preliminary task had been to organise consultations with those specialized agencies, the representatives of which had expressed their organizations' readiness to co-operate with the Commission.

The French representative, for his part, had argued the necessity for drafting a separate covenant for such rights, which called for different methods of implementation. Following that discussion, the Commission on Human Rights had adopted the two resolutions he had mentioned, which the Social Committee had just endorsed after making certain amendments on points of detail to the second of them.

Resolution III, adopted by 12 votes to 2, fixed the Commission's programme for the coming year. Specifically, it included an undertaking "to proceed at its first session in 1951 with the consideration of additional covenants and measures dealing with economic, social, cultural, and other categories of human rights".

Resolution IV, adopted unanimously, stipulated that the programme would relate more especially to economic, social and cultural rights, and made provision for its execution.

After quoting the main paragraph of that resolution, he submitted that

a covenant which made no mention of those rights, or which was unaccompanied either by some other instrument for simultaneous submission to the General Assembly or - should it prove technically impossible to prepare such an instrument - by certain special conventions on the subject of those rights and a draft resolution clearly specifying the obstacles in the way of the conclusion of the general covenant might well have the appearance, half-way through the twentieth century, of an intolerable anachronism.

The study of economic, social and cultural rights was of great importance, since it would throw light on the implementation of human rights as a whole, and on the limits of the competence of the body to be known as the Human Rights Committee.

It had appeared during the discussion at the Commission's sixth session that, in most cases, the reason why certain articles had been deleted, including the former article 21 of the draft prepared by the Implementation Committee, was that certain representatives had been ignorant of the machinery required for the implementation of those rights by highly technical organs. Only a thorough study of the rights and the method of their application would make it possible to determine, in full knowledge of the facts, the relationship between the supervisory body to be set up and the other organs of the United Nations (particularly the Trusteeship Council and the International Court of Justice) and to distinguish between matters which fell within the scope of the general Covenant on Human Rights, and those which should form the subject of conventions on particular rights. Since the Commission on Human Rights and the Social Committee had decided to make a study of economic, social and cultural rights the following year, advantage should be taken of that study to perfect the Covenant.

Reference of the Covenant to the General Assembly in 1951 would have the further advantage of making it possible to submit, together with the general Covenant, a separate covenant on economic, social and cultural rights.

If the draft Covenant were referred to the General Assembly as it stood, three eventualities must be contemplated: first, demagogic pressure might

compel the inclusion in the Covenant of provisions concerning economic, social and cultural rights, which could only be studied under technically unfavourable conditions by an Assembly that was essentially political in nature and too large; secondly, without actually including such provisions in the Covenant, the General Assembly might nevertheless pre-judge the issue by deciding in advance to insert them in a special covenant; finally, the Assembly might decide to adopt no provisions concerning those rights. In the third case, certain States would not fail to criticise the attitude towards the rights of the workers adopted by the countries they regarded as Fascist.

In conclusion, the French delegation wished to submit the following observations to the Council. On the technical side, that part of the draft Covenant which defined the rights it dealt with had been seriously studied. Subject to certain reservations on points of detail, it seemed satisfactory to the French delegation, which was therefore prepared to ask the Economic and Social Council, if not to approve it, at least to adopt a resolution recommending the Commission on Human Rights to leave it to the sixth session of the General Assembly (in 1951) to give that part of the covenant its final form.

On the other hand, the trend of the studies on international implementation and the haste with which the 25 articles on implementation had been adopted, showed that that part of the Covenant had not been thoroughly studied, that it consequently could not be approved by the Council, and that it would therefore have to be referred to the General Assembly.

Moreover, certain representatives had been opposed to referring to the General Assembly a Covenant that was not rounded off or accompanied by provisions concerning economic, social and cultural rights in the form of supplementary instruments. That question also deserved fuller consideration.

Finally, and above all, the permanent supervisory which it had been decided, on the proposal of the French delegation, to set up did not provide the guarantees of competence, objectivity, impartiality and authority in respect of the personalities of its members which that delegation desired.

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An essentially political character would cast doubts on the very value of a permanent body. That value would lie chiefly in the legal practice which might become established as a result of its actions. But since that practice was likely to take the form of a succession of political precedents, it clearly offered but little advantage, and might even entail grave risks for certain of the States signing the Covenant.

In those circumstances, the French Government would oppose any proposal to refer to the fifth session of the General Assembly a draft of which the section dealing with implementation was as it stood merely an initial and very inadequate outline.

His delegation reserved the right to revert to that question when the Committee came to decide to which body the present draft Covenant should be referred. For the time being it would confine itself to pointing out that the document should first of all be referred to the governments concerned, with the request that they should transmit to the Secretary-General of the United Nations before 1 February 1951 any comments prompted by that draft.

In that way the Commission on Human Rights would be able at its seventh session to resume its work on the draft Covenant on the basis of the comments submitted.

Thoroughness was more important than speed, and any decision to refer to a political body a document which was still technically imperfect would be a hasty solution, and one which could only injure, not merely the Covenant itself, but also the States of good faith which agreed to accede to it.

Mr. SILOS (Brazil) thought that the draft prepared by the Commission on Human Rights represented no more than a basic document designed to help in drawing up a final draft Covenant of Human Rights.

The Universal Declaration of Human Rights was merely a statement of principles involving no legal obligation. The Covenant, on the other hand, would be the instrument under which States would assume specific obligations with a view to ensuring the effective protection of the rights and freedoms

set out in the Declaration.

While reserving the right to speak later on certain questions of substance, he associated himself with the general criticism which had been made of the text before the Committee. He thought that the draft Covenant was at fault in containing no guarantees in respect of economic and social rights; he also agreed with the Chairman that the general principles enunciated in the draft fell far short of the general standards of the constitutional law of member States; lastly, he thought that the proposed measures for implementation were extremely weak.

His delegation considered that discussion of the provisional text in the Social Committee would be most useful in that it would enable a number of countries which were not members of the Commission on Human Rights to make known their views on the matter. Once that discussion had been concluded, however, member States should be consulted. According to its report, the Commission on Human Rights had received suggestions and comments on the provisional text from eleven governments only, of which only four were non-members of the Commission. Moreover, their comments concerned only the first part of the draft, whereas the part dealing with implementation was not only the most important, but also the weakest. Finally, it was necessary to give member States an opportunity of studying the problem of economic and social rights as well as the federal State and colonial clauses.

His delegation considered that excessive haste would be undesirable, and that it would be useless to adopt a mediocre and faulty covenant. For all those reasons it considered that the present text of the draft Covenant should first be submitted to governments.

Mr. CALDERON PUIG (Mexico) emphasized that governments had not had sufficient time to examine the report of the sixth session of the Commission on Human Rights, which had closed only on 19 May 1950. He believed, therefore, that it would be better if the draft Covenant were not examined by the General Assembly until its sixth session in 1951. In the meantime, the Commission on

Human Rights could examine the draft Covenant anew, together with the comments received from governments and various other relevant documents. The Social Committee, however, should not discuss the draft Covenant article by article, for otherwise it would duplicate the work of other competent bodies. He agreed that the matter was one of great urgency, yet felt that undue haste might defeat the very aims of the Covenant.

In his opinion, one of the principal aims of the Committee in examining the draft Covenant should be to include provisions to make sure that the enforcement of the Covenant did not lead to inequality between the permanent and non-permanent members of the Security Council. When referring the draft Covenant to the General Assembly, the Council could suggest that the Sixth Committee should examine in detail the question of the equality of States.

Regarding the possibility of the inclusion of economic and social rights in the Covenant, he wished to emphasize that the Constitution of his country provided such rights for all. He was therefore in favour of the inclusion of such rights in the Covenant, and would follow the discussion on that question with great interest.

Whether the measures for implementation should be included in the existing Covenant or embodied in a separate instrument was a question which should be carefully examined by the Commission on Human Rights, the Sixth Committee of the General Assembly, and governments themselves. Thus, at its session in 1951, the General Assembly would have before it a carefully prepared document.

He reserved the right of his delegation to express its views on specific articles and questions during the course of the debate in the Council and in the General Assembly.

Mr. BROHI (Pakistan) agreed with some of the criticisms voiced by previous speakers, particularly those relating to the vagueness of various terms used in the Covenant. He wished to emphasize, however, that no human achievement either was, or could be, perfect. Furthermore, he could not

understand why some members thought that the imperfections in question should be remedied by the Commission on Human Rights rather than by the Social Committee itself.

To argue that the draft Covenant could not be transmitted to the General Assembly because it had not reached a state of perfection revealed a wrong approach to the whole problem. It was essential that the General Assembly should approve the Covenant, not because it was a perfect document, but because such a step would constitute a great achievement in the field of international co-operation. The promulgation of the Universal Declaration of Human Rights had been a step in the right direction; the adoption of the Covenant would be yet another step. It was true that the principles embodied in the first eighteen articles of the Covenant represented the minimum on which agreement could be reached; yet even that minimum was a step forward.

He felt that it was wrong to regard the Covenant as a legal instrument which could be enforced by law. The real enforcement of the principles embodied in the Universal Declaration could only be achieved by the pressure of moral conscience and public opinion. Hence, it was idle to crave for de jure acceptance, which would never be achieved, when de facto acceptance would suffice by itself.

All the rights embodied in the Covenant were already constitutionally guaranteed in all the civilized countries of the world. The adoption of the Covenant therefore was important only in so far as it would represent yet another instance of international co-operation. The recent wars should have made it abundantly clear to all that mankind could not survive unless there was true and sincere co-operation between nations. He hoped that all members of the Committee would approach the problem from that angle, and agree with him that any step likely to promote international co-operation was a step in the right direction.

Mr. BORNBERG (Denmark) emphasized that the discussions in the Committee and in the Commission on Human Rights should result in the drafting of

a covenant which would be in keeping with the high ideals embodied in the Universal Declaration of Human Rights. It was essential that the Covenant should be of a very high standard indeed. It was particularly important that the measures for implementation should achieve the desired result and not merely make it possible for States to take a limited interest in the rights of individuals. The Covenant should be realistic, but without sacrificing ideals.

Mr. VALENZUELA (Chile) said he had heard, with concern, many speakers emphasize how much time should elapse before the Covenant could become an international instrument. Those who spoke of the need for time should remember that the patience of the people of the world was running short, and that those people wanted something more than purely academic discussions on their own rights. He had the impression that the debate always remained at the expert level, and bore little relation to the conditions prevailing throughout the world. Members should understand those who were becoming tired of the constant repetition of abstract concepts, which led to nothing tangible. Human rights had been promoted, and had become recognized, throughout the ages, not through expert or academic debates, but by the will of the people. The recent development of trade union rights was a striking illustration of what he meant.

The first problem was to determine who should enjoy the rights embodied in the Universal Declaration. It should be remembered that there were still virtually entire continents the people of which did not enjoy human rights because experts had not deemed it expedient on juridical grounds that they should do so.

The second problem was what he might describe as the quantity and the quality of the rights in question. There again, all progress was being hindered by the experts. Those experts who only a few years previously had believed that a worker should toil 12 hours a day, now thought that it was not advisable to embody economic and social rights in the Covenant. In that field, the purely technical work performed by the International Labour Organisation had been confused with the general principles to be accepted by States. Indeed, there was a good deal of difference between subscribing to the principle

of social security schemes, and accepting a specific pensions system such as that proposed by the International Labour Office.

He believed, therefore, that the draft Covenant should be referred to the General Assembly, where every country would be able to state its views on the main questions of substance involved. It should always be remembered that the problem of human rights could not be solved by experts.

Mrs. SWAMINATHAN (India) said that although various articles could be improved, she felt that, taking the draft Covenant as a whole, much progress had been made during the previous few years. The aim was not to produce a perfect convention, but rather to draft a practical one, which would prove acceptable to a large number of States. Once the Covenant had been adopted by the General Assembly, however, her country would not object to further study to improve its text, provided that the psychological effect of an early adoption, or the total number of adherents or of the persons protected and safeguarded by the Covenant, were not thereby reduced. However, some parts of the existing text should be improved by the Council before it was referred to the General Assembly.

The draft should be assured the widest application possible, and legalistic difficulties relating to federal constitutions or colonial territories should not be allowed to jeopardize one of the basic ideals of the Charter. Regarding the proposed inclusion of economic and social rights, she believed that the best course would be to proceed slowly - though not too slowly - and surely. The world had not yet reached a stage where it could expect the same standards to prevail over a very wide area, but it was essential at least to define and respect the basic rights of human beings. She felt that any extension of the field covered by the Covenant was likely to delay the adoption of the draft, and might well end in disaster.

There would be no justification for any relaxation of effort until the Charter became a daily reality instead of a distant goal. A start, however modest, should be made at once.

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She reserved the right of her delegation to comment on specific questions at a later stage of debate.

Mr. YU (China) agreed that the draft Covenant was imperfect in parts. Yet were human beings themselves perfect enough to conceive something perfect? Defects in such a monumental work as the draft Covenant should not give rise to discouragement. On the contrary, it should be realized that a good start had been made, and the utmost should be done to achieve further progress in that direction.

Ample time was needed for study of the Covenant, and no time limit should be set in that respect. The aim should be to assemble all views, so that at a later stage either the Commission on Human Rights or the General Assembly itself should be in a better position to proceed with their work on the Covenant. He believed that the draft Covenant should be referred to the General Assembly. It was improbable that the latter would take any hasty action, and it might even itself decide to refer the Covenant back to the Commission on Human Rights.

In conclusion, he wished to endorse the remark made by the representative of Pakistan that no Court could enforce respect for human rights - that could only be done by the collective moral conscience of mankind.

The CHAIRMAN declared the general debate closed.

The meeting rose at 5.50 p.m.
