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CONTENTS

Chairman: **Mr. Jiří NOSEK (Czechoslovakia).**

In the absence of the Chairman, Mr. Núñez (Costa Rica), Vice-Chairman, took the Chair.

Statement by the representative of Brazil

1. Mr. DE BARROS (Brazil) recalled the request made at a previous meeting by the Ecuadorian and Iraqi representatives that the Committee's deliberations on the draft covenants should be recorded in full, in view of the importance of the subject and of the fact that many countries were represented neither on the Economic and Social Council nor on the Commission on Human Rights. Nevertheless, the record of the 565th meeting, held on the afternoon of Wednesday, 27 October, contained a distorted account of the Brazilian statement. The principle of non-discrimination should be applied in the choice of words and emphasis in recording representatives' remarks. It was obvious that various delegations attached special importance to different aspects of the question, but all points of view had the same value and should be interpreted as faithfully as possible.

AGENDA ITEM 58

Draft international covenants on human rights (A/2714, A/2686, chapter V, section I, E/2573, A/C.3/574) (*continued*)

GENERAL DEBATE (*continued*)

2. Mrs. MONTGOMERY (Canada) said that economic, social and cultural rights were an essential prerequisite for the enjoyment of traditional civil liberties. Nevertheless, they differed substantially from civil and political rights in that the latter imposed limitations upon the State as against the individual, whereas the enjoyment of economic, social and cultural rights depended on policies involving legislation and administrative machinery. It was therefore appropriate, from a practical point of view, that there should be two instruments dealing with the two categories of rights.

3. The draft covenant on economic, social and cultural rights (E/2573, annex I) contained vague generalizations, which would have to be explained if the provisions of the covenant were to have the same meaning for all countries. That applied, in particular, to articles 13 and 16 and to such terms as "fair wages", "decent living", "healthy working conditions", "adequate food and housing" and "adequate standard of living". Similar considerations applied to the draft covenant on civil and political rights in the case of articles containing expressions susceptible of different interpretations according to various legal systems and in different languages. An attempt might be made to define such terms as "arbitrary" and "public order" more closely.

4. Although the Canadian delegation had expressed its general agreement with the content and scope of the draft covenant on civil and political rights (E/2573, annex I), it could not agree with some of the provisions that had been added to it. In the first place, the International Court of Justice should not be asked to elect members to the proposed human rights committee; that was not a judicial task and it should be left to the General Assembly or the signatory States. Secondly, articles 24 and 26 were superfluous and inconsistent with other provisions of the draft covenant. Article 24 might be invoked to prevent authorized derogations, such as that provided for in article 12, and the prevention of discrimination, which was the purpose of article 24, was adequately covered by article 2. It was impracticable to define the terms of article 26, especially "incitement to hatred and violence" and the purpose of the article was achieved by article 19.

5. With regard to provisions which were common to both draft covenants, the Canadian delegation believed that recognition of the principle of self-determination was essential. Nevertheless, self-determination was a collective rather than an individual right and as such had no place in the covenants. Moreover, it was inappropriate to entrust the proposed human rights committee with the responsibilities provided for in article 48 of the draft covenant on civil and political rights. It would also be legally and practically unsuitable to grant the right of petition to individuals and non-governmental organizations. The system of appeal to the human rights committee should be adequate to ensure effective implementation of the covenant.

6. With regard to the territorial articles (article 28 of the draft covenant on economic, social and cultural rights and article 53 of the draft covenant on civil and political rights), it did not seem either practicable or fair to expect States administering Non-Self-Governing and Trust Territories to apply all the provisions of the covenants to those territories immediately. Some of those territories already enjoyed a certain measure of autonomy, of which they were understandably jealous, and many of the provisions of the draft covenants already came within the purview of colonial governments and legislatures. Inclusion of the territorial articles

would make it impossible for some States to accede to the covenants, although it was in the general interest that they should do so.

7. The Canadian delegation took strong exception to the federal State article, article 27 of the draft covenant on economic social and cultural rights and article 52 of the draft covenant on civil and political rights, which could more appropriately be called an "anti-federal clause". In its resolution 421 (V), section C, the General Assembly had given instructions for the preparation of recommendations to secure the maximum extension of the covenants to the constituent units of federal States and to meet the constitutional problems of those States. That resolution recognized the fact that federal States, unlike others, were confronted with special problems; it did not, however, stress that the covenants should apply to constituent units, since it was the normal rule that any State becoming a party to a convention which contained no federal clause was automatically bound to apply the convention to all its territory. The text adopted by the Commission on Human Rights not only implied complete lack of understanding of the special position of federal States but was in direct contradiction with the letter and spirit of the General Assembly resolution. The Canadian Government could not consider becoming a party to the covenants unless the text of article 27 of the draft covenant on economic, social and cultural rights and article 52 of the draft covenant on civil and political rights was replaced by an article taking into consideration the special position of federal States. Its objective in insisting on the insertion of a suitable federal clause was not to escape obligations. The federal Constitution of Canada had been adopted at a time when it could not have been foreseen that matters attributed exclusively to the provinces would enter into the sphere of international legislation. The current situation in Canada was that international agreements dealing with matters within the jurisdiction of the provinces did not become the law of the land even if they were approved or ratified by the federal Government.

8. The Canadian delegation hoped that the middle course advocated by the French representative would be followed and that the covenants would not be drafted in such a way that it would be impossible for many States to accept and implement their provisions.

9. Mr. CHENG (China) thought it was useful to recall the provisions of the United Nations Charter relating to human rights, and to consider whether, in the light of the events that had taken place since 1945, it was necessary to proceed with the task of drafting the covenants. Those events, and the dangers they entailed, could not be ignored. The enslavement of the peoples of Eastern European countries and of the northern parts of Korea and Indo-China had been legitimized, condoned or defended by many countries, including States Members of the United Nations. Forced labour, discrimination, religious intolerance, political persecution, denial of free speech, imprisonment and punishment without fair trial and denial of the right to choose representatives still prevailed in many States, including some that were Members of the United Nations. Those facts led to the conclusion that existing international law had not deterred States from violating human rights and denying fundamental freedoms. It should be borne in mind that the rise of Hitler and Mussolini had been accomplished by means of wholesale violations of human rights. All the portents of the Second World War were again evident in a more ruthless form and on an even wider scale. The preparation of the covenants should therefore be pursued with renewed vigour.

10. The Chinese delegation's attitude towards the covenants was guided by five principal considerations. Its objectives were to seek effective means to implement the purposes and principles of the Charter; to guarantee the observance of human rights and fundamental freedoms by law; to ensure that the articles of the covenants should have a common denominator of universal application and should not seek to impose, even in good faith, the political, economic, social or cultural concepts of any State or group of States; to avoid the insertion of articles which did not strictly fall within the scope of individual human rights; and to ensure rapid accession to the covenants by the largest possible number of Member and non-Member States.

11. Generally speaking, the covenants had been painstakingly drafted, though careful study would be needed to bring the intention of the articles into line with different legal systems and in different languages and to settle the final grouping and order of the provisions. Although the Chinese delegation agreed with the majority of the Commission on Human Rights that the measures of implementation in part IV of the draft covenant on civil and political rights (E/2573, annex I) should apply to that covenant only, it did not entirely approve of the terms of reference of the proposed human rights committee. It would not object to a debate on the Uruguayan proposal for the establishment of an Office of the United Nations High Commissioner for Human Rights (E/2573, annex III). Article 2 of the draft covenant on economic, social and cultural rights (E/2573, annex I) provided a realistic means of implementation for that covenant; nevertheless, one great defect of the implementation system lay in the absence of any provision to censure a State which used its economic, social and cultural resources for the preparation of aggressive wars, to the detriment of the population which should enjoy those resources.

12. The right to property constituted the basis of the philosophies of many countries and the international community had no right to impose changes in such concepts. The right of the individual to own property was recognized in his country, but other States considered that the excessive ownership of property was contrary to the best interests of society. It should also be taken into account that expropriation was permitted in all States, under certain conditions. In view of the complexity of the problem, the article on that right should either be very simple, or extremely specific; otherwise what was not specified might be interpreted as an exemption.

13. The representatives of certain federal States had said that, unless a more satisfactory federal State article were drafted, it would be impossible for them to accede to the covenants. In that connexion, it would be wise to take into account the fact that, while the inclusion of the article would not prevent unitary States from acceding to the covenants, the non-inclusion of a satisfactory clause would present insurmountable obstacles for many federal States.

14. The question of petitions hinged on the two questions whether the time was ripe to revise international

law so as to make the individual the subject of that law where he had previously been its object and whether human rights could be promoted and safeguarded effectively everywhere under existing international law and national practices. The answer to the second question was clearly in the negative. With regard to the first question, however, it might be said that the individual was gradually emerging as a subject of international law; examples of that emergence existed in provisions of two draft conventions drawn up by the International Law Commission,[1] in the report of the 1953 Committee on International Criminal Jurisdiction,[2] in the European Convention for the Protection of Human Rights and Fundamental Freedoms and in the practice of the Trusteeship Council. There were three types of petitions, those of States against States, those of non-governmental organizations against States and those of individuals against States. The first type of petition gave rise to no differences of opinion; with regard to the other two types, the Chinese delegation considered that a covenant drawn up with the specific purpose of preventing the violation of individual human rights could have no real effect without implementation clauses allowing non-governmental organizations and individuals the right of petition. The question should be debated at length.

15. He could support neither of the extreme positions with regard to the question of reservations and had therefore co-sponsored a compromise draft article in the Commission on Human Rights (E/2573, para. 271); although that draft had been rejected, he would continue to seek a solution.

16. The Chinese delegation realized that recognition of the right of self-determination would not of itself solve all problems and that premature self-determination might be costly. Nevertheless, it considered that the fervent desire of many peoples to achieve self-determination should be satisfied, with the assistance of the United Nations. The early realization of the right was an essential prerequisite of an orderly democratic society and undue delay in the achievement of self-determination might undermine the very existence of the Organization. The subjugation of alien peoples had been one of the main causes of past wars. There had been a tendency, however, in some of the debates on self-determination in the United Nations, to carry the concept of self-determination too far and to confuse the question of minorities with that of self-determination. The two problems were distinct and required different solutions. Furthermore, the concept of secession should not be allowed to enter into the consideration of the question. It had been stated categorically at the San Francisco Conference that the principle of self-determination conformed to the purposes of the United Nations Charter only in so far as it implied the right of self-government and not of secession.

17. With regard to the article on self-determination included as article 1 in both the draft covenants, he considered that paragraph 3, on sovereignty over natural wealth and resources, had no place in a covenant on civil and political rights. Secondly, the right of self-determination was a collective right and had no place in covenants dealing with individual human rights. Thirdly, self-determination had become a political problem and its solution had to be found mainly through political means. The Chinese delegation therefore thought that it would be wise to draft a third covenant, on self-determination, to be submitted to the General Assembly simultaneously with the other two covenants. Another possibility was to draft a declaration on self-determination, to be followed by a covenant.

18. Mr. MENESES PALLARES (Ecuador) said that his country was convinced that the covenants on human rights would contribute greatly to the securing of world recognition of and respect for human rights. The draft covenants could no doubt be improved, but they were nevertheless of outstanding merit.

19. It was encouraging to observe what a profound influence had been exerted by the Universal Declaration of Human Rights, despite its purely declaratory character. Its provisions had been included in several Constitutions and much relevant legislation had been adopted since 1948. It had had an enormous impact on public opinion and had prepared the ground for the conclusion by sixty nations of universally binding covenants with the force of law. The Declaration had been the first stage, at which the cardinal principles and the fundamental rights had been laid down; it was the task of the Third Committee, by virtue of the obligations accepted under Article 56 of the Charter, to give the force of law to those principles and rights.

20. In that final stage the most important task was to provide the covenants with effective means of implementation. The Ecuadorian delegation had no hesitation in asserting that it was essential to create appropriate machinery to enable parties whose rights had been infringed to obtain genuine redress. It was also necessary to introduce some form of supervision of the behaviour of States. It followed logically from the principle of international obligation to implement the covenants that the individual should be permitted the right of petition or appeal to an appropriate international body, once the possibilities of appeal through normal domestic channels had been exhausted. The problem of intervention in domestic affairs had been thoroughly discussed elsewhere. The Ecuadorian delegation was fully aware of the implications of Article 2, paragraph 7, of the Charter, but considered that that article was intended to prevent intervention of the coercive or dictatorial type, not intervention to secure the protection of human rights. If that were the case, the United Nations would be unable to act effectively in one of the most important fields covered by the Charter and it would be pointless to sign the covenants. The Ecuadorean delegation therefore submitted that the right of petition, exercised either in its original form or through the establishment of an attorney-general's office, as suggested by the Uruguayan delegation (E/2573, annex III), was essential to the implementation articles of the covenants.

21. The international court of appeal would come into operation only when all domestic remedies had been exhausted. Fundamentally the application of human rights was within the domestic jurisdiction of States, without prejudice to the international power of intervention, as provided by the Charter or by the covenants, in cases where States had failed to carry out their obligations. It was to be hoped that such cases could always be dealt with through normal domestic channels, but if not, domestic jurisdiction in its narrow sense would, under covenants freely entered into, have to yield

[1] See *Official Records of the General Assembly, Ninth Session, Supplement No. 9*, chapter II.
[2] *Ibid., Supplement No. 12.*

to the international machinery of investigation, control and enforcement. That principle was expressed in article 2, paragraph 2, of the draft covenant on civil and political rights (E/2573, annex I), whereby States would undertake to take the necessary steps to give legislative effect to the rights recognized in the covenant. Under article 2, paragraph 3, States would accept one of the fundamental obligations of the covenant, that of providing for effective remedies.

22. It followed from article 41 that States should make domestic remedies available, and that the procedure should be effective. It was right that the covenants should make that requirement mandatory, since it would be useless to sign covenants for the international protection of human rights if States could cite constitutional difficulties as a reason for failure to respect human rights. It was equally right to provide for international intervention when all domestic remedies had been exhausted.

23. It had to be admitted with regret that the implementation articles of the draft covenant on civil and political rights seemed, from the strictly legal point of view, inadequate to guarantee the rights and provide effective remedies for infringements. First of all, the idea of special courts of law on human rights, such as those unanimously recommended by the working group appointed during the second session of the Commission on Human Rights in 1947,[3] had been completely dropped from the implementation articles. The ideal, first suggested by Australia, of an international court of human rights seemed to be dead so far as the United Nations was concerned, although such a court had been approved in principle by certain regional organizations. The proposed human rights committee, which would hear only complaints submitted to it by States after the possibilities of complaint from State to State had been exhausted, did not appear to be the most effective arrangement. It seemed unlikely that a State would make a formal complaint against another on behalf of one or two individuals, and absurd that a State would complain against itself. The logical solution was to institute the right of petition—subject to absolute safeguards to prevent frivolous or false complaints—by individuals, groups of individuals or non-governmental organizations. The practical difficulties had been repeatedly pointed out by the opponents of the right of petition, but it was surely possible to agree on a procedure which would eliminate the more serious difficulties while retaining the essence of the principle. An opportunity to do that had been offered by the Uruguayan proposal to establish an office of an attorney-general for human rights.

24. Under that wise suggestion, the attorney-general, after establishing the genuineness of a complaint, would submit it in his own person to the State concerned and negotiate an appropriate remedy with that State. If he felt that such negotiations would fail, he would refer the case to the human rights committee. His status would not be judicial; his function would be merely to initiate consideration of the cases and verify that they were well founded. The proposal warranted most careful consideration.

25. It was the Committee's duty to explore fully all compromise solutions which would facilitate the adoption of the covenants and it was reasonable to try to find the lowest common denominator, without, however, abandoning so much of principle as to render the covenants useless. If all States found themselves immediately able to sign the covenants, or if the covenants contained nothing that was not already laid down in all the Constitutions and legislations of Member States, they would be useless and sterile. The Committee's work would be a waste of time unless the sixty nations could agree to legislate boldly and dynamically for the present, while at the same time sowing the seed of future progress.

26. Mr. SILES ZUAZO (Bolivia) said that the Committee's decision to give the draft covenants a first reading at the current session had been necessary, but, unless a spirit of compromise and collaboration prevailed, there was some danger that the final approval of the covenants would be unduly delayed.

27. One of the most controversial points had been the right of self-determination. That right had been stated in the Atlantic Charter, in the United Nations, in the Moscow and Cairo Declarations and in Articles 1, 55, 73 and 76 of the United Nations Charter. Those documents had been signed before the end of the Second World War, and therefore it might be insinuated that they had been only an abstract token of gratitude for the sacrifices of blood and wealth made by many non-self-governing countries and for the generous collaboration of the countries, which though underdeveloped, yet produced essential strategic raw materials, unless the right of self-determination was firmly and fully maintained.

28. There had been many arguments against the "unconditional" recognition of the right of self-determination, notably by interpreting Article 73 restrictively. But that article actually implied that if territories which did not yet enjoy a full measure of self-government had an interest in declaring their complete independence, that interest was paramount over the economic or political interest of the metropolitan country in maintaining its administration. The article further implied that the responsibility for administering such territories was a sacred trust, not a right, and that the administering Power should therefore promote to the utmost the inhabitants' well-being. The well-being of a people could be thus promoted only if that people was able to make full use of its labour force, without its profits becoming contributions which it had to share with others. Article 73 b laid down the duty to take due account of the political aspirations of the peoples. But, even if the idea of self-government had become fully developed, it might logically be assumed that the administering Power would not be willing to acknowledge that, unless it was demanded by force, as so often occurred. It was in order to prevent such bloody disputes that an attempt was being made to incorporate the right of self-determination in the covenants.

29. Another objection frequently raised was that the notion of "people" had not been precisely defined. The definition of "people" had been well set forth in accordance with the precepts of international jurisprudence by those who had supported the inclusion of the right of self-determination in the covenants. If, however, the question was still to be debated, it might be best to add a phrase explaining the real scope of the notion of "people" for the purposes of the right of self-determination. He would submit a draft resolution on that subject in due course.

[3] See *Official Records of the Economic and Social Council, Sixth Session, Supplement No. 1*, annex C, para. 50.

30. Bolivia was bearing the dramatic experience of its own struggle for political and economic independence in mind in supporting the inclusion of the three paragraphs of article 1 in the covenants.

31. When it had won political independence, Bolivia had found that the Crown of Spain had left as its heritage a system of inhuman exploitation which had lasted for more than a century. The Indians had not been able to free themselves from slavery and had continued to provide free manpower for the creation of new wealth. That showed that a declaration of political sovereignty was not sufficient in under-developed countries, since control of the economic factor which determined the shape of the political State was also necessary if it was to have any reality.

32. The leaders of the Bolivian Revolution had analysed the true state of the nation and had taken three basic points for their programme: control of the national economy, integration of the peasants into the life of the nation, and diversification of production.

33. The Bolivian economy had in the past been in the hands of three great mining enterprises, which had exported the entire production, to the country's detriment.

34. After the National Revolution had gained the mastery of the economy and nationalized the tin mines, the Bolivian delegation to the United Nations had, in conjunction with the Uruguayan delegation, submitted a draft resolution on the right to exploit freely natural wealth and resources, which had been adopted as General Assembly resolution 626 (VII). As a result of the land reform decreed on 2 August 1953, the Bolivian delegation to the Third Inter-American Indigenous Congress held in Bolivia in August 1954 had submitted an eight-point draft resolution embodying the Declaration of the Essential Rights of the Indian Peoples, which had been adopted unanimously save for a reservation made to point 2 by El Salvador and Peru. Bolivia was glad to be able to tell the Committee that all the human rights contemplated in the two covenants had already been embodied in its legislation and that other substantial rights not incorporated in them had been granted.

35. His delegation could not agree with the objections raised to article 18 of the draft covenant on civil and political rights (E/2573, annex I). The Apostolic Roman Catholic religion was officially recognized in Bolivia, but all religions could be freely practised. Freedom to maintain or change one's religion was undoubtedly a fundamental human right. Some representatives objected to the provision for change of religion, but to omit that right would conflict with every man's freedom to seek refuge in the religion which he found most in accord with his spiritual needs and to change it if he lost faith in it. Almost all Latin American countries officially recognized the Roman Catholic religion and none refused entry to missionaries of other religions who came to proselytize, because only the human conscience could accept any particular religion as the true one. Obviously, if a religion held that its doctrine could make a better world, its missionaries would try to convert those who did not profess that religion. If that were not so, some religions could be regarded as confining themselves to the faithful and as unwilling to carry their spiritual light to other peoples.

36. With regard to reservations, his delegation believed that it was of the utmost importance that no reservations of any kind should be admitted. At the most, a time limit might be set for those countries whose law was inconsistent with the covenants to change it. If reservations were admitted, the covenants would lose their universality. A change in legislation to bring it into line with the covenants would show that Member States were truly engaged in making a better world, as was so often stated in the Assembly.

37. Mr. LUCIO (Mexico) said that the Third Committee's work at the tenth session should be the detailed discussion and adoption of the draft articles; accordingly, the Committee should set out very clearly in its final draft resolutions at the current session precisely what it intended to do at the next session.

38. Mexico's recognition of and support for international respect for human rights was well known; a recent indication had been its successful proposal for the inclusion in the agenda of the Tenth International Conference of American States at Caracas in March 1954 of an item concerning measures to promote human rights without infringing national sovereignty and the principle of non-intervention, which had been the basis of the final resolution on human rights.

39. The Mexican delegation still thought that it would be preferable to draft one covenant rather than two because of the close interrelation of all the rights; that would preserve the unity which had given the Universal Declaration of Human Rights such coherence and authority. It would, however, bow to the General Assembly's decision.

40. The right of peoples to self-determination, set forth explicitly in the Charter of the United Nations and implicitly in article 21, paragraph 3, of the Universal Declaration of Human Rights should certainly be included in the draft covenants; its recognition would contribute to the maintenance of international peace and security.

41. Mexico had a special system of protection for human rights known as the *juicio de amparo*, which had been one of the bases for article 8 of the Universal Declaration. As the Mexican representative had stated at the sixth session of the General Assembly, Mexico would find no substantive difficulty in applying the covenants. He recognized, however, that federal States would be confronted with difficulties in applying the covenants and that the covenants should be ratified by the largest possible number of States. The Committee should therefore consider very carefully and in a spirit of compromise any proposals put forward by the States directly affected. That position should not be construed as an attempt to justify a differentiation as between the obligations of signatory States; but the problem existed and had to be faced realistically. It should be borne in mind that international law had evolved as a result of the development of civilization. Originally, relations between a State and its nationals had been strictly a domestic matter and no one, therefore, had anticipated any difficulties in international law originating from the question whether a State was or was not federal in structure. As domestic sovereignty was being appreciably modified by treaties or covenants, due consideration should be given to a situation, the strictly juridical nature of which was one of those difficulties which were bound to confront countries in the application of the covenants on human rights.

42. The lack of synchronization between domestic and international law was somewhat similar with regard

to the territorial application clause. Mexico had always fought for the speediest possible emancipation of colonial peoples, and, as their independence had inevitably to be based on a firm protection of human rights, it could never accept any idea that the metropolitan Powers should be able to take shelter behind the covenants in evading the application of principles which the United Nations regarded as essential for the progress of mankind. His delegation therefore supported the basic idea in article 28 of the covenant on economic, social and cultural rights and article 53 of the covenant on civil and political rights, but suggested that the Committee should consider carefully any proposals made by the administering Powers to overcome their very real difficulties.

43. The question of including an article on the right of property had been raised. The right to individual and collective property might well be recognized, but made subject to the higher interests of the public weal and social progress in the country concerned, on the lines proposed by the Sub-Committee of the Commission on Human Rights, as set forth in paragraph 52 of the Commission's report (E/2573).

44. The common denominator for all proposals for the recognition of and respect for human rights was the sense of the dignity of the human person, but there were national, economic, social and historical factors which had led to differences from country to country and therefore to differences of opinion with regard to specific action on the drafting of the covenants. He hoped that compromises would be found and that the international situation would develop in such a way that all Member States would be able to sign and ratify the covenants.

The meeting rose at 12.55 p.m.

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