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

Draft first international covenant on human rights and measures of implementation (A/1384, A/C.3/534, A/C.3/535, E/1681 and E/1721 and Corr.1) (continued)

[Item 63]*

1. Mr. ALTMAN (Poland) stated that the arguments so far advanced by supporters of the federal clause had not convinced his delegation, which believed that the clause would enable federal States to by-pass the obligatory provisions of the draft covenant.

2. Supporters of the federal clause argued that while a federal government exercised control over the entire territory of a State, a number of legislative questions, by virtue of the State's constitution, were reserved for the constituent parts of the federal State; hence, the federal State had not the right to sanction or to implement obligations which it had assumed. The argument was untenable because, from the point of view of international law, the federal State represented a whole; it was a juridical person and acquired rights and assumed obligations just like a unitary State. The distribution of power between the central government and local or regional authorities was merely an internal problem which was of no concern to international law. As soon as any State became an integral part of a federal State, it completely lost its juridical personality. He cited as examples the former Republic of Texas and South Carolina, Georgia, Alabama and Louisiana, all of which had lost their status as juridical persons to the federal government. It followed clearly that in accepting international obligations, the federal government must act in the name of all the constituent parts of the federal State.

3. International jurisdiction had been very clear-cut in that respect. Thus, in the dispute between France and Mexico, the court of arbitration had ruled in 1929 that the federal State was responsible for obligations assumed by member States, and a similar attitude had

been adopted in 1923 by the Anglo-American court of arbitration. It had, moreover, been frequently and authoritatively stated that the individual units comprising a federal State could not accept international obligations. Thus the right to accept obligations and to conclude agreements as well as the obligation to implement their provisions on behalf of the constituent parts of a federal State were incumbent upon the latter, and it followed logically that, in the international sphere, a federal government must assume the part of a contracting party acting on behalf of its entire territory.

4. Any other assumption would lead to a paradoxical situation. For example, a federal government might accept obligations only on behalf of one part of its territory which, in the case of the United States of America, might mean acceptance of obligations on behalf of two or three constituent states. That would be clearly contrary not only to law but to the principles of the United States Constitution, for the authors of that Constitution, Jefferson and Madison, had repeatedly stressed that the United States of America represented a whole and that, from the point of view of international law, it was a single person; they had further emphasized that differences between the constituent states only affected their internal relations and were solely a domestic affair of the federal State.

5. The draft covenant under discussion also required that a federal State must be dealt with as a unit. He wondered what the consequences would be, if, for example, in the United States of America, such southern states as Georgia, Mississippi and South Carolina known for their racial legislation and for their racial discrimination would not be obliged to implement the draft covenant when it was of the utmost importance that those states in particular should be bound by that instrument.

6. At the 292nd meeting the representative of Egypt had stated that behind the veil of arguments advanced by supporters of the federal clause there might be cer-

* Indicates the item number on the General Assembly agenda.

tain hidden considerations, which he had called the unknown quantity in the equation. Mr. Altman believed that the conditions existing in the territories of certain federal States, for example the southern states of the United States, were such an unknown quantity.

7. The rights of man and the constitutional guarantees were set forth in the Fifth and Fourteenth Amendments to the federal Constitution of the United States. To concede that the federal government was not obliged to assume responsibility for the entire territory would be to disqualify that government and to deprive it of its capacity to sign treaties in general. The alternative was therefore quite clear: a federal government either was, or was not, in a position to sign the draft covenant. If it was in a position to do so, it must act on behalf of all its territories. Otherwise the federal States would be favoured at the expense of unitary States.

8. Those requesting the federal clause admitted that it would favour the federal States. That was borne out by the statements made by the Canadian and United Kingdom representatives at the 151st meeting of the Social Committee of the Economic and Social Council.¹ The representative of the United Kingdom had stated at the 292nd meeting of the Third Committee that the amendment proposed by his delegation was intended to narrow the gap between the obligations of federal States on the one hand and the much wider obligations of unitary States on the other. While such an attempt might be appreciated, his delegation was certain that it could not lead to results acceptable to it and many others, namely, to equality in the duties of both types of States.

9. In view of the fact that it favoured federal States and enabled them to evade their international obligations, the federal clause was unacceptable not only from the point of view of international law but more particularly in the sphere of human rights where such a provision would, in advance, render the provisions of the draft convention inoperative for vast areas in many of which important segments of the population continued to be victims of discrimination.

10. For all those reasons his delegation was categorically opposed to the insertion of the federal clause.

11. Finally, he wished to comment briefly upon some of the statements made by previous speakers.

12. The question raised by the representative of Mexico (292nd meeting) in connexion with the reservations to multilateral conventions did not, he believed, have anything in common with the problem of the federal clause. In the first place such reservations were not set forth in the text of the conventions concerned; in the second place, they could be made at the time of the signature of a convention by any State; and in the third place, they could not extend to the whole of the convention, but only to one or some of its articles.

13. He could not share the view of the Greek representative that the question of the legal consequences of the term "federal clause" could be eliminated by substituting the term "constitutional clause". The view of the Greek, Lebanese and certain other representatives (292nd meeting) served to show that even those who were not entirely negative in their attitude towards the

question of the federal clause were aware that it was inadmissible and were therefore seeking a solution in the form of a more or less vague formula. Their efforts were bound to fail for the only solution was to reject all proposals for the insertion of the federal clause in the draft covenant.

14. The representative of the United States had cited (292nd meeting) as an argument for the federal clause the Constitution of the International Labour Organisation, but the ILO Constitution was neither an ideal nor a model international instrument: it suffered from many defects, the most important and serious of which were precisely the federal and colonial clauses.

15. Mrs. Roosevelt had however implied that the presence of the federal clause in the ILO Constitution had facilitated the ratification of international labour conventions by federal States. In reality, however, an ILO tabulation showed that out of a total of 98 ILO conventions, only 6 had been ratified by the United States, in spite of the presence of the federal clause. Similarly, Canada, which also favoured the inclusion of the federal clause, had ratified only 12 of the 98 ILO conventions. On the other hand, Bulgaria had ratified 62 conventions, France 49 and Poland 33. It was clear from the example of ILO that the federal clause could hardly be regarded as an effective means of facilitating the implementation of the covenant by federal States. The same example showed that the arguments advanced by supporters of the federal clause were only a pretext to obtain a loop-hole identical in its consequences to the colonial clause, which the Committee would discuss at a later stage.

16. Mrs. LIONAES (Norway) stated that her delegation deemed it most important that as many States as possible should be enabled to become parties to the covenant from the outset. It was aware of the formal difficulties which had to be overcome if that goal were to be reached, difficulties arising from the fact that it was desired to have unitary as well as federal States among the signatories of the covenant. For that reason it favoured the inclusion of a federal clause. It preferred the text submitted by the United States which was reproduced on page 21 of the report of the Commission on Human Rights (sixth session) (E/1681).

17. In the belief, however, that the United Nations should be kept informed concerning the extent to which federal States were implementing the provisions of the draft convention, her delegation favoured the United Kingdom amendment (E/1681, annex I, page 21) to the proposal submitted by the United States. The new sub-paragraph suggested by the United Kingdom was intended to urge Member States to fulfil their obligations arising from Articles 55 and 56 of the Charter as soon as possible.

18. Mr. PANYUSHKIN (Union of Soviet Socialist Republics) stated that his delegation adhered to the point of view that all States signatories to the covenant were obliged to apply its provisions in all the territories under their jurisdiction without discrimination. His delegation could therefore see no reason for the inclusion of a federal clause.

19. Of the many similar proposals which had been submitted to the Human Rights Commission, he wished to

¹ See document E/AC.7/SR.151.

consider, in particular, the text of the article contained in the report of the Commission on Human Rights (E/800) (E/1681, annex I, page 20).

20. Adoption of that proposal would mean that federal States would be free to decide for themselves which provisions were mandatory for the federal governments and which were not. The federal governments would simply recommend implementation of the various provisions of the draft covenant to their constituent parts but the latter would still be free to decide for themselves whether or not to abide by such recommendations. In other words a federal State adhering to the draft covenant on such terms would not be bound to implement all parts of the instrument and there would be complete uncertainty regarding the scope of the obligations of a federal State in the circumstances. Moreover, since the constitutions of federal States were not identical, it might be necessary to undertake a specific legal enquiry in each concrete case to determine which parts of the covenant were within the jurisdiction of a given federal government. Federal States might therefore differ from one another in the manner in which they dealt with the provisions of the covenant. By the simple device of adopting certain legislative measures, a federal State might be able further to reduce the scope of the covenant which it desired to implement. It was clear that in so vital a sphere as that of human rights, such an approach was altogether inadmissible. Insertion of the federal clause would set at nought the significance of the ratification of the covenant by States.

21. Mr. Danton JOBIM (Brazil) said his delegation favoured the inclusion of a federal clause in the belief that such a step would facilitate universal adoption and implementation of the covenant. Failure to include a federal clause would not present any difficulties for his own country, though it was a federal State, so far as ratification of the covenant was concerned, because under the Brazilian Constitution the federal government was the only body responsible throughout the entire State territory for the execution of international obligations assumed by it. The difficulties of other federal States, however, could not be ignored and a remedy must be found which would help them to solve their difficulties. He believed that the inclusion of the federal clause was the desired remedy.

22. The supremacy of international over domestic law could not be contested by anyone. Every State ratifying the covenant would be obliged to enforce its provisions and that obligation would undoubtedly extend, in principle, to federal States. Difficulties arose, however, in the application of that principle from the powers reserved in certain federal constitutions to the constituent parts in the sphere of civil rights, and such difficulties could not be minimized by the drafters of the covenant. For some federal States, Brazil included, such difficulties did not arise because the federal government had complete jurisdiction in the matter, but the situation was different in the case of federations of the type of the United States of America and Canada where some jurisdiction rested with the constituent parts. If a federal clause were omitted, the United Nations would be confronted with the paradoxical situation that precisely the countries which had proved to be the strongest defenders of human rights and individual freedom might be precluded from

adhering to the very instrument setting forth those rights and freedoms.

23. Nor should it be forgotten that the governments favouring the inclusion of a federal clause had proved faithful to their obligations in the field of international relations, a fact which should serve to abolish the fear or the false impression that they would fail to exert all the influence at their disposal in order to bring about the full implementation of the draft covenant throughout their territories.

24. With regard to the remarks of the Polish representative concerning the existence of discriminatory practices in the United States of America, it seemed to Mr. Jobim absurd to assume that, if a federal clause were included, the United States Government would exclude from the sphere of enforcement of certain provisions of the covenant those states in which a policy of racial discrimination still prevailed. The world had witnessed in the United States, in the last few decades, the constant effort of the federal government to eliminate the dark shadow of racial discrimination. Just as totalitarian agents made use of democratic freedom to destroy democracy, so the fanatical proponents of racialism made use of the ample rights accorded to individuals in the United States of America to sow the seeds of racial hatred. There was, however, no reason to link the federal clause and the phenomenon of racial discrimination in certain parts of the United States, since the United States Constitution itself had been constantly invoked to correct abuses which were not effectively punished in state and local legislation.

25. While favouring the inclusion of a federal clause, he reserved the position of his delegation in respect of the specific drafting of such a clause.

26. Mr. DEMCHENKO (Ukrainian Soviet Socialist Republic) stated that his delegation opposed the inclusion of a federal clause in the belief that the covenant must be a universal instrument which would have to be implemented by all States parties to it in all the territories under their jurisdiction. The inclusion of a special clause for federal States would restrict the scope of the covenant and would prejudice the applicability of its clauses, thus depriving some people of the benefits of the rights which it offered. Adoption of the federal clause would be a clear violation of Article 1, paragraph 3, of the Charter of the United Nations. By ratifying the Charter the federal States, too, had assumed the obligation to carry out its provisions and they should not be placed in a position where they could enjoy special privileges. The inclusion of a clause for the special benefit of federal States would open the door to legal discrimination against some groups of populations. In sanctioning the insertion of such a clause, the General Assembly would in effect promote restrictions and discriminations in violation of the Charter.

27. It had been argued by some that such a clause was intended to enable federal States to adhere to the covenant. The argument was faulty because the rights set forth in the draft covenant were so elementary that hardly any part of a federal State could refuse to observe them. If the government of a federal State believed that constituent parts of the State would not implement the covenant, it should not sign it.

28. It was not the task of the General Assembly to deal with ways and means to enable a federal State to confer with its constituent parts regarding implementation of the covenant. It was the task of the General Assembly to decide on the principle that a State, federal or unitary, must implement the provisions of the covenant throughout its territory once it ratified that instrument. In taking the contrary course, the Assembly would be going astray and might find itself faced with the necessity of having to include specific provisions for each federal State party to the covenant.

29. Mrs. MENON (India) said her delegation was convinced that the inclusion of a federal clause was neither necessary nor advisable and would not be conducive to the promotion of human rights and of international co-operation.

30. The purpose of the covenant was to stabilize and augment the moral force generated by the Universal Declaration of Human Rights. Ratification of the covenant would make it part of the domestic law of the States parties to it, or if its provisions were already guaranteed by law their legislatures would no longer be able to depart from them.

31. The covenant depended for its strength on its universal applicability. Hence any restriction of that applicability reduced the value of the instrument. That was one reason why her delegation would not favour the inclusion of a federal clause. She would point out in that connexion that her country had a federal constitution based largely on the constitutions of the United States of America and some of the countries of the British Commonwealth. The Indian Government was, however, empowered to act for the entire country in accepting international obligations.

32. She felt that constitutional difficulties had been exaggerated during the debate. It was not helpful to produce outworn theories to reinstate outmoded ideas. The entire concept of national sovereignty had been modified or even revolutionized by the constant need for international co-operation in economic and social matters. What had hitherto been regarded as matters of domestic jurisdiction had necessarily become matters of grave international concern. Included in the agenda of the General Assembly were such items as the observance of human rights in Hungary, Romania and Bulgaria and the treatment of Indians in South Africa. If the federal clause were accepted in principle, international co-operation in the investigation and settlement of such matters could not be invoked nor could international opinion be mobilized for joint action. Whenever any delegation had suggested the inclusion of such words as "according to the law of the State" in any article of the Universal Declaration of Human Rights, the Third Committee had always opposed it as invalidating fundamental rights.

33. There was one additional reason why the United States of America should abandon all its fears. According to United States law, every citizen was a citizen of the United States and of his own state, and the final portion of section 1 of the Fourteenth Amendment to the United States Constitution, which she quoted, should obviate any difficulties. If that were still inadequate, it should be borne in mind that the Constitution itself provided means for the introduction of amendments

which would make it possible to do without a federal clause in the covenant.

34. The Supreme Court of the United States had, in recent decisions, given so wide an interpretation to the term "privileges and immunities" in the United States Constitution as to include a great variety of freedoms. The same liberal and progressive tendency was to be noted in recent decisions by the Oklahoma and California courts, one regarding the admission of Negroes to state colleges, the other invoking the Charter of the United Nations as superseding state legislation restricting fundamental human rights. Those decisions were encouraging signs for those who believed in the flexibility and adaptability of human institutions although they were based on rigid written constitutions; they should also help to allay the unfounded fears of representatives of federal States.

35. It was true that federal States had come into existence as a result of local individualism and differences. Even in the United States, various amendments had been adopted from time to time in order to make an eighteenth century constitution workable in the twentieth century, and the people of the United States were sufficiently aware of the importance of the position of their country in international affairs to consider further changes in their constitution to enable it to meet the growing demands of international participation and co-operation.

36. While constitutional arguments did of course exist, they were formal in nature and various valid and workable suggestions had been made to meet them. Her delegation felt certain, in view of all those reasons, that the federal States would accept the draft covenant as they had accepted the Charter, without a federal clause and without reservations.

37. From paragraph 5 of the report by the Secretary-General on federal and colonial clauses (E/1721), she noted that the federal clause had not been included in any of the conventions adopted or approved by the General Assembly so far. Surely the covenant, calculated as it was to promote and encourage respect for human rights and for fundamental freedoms for all without any distinction as to race, sex, language, religion, social status, political or other opinions, etc., would be a most inappropriate agreement with which to initiate a departure from that tradition. If the United Nations was to be a centre for harmonizing the actions of nations in the attainment of those rights and freedoms, the Member States could not but refrain from doing anything which would detract from that great and common effort.

38. Mr. HOFFMEISTER (Czechoslovakia) found it interesting that those who advocated the insertion of a federal clause in the covenant did not include all the Member States with a federal structure but did include all the colonial Powers, particularly those most open to criticism on the grounds of discrimination. It was to be noted in that connexion that the Charter of the United Nations, which embodied many references to the obligation to promote respect for human rights, particularly in Articles 13, 55, 62, 73 and 76, nowhere included a federal or colonial clause. It might of course be argued that it was essential that States should not be able to plead domestic law as an excuse for their failure to implement their international obligations, but they

were not justified in demanding a limitation of the obligations they had assumed by accepting the Charter.

39. The debate on the inclusion of a federal clause had posed the question of the relationship between obligations assumed under the Charter and those to be embodied in the covenant on human rights. Professor Lauterpacht, the noted Cambridge legal authority, had confirmed the view that obligations under the Charter should be an essential part of the covenant on human rights by stating at the very beginning of his book, *International Law and Human Rights*, that the two main objects of that book were the exposition of the existing law, as enshrined in the Charter of the United Nations, relating to the international recognition and protection of human rights and fundamental freedoms and, secondly, the consideration of the problems arising out of the proposals made for the extension of the existing law, as embodied in the Charter, through the adoption of an "international bill of the rights of man".

40. Under Article 56 of the Charter all Members had pledged themselves to promote the purposes set out in Article 55, including universal respect for human rights and fundamental freedoms for all without distinction. Where the Charter made general provisions, as in Articles 73 and 76, to be applied until the particular provisions, in that instance the covenant on human rights, were laid down, it was obvious that the obligation should be transferred from the Charter to the covenant in its entirety and not limited by clauses laying down an obligation less general than the primary obligation.

41. The argument advanced that existing constitutions should not be taken as a standard in any effort to raise the principles of human rights to a higher level was inconsistent with arguments in favour of the inclusion of a federal clause on the ground that the constitutions of federal States required it. The inclusion of such a clause would result in gross inequity between Member States. It was unthinkable that sovereign States, under the pretext of showing their progressive and humanitarian spirit, should restrict themselves to assuming responsibility only for the acceptance of a covenant and evade responsibility for implementing it.

42. The Czechoslovak delegation therefore associated itself with the delegations of the USSR, Poland, and Latin American countries and of the States of the Near, Middle and Far East which had advocated the rejection of the federal clause.

43. Mr. KOUSSOFF (Byelorussian Soviet Socialist Republic) supported the USSR, Ukrainian and other delegations which had advocated the rejection of the federal clause. There was no reason for the inclusion of such a clause, as all the articles of the covenant must be equally applicable to all peoples, whether the structure of their country was unitary or federal. Any departure from that principle would sanction discrimination in certain territories.

44. Mrs. ROOSEVELT (United States of America) believed that the Commission on Human Rights should carefully consider the views expressed in the debate, particularly with regard to the question whether the text proposed by the United States or by the Indian delegation should be used in the federal clause, and the suggestions concerning reports to be furnished by federal States. The United States delegation was quite prepared

to revise its proposed text in the light of suggestions made by members of the Committee.

45. It was not true, so far as the United States was concerned, that a federal State could, under a federal clause, escape the obligation to carry out most of the provisions likely to be embodied in the covenant. The federal government of the United States would, in fact, have to undertake a broad area of responsibility under such a clause. The Constitution of the United States had vested the primary, if not the sole, responsibility in the federal government in the case of the subject matter of articles 5, 8 and 9 of the draft covenant. Even where the federal government did not have sole or primary responsibility, federal responsibility would be considerable, although its extent would be open to question in cases where there was partial jurisdiction in the federal and state governments such as those covered by articles 3, 4, 6, 7, 10, 13, 14, 15 and 17 of the draft covenant. In each of those cases, where the conduct of the federal government itself was concerned, the federal government had the primary and sole responsibility to see that those rights were respected. There was thus direct protection against their violation by federal officers or agencies through the federal courts, which had jurisdiction throughout the United States and were bound to afford redress. When the federal courts acted, they must themselves observe the procedures and guarantees embodied in certain rights laid down in the covenant. Similarly, the federal government could afford almost complete redress with regard to most of those rights by judicial review in the federal courts if they were violated by the governments of the constituent states through their officers or agencies. The federal government could also give certain limited, direct redress under certain civil rights statutes.

46. Where infringement of those categories of rights was committed by private persons within the confines of a state, the remedies were almost entirely in the hands of the state governments, although there would be federal responsibility in those parts of the United States under federal control such as the District of Columbia, federal reservations and territories.

47. In another category of rights, such as those laid down in articles 8 and 16, the measure of federal or state responsibility might depend upon the degree to which the transactions fell within the federal government's interstate powers with regard to interstate and foreign commerce; such was also the case with interstate communications. Federal judicial power extended, moreover, to admiralty and maritime jurisdiction.

48. The responsibilities which the federal government would undertake under a federal clause should not, therefore, be minimized. She was proposing the inclusion of such a clause only because the jurisdiction of the federal government was not completely co-extensive with the obligations of the proposed covenant. Even in those areas where the federal jurisdiction was limited, however, it could be confidently expected that the states would provide adequate safeguards to meet federal shortcomings.

49. Although the people had delegated broad powers to the federal government through the federal Constitution, they had also thereby expressly prohibited both the federal and the state governments from abridging or

denying certain basic rights and freedoms which were almost precisely the same as those embodied in the draft covenant. Those rights included the prohibition of deprivation of life without due process of law, freedom from slavery and involuntary servitude, freedom from *ex post facto* laws, the right to a writ of *habeas corpus*, certain safeguards in criminal cases, freedom of religion, of expression and of the Press and the right of peaceful assembly.

50. The United States Government wished to do everything within its power to give effect to the provisions of the covenant; she hoped that it would be given the opportunity to adhere to it as far as it was possible for it to do so. It was to be hoped that the Committee as a whole did not share the view expressed at the previous meeting that it would be preferable for a federal State not to adhere to the covenant at all if it was not prepared to undertake all the obligations embodied in it.

51. Furthermore, she could not agree with the view that to change or disregard a constitution would be a comparatively simple matter. Changes in the United States Constitution had always required a very long time. Nor could she agree that the federal States should consult all their constituent parts before they ratified the covenant. That would require so much time that the ratification would come too late to be of any appreciable value. It had been argued, furthermore, that a delegation which was not prepared to speak on behalf of the entire federation in its State should not ratify the covenant. That argument would simply provide a convenient excuse for States which were not willing to apply the covenant, as they would simply be able to accept every provision and subsequently plead that they could not impose such obligations on their constituent parts.

52. The inclusion of a federal clause in the Constitution of the International Labour Organisation had not made it easier for the United States to ratify ILO conventions. Article 19, paragraph 7 (b), of that Constitution, having to do with conventions appropriate, in whole or in part, for action by constituent states, provinces or cantons, made no provision for ratification by a federal State, but merely bound federal States to make effective arrangements for reference of such conventions to the state, provincial or cantonal authorities for the enactment of legislation. The matters covered by the ILO conventions generally fell within both federal and local jurisdiction. That was one of the reasons why the United States delegation had proposed a differently-worded text for inclusion in the covenant.

53. Mr. BOKHARI (Pakistan) wished to remove the impression under which the Canadian representative appeared to be labouring that he (Mr. Bokhari) was opposed to the federal constitution as such; far from it.

54. What the Committee was concerned with was the international position of federal States. No clear reply had yet been given to two basic questions. The Canadian representative had stated that if he, as the representative of a federal State, signed the covenant without reservations, it would mean that the constituent states would be bound never to make any change in provincial law on the subject. If that was a fact, the disparity was clear. If, on the other hand, the federal States bound themselves to ensure that none of their constituent parts would deviate from the covenant, whereas those con-

stituent parts refused to bind themselves, the signature of the unitary States would have far greater value. That too would be unfair, because if States signed the covenant, they should all do so on an equal footing.

55. The first question, then, was what prevented federal States from consulting their constituent parts and subsequently signing or ratifying. The General Assembly would fully understand the delay entailed.

56. The second question was that of representation. If federal States at the time of signature stated that they could sign only with reservations such as a federal clause, it must be asked whether, when they voted in the General Assembly or its Committees, they were voting as representatives of the federal government or of its component parts, and whether they consulted those component parts for instructions before they voted. In his opinion, they represented sovereign States rather than federal governments and their domestic structure and constitution was of no concern to the Committee. It was to be noted, moreover, that some delegations which had played a leading part in drafting the covenant were among those which advocated the reservation. All States should sign on an equal footing.

57. Mr. Bokhari drew attention to the Secretary-General's report on federal and colonial clauses (E/1721 and Corr.1) and stated his belief that the arguments on that subject advanced by the Pakistan delegation in the Third Committee and the Economic and Social Council might have been stated more fully.

58. Mr. SAVUT (Turkey) thought that the representative of a federal State represented every constituent part of it to the same extent as he represented the federal government, since in the majority of cases, international relations were exercised on behalf of the constituent parts by the federal government. No such question, therefore, was relevant either during the drafting or at the time of the signature of a convention.

59. Ratification, however, was a matter for the legislature of each State; no representative had that power, which rested solely with the legislature. At that stage arose the difficulties of the federal States; their legislatures were not competent to make laws on certain matters. It was, therefore, a constitutional rather than an international problem. As the difficulty arose at the stage of ratification, the federal clause might be regarded as a ratification clause similar to that embodied in all international conventions, and in article 42, paragraph 1, of the draft covenant in particular. The federal States required a special provision in order to ratify; and from that point of view there should not be any objection to the inclusion of a federal clause.

60. On the other hand, however, a federal clause might seem to be a general reservation and be open to objection precisely on that ground, as it might imply an authorization for failure to apply the provisions of the covenant. Obviously it should not be possible to invoke the federal clause as a pretext for any violation of human rights which might be brought before the proposed human rights committee.

61. It might therefore be advisable to add a new paragraph to the proposed federal clause reading:

"Within five (or ten) years of the entry into force of the present Covenant in respect of any federal

State, the present article shall cease to be in effect, and after that period it can no longer be invoked in any case concerning the non-application of any of the provisions of this Covenant anywhere on the territory under the jurisdiction of that State”.

With such an addition, the federal clause would facilitate ratification by federal States and at the same time avoid the danger that it could be invoked for an indefinite time.

62. Miss BERNARDINO (Dominican Republic) opposed the inclusion of a federal clause for the same reasons as those advanced by a number of delegations. Such a clause would be inconsistent with the Charter, which contained no such limitation. She fully understood, however, the difficulties facing the federal States and expressed the hope that the Commission on human Rights, when reviewing the draft covenant, would find a compromise formula which would enable all Members to support it at the following session of the General Assembly.

63. Mr. LESAGE (Canada), in reply to the representative of Pakistan, said that representatives of a federal

State undoubtedly represented the federal government as that was the source from which they derived their instructions.

64. With regard to consulting the constituent parts of a federal State, there was no existing constitutional procedure for doing so, and, even if there were, it would take so long that ultimate participation would be ineffective. The provinces of Canada were themselves fully responsible for the protection of civil rights. Far from being easy, it was almost impossible to alter the Constitution of Canada. The division of powers was part of the historic structure of the country; it was unthinkable that the provincial governments would abandon their exclusive responsibility for civil rights.

65. He was willing to consider any solution other than that of a federal clause, but if it could not be found, it was to be hoped that that clause would be included, for that was the only possible way in which Canada, which was second to none in its eagerness to protect human rights, could sign the covenant.

The meeting rose at 1 p.m.