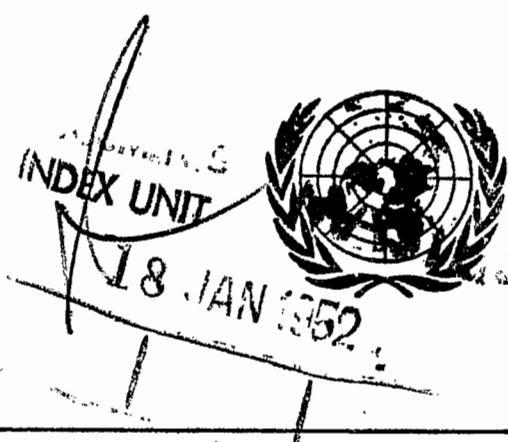


GENERAL
ASSEMBLY

SIXTH SESSION

Official Records



Monday, 10 December 1951, at 10.30 a.m.

Palais de Chaillot, Paris

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Chairman : Mrs. Ana FIGUEROA (Chile).

In the absence of the Chairman, Mr. Dehousse (Belgium), Vice-Chairman, presided.

Draft international covenant on human rights and measures of implementation (A/1883, A/1884 (chapter V, section I), E/1992, E/2057 and Add.1 to 5, E/2059 and Add.1 to 8, E/2085 and Add.1, A/C.3/559, A/C.3/L.88, A/C.3/L.180, A/C.3/L.182, A/C.3/L.186 and Add.1) (continued)

[Item 29]*

GENERAL DEBATE (continued)

1. The CHAIRMAN said the meeting was being held on Human Rights Day, on the third anniversary of the adoption of the Universal Declaration of Human Rights by the General Assembly (Assembly resolution 217 A (III)). The Assembly, in its resolution 423 (V), had recognized that the Declaration marked a distinct forward step in the march of human progress. The authority of the Declaration had become obvious in only three years; it had been cited time and again in parliaments and courts and had influenced the action of national and international bodies. Its principles had, for example, been incorporated in the new Constitution of Libya.

2. In drafting the international covenant on human rights, the Third Committee would continue to be guided by the Declaration, which was a constant inspiration to every Member of the United Nations to exert increasing efforts to secure the universal and effective recognition and observance of the rights and freedoms proclaimed.

3. Mr. BEAUFORT (Netherlands) said that, in the six years that had elapsed since the signature of the United Nations Charter, no real progress had been

made in the juridical protection of human rights, though admittedly the Universal Declaration of Human Rights had a moral value and was exerting an increasing influence. The Commission on Human Rights could hardly be blamed for that state of affairs, for it had made great efforts to reach agreement on controversial points.

4. The main point on which opinions in the Commission had been divided was the relationship between the individual and the community. According to one school of thought, the rights of the State should always prevail over those of the individual, who had no rights beyond those granted by the State. The other school held that every human being had certain inalienable rights which ought to be recognized as sacrosanct, even by the State. It was difficult to see, in those circumstances, how a basic agreement on human rights could be reached by the partisans of those two widely divergent ideas.

5. That did not mean, however, that the United Nations should abandon its great task with regard to human rights. In international as in national affairs, there was always room for and hope of improvement and it was impossible to say of the United Nations or of any single nation that it had concluded its task.

6. With regard to the question whether one or more covenants should be drafted, his delegation associated itself with the views of the representatives of the United States (360th meeting), Belgium and India (361st meeting). The prospective covenant should be acceptable to the greatest possible number of States. That purpose would not be achieved, however, if the majority of the Third Committee were to refuse to reconsider its former decision, as was proposed by the Economic and Social Council in its resolution 384 (XIII). It was undeniable that the greatest opposition against the drafting of a single covenant had come from States which had already achieved the protection of the principal economic, social and cultural rights and which

* Indicates the item number on the General Assembly agenda.

therefore could not be accused of objecting to the safeguarding of such rights.

7. In view of that argument, he was surprised that the sponsors of the joint draft resolution (A/C.3/L.182)—Chile, Egypt, Pakistan and Yugoslavia—had submitted their text at the beginning of the general discussion of the problem (359th meeting), without hearing the views of other representatives on the matter. He appreciated the attitude of the representative of Guatemala (360th meeting), who, although he favoured a single covenant, was prepared to listen to opposing views before taking a final step.

8. A way out of the controversy was offered by the amendment submitted jointly by Belgium, India, Lebanon, the United States of America (A/C.3/L.185) to the joint draft resolution (A/C.3/L.182). By stressing the fact that the General Assembly should consider and approve the two covenants simultaneously and possibly open them for signature at the same time, the amendment allayed any fear that economic, social and cultural rights might be given a position subordinate to that of civil and political rights.

9. In spite of that admirable compromise, some difficulties still remained. At the fifth session of the General Assembly the Netherlands delegation had expressed the view that articles on the right to property¹ and parents' rights in matters of education² should be added to the list of civil and political rights. Although the right to property might be regarded as an economic right, it was inherent in the human personality and had therefore to be regarded as indispensable to any basic enumeration. For that reason his delegation was disappointed by the decision taken by the Commission on Human Rights at its seventh session not to include such an article in the covenant.³ With respect to the second point, although article 28 of the draft covenant contained a provision concerning the right of parents with regard to the education of their children, it was possible that if there were a separate covenant on civil and political rights, it might not refer to that primordial right of parents.

10. The omission of two such important articles from a covenant on civil and political rights would make it extremely difficult for certain States to sign and ratify such an instrument.

11. Mr. CASSIN (France) said that the Committee must make every effort to dispel the pessimism prevalent with regard to the possibility of actually implementing the Universal Declaration of Human Rights.

12. Three things must be done. The General Assembly must, at its seventh session, be able to discuss and adopt texts for a covenant covering the personal freedoms and the civil rights and the economic, social and cultural rights, which must not be a mere paraphrase of the Declaration; they must be accompanied by measures of implementation suited to the nature of

each of the obligations assumed; finally, the provisions adopted by the General Assembly at its seventh session must be able to be signed and ratified by the greatest possible number of States so that the general scope and also the universality aimed at in the Declaration should be ensured. That threefold aim was of imperative importance.

13. The work assigned to the Commission on Human Rights by the General Assembly at its fifth session (resolution 421 (V)) had really been too heavy for the time at the Commission's disposal. The French delegation appreciated the way in which the Commission had discharged its duties and the value of the work it had completed. It maintained the right to criticize and to amend. It must emphasize the greatest difficulties to be overcome and the contradictory principles or demands to be reconciled in the general structure of the obligations and measures to be adopted, whether they were included in a single covenant or in two covenants.

14. The enforcement of a large part, if not of all, of the economic, social and cultural rights was conditional on social reform and on plans spread over some time, and depended on the resources of the States, whether national or supplied by the co-operation of the States. That was the reason why article 19, paragraph 4, of the Commission's draft (E/1992) had been strongly influenced by the language of article 22 of the Declaration and took into account "progressive achievement".

15. The language concerning the commitment assumed in article 19 was strong enough to compel the immediate implementation of obligations regarding such economic, social and cultural rights as trade-union freedom (article 27), the principle of non-discrimination (article 28, paragraph 2) and others (article 28, paragraphs 7 and 9). In those cases implementation could be obtained by rapid legislation, without intermediate stages lasting some time and requiring large resources. Furthermore, the individual could acquire a personal and justifiable right in those cases, such as already existed in many countries with regard to the limitation of the working week, guaranteed wages and assistance through social security systems.

16. In drafting the covenant, however, those doing so had no right to ignore reality and to take for the commitments texts which, although apparently an improvement, were in reality illusory and ones which no responsible government would ratify. Thus, the obligation to reduce infant mortality or to ensure adequate housing could not be drafted in the same direct terms as those used, for example, for the freedom of belief or association.

17. A further difficulty of principle concerned the existence of specialized agencies constitutionally designed to ensure the protection of certain of those rights: the International Labour Organisation, the World Health Organization and the United Nations Educational, Scientific and Cultural Organization.

18. The United Nations had a general responsibility for the respect of the human rights claimed in the Charter and the Universal Declaration, which they

¹ See *Official Records of the General Assembly, Fifth Session, Third Committee*, 297th meeting.

² *Ibid.*, 290th meeting.

³ See document E/CN.4/SR.231.

could not decline, but it ought to be discharged in collaboration with the specialized agencies in order to avoid the dispersion and duplication of efforts.

19. Some important countries, however, were not members of those specialized agencies; moreover, the specialized agencies were not equally mature; whereas ILO might find it most convenient to draft articles couched in the briefest and most specific terms, WHO and UNESCO might prefer articles which were tantamount to directives for broad programmes.

20. He must be very frank about the problem of implementation. When multilateral conventions were concluded through an international organization, the obligations assumed by the States were, in the first place, subjected to domestic measures of implementation in each of the States parties to the covenant. The French delegation attached the greatest importance to such domestic legislation and to the provisions of the covenant designed to stimulate it.

21. In the matter of the international protection of human rights, however, the French delegation considered that, for any type of rights, such protection had two aspects; one preventive and constructive, the other corrective or remedial coming into force in case of a petition against alleged violation.

22. The Constitution of ILO, for example, had explicitly written into it both forms of international protection simultaneously, through the system of periodic reports and that of the procedure of petitions.

23. Experience showed that international organizations could protect the rights subject to multilateral conventions by requiring periodic reports from signatory States, by periodically asking non-signatory States why they were still unable to sign and by receiving petitions against violations of conventions. Specialized agencies were already receiving periodic reports in connexion with certain rights which must inevitably be incorporated in the covenant, so that the Commission on Human Rights must be empowered both to co-ordinate the reception of such reports and also to frame its own questionnaires spread over several years in order to cover in sequence the rights stated in the covenant. Furthermore, as all Member States by adopting the Charter and the Universal Declaration had made themselves responsible for the protection of human rights, all should submit periodic reports, whether or not they had signed the covenant. That was a provision that could not bind States which had not signed the covenant; but it could be embodied in resolutions or recommendations of the General Assembly and of the Economic and Social Council. That would have a psychological as well as a practical effect; it would be a strong incentive to States to accede to the covenant.

24. The draft submitted by the Commission on Human Rights provided for the hearing of complaints by a new organ, the committee on human rights, composed of highly qualified persons who were nationals of the signatory States. It would be a fact-finding body—a kind of good offices committee—rather than a judicial body. Its members would be elected by the

International Court of Justice from a list of independent persons nominated by the States parties to the covenant because, on the basis of the principle of reciprocity, no State Party would permit its actions to be supervised by a representative of a State which was not party to the covenant and because the members of the proposed committee would be acting as arbitrators rather than as officials. The committee should not be a small exclusive group but should have the widest possible powers. The list submitted to the International Court of Justice should therefore be as comprehensive as possible. Wherever feasible, complaints might first be dealt with in accordance with the procedures employed by the relevant specialized agencies, in order that the committee would not be overburdened with technical work; but the fact that some countries were not members of the specialized agencies must not be interpreted as tacit permission for them to violate the rights coming within the agencies' competence. The committee should thus be given a general competence, subject to all necessary adaptations to the appropriate treatment of certain rights.

25. The French delegation was prepared to re-examine the formula for the committee's competence in order to take into account the special methods of implementation appropriate to certain rights. It must, however, warn the Committee against the very real danger of leaving loop-holes in the implementation for lack of an organ with the competence of an ordinary court of law.

26. The principle of reciprocity must also apply to the right of petition. The French delegation was, in principle, in favour of that right, but care had to be taken to see that it was not exercised against some States and not against others. There might well be some apprehension lest individuals or organizations submitting such petitions were merely acting as agents for non-signatory governments. The French delegation was ready to examine with the greatest care the proposals for a separate protocol and for the institution of a United Nations attorney-general for human rights (E/1992, annexes V and VII) and the Indian proposal according the committee the right to take up matters *proprio motu*. All those proposals were indeed of interest.

27. With regard to the directives which the General Assembly must give, he thought that a welcome movement towards compromise had begun between the supporters of the single covenant and those of separate instruments; the joint amendment (A/C.3/L.185) to the joint draft resolution (A/C.3/L.182) proposing the simultaneous submission of two draft covenants to the General Assembly was a step forward. A considerable divergence still remained. If a single covenant was decided upon, it might very well have to deal with all the matters previously envisaged as forming part of separate supplementary covenants; yet work had already been begun on several of those additional rights (such as family, nationality and political freedoms) and it was doubtful whether the Third Committee could embark upon their consideration at that stage without jeopardizing the speedy adoption and implementation

of the single covenant. The problem of the right to self-determination was a case in point. It had not been included in the Declaration, although it appeared in Article 55 of the Charter. As the Belgian representative had observed, that right would require most thorough examination in all its aspects; the Commission on Human Rights might not be competent to undertake such an examination and certainly would not have time to do so. In any case, the drafting of a single covenant covering all rights would be likely to postpone indefinitely the measures for implementation of the Declaration.

28. If the Committee decided that there should be two or more covenants, it was essential that the Commission on Human Rights should be instructed to construct some connecting machinery between them, as the protection of human rights must be regarded as a whole. The measures of implementation, particularly the periodic reporting, must be as similar as possible with regard to each separate right or category of rights.

29. Failure to create such a link between the various covenants would result in chaos. If the idea of "inter-linked" covenants was well received, the French delegation would submit a proposal to that end; but if it was not, it would have to reserve its position at the time of the vote on the joint draft resolution (A/C.3/L.182).

30. Mr. JOCHAMOVITZ (Peru) said that the task of drafting and ensuring the implementation of a covenant applicable to all was a tremendous one; it was hindered by prejudices, interests and basic differences of ideology. A decision on whether one or more covenants should be drafted was therefore premature, since those covenants would be referred to the Commission on Human Rights for improvements in the light of the debates in the Third Committee.

31. Although the important right to self-determination was stated in the Charter, it would be mentioned again in the covenant with advantage.

32. He criticized the omission of an article on the right to property, on the ground that such an omission would enable certain States to deprive their subjects of that right. Although in most States the right to property was limited by taxation, everyone should be entitled to a minimum of goods which he could call his own.

33. He also deplored the absence of any reference to family rights in the covenant. The protection of mothers and children guaranteed in articles 25 and 26 of the draft was inadequate, in view of the fact that all nations represented groups of family units. Such rights were especially important because they involved the assumption of certain obligations.

34. The final covenant should bear two mottos which would express the general tenor of the instrument: "Liberty, equality, fraternity" and "Love one another".

35. Mr. HARRY (Australia) believed that, despite the despondency felt in certain quarters at the small degree of progress achieved during the past three years,

a great deal of essential work had been done during that period. The Committee had before it, though not in final form, a whole series of articles setting out in reasonably precise legal language the obligations which States might be prepared to accept for the protection and implementation of human rights.

36. The acceptance of obligations by international covenant was only one of the roads which led to the development and extension of human rights. No State need wait for the signing of a covenant to take action on behalf of its citizens and put the provisions of the Universal Declaration of Human Rights into effect. Nor could a State excuse or justify the violation of human rights by the absence of such a covenant.

37. He would recall that Australia had not been in full agreement with all the directives given by the General Assembly at its fifth session (resolution 421 (V)) to the Commission on Human Rights through the Economic and Social Council; however, the Australian representative on the Commission had co-operated loyally in carrying out those directives and had, he believed, made a positive contribution to the results which the Commission had achieved.

38. Although the views of the Australian Government on the details of the draft articles of the covenant were well known, a re-statement of the main objective which his Government thought should be pursued might be helpful to the Third Committee. In the broadest sense, the objective was to obtain acceptance by as many governments as possible of as wide a range of obligations in the field of human rights as they were prepared to accept. With that objective in mind, the Australian Government applied to all proposals a series of simple tests which could be summarized as follows: (a) Could the obligation to be assumed by States be defined with the precision necessary in a legal document? (b) To what degree could the international community promote respect for the rights in question through supervision of or assistance to governments which accepted the obligation? (c) Was that obligation one which should be accepted by, and which was acceptable to, the majority of Members of the United Nations?

39. With regard to the first test, it was clear that many rights included in the Universal Declaration of Human Rights could not figure in the covenant owing to the impossibility of giving them precise legal definition. It was primarily because of that difficulty that the Australian delegation considered the inclusion of an article on the self-determination of peoples to be inappropriate. Again, because the covenant dealt not so much with the definition of rights as with a definition of concrete obligations, it was apparent that the obligations to be undertaken by States with respect to basic civil and political rights were different from the obligations which they assumed with respect to economic, social and cultural rights. It was for that reason, apart from the fact that it believed in the fundamental role of the individual in society, that his delegation drew a distinction between those two main categories of rights and between the methods and processes by which they could be implemented. Accordingly, the Australian Government was of the opinion that if the obliga-

tions of States with regard to economic and social rights were to be set out, that should be done in a separate instrument, not of less importance, but formulated separately, precisely because of the essential differences in its contents.

40. The Australian delegation hoped that the General Assembly would at the current session agree to instruct the Commission on Human Rights to prepare two drafts to be presented together to the General Assembly and opened for signature simultaneously.

41. With regard to the second test, the inherent difference between the two types of rights also resulted in a difference in the form of international action which could appropriately be taken to supervise or assist their implementation. While the primary obligation to implement the agreement would, as in any treaty, rest with the signatories themselves, his Government believed that some provision for international supervision should be included in the covenant. In that connexion, it believed that, subject to further drafting, the proposal for a committee on human rights (E/1992, section IV), which was before the Third Committee, tended in the right direction, as applied to the justiciable rights contained in part II of the draft. Subject to a reservation of its position pending further information, the Australian Government also believed that a system of reporting could be developed with respect to the rights to be granted gradually. The object of those progress reports should be not so much to reveal and stigmatize defaulters as to assist States, within the limits of United Nations responsibilities and resources, to make effective the economic and social rights of their citizens. Care would have to be taken, when determining the contents of reports, to avoid duplication with reports already submitted to the specialized agencies.

42. The experience of the Trusteeship System could with profit be utilized in connexion with reports, and also, to some extent, in connexion with petitions. It had been suggested that because individual petitions were permitted under the Trusteeship System, it would be appropriate to provide for similar petitions in the

event of violations of human rights. The analogy was, however, to some extent inaccurate and it was highly doubtful whether it would be possible in a covenant on human rights to reproduce the conditions which had made the handling of petitions from Trust Territories possible. The experience of the General Assembly in relation to human rights illustrated the difficulty of persuading States, even when bound by treaty to do so, to accept investigation of the observance of human rights. In the circumstances, the Australian delegation felt that it might be desirable to defer for the time being the attempt to obtain agreement on the right of individual or group petition, since it seemed impossible, at the current time, to work out a practicable system for the implementation of that right. If, however, a considerable number of governments wished to proceed with such a system it might be preferable to enable them to do so by means of a separate protocol or protocols.

43. Referring to the third test which he had mentioned, namely, whether the covenant would be accepted by the majority of Members of the United Nations, he would stress that the Australian Government was in no way suggesting that the General Assembly should aim at a lowest common multiple. Indeed, a covenant would serve little purpose if it merely recorded the existing law and practice of States, and a level of obligation had to be sought which would mean a real advance in respect of human rights. Nevertheless, it had to be remembered that the most outstanding feature of the Universal Declaration of Human Rights was that it had obtained almost universal support. It would therefore be unwise to include in the covenant or covenants obligations unacceptable to a substantial number of States. The principle of universality was also very relevant in the case of the federal clause, which was, of course, of particular interest to Australia. His delegation believed that it would be possible to devise a formula which would meet the constitutional problems arising in the case of Australia. At all events an adequate federal clause was probably essential if federal States were to be in a position to ratify any covenant on the subject of human rights.

The meeting rose at 12.45 p.m.