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Chairman: Mr. JIH NOSEK (Czechoslovakia).

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

1. Mrs. ELLIOT (United Kingdom) recalled that the United Kingdom Government had been among the first to propose the drafting of a covenant on human rights, had participated in the drafting of it and had been the first to ratify the European Convention for the Protection of Human Rights and Fundamental Freedoms. The time had come to review the work of the Commission on Human Rights.

2. Her delegation was in agreement with a number of the articles which appeared in the draft covenants, but she was bound to say that as a whole they suffered from very grave defects.

3. If the draft covenants were to achieve their purpose it was essential that they should fulfil two requirements. First, their content and scope should be clearly described and vague terms should therefore be avoided. Secondly, the obligations they imposed should be such that they could be accepted and put into force by the States Parties to them. Her Government felt that the draft covenants were defective in both those respects, and she proposed to give some examples. She would make more detailed comments when the time came for the Third Committee to consider the drafts article by article.

4. With regard first to the draft covenant on economic, social and cultural rights (E/2573, annex I) her delegation was entirely in agreement with the General Assembly's decision (resolution 543 (VI)) that those rights should not be included in the same covenant as the civil and political rights. Their nature rendered it necessary to give them separate treatment. Their level of realization depended in every country upon social and economic factors which were not entirely within Government control. The possibilities of formulating them precisely and implementing them immediately were therefore not the same as in the case of the civil and political rights. Any attempt

to reverse the Assembly decision and embody all the rights in a single covenant could only cause confusion and delay the completion of the work still further.

5. The Commission on Human Rights had adopted the view that the rights should be formulated only in general terms and that their realization should be subject to the provisions of article 2, paragraph 1, of the draft covenant. Some articles in the draft, however, departed from that conception and imposed immediate and specific obligations.

6. States were required under article 2, paragraph 2, of the draft covenant to guarantee that the rights would be exercised without distinction of any kind, regardless of the circumstances. Her Government had always recognized the importance of non-discrimination, but the text as it stood imposed certain obligations with which most States would be unable to comply. If the provision of article 2, paragraph 2, prohibiting any distinction on the ground of national origin were applied, for example, to article 6, which concerned the right to ...; it would compel States to accord to aliens the ... treatment in respect of employment as to its own nationals, whereas most States found it necessary for the protection of their nationals to impose, upon the employment of aliens, restrictions which would be impossible under article 2, paragraph 2. Similarly, the prohibition of discrimination on the ground of sex under article 2, paragraph 2, would apply to the provisions of article 7 and would involve the immediate institution of equal pay for men and women in every State which adhered to the covenant. Many countries would be unable to accept such an obligation at present. In her country, for example, wages were determined by voluntary agreements freely negotiated between employers and workers, and the Government could not guarantee equal pay for men and women except in the case of civil servants, in connexion with whom the relevant arrangements to implement the principle of equal pay were currently under study. It seemed necessary, therefore, to re-examine the provisions of those articles with a view to avoiding the embodiment of the principle of non-discrimination therein in such terms as to make it impossible for countries of goodwill to adhere to the covenant.

7. She wished to make another general point in regard to the draft covenant. The draft was based on the principle that the rights should be stated in brief, general terms. The action necessary to implement those general obligations in detail fell within the scope of the specialized agencies, and it was not desirable that the articles should be drafted in so detailed a manner as were, in particular, articles 15 and 10, the subject-matter of which concerned the United Nations Educational, Scientific and Cultural Organization and the International Labour Organisation respectively.

8. Her delegation felt that the provisions for implementation set out in part IV were satisfactory on the whole.

9. With regard to the draft covenant on civil and political rights (E/2573, annex I), she stressed that, in contrast with the economic, social and cultural rights, a system of progressive application of the civil and political rights would be inappropriate. The draft covenant was intended to make specific provision in respect of each of those rights and impose obligations that would be binding on the States parties to the covenant. It was therefore of cardinal importance that the rights and obligations should be stated with the utmost precision. Several provisions of the draft covenant were unsatisfactory from that point of view. Article 2, paragraph 2, was a case in point. It could be interpreted in two ways. If it was merely a statement of the principle that a State's legislation had to conform to the obligations which the State had accepted by the act of ratification of a treaty, it was superfluous; but the discussions which the provision had prompted showed that it should be interpreted as meaning that States which had ratified the covenant would be allowed an indefinite period within which to take steps to bring the law into accord with the covenant. If that was the meaning of the provision, and if the provision was maintained, her delegation doubted whether the covenant was worthwhile at all, since the States' undertaking would be limited to a mere promise, which they would be left to fulfil at some future time of their own choosing. While disparities between the legislation of some States and the provisions of the covenant might present difficulties, it should be possible to meet them by including in the covenant an article permitting reservations within appropriate limits. Article 2 was a major example of indefiniteness, but there were in that draft covenant, in which precision was essential, other articles in which the rights and obligations of States were imperfectly defined. A particular example was the use of the words "arbitrarily" and "arbitrary" in articles 6, 9 and 17. The discussions which had taken place on the subject in the Commission on Human Rights had shown that it was intended to make a distinction between "arbitrary" and "unlawful". Her delegation did not know what was meant by the term "arbitrary", and the term was not defined in the text. It would seem in the last resort to be for the human rights committee, which was to be set up under the draft covenant, to determine whether the action taken in a particular case though lawful was nevertheless arbitrary. One effect of the provisions, as they stood, would seem to be to compel States whose systems of law and practice for the protection of life and liberty had been built up gradually over the centuries to agree that that system should be judged by some extra-legal and undefined standard.

10. Article 24 also raised important issues. The first sentence, which was concerned with equality before the law, did not seem to present any problem, but the second sentence was concerned with the quite different question of discrimination. It required the law to prohibit any discrimination; it applied not only to rights which were not fundamental human rights and were not included in the covenant but also to discrimination outside the sphere of rights altogether. It involved the abolition of all discrimination on the grounds of national origin, which would mean the abolition of all control over foreigners; and the abolition of all discrimi-

nation on the ground of birth, which would mean the abolition of existing legal provisions about inheritance. She would not multiply examples, but wished to stress that article 24 was based on the unrealistic conception that all discrimination could be abolished at once and by law. Everyone knew that discrimination was most often due to social prejudice, which could be eradicated only through a long process of education and not through the mere enactment of legislation. The draft covenant was concerned with fundamental human rights and the provisions about discrimination should apply only to those rights.

11. As to part IV, which concerned the measures of implementation, her delegation was in favour of setting up a human rights committee. It regretted, however, the omission of an article designed to avoid overlapping between the functions of that committee and those exercised by other organs and specialized agencies; the International Labour Organisation and the World Health Organization, among others, had expressed their views on the subject clearly.

12. Her delegation was opposed to the system of reporting provided for in article 49. Such a system was justified in the case of the draft covenant on economic, social and cultural rights because the obligations under that covenant would be assumed progressively. That was not so in the case of the draft covenant on civil and political rights; such a provision would detract from the immediacy of the obligations it imposed on the States parties to the covenant and introduce an element of progressive application. That could be shown from the terms of the article itself, but she would not discuss its terms for the time being, as the Committee would not begin detailed examination of the draft article by article until later.

13. With regard to the articles which were common to both draft covenants, article 1 was totally unacceptable to her delegation, which held that provisions that were not concerned with an individual human right had no place in the covenants. Moreover, self-determination was a political principle and its application in practice was subordinate to other principles, the most important of which was the maintenance of peace. The terms "peoples" and "nations" were not defined; in consequence the article would have the most far-reaching consequences for many States, not only for those administering Non-Self-Governing Territories.

14. Her delegation also opposed article 48 of the draft covenant on civil and political rights, not only because it provided special measures of implementation for an article of which it disapproved, but also because it would turn the human rights committees from a quasi-judicial body into a body entrusted with the task of determining what were essentially political questions.

15. Article 27 of the draft covenant on economic, social and cultural rights and article 52 of the draft covenant on civil and political rights could hardly be regarded as a federal clause. On the contrary, they seemed to run counter to the provisions of General Assembly resolution 421 (V), section C, and her delegation regretted that the Commission on Human Rights had apparently decided, in proposing those two articles, not to attempt to meet the constitutional problems of federal States.

16. Article 28 of the draft covenant on economic, social and cultural rights and article 53 of the draft covenant on civil and political rights contained a provision relating to the territorial application of the cove-

nants. Her delegation had explained on many occasions that a territorial application clause such as had appeared in many multilateral treaties, and recently in the European convention on human rights, was in no way designed to exclude application of the provisions of a covenant to Non-Self-Governing Territories. On the contrary, it was designed to facilitate such application, as had been shown by the action taken under the clause in the European convention on human rights. At the current stage she would confine herself to stating that an article in the terms of articles 28 and 53 did not dispense with the need for consultation with Non-Self-Governing territories on the question of their acceptance, in respect of matters within their domestic competence, of the obligations imposed by the covenants. Consequently, such an article could have no other effect than to delay for a considerable time, even perhaps indefinitely, the adherence of an administering Power to a covenant in which the article appeared.

17. Some delegations had expressed the view that reservations should not be allowed in the case of a covenant which, like the covenant on civil and political rights, was concerned with fundamental rights. The Commission was, however, really engaged upon codifying, at the international level, the law and practice relating to those rights, and it could not be expected that such a code would fit at every point the divergent legal systems and traditions of the various countries. For that reason her delegation felt that it was necessary to make a suitable provision for reservations, by which she meant a provision containing safeguards precisely against the abuse of reservations in order to evade the provisions of the covenants. The United Kingdom proposals on the subject, which had so far been discussed only in relation to the draft covenant on civil and political rights, provided such safeguards, first because reservations could be made only to part III of the draft covenant and, secondly, because those reservations had to secure the assent of two-thirds of the States parties to the covenant. Those States would number not less than twenty and it was hoped that they would in fact comprise the whole international community. Her delegation felt that to put into the hands of the international community the responsibility for deciding by a two-thirds majority whether a particular reservation should be admitted or not was the best and most effective safeguard against the abuse of a reservations article.

18. Her delegation had felt it necessary to single out and discuss the main defects which, in its view, the draft covenants presented. It did not expect all delegations to share its opinion but it hoped that its views would be given due weight. The time had come to recognize the deep cleavages of opinion which underlay the work on the covenants. The last stage of the consideration of the draft covenants would not be really fruitful unless it was undertaken in a spirit of mutual tolerance and understanding. Only thus could the draft covenants be made effective instruments for the maintenance and safeguarding of the fundamental human rights.

19. Mr. MENESES PALLARES (Ecuador), speaking on a point of order, pointed out that many delegations would make important statements to the Committee about the draft covenants. The statements would have to be considered with great care by the other representatives and, that being so, he asked whether it would be possible to request the précis-writers to produce more complete and detailed summary records on that item of the agenda.

20. Mrs. AFNAN (Iraq) supported the request.

21. The CHAIRMAN said he was convinced that the précis-writers would do their best to meet the delegations' wishes. He suggested that the Committee should decide at its next meeting on what date the list of speakers should be closed.

22. Mr. PAZHWAQ (Afghanistan) wondered whether it would not be possible for the Committee to consider the next item of its agenda if there were not enough speakers on the item under consideration.

23. The CHAIRMAN said that he feared that such a suggestion would not be acceptable. He recalled that the Committee had decided to devote twenty meetings to the consideration of the item under discussion.

24. Mr. DUNLOP (New Zealand) pointed out that the Committee had decided to devote, not twenty meetings, but one-half of its remaining meetings, to the consideration of the item under discussion. The possibility of taking up another agenda item if there were not enough speakers on the item under discussion should, therefore, not be excluded.

25. The CHAIRMAN confirmed that the Committee would devote one-half of its remaining meetings to the consideration of the draft covenants on human rights.

The meeting rose at 4.10 p.m.