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Draft international covenants on human rights (continued) ........................................ 95

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 treat-
ment. Their level of realization depended in every
country upon social and economic factors which were
not entirely within Government control. The possi-
bilities 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 sub-
ject to the provisions of article 2, paragraph 1, of
the draft covenant. Some articles in the draft, how-
ever, departed from that conception and imposed im-
mediate 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, regard-
less of the circumstances. Her Government had al-
ways recognized the importance of non-discrimina-
tion, but the text as it stood imposed certain obliga-
tions 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 vote, it would compel States
to accord to aliens the same 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 discrimina-
tion 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 ac-
tend 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 ar-
ticles 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 re-
gard 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 Educa-
tional, 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 1), 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 warranted at all, since the States’ undertaking would be limited to a mere promise, which they would be less to fulfill 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 “arbitrariness” 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 discrimination 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-
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. AFRAN (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. PAZHWA (Afghanistan) wondered whether it would not be possible for the Committee to consider the next item on 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.