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COMMISSION ON HUMAN RIGHTS

Sixth session

COMMENTS OF GOVERNMENTS ON THE DRAFT INTERNATIONAL COVENANT
ON HUMAN RIGHTS AND MEASURES OF IMPLEMENTATION

The Secretary-General has the honour to circulate the following comments:

2. United States of America

Communication from the Secretary of State to
the Secretary-General received
on 3 January 1950

/In response

In response to the request of the Commission on Human Rights at its fifth session, the United States submits the following observations concerning:

- I. Draft International Covenant on Human Rights set forth on pages 27-46 of document E/1371;
- II. New articles proposed and set forth on pages 47-50 of document E/1371;
- III. The proposals on implementation set forth on pages 61-81 of document E/1371; and
- IV. The questionnaire on measures of implementation set forth on pages 82-99 of document E/1371.

I. Draft International Covenant on Human Rights

The United States continues to support the view that every possible effort should be made for the completion of the draft International Covenant at the next session of the Commission on Human Rights, which is to convene on 27 March 1950, in order that the draft Covenant may be forwarded to the Economic and Social Council in time to enable the Council to submit the draft Covenant to the General Assembly for its consideration at its fifth (1950) session. It will be observed that many of the following comments concerning the draft Covenant are of a drafting nature rather than of a substantive character.

The Preamble should read as follows:

"The States Parties hereto,

Bearing in mind the general principles proclaimed in the United Nations Charter, and in the Universal Declaration of Human Rights approved by the General Assembly of the United Nations on December 10, 1948, and

Considering the importance of developing in the United Nations international agreements in the field of human rights concerning civil, political, economic, social and cultural matters,

Agree at this time upon the following articles with respect to certain of these human rights:"

Article 1 should be omitted from the Covenant since it is adequately covered by the proposed Preamble.

Article 2. Paragraph 1 should be revised to include the words "territory and subject to its" immediately prior to the word "jurisdiction" in the first sentence, so that this paragraph would read as follows:

/"1. Each

"1. Each State party hereto undertakes to ensure to all individuals within its territory and subject to its jurisdiction the rights defined in this Covenant. Where not already provided by legislative or other measures, each State undertakes, in accordance with its constitutional processes and in accordance with the provisions of this Covenant, to adopt within a reasonable time such legislative or other measures to give effect to the rights defined in this Covenant."

Paragraph 2 should be revised to read as follows:

"2. Each State party hereto undertakes to ensure, in accordance with its constitutional processes, that its executive authorities and judiciary shall act in support of law giving effect to the rights defined in this Covenant."

Article 3 relates to implementation and should be considered with proposed measures for implementation. The views of the United States on implementation are set forth in Part III of this communication.

Article 4. Paragraphs 1 and 3. No change is proposed.

Paragraph 2 should read as follows:

"2. No derogation may be made by any State under this provision which is inconsistent with international law or with international agreements to which such State is a party."

Article 5. Paragraph 1. Insert the word "arbitrarily" before the word "deprived" in this paragraph so that it would read as follows:

"1. No one shall be arbitrarily deprived of his life."

Paragraph 2. No change is proposed.

Paragraph 3 should be revised to read as follows:

"3. In such countries, sentence of death may be executed only pursuant to the sentence of a competent court and in accordance with law."

It is suggested that consideration be given to merging paragraphs 2 and 3 to read as follows:

"In countries where capital punishment exists, sentence of death may be imposed only as a penalty for the most serious crimes pursuant to the sentence of a competent court and in accordance with law."

Paragraph 4 should be revised to read as follows:

"4. Any one sentenced to death shall have the right to seek amnesty, or pardon, or commutation of the sentence."

/Article 6

Article 6 should be revised to read as follows:

"No one shall be subjected to torture or to cruel, inhuman or degrading punishment."

Article 7. No opinion is expressed at this time concerning this article since the views requested by the Commission on Human Rights from the World Health Organization with respect to this article, have not as yet been received by this Government.

Article 8. Paragraph 1 should be revised to insert the phrase "in all their forms" immediately after the words "slave trade" rather than at the end of this paragraph so that the paragraph would read as follows:

"1. No one shall be held in slavery; slavery and the slave trade in all their forms shall be prohibited."

Paragraph 2. Change the word "servitude" to "peonage or serfdom", so that this paragraph would read as follows:

"1. No one shall be held in peonage or serfdom."

The discussion in the Commission on Human Rights at its fifth session indicated that the terms "peonage or serfdom" rather than "servitude" are intended in this paragraph.

It is suggested that consideration be given to merging paragraphs 1 and 2.

Paragraph 3 should be revised to read as follows:

"3. No one shall be held in involuntary servitude or be required to perform forced or compulsory labor except as a consequence of a conviction of a crime by a competent court."

Paragraph 4. Sub-paragraph (a) of this paragraph should be omitted because it is believed that not only ordinary "housekeeping" work required to be done in the ordinary course of prison routine but also work of a similar routine character required to be done in connection with many types of institutions where individuals not convicted of a crime may be lawfully detained (e.g., mental institutions, juvenile detention homes, places of detention for persons awaiting trial) would not in any event be interpreted as being comprehended within the term "forced or compulsory labor", as used in paragraph 2. It is not believed that it would be feasible or necessary to attempt to spell out, in this article of the Covenant, all of these possible situations.

/Article 9.

Article 9. Paragraphs 1, 2, 3, 4. No change is proposed.

Paragraph 5. Add the following at the end of this paragraph:

"This remedy may not be suspended unless when in cases of rebellion or invasion the public safety may require it."

Paragraph 6. This paragraph should be omitted from the Covenant.

Article 10. No change is proposed.

Article 11 should be revised to read as follows:

"1. Subject to law necessary to protect national security, public safety, health or morals or the rights and freedoms of others:

(a) every one legally within the territory of a State shall, within that territory, have the right to be free from governmental interference in (1) liberty of movement and (2) freedom to choose his residence;

(b) any one shall be free to leave any country including his own.

2. Any one shall be free to enter the country of which he is a national."

Article 12. No change is proposed.

Article 13. Paragraph 1 should be revised to read as follows:

"1. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, every one shall be entitled to a fair and public hearing, by an independent and impartial tribunal established by law. The press and public may be excluded from all or part of a trial in the interest of morals, public order or national security, or where the interest of juveniles or incapacitated persons so requires or in a suit at law in order to conserve the subject matter of the litigation; but the judgment shall be pronounced publicly except where the interest of juveniles otherwise requires."

Paragraph 2. In the first sentence change the word "has" to "shall have", and in the second sentence change the word "is" to "shall be", so that the introductory sentences of this paragraph would read as follows:

"2. Every one charged with a penal offence shall have the right to be presumed innocent until proved guilty according to law. In the determination of any criminal charge against him, every one shall be entitled to the following minimum guarantees, in full equality:"

/At the end

At the end of sub-paragraph (c) add the words "who are within the jurisdiction and subject to the process of the tribunal," so that this sub-paragraph would read as follows:

"(c) to examine, or have examined, the witnesses against him and to obtain compulsory attendance of witnesses in his behalf who are within the jurisdiction and subject to the process of the tribunal."

Paragraph 3. This paragraph should be omitted from the Covenant.

Article 14. No change is proposed.

Article 15. Change the word "has" to "shall have", so that this article would read as follows:

"Every ~~one~~ shall have the right to recognition everywhere as a person before the law."

Article 16. Paragraph 1. Change the word "has" to "shall have" and the word "includes" to "shall include", so that this paragraph would read as follows:

"1. Every one shall have the right to freedom of thought, conscience and religion; this right shall include freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance."

Paragraph 2. No change is proposed.

Article 17. In response to the questions on page 34 of the Report of the Fifth Session of the Commission on Human Rights (document E/1371), it is the view of the United States that:

(a) An article on freedom of information should be included in the International Covenant on Human Rights.

(b) This article should read as follows:

"1. Every one shall have the right to be free from governmental interference to hold opinions, to seek, receive and impart information, opinions and ideas, regardless of frontiers, through speech, press, art or any other media.

2. This right shall be subject only to such limitations as are pursuant to law and necessary for the protection of national security, public order, safety, health or morals, or the rights and freedoms of others."

/Article 18.

Article 18. The first sentence of this article should be revised to read as follows:

"Every one shall have the right to be free from governmental interference to assemble peaceably. No restrictions shall be placed on the exercise of this right other than those prescribed by law and which are necessary to ensure national security, public order, the protection of health or morals, or the protection of the rights and freedoms of others."

Article 19. Paragraph 1 should be revised to read as follows:

"Every one shall have the right to be free from governmental interference to associate with others."

Paragraphs 2 and 3. No change is proposed.

Article 20. Paragraph 1. Change the word "are" to "shall be", so that this paragraph would read as follows:

"1. All shall be equal before the law and shall be accorded equal protection of the law."

Paragraph 2. No change is proposed.

Paragraph 3. This paragraph should be omitted from the Covenant on the ground that it is open to abuse. Its retention in the Covenant may encourage the enactment of legislation limiting freedom of speech and press.

Article 21. This paragraph should be omitted from the Covenant on the ground that it is open to abuse. Its retention in the Covenant may encourage the enactment of legislation limiting freedom of speech and press.

Article 22. Paragraph 1. This paragraph should be omitted from the Covenant because it is vague, unnecessary and open to abuse.

Paragraph 2. This paragraph should be omitted from the Covenant because it is vague, unnecessary and open to abuse.

Article 23. Paragraph 1. No change is proposed.

Paragraph 2. Insert the figure "15" before the word "States" in the first sentence, so that this paragraph would read as follows:

"2. Ratification of or accession to this Covenant shall be effected by the deposit of an instrument of ratification or accession with the Secretary-General of the United Nations, and as soon as 15 States have deposited such instruments, the Covenant shall come into force between

/them.

them. As regards any State which ratifies or accedes thereafter the Covenant shall come into force on the date of the deposit of its instrument of ratification or accession."

Paragraph 3. No change is proposed.

Article 24. This article should read as follows:

"In the case of a Federal State, the following provisions shall apply:

(a) With respect to any articles of this Covenant which are determined in accordance with the constitutional processes of that State to be appropriate in whole or in part for federal action, the obligations of the federal government shall to this extent be the same as those of parties which are not Federal States;

(b) With respect to articles which are determined in accordance with the constitutional processes of that State to be appropriate in whole or in part for action by the constituent states, provinces, or cantons, the federal government shall bring such articles, with favorable recommendation, to the notice of the appropriate authorities of the states, provinces or cantons at the earliest possible moment."

Article 25. This article should read as follows:

"Any State may, at the time of the deposit of its instrument of ratification or accession or at any time thereafter, declare by notification addressed to the Secretary-General of the United Nations that this Covenant shall extend to all or any of the territories for the international relations of which it is responsible. This Covenant shall extend to the territory or territories named in the notification from the date of receipt by the Secretary-General of the United Nations of this notification.

Each State Party to this Covenant undertakes, with respect to those territories to which the Covenant is not extended at the time of ratification or accession, to take as soon as possible the necessary steps in order to extend the application of this Covenant to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories."

/Article 26.

Article 26. This article should read as follows:

- "1. Proposed amendments to this Covenant shall first be considered by a Committee consisting of representatives of all parties to the Covenant and shall be submitted to the General Assembly for approval.
2. Such amendments shall come into force when they have been adopted by a resolution of the General Assembly and accepted by 15 States parties to the Covenant in accordance with their respective constitutional processes.
3. When such amendments come into force they shall be binding on those parties which have accepted them, leaving other parties bound by the provisions of the Covenant which they have accepted by ratification or accession, including earlier amendments which they have accepted."

II. New Articles

Many of the proposals submitted by Australia and the USSR (set forth on pages 47-50 of document E/1371) deal with subjects which, in keeping with the spirit and intent of the Universal Declaration of Human Rights, would lend themselves to incorporation in international agreements "to secure their universal and effective recognition and observance". Depending upon the subject matter to be dealt with, such agreements, in these fields might take the form of separate, detailed conventions or of additional articles incorporated in later, separate protocols to the International Covenant on Human Rights.*

The United States believes, however, that the drafting of articles dealing with the types of subjects covered in many of the Australian and USSR proposals should be undertaken only after the most careful consideration and the fullest possible exploration, especially in the light of the differing levels of economic and social development attained or attainable in each of the Member States, of what provisions can, with any degree of feasibility and efficacy, be included in such agreements. Such consideration and exploration will take considerable time.

* The subject of trade union rights is of course already provided for in Article 19 of the draft Covenant.

The Commission has already devoted several years to the development of the articles in the draft Covenant. To undertake, at this time, the consideration, exploration and drafting of articles dealing with many of the subject matters dealt with in the new articles proposed by Australia and USSR would, in the view of the United States, seriously hamper the completion of the Covenant at the next session of the Commission. It is important, the United States feels, that every possible effort should be made for the completion of the Covenant at the next session of the Commission in order that the draft Covenant may be forwarded to the Economic and Social Council in time to enable the Council to submit the draft Covenant to the General Assembly for its consideration at its fifth (1950) session.

However, in order that there may be the speediest possible progress made in the progressive developments of such international agreements as may be found feasible of being undertaken to secure the universal and effective recognition and observance of the human rights set forth in the Universal Declaration, the United States proposes that the Commission, at its next session, begin the exploration of the extent to which it would be feasible to include in subsequent conventions or protocols matters dealt with in the Universal Declaration but not to be included in the initial covenant on human rights. It is the feeling of the United States that, in the course of such exploration, the Commission not only should consider carefully the report of the Secretary-General undertaken, pursuant to the Commission's resolution at its fifth session, with respect to the activities of other bodies of the United Nations and the specialized agencies in matters within the scope of Articles 22-27 of the Universal Declaration but also should obtain the views of and the facts available to such bodies and agencies bearing upon the measures which may, in the light of economic development among the Member States, be undertaken with respect to these matters.

III. Proposal on Implementation

The International Covenant on Human Rights should include an article on implementation which provides only for complaints by one State against another State with respect to alleged violations of the Covenant.

/The United States

The United States proposes that this article read as follows:

"1. If a State Party to the Covenant considers that another State Party is not giving effect to a provision of the Covenant, it may, by written communication, bring the matter to the attention of that State. Within three months after the receipt of the communication, the receiving State shall afford the communicating State an explanation or statement in writing concerning the matter, which should include, to the extent possible and pertinent, references to domestic procedures and remedies taken, or pending, or available in the matter. At any time after six months have elapsed from the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter, by notice to the Secretary-General of the United Nations and to the other State, to a Human Rights Committee to be established in accordance with the provisions of this Article.

2. The Secretary-General shall maintain a panel of persons, named by States Parties to the Covenant from among their respective nationals for their high moral character and suitable ability, to serve on Human Rights Committees in their personal capacity. Each State Party to the Covenant may, for this purpose, name four persons and from time to time such additional persons as are necessary to maintain two available nationals of that State on the panel. Each such person shall be named for a period of five years and shall be eligible to be renamed. A vacancy in the national group of any State shall be filled by that State for the unexpired period.

3. Upon notice being given to the Secretary-General under paragraph 1, a Human Rights Committee shall be established consisting of five persons elected from the panel by majority vote of States Parties to the Covenant and voting. One of the members so elected shall be a national of the State referring the matter and another shall be a national of the other State concerned. In the event of the inability or refusal or failure to serve on the part of nationals of a State entitled to serve or if there is no national of that State on the panel, nationals of other States may be elected to the Committee from the panel. No State shall have more than one national on any Committee. A vacancy on the Committee shall be filled in the same manner as provided in the initial election. The Secretary-General

/shall make

shall make the arrangements and fix the time for the election of a Committee. Any person elected to a Committee shall continue to serve on that Committee for its duration, even though his term of five years as a member of the panel may have expired.

4. The Secretary-General shall convene the initial meeting of the Committee. The Committee shall meet at the Headquarters of the United Nations, in the absence of agreement to the contrary between the Committee and the Secretary-General.

5. The Committee shall establish its own rules of procedure provided that:

(a) Three members shall constitute a quorum;

(b) The work of the Committee shall proceed by a majority vote of the members present and voting;

(c) A State concerned shall have the right to a hearing before the Committee and to make submissions to it orally and in writing; and

(d) The Committee shall hold hearings and other meetings in closed session.

6. The Committee may call for relevant information from any State concerned, and this State shall to the extent feasible supply the information requested.

7. The Secretary-General shall provide necessary services and facilities for the Committee and its members.

8. The Committee may ask the United Nations Commission on Human Rights* to request the International Court of Justice for an advisory opinion on legal questions.

9. The Committee shall as soon as possible and in no event later than two years after its first meeting report its findings of fact to the States concerned, and to the Secretary-General for publication, and the Committee shall thereupon cease to exist. Normally, if the Committee finds that in the matter before it, domestic judicial and administrative remedies have not

* It will be necessary for the General Assembly to authorize the Commission on Human Rights to request advisory opinions of the International Court of Justice in accordance with Article 96 of the Charter of the United Nations.

been availed of or exhausted, the Committee shall limit its report to this finding. The records of the Committee shall be deposited with the Secretary-General.

10. Nothing in this Article shall preclude reference of the matter to the International Court of Justice for decision if the States referred to in paragraph 1 so agree."

IV. Questionnaire on Implementation

The views of the United States with respect to the questions raised in the Questionnaire on Implementation are set forth in III above.
