United Nations | Nations Unies

ECONOMIC AND SOCIAL COUNCIL | CONSEIL ECONOMIQUE ET SOCIAL

UNRESTRICTED

E/CN.4/SR 129
27 June 1949

ENGLISH
ORIGINAL: FRENCH

COMMISSION ON HUMAN RIGHTS

Fifth Session

SUMMARY RECORD OF THE ONE HUNDRED AND TWENTY-NINTH MEETING

Held at Lake Success, New York,
on Wednesday, 15 June 1949, at 2.30 p.m.

CONTENTS:

Chairman:	Mrs. ROOSEVELT	United States of America
Rapporteur:	Mr. Charles MALIK	Lebanon
Members:	Mr. HOOD	Australia
	Mr. STEYAERT	Belgium
	Mr. SAGUES	Chile
	Mr. CHANG	China
	Mr. SORENSEN	Denmark
	Mr. LOUTFI	Egypt
	Mr. CASSIN	France
	Mr. GARCIA BAUER	Guatemala
	Mrs. MEHTA	India
	Mr. GOUDARZI	Iran
	Mr. AQUINO	Philippines
	Mr. KOVALENKO	Ukrainian Soviet Socialist Republic

Any corrections of this record should be submitted in writing, in either of the working languages (English or French), and within two working days, to Mr. E. Delavenay, Director, Official Records Division, Room F-852, Lake Success. Corrections should be accompanied by or incorporated in a letter, on headed notepaper, bearing the appropriate symbol number and enclosed in an envelope marked "Urgent". Corrections can be dealt with more speedily by the services concerned if delegations will be good enough also to incorporate them in a mimeographed copy of

Members (continued):

	Mr. PAVLOV	Union of Soviet Socialist Republics
	Miss BOWIE	United Kingdom
	Mr. MORA	Uruguay
	Mr. VILFAN	Yugoslavia

Consultants from non-governmental organizations:

Category A:	Miss SENDER	American Federation of Labor (AF of L)
	Miss STUART	World Federation of Trade Unions (WFTU)
Category B:	Mrs. AIETA	Catholic International Union for Social Service
	Mr. STEINER	Commission of the Churches on International Affairs (CCIA)
	Mr. SCOTT	International League for the Rights of Man
	Mr. PERLZWEIG	World Jewish Congress

Secretariat:

	Mr. HUMPHREY	Representative of the Secretary-General
	Miss KITCHEN	Secretary of the Commission

DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS (E/800, E/CN.4/296, E/CN.4/328, E/CN.4/337) (discussion continued)

Article 23 (discussion continued)

Mr. AQUINO (Philippines) said that, before dealing with the substance of the United States amendment, he would like to comment on its technical aspect. He approved, from a formal point of view, the method of accession proposed by the United States, with the additions suggested by the representative of the Legal Department of the Secretariat.

His delegation did not feel strongly on the number of accessions necessary to give effect to the Covenant, and agreed with other representatives that a fairly large number was needed in order to give it a universal character.

He disagreed with the French amendment which proposed that the Covenant should come into force only after two of the permanent members of the Security Council had acceded. Such a provision would introduce a political concept which would be not only undesirable but altogether out of place. He approved of the principle that the Covenant should be open for accession and signature to all States, as its effectiveness would depend on the extent of its application. The

/desire

desire to give it a universal character should take pride of place over the ideological considerations which had prompted the Commission to exclude certain States. In practice, no State could be excluded if it undertook, through its domestic legislation, to respect the rights and freedoms proclaimed in the Covenant. Governments whose political ideas were unreliable, would manifest a desire to learn democratic methods by signing the Covenant.

He did not agree with the proposals that States non-members of the United Nations could accede to the Covenant only on the General Assembly's invitation. To do so would be to introduce ideological and political considerations which his Government wished to set aside.

He would, therefore, vote for the United States amendment.

Mr. CASSIN (France) favoured the methods for ratification and accession proposed by the United States, but could not agree to the Covenant being open for signature to all States. It would be preferable to abide by the traditional method which required that the General Assembly should invite all States, or a certain number of States, to accede to a humanitarian covenant. A signature should be accompanied by a genuine moral accession. Moreover, as the legal status of certain States had not been fully recognized, it would be wiser to invite States to accede rather than to allow them to accede as a right.

The Covenant should be put into effect only in accordance with clearly defined conditions. In the first place, it should have been ratified by two-thirds of the States Members of the United Nations, and secondly, two of the permanent members of the Security Council should be among the signatory States. It was essential that the Covenant should be ratified by as many States as possible. After the quasi-unanimous adoption of the Universal Declaration of Human Rights it would be disgraceful if the Covenant were to be ratified by a few States only. The initiative should not be left to those States which did not wish to sign the Covenant.

If the Commission thought that the ratio of two-thirds was too high, his delegation would not refuse to consider the possibility of a smaller proportion such as a half, as had been proposed by the Egyptian delegation. Moreover, it was not the provisions of the Covenant which would stand in the way of its ratification, as for many civilized countries they would merely confirm existing legislation. It was nevertheless true that the Covenant did introduce real moral and

political innovations, such as the right of petition recommended by France. It was highly desirable that the Covenant should not only receive as many ratifications as possible but also that it should enjoy the accession of having great political responsibilities, a large population and wide influence. If only a small number of States acceded to the Covenant and if the signatory States did not have wide responsibility, the innovations it introduced would thereby lose in scope. The purpose of his delegation's proposal was the better to defend the Covenant; it was not a matter of theorizing but of building up something solid.

Mr. MORA (Uruguay) favoured the United States amendment with the modification suggested by the representative of the Legal Department, which provided that the Covenant should be open not only for signature but also for the accession of States, thus giving the ceremony of signing a greater moral weight.

In regard to the number of accessions required for the Covenant's implementation, he agreed with the Lebanese representative that in view of the amount of work devoted to the drafting of the Covenant, it might be hoped that Governments would ratify it without delay, and that there would be no difficulty in gathering an adequate number of accessions. All States wishing to apply the Covenant immediately should be authorized to do so, and he therefore formally proposed the following amendment to paragraph 2 of the United States amendment:

> "... The Covenant shall come into force between the States which have ratified or acceded to it as soon as the instruments of ratification or accession have been deposited ..." (E/CN.4/337)

It would be better for the present if the Covenant were not open for signature to all States, and he preferred the text proposed by the Drafting Committee. If that text were rejected, his delegation would be forced to abstain from voting. While the Covenant should certainly be given a universal character, it should not be forgotten that no machinery for its application had as yet been set up. It was not advisable to allow all States to sign the Covenant until some means of punishing those who violated it were available.

Mr. PAVLOV (Union of Soviet Socialist Republics) thought that it was very important to realize the real meaning of the United States amendment. While the first paragraph of the Drafting Committee's text indicated clearly which States could accede to the Covenant, the United States amendment proposed that the Covenant should be open for signature or accession to all States, even Franco Spain. His delegation felt that the Commission could not accept such a proposal, and he quoted, in support of his statement, the General Assembly resolution on Spain of December 1946, which emphatically condemned the Franco regime. It was the Commission's duty to prevent the attempt by certain delegations to revise that decision.

There was no need to discuss in detail the existing reign of terror in Spain where thousands of patriots were daily being imprisoned or put to death because of their democratic beliefs. The standard of living in Spain was very low and unemployment, hunger and sickness were the familiar trappings of that regime which had nothing in common with democracy.

The adoption of the United States amendment would make it possible for Franco Spain to accede to the Covenant. Such an act would be a blatant mockery of all the work accomplished by the Commission, and would be contrary to the will of the peoples who refused to make peace with the Fascists.

He understood why certain delegations did not wish to include in the Covenant the right for all to work and rest. Those rights were not applied in Franco Spain and that fact would have made it impossible for Franco to accede to the Covenant.

Mr. Pavlov hoped that the Commission would realize that its duty was to obey the General Assembly Resolution and not to deceive the democratic peoples in such a monstrous way.

The text of article 23 as proposed by the Drafting Committee was better and had a more progressive character; he therefore asked the members of the Commission to adopt it.

He did not attach much importance to the second paragraph of the United States amendment: it was not the formalities of accession which mattered but the actual substance of the article.

As to the number of accessions required for the Covenant's implementation, he believed that the Covenant should be of international significance; he did not, therefore, agree with the Lebanese representative

/who thought

who thought that the Covenant could simply become a bilateral convention. The Commission's objective should be to obtain the ratification of the Covenant by all peace-loving countries. It would be wiser, at that stage, not to mention a minimum number as that might delay the Covenant's implementation. That point could be decided after the list of human rights had been clearly determined; there was as yet no need for lengthy discussions on that subject.

In reply to the USSR representative, the CHAIRMAN, speaking as the representative of the United States, said that opening the Covenant for accession to all States would promote a more general respect for human rights. Any State not a member of the United Nations undertaking to promote the respect for those rights would satisfy one of the conditions for membership in the United Nations. The USSR representative had mentioned only Franco Spain, whereas her delegation had had other countries, such as Yugoslavia and Bulgaria, in mind. The United States attitude towards Franco was clear; her country had joined in the general condemnation of the Franco regime and its attitude was unchanged.

The Chairman reminded the representative of the USSR that when Mr. Gromyko had presided in the Security Council, the Council had unanimously decided that the International Court of Justice should be open to all States without exception; Franco Spain was, therefore, free to say that it accepted the Court's jurisdiction.

In conclusion, the Chairman said that the purpose of the United States amendment was to assure respect for human rights by as many States as possible. Her delegation would not insist that the number of States should be fifteen, as stated in its amendment.

Mr. HOOD (Australia) thought that the decision on Franco Spain had nothing to do with the question.

In connexion with the possibility of all States acceding, he referred to the preamble of the Universal Declaration of Human Rights in which the General Assembly stated that every individual and every organ of society should strive to promote respect for and the universal application of human rights but which added "both among the peoples of member States themselves and among the peoples of territories under their jurisdiction". He was not sure whether those last words could be considered as a directive from the General Assembly, but, anyway that text had been adopted. He doubted whether the Commission was competent

to propose that the Covenant, unlike the Declaration, should be open to accession by non-member States. It would be wiser to leave a decision on that matter to the General Assembly. He therefore preferred the Drafting Committee's original text and thought that it should be adopted.

As to the requisite number of accessions, he pointed out that the Covenant's application would in the end depend on what action would be taken in the event of violations. The Lebanese delegation believed that it would be sufficient for two States to accede to the Covenant for it to come into force. That view might be justifiable, but in such cases the means of application would be reduced to a minimum. An adequate number of ratifications should be decided upon, such as ten or twelve, so that, in the event of a violation of human rights, recourse could be made to a body which had been established to see that those rights were respected.

He was in favour of the second paragraph of the United States amendment provided that the number of ratifications required was reduced to ten or twelve.

Referring to the French delegation's proposal, the Australian representative agreed that the permanent members of the Security Council had greater political responsibility than other States, but thought that the effectiveness of the Covenant would depend on a country's moral responsibility rather than on its political importance. It could not be claimed that small countries had less moral sense than the great Powers, and the arguments advanced by the French representative were neither decisive nor pertinent.

Mr. VILFAN (Yugoslavia) was opposed to the United States proposal to open accession to the Covenant to all States, as that would enable Franco to accede. The problem had a practical bearing which should not be overlooked. It was possible that States would agree to sign the Covenant without sincerely intending to apply it, and that was why a distinction should be made between States which were members of the United Nations and those which were not. The existing international situation should be taken into consideration as well as General Assembly resolutions and the policy of the United Nations. There were differences between States, and traces of fascism still remained in the world. Although, at first glance the United States proposal appeared to flow from legal considerations, it could, however, give rise to doubts regarding that country's attitude towards Franco.

/Mr. Vilfan felt

Mr. Vilfan felt it would be wiser not to accept the United States proposal and he suggested that the text submitted by the Drafting Committee should be adopted.

He did not hold any strong views on the formalities of accession. He recalled the remarks of the representative of the Legal Department on the matter, and felt that although the ceremony of signing had formerly been a solemn affair because of its rareness, it could well be dispensed with nowadays.

Mr. Vilfan thought moreover, that it would be better not to fix immediately the number of ratifications required. His delegation hoped that the Covenant would be ratified by the largest possible number of States and if the French proposal were put to the vote, he would support it although he preferred that the Commission should postpone its decision on that matter until a later date.

The CHAIRMAN proposed to put the various proposals before the Commission to the vote.

Mr. SOERENSEN (Denmark) suggested the adoption of the wording of article 11 of the Covention on Genocide and that the first paragraph of the United States amendment should be redrafted to read: "The present Covenant shall be open for signature and accession on behalf of any Member of the United Nations and of any non-member State to which an invitation to sign has been addressed by the General Assembly."

Mr. PAVLOV (Union of Soviet Socialist Republics) asked for a roll-call vote on the second part of the first paragraph of the United States proposal.

In reply to the observations of the representative of the United States, he pointed out that the accession of any State to the Statute of the International Court of Justice was submitted for approval to the Security Council. The Security Council decision referred to by the Chairman had had no connection with the question of accession and was therefore irrelevant to the present debate.

The CHAIRMAN put to the vote the opening phrase of the first paragraph of the United States amendment with the change suggested by the representative of the Legal Department.

/The opening

The opening phrase read: "The present Covenant shall be open for signature or accession..."

The opening phrase was adopted unanimously.

The CHAIRMAN put to the vote the second part of the first paragraph, as amended by the representative of Denmark, which read: "on behalf of any Member of the United Nations and of any non-member State to which an invitation to sign has been addressed by the General Assembly."

A vote was taken by roll-call as follows:

In favour:	Australia, Chile, China, Denmark, Egypt, France, Guatemala, India, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom, Uruguay, Yugoslavia.
Against:	United States of America.
Abstaining:	Lebanon.

The second phrase was adopted by 13 votes to 1, with 1 abstention.

The CHAIRMAN called for a vote on the first paragraph as a whole.

The first paragraph was adopted unanimously.

The CHAIRMAN invited the Commission to take a decision on the second paragraph of the United States amendment, having in mind the Uruguayan amendment.

Mr. Charles MALIK (Lebanon), on a point of order, observed that it would be better to vote first on the proposal that no mention should be made for the time being of the number of ratifications required for the Covenant to come into force.

That proposal was adopted by 8 votes to 5, with 1 abstention.

The CHAIRMAN noted that with the adoption of that proposal all the amendments calling for a specific number of ratifications fell, including the part of the Uruguayan amendment which stipulated that the Covenant would come into force as soon as the instruments of ratification or accession had been adopted.

She, therefore, called for an immediate vote on the second paragraph as a whole.

The second paragraph was adopted unanimously.

/The CHAIRMAN

The CHAIRMAN put to the vote the third paragraph of the United States amendment.

The third paragraph was adopted by 13 votes to none, with 2 abstentions.

The CHAIRMAN put article 23 as a whole to the vote.

Article 23 was adopted unanimously.

Mr. AQUINO (Philippines) said that if he had had the right to vote, he would have favoured the article as it had just been approved, although with reservations regarding the conditional clause according to which non-member States of the United Nations could not accede to the Covenant unless invited to do so by the General Assembly. That clause compromised the universal nature of the Covenant.

Article 24

The CHAIRMAN, speaking as the representative of the United States of America, recalled that her delegation had proposed an amendment to sub-paragraph (a) of article 24 (E/CN.4/225). As a result of the Indian proposal concerning the same article (E/CN.4/240), the United States was now submitting an amendment to that proposal (E/CN.4/328). The underlined words in the United States amendment indicated the changes proposed in the Indian text and the United States delegation suggested that those phrases should be put to the vote first If they were adopted, a vote could then be taken on the United States proposal as a whole; if they were rejected, the Indian proposal would be put to the vote.

The Chairman pointed out that the wording proposed by the United States was not new and corresponded more or less to that used in the Constitution of the International Labour Organization, as amended at Montreal in 1946, and she noted that forty-six States had accepted that Constitution. The United States proposal provided that:

> "(a) With respect to any articles of this Covenant which the Federal Government regards as appropriate under its constitutional system, 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;"

The United States attached great importance to the last phrase of its text.

Concerning the need of inserting a similar article in the Covenant, the Chairman, speaking only from the point of view of the United States, although other Federal States might find themselves confronted with the

/same

same problem, remarked that under the constitution of her country, many powers were vested in the people of the forty-eight States and that the Federal Government only exercised the power which was conferred upon it. Like the ILO Conventions a covenant on human rights dealt in large measure with questions concerning the individual in his relations with his local Government, matters over which the Federal Government in the United States exercised no control.

Moreover, in respect of the field of application of federal law, the United States wanted its obligations to be comprehensive. Under the terms of the Constitution, the forty-eight States had no power to conclude treaties with foreign countries.

The United States delegation had studied the Indian proposal closely and noted that it omitted the words "which the Federal Government regards as appropriate...for federal action". For the United States, the competence of the Federal Government and that of each State was clearly determined by a decision of the federal judiciary. For administrative reasons, the United States believed that the authority responsible for determining the competence of the Federal Government and of each State, must be the Federal Government itself.

If the Commission were to accept the Indian amendment as it stood, it might be claimed that the intention of the authors of the Covenant, was to leave it to the other parties to the Covenant or to an international organ to define the competence of the federal Government and that of each State. Only jurists having very wide experience in the field of the Constitution of each country would be able to resolve so delicate a problem.

The Indian amendment was basically the same as that of the United States, except for the omission of the words "which the Federal Government regards as appropriate...for Federal action" and the Chairman proposed that those words should be added to the Indian proposal.

Mr. LOUTFI (Egypt) agreed that article 24 raised an important and delicate question for the United States. The federal State was a phenomenon of constitutional law which had to be considered, because it existed and could not be changed. For that reason it would be preferable to postpone any decision on article 24 until the following session and, in the interim, to forward to the Governments, for fuller study by experts, the basic text with all its amendments, together with the commentary of the United States representative.

/Miss BOWIE

Miss BOWIE (United Kingdom) stated that she would be prepared to accept as a substitute for the first paragraph of her amendment (E/CN.4/320) either that of the United States (E/CN.4/225) or that of India as amended by the United States (E/CN.4/328).

The second paragraph of the United Kingdom amendment must be retained, for it contributed a substantive innovation, namely, the obligation for a federal State to inform the other signatories of the Covenant of the measures taken to implement its provisions by the States, provinces or cantons which composed the federal State.

In the opinion of the United Kingdom delegation, the federal clause was the logical counterpart of the colonial clause in any international convention. In point of fact, it would not be proper if a federal State, in adhering to a convention, did not undertake, for its various component States, an obligation analogous to that which had to be taken by an administering authority with regard to Trust or non-self-governing territories.

Mr. HOOD (Australia) indicated that his vote would depend upon the position taken by the representative of India with regard to the United States amendment to the Indian amendment. If she did not accept it, Mr. Hood would vote for the first United States amendment (E/CN.4/225); if she did accept it, the Australian representative believed that the combined texts of India and the United States would so closely resemble the wording proposed by the Drafting Committee that it would be simpler to return to the original article, which had been inspired by the wording adopted by the Constitution of the International Labour Organization.

Mrs. MEHTA (India) could not accept the United States amendment, as it introduced the verb "regards", which was so indefinite that it permitted the federal State to be its own judge of the commitments by which it was bound by adherence to the Covenant.

The Indian delegation preferred, moreover, to support the Egyptian proposal for adjournment.

The CHAIRMAN put to the vote the proposal of the Egyptian representative to postpone a decision on article 24 to the following session, and to forward the original draft of that article to the various Governments, together with its amendments and the records of the meetings at which the matter was discussed, so

/that the

that the Governments might make an exhaustive study of the problem of constitutional law which arose on the point.

The Chairman's proposal was adopted by 12 votes to none, with 3 abstentions.

Article 25

The CHAIRMAN pointed out that the draft Covenant contained two texts of article 25, one including a draft of the so-called colonial clause, and a second, proposed by the USSR, which omitted any formulation of that nature. The Drafting Committee had favoured the first of those texts.

Speaking as the representative of the United States, the Chairman explained that her delegation had offered an amendment (E/CN.4/170), the text of which corresponded in general to the clause adopted by the General Assembly for the Convention on the International Transmission of News and the Right of Correction (A/876). It differed from that clause, however, in that the Covenant would come into force in the given territories from the moment of receipt of the notification required by the Secretary-General of the United Nations, and not after an interval of thirty days, as fixed by the said Convention. That modification was intended to bring article 25 into harmony with article 23, which fixed the coming into force of the Covenant in the territory of the signatory States as at the date of deposit of the instrument of accession. It also differed in omitting the final paragraph relative to denunciation, which had no place in the Covenant, as no possible denunciation was contemplated therein.

Miss BOWIE (United Kingdom) noted that the retention of that final paragraph in the United Kingdom amendment (E/CN.4/242) was the result of an error. Otherwise, the latter amendment was very similar to that of the United States. They hardly differed, but for the matter of the thirty-day interval, which could, as a matter of fact, be dropped in that instance. Therefore, the United Kingdom representative withdrew her own amendment in favour of that of the United States.

Mr. PAVLOV (Union of Soviet Socialist Republics) recalled that the Universal Declaration of Human Rights had proclaimed the necessity of extending the benefits of human rights and fundamental freedoms both to the populations of the member States themselves and to the territories that had been placed under their jurisdiction.

As that general principle had been given recognition in the Declaration, it followed that the Covenant should unquestionably require the extension

/of its provisions

of its provisions to all Trust and non-self-governing territories. Now, the draft of article 25 adopted by the Drafting Committee, declared that the State which guaranteed the international relations of such territories might declare, by notification, that the Covenant applied to any one of them. The question was therefore left entirely to the arbitrary decision of that State, which also might perfectly well not make such a declaration. It was true that the article made it clear further on that the contracting States should seek to obtain, as soon as possible, the consent of the proper authorities of those territories to the application of the Covenant. But it would suffice for some native princeling in the service of the administering authority to oppose application, for the entire machinery provided in article 25 to be paralyzed from the outset. If that text were adopted, it would be possible to say that the Covenant did not contain a single provision in favour of the populations of Trust and non-self-governing territories populations. Yet such peoples were the first to need protection in the field of human rights, for it was mainly in their case that those rights were most frequently and seriously violated. The text of the Drafting Committee did nothing but legalize a completely inadmissable situation.

The United States amendment was hardly more satisfactory. It used the same arbitrary wording and, although it provided in detail for the various stages at which the declaration could be made, it fixed no time limit in that respect. The second paragraph of the amendment introduced a very slight improvement in the corresponding text of the original wording but there again, the period in which a State must fulfil its obligation was not defined and the application of the clause was subjected to a reservation which rendered it practically meaningless.

On the contrary, however, the clear and concise text proposed by the USSR delegation drew the necessary conclusion from the general principle contained in the Declaration, by extending the application of the Covenant to all Trust or non-self-governing territories administered by a signatory State. Further, it specified that the provisions of the Covenant would apply equally to Trust and non-self-governing territories and to metropolitan territories, with the result that it would not be possible to maintain two different standards and the native populations would enjoy the same rights as others. States administering Trust or non-self-governing territories would not be able to dodge their obligation to compel respect for human rights within such territories; as to how they carried out that obligation depended entirely on the character of their internal relations with those territories.

/The advantage

The advantage of the USSR draft was that it was clear and avoided any suspicion of discrimination or reservation in the application of the Covenant. It should therefore command the support of all who were guided by the democratic principle of the real equality of all men.

Mr. CASSIN (France) believed that the new version of article 25, drawn from the text of the Convention on the International Transmission of News and the Right of Correction, was to be preferred to that of the Drafting Committee. It was desirable that the wording of the colonial clause should be still further improved in the future, but for the moment the United States amendment could be considered to be satisfactory.

It was not always the clauses which were most progressive in appearance, such as that proposed by the USSR, which led most surely to progress.

If every convention were applied automatically to all Trust and non-self-governing territories, there would result a general alignment at the level of the most backward people, for the signatory State could adhere to the convention only in so far as its application was possible in all the territories it administered. Now, progress would doubtless be slower in some territories than in others. It was certain, for example, that the principle of the equality of the sexes could not be applied immediately in all such territories in so far as family law was concerned. Therefore, the adoption of the general clause offered by the USSR would prevent France from ratifying the Covenant, as she would not be able to observe it in its entirety in all the territories she administered. Thus, the result obtained would be the opposite of that which was sought. The fact that its ratification was made impossible for certain countries would considerably reduce the scope of the Covenant which was but the prototype of a whole series of future covenants that would come into being only if the first of them secured a very large number of ratifications. The USSR delegation could not ignore that pragmatic aspect of the question.

The USSR delegation should, likewise, modify its attitude on one other point. At times the USSR delegation reproached the Powers charged with administration for not respecting sufficiently the autonomy of the territories for which they were responsible. At other times the same delegation called upon them to use their authority, which it alleged to be absolute, to introduce reforms without consulting the populations concerned.

/Now, France

Now, France had embarked upon a course which prevented her, thenceforward, from taking any important decision without consulting the local population. The representative assemblies that had been established everywhere were functioning normally, were taking over the administration of public affairs to an ever increasing extent, and, even as it was, had the right to take part in the adoption of decisions as important as that concerning the application of the rights of man in their territories. It was not possible to impose upon them progressive steps the necessity for which was not understood by the people on account of their attachment to their own traditions. France was resolved to hold to that course, while respecting the desires of the populations which she administered, and those desires would be given ever fuller expression through the existence of truly democratic institutions. That was why France could not possibly ratify any covenant which obliged her to ignore the will of such populations whenever a provision of that covenant did not correspond to their real state of evolution.

Mr. AGUINO (Philippines) said that he would not be opposed to the insertion of a colonial clause in the pact, if the relations between Trust or non-self-governing territories and the Administering Authorities were similar to those that had obtained between the population of the Philippines and the United States of America during the period when the latter had loyally helped the Philippine nation along the road to independence by allowing it to share in the administration of the country. As, however, that was not so and as the manner in which the populations of those territories were treated was quite different, the Philippine representative considered that the application of the pact to Trust and non-self-governing territories should not depend upon the good will of the Administering Authorities. It must be stipulated that the provisions of the Covenant applied to such territories in the same way as they did to the State under whose jurisdiction they had been placed. That condition would likewise ensure the fulfilment of one of the essential aims of the Trusteeship System as well as of the obligations undertaken by the signatories of the Charter towards the non-self-governing territories.

The Philippine delegation could not agree to the French claim that human rights and fundamental freedoms could not be granted to peoples still in a very backward state of development. It was just in such cases that the application of the pact had the most to offer. The right to progress

/could not be

could not be withheld from such peoples just because of their primitive evolution.

Mr. CHANG (China) noted that the colonial clause had appeared in all the conventions prepared under the auspices of the United Nations, but that it had not effected much change in general appreciation of the necessity for recognizing the same rights and liberties for all peoples.

In the case of the Covenant on Human Rights, however, the Commission could not, it seemed, confine itself to reproducing one of the previously adopted clauses. The object of the Covenant was completely different from that of a convention such as had been adopted in connexion with the international transmission of news and the right of correction, which dealt primarily with the rights exercised by the Administering Authority and where the role played by the peoples of the Trust Territories or non-self-governing territories was passive. In respect of human rights, however, their role should be eminently an active one. For that reason the Covenant should apply in a more direct manner to such peoples, the more so as the Declaration had already expressly proclaimed the principle of the universality of human rights.

It would, therefore, be well to consider a new formula which would reproduce, in the first part, the second sub-paragraph of the United States amendment which would require the signatory State to take the necessary measures as soon as possible with a view to the implementation of the Covenant in territories for whose international relations it was responsible. The limitation clause regarding the consent of the territories could also be included in view of the fact that a number of them already enjoyed the right to decide such matters themselves. The rest of the article might make provision for certain exceptions which the signatory State would have to justify on the grounds that they met a real necessity arising out of a constitutional text.

The drafting of such an article raised a number of knotty questions of constitutional law which should first be studied by experts on the matter. The representative of China therefore suggested that the text of article 25 should be transmitted to Governments with all pertinent amendments and comments and that no decision should be taken on it until the various delegations were able to adopt a definite attitude towards it.

Mr. CASSIN (France) remarked that the colonial clause was also included in conventions on narcotics which for the peoples of the Trust Territories and the non-self-governing territories were of as much interest and importance as the Covenant on Human Rights.

Mr. KOVALENKO (Ukrainian Soviet Socialist Republic) compared the two opinions held in the Commission with regard to article 25. On the one hand there was the clear-cut attitude of the Union of Soviet Socialist Republics and of the delegations which shared its view that human rights should be extended to all territories without exception, while on the other hand there was the stand taken by the Administering Authorities which desired certain provisional limitations of those rights in the territories entrusted to them.

In spite of the universality of human rights proclaimed in the Declaration, the United States amendment wrongly proposed to establish such limitations by admitting that the extension of the Covenant to those territories was purely optional for the State responsible for their administration. Such an attitude amounted to excluding from the scope of the Covenant the peoples which needed it most, and was indeed most difficult to explain when it was remembered that the United States had previously opposed any limitations affecting States which were not Members of the United Nations so as to permit the ratification of the Covenant by Franco Spain. Certain constitutional provisions, where they existed, must, of course, be taken into consideration, but surprise must be felt that consultation of the indigenous populations should be established as an absolute principle in a matter in which consultation would leave no doubt as to its results, for it was unlikely that those concerned would refuse to benefit from the rights and freedoms set forth in the Covenant. It seemed that the Administering Authorities did not always insist so strongly on such consultations when it came to applying to the peoples of those territories decisions which were of immediate concern to them, such as participation in the North Atlantic Treaty in which they had been included without having a chance to state their views on the matter, although the Treaty contained military obligations which they would subsequently have to meet.

The representative of France had held that in certain cases it was necessary to wait until the population had become sufficiently developed before granting them the benefits of all human rights and fundamental freedoms. But the process of natural evolution could last for centuries and the implementation of the Covenant might thus be delayed indefinitely, for the United States amendment provided for no specific time limit for the fulfilment of the obligation imposed upon the Administering Authority. Moreover, during the discussion of the Yearbook on Human Rights, the French delegation had claimed that it was unnecessary to include therein the laws applied in the Trust Territories and the non-self-governing Territories administered by France, as French legislation was fully applicable there. If all the metropolitan laws were applicable in such territories, Mr. Cassin's argument, which was based on the need to consult the local population, lost all its force.

For the reasons which he had just given, the representative of the Ukraine would vote in favour of the text proposed by the USSR delegation.

Mr. GARCIA BAUER (Guatemala) pointed out that his delegation had always been against the colonial clause. It would not swerve from that view in a matter for which the universal nature of the rights proclaimed had already been specifically announced. If some States encountered problems in connexion with their domestic legislation, they might make exceptions, but those exceptions should not figure in the text of the Covenant itself.

Mr. HOOD (Australia) did not think it was possible to admit, as the Chinese representative wished to do, that the methods of applying the Covenant should differ from those adopted for other conventions prepared by the United Nations. Like all the other conventions, the Covenant sprang from the United Nations Charter, and it could not, therefore, go beyond the obligations incumbent on the Member States by reason of the Charter.

Those obligations were specifically defined by Chapter XI in the case of non-self-governing territories, and by Chapter XII in the case of Trust Territories. For the former, the Powers concerned had accepted the obligation to ensure, with due respect for the culture of the peoples concerned, their political, economic and social advancement, their just treatment, and their protection against abuses. For the Trust Territories, their obligations were clearly specified in Article 76 and in the Trusteeship Agreements which had subsequently been concluded. The care

/with which

with which those two chapters of the Charter had been drawn up was well known. Both chapters, however, provided that the action of the Administering Authorities must allow for the particular circumstances of each territory and the differing level of its population's development; it was nowhere stipulated that a covenant like that on human rights should be applied automatically to such territories.

For that reason it was both right and necessary to stipulate, as did the United States amendment, that the provisions of the Covenant should be extended to the territories in question "as soon as possible". No limitation of the Covenant was in question, as the representative of the Ukraine had contended. A formal obligation rested on the Administering Authorities, and it was not to be expected that they would interpret it restrictively; at the same time, other provisions of the Charter referring to the same matter must be taken into account.

The CHAIRMAN, speaking as the United States representative, wished to make it quite clear that the United States amendment could not possibly be intended to promote the special interests of the United States, for her country would put the Covenant into force, as soon as it had been ratified, in all of the non-self-governing territories whose foreign relations it directed.

Mr. LOUTFI (Egypt) believed that the Covenant should, by its very essence, apply unreservedly to all Trust Territories or non-self-governing territories, for whose peoples the rights and freedoms in question were especially vital. The United States amendment was inadequate in that respect; the Covenant should restate the principle of general application which already appeared in the Declaration.

Mr. Charles MALIK (Lebanon), far from distrusting the good intentions of France, wished to pay homage to that country's humanitarian and liberal traditions and to its accomplishments in Lebanon when that latter country had been governed under French mandate. If there had been a Covenant at that time, France would doubtless have applied it in Lebanon in exactly the same way as in France, in spite of the presence of a colonial clause.

He agreed with the representative of China, however, in thinking that the Covenant on Human Rights could not be compared with the other conventions in which the colonial clause had been included in its usual form. No reservation as to application could possibly be made in the field of human rights.

/The Australian

The Australian representative's argument, based on the interpretation of certain sections of Chapters XI and XII of the Charter, did not take into account all the other provisions of that document. Article 55, for instance, recognized the unqualified and universal nature of human rights and fundamental freedoms, which had later been re-stated in the Declaration.

The Commission would not, therefore, go beyond the provisions of the Charter and would certainly not exceed its terms of reference, by excluding the so-called colonial clause from the Covenant.

The Lebanese delegation would therefore vote for the text of the USSR, unless a new proposal were made which, unlike all the previous ones, did not provide for any limitation of the Covenant's application to Trust Territories and non-self-governing territories.

Mr. VILFAN (Yugoslavia) recalled that article 2 of the Declaration had been based on an amendment of his delegation, which, when under consideration, had given rise to the same objections as those now being invoked against the deletion of the colonial clause. Article 2 had, however, been adopted, and the principle of the universality of human rights had won out in the Declaration. He hoped that the same fate awaited the objections now made in connexion with article 25 of the Covenant. The Commission could not, indeed, go back on that principle for merely legal and formal reasons. The Yugoslav delegation, therefore, would support the USSR text.

Mr. SOERENSEN (Denmark) shared the belief that both the Covenant and the Declaration should have a universal meaning, and he thought that the majority of the Administering Authorities might agree to apply the bulk of the articles of the Covenant to Trust Territories and non-self-governing territories.

He realized that in some specific cases, the number of which was limited and which might be clearly defined after a thorough study of the whole question, the interests of the peoples and territories themselves would require exceptions to be made to the application of certain rights and freedoms. There could be no question, for example, that in some of the territories of Oceania, it was essential to prevent the indigenous people from wasting their assets, and that some restrictions on their freedom of movement were necessary.

As to consulting the local population, the Administering Authorities were clearly bound in many cases by constitutional obligations which were, moreover, adequately justified by the provisions of the Charter cited by the Australian representative. Such obligations had to be respected as had those of the federal State towards the members of the federation. Administering authorities had been too often blamed for not taking the freely expressed desires of indigenous peoples into consideration for them to agree to give up the consultation system which was in itself a stage on the road to self-government and independence.

The Commission would do well, therefore, to follow the Chinese representative's suggestion, which would permit the drafting of a satisfactory text having neither the character of the colonial clause nor that of the USSR proposal, the peremptory provisions of which would be contrary to the very spirit of the Charter.

Mr. MORA (Uruguay) did not dispute the critical nature of the problem raised by article 25. Every delegation certainly wished to apply the Covenant to all territories without exception, and it would be hard to adopt a clause deviating from the principle of universality which the Declaration enshrined.

It could not be denied, however, that some States might encounter great practical difficulty in ratifying the Covenant if it were to apply at once to Trust Territories and non-self-governing territories whose foreign affairs they supervised. Hence the delegation of Uruguay supported the Chinese representative's suggestion that no decision should be taken until there had been prepared a satisfactory text inspired by paragraph 2 of the United States amendment, which reflected faithfully the intentions of those who had drafted the Covenant.

Miss BOWIE (United Kingdom) stated that her country greatly desired to apply the Covenant to all the territories under its jurisdiction, but that the provisions of the Charter itself concerning the local circumstances of each Trust and non-self-governing Territory obliged it to request the inclusion in the Covenant of a clause allowing account to be taken of the wishes of the peoples of those Territories.

/She suggested

She suggested in that connexion that the Commission should follow the course adopted by the General Assembly in passing resolution 277 (III) on the Convention on the International Transmission of News and the Right of Correction. That resolution urged each Contracting State, on the one hand, to take as soon as possible the necessary steps in order to extend the Convention's application to territories for which it had international responsibility, subject, where necessary for constitutional reasons, to the consent of the governments of such territories; and, on the other hand, urged each Contracting State to communicate to the Secretary-General within twelve months of the opening of the Convention for signature the reasons for not making a declaration of extension under article XVIII of the Convention, if that were the case.

Mr. PAVLOV (Union of Soviet Socialist Republics) thought that the discussion had reached a point where a decision might be taken, as the points of view of the various delegations had been made clear. He stressed that the decision would be only provisional, as the Commission would have an opportunity to consider article 25 again.

The Union of Soviet Socialist Republics yielded to none in respecting the self-determination of all peoples, but, in the objection with reference to consulting them, it saw only a secondary issue which should not be allowed to delay the proclamation in the Covenant of the principle of its universality.

He pointed out that Article 76 of the Charter, which the representative of Australia had cited to support his objections, set up, as the basic objectives of the trusteeship system, the political, economic and social advancement of the inhabitants, their progressive development toward self-government or independence, and the respect for human rights and for fundamental freedoms for all. It would, therefore, be difficult to interpret that article as limiting in any way the extension of those rights and freedoms to the peoples of the said territories.

To assume, as the representative of France did, that they might refuse to benefit from those rights if they were consulted, would be to count only on their ignorance. Once those rights and freedoms were given them, indeed, there could be no doubt that the peoples in question would be quick to appreciate them and use them correctly.

Mr. STEYAERT (Belgium) agreed with the statements of the United Kingdom and French representatives, and of all those in favour of adopting the United States amendment rather than the USSR text.

He stressed that the Powers which were voluntarily and loyally obeying the provisions of Article 73 (e) of the Charter, by transmitting regularly to the Secretary-General the required information concerning the non-self-governing territories which they were administering, did not deserve the continual scorn to which they were subjected on that account, while other States which refrained from obeying that provision thereby avoided all criticism.

The CHAIRMAN asked the Commission to vote on the Chinese proposal to postpone decision on article 25, and to transmit to the Governments the draft of the article, all proposals and amendments to it, pertaining to it as well as the records of the meetings of the fifth session of the Commission at which the article in question had been discussed.

The proposal was adopted by 7 votes to 4, with 2 abstentions.

The meeting rose at 6.30 p.m.