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*Chairman:* Mr. G. J. VAN HEUVEN GOEDHART (Netherlands).

**Draft first international covenant on human rights and measures of implementation (A/1384, A/C.3/534, A/C.3/535 and E/1681) (*continued*)**

[Item 63]\*

1. The CHAIRMAN suggested that the Committee should consider in turn the four questions addressed to it by the Economic and Social Council (resolution 303 I (XI) of the Council) regarding (a) the general adequacy of the first eighteen articles of the draft covenant on human rights, (b) the desirability of including special articles on the application of the covenant to federal States and to Non-Self-Governing and Trust Territories, (c) the desirability of including articles on economic, social and cultural rights, and (d) the adequacy of the articles relating to implementation.

2. The Committee might wish to sub-divide question (b) and consider federal and colonial clauses separately. The Committee, composed as it was of sixty members, was hardly a suitable body to consider the details of drafting changes. He thought its aim should be to develop, from the consideration of each of the questions referred to it, some form of policy directive which might serve as guidance for the Human Rights Commission.

3. Mr. KAYSER (France) enquired whether it was the Chairman's intention to hold successive debates on each of the four questions and to make decisions or recommendations at the conclusion of each successive discussion or to make decisions or recommendations following the termination of the debate as a whole.

4. He noted that the Economic and Social Council had grouped the questions under four headings rather than five and suggested that that grouping should be respected by the Committee; in other words, there should be one single debate on the colonial and federal clauses rather than two separate ones.

5. The CHAIRMAN agreed with the French representative's suggestion. In reply to his question, he said he would prefer the Committee to adopt one overall resolution covering all four questions rather than four separate resolutions at the conclusion of each of the four parts of the debate.

6. Mrs. ROOSEVELT (United States of America) supported the Chairman's recommendation, in the belief that it would probably best meet the wishes of the Economic and Social Council. She understood that, in addition to receiving the comprehensive recommendation of the Assembly, the Human Rights Commission would also receive the summary records of the entire discussion on the item under consideration.

7. The CHAIRMAN invited discussion on the first of the four questions, that is, the general adequacy of the first eighteen articles of the draft covenant on human rights.

8. Lord MACDONALD (United Kingdom) stated that consideration of the general adequacy of the first eighteen articles of the covenant raised two major questions: first, whether the catalogue of rights contained in those articles was itself adequate; secondly, whether those articles as drafted were adequate to protect the rights with which they dealt.

9. With regard to the first point, his delegation was satisfied that the scope of the covenant was adequate. The catalogue of rights with which it dealt was obviously not exhaustive but it did comprise all those human rights which could properly be described as fundamental. The Committee would later be considering the desirability of broadening the covenant to include economic and social rights and various other rights which had been suggested. For the moment he merely wished to state that the United Kingdom delegation was doubtful whether some of the rights referred to could properly be described as fundamental.

10. Turning to the second question, his government was by no means satisfied that the form in which the

\* Indicates the item number on the General Assembly agenda.

first eighteen articles of the covenant had been drafted was adequate to protect the rights in question. In fact, it was doubtful whether the covenant, as drafted, constituted a legally binding document at all.

11. The records of the debate in the Social Committee of the Economic and Social Council showed that there was not complete agreement that the covenant should be a legally binding document. The representative of Pakistan had argued that the covenant was not a law-making agreement but simply an agreement which declared already existing law. Thus, he had explicitly stated that in drafting the covenant no new rights were being established; the rights concerned were already guaranteed in civilized countries. Lord MacDonald whole-heartedly agreed with that concept of the covenant. The Pakistan representative, however, had gone on to say that the covenant should consequently not be regarded as a legal instrument enforceable by law. If that were the case, what was the purpose of the somewhat elaborate measures for implementation contained in articles 19 to 41? Surely, whether intentionally or not, in drafting the covenant the United Nations was drafting a legal instrument enforceable by law.

12. The Government of the United Kingdom therefore considered the covenant inadequate in its existing form. It was willing to accept obligations as extensive as those which any other Member of the United Nations was prepared to accept, but it would find it most difficult to assume obligations as imprecisely defined as those in the existing draft of the covenant.

13. He completely disagreed with the view that the covenant should confine itself to defining general principles. A statement of general principles was not, technically, a proper method of imposing binding legal obligations on States; what was required was an instrument drawn up with the greatest possible degree of precision. If the covenant was to be no more than a second edition of the Universal Declaration of Human Rights, it was a waste of time to try to cast it in the form of a legal document. The United Kingdom Government, however, wished the covenant to be an effective and enforceable legal instrument, drafted with the necessary precision. Most of the faults of the covenant as drafted were due to the fact that it followed the Declaration too closely. The Declaration was a statement of ideals; the covenant would be a part of international law. It had been proposed that an international committee should be established to investigate alleged breaches of the covenant. If that committee were to function effectively, it was absolutely indispensable that it should have an enforceable instrument which it could interpret precisely, a requirement that was not satisfied by the existing text of the first eighteen articles of the covenant.

14. The definition of the rights embodied in certain articles, notably articles 3, 6 and 8, was excessively vague. The previous discussions by the Third Committee and the Commission on Human Rights about the exact meaning of the word "arbitrary", which appeared in article 6, paragraph 1, had made it amply clear that that word could be interpreted in a variety of ways. The danger of using it in the covenant lay in the fact that it could not be maintained at all confidently that it means more than simply "in accordance

with the law". If a State were accused of having "arbitrarily" deprived a person of his liberty and defended its action before the proposed human rights committee on the grounds that the act had been performed in accordance with the law and was not, therefore, arbitrary, that committee might very well hold that that State had not been guilty of a violation of article 6 of the covenant. If that interpretation were placed on the article in question, that particular human right would hardly be safeguarded.

15. There appeared to be some inconsistency between paragraphs 1 and 2 of article 6, but, in itself, paragraph 2 provided a very poor safeguard against deprivation of liberty. When the nazi and fascist governments before and during the war had consistently trampled on human rights, they had done so by means of laws which had been valid according to their national constitutions. If the final version of the covenant contained an article drafted in such terms, all that some future Hitler would require in order to avoid violating that article would be to pass a law making membership of a particular racial or religious group, for example, punishable by imprisonment. Article 6, as it stood, was, therefore, wholly inadequate.

16. Article 8 contained what appeared to be a completely circular proposition. Thus, paragraph 1 stated that everyone legally within the territory of a State should have certain rights subject to any general law consistent with the rights recognized in the covenant. Among those rights were the ones proclaimed in article 8, so that that article merely stated that everyone had the rights proclaimed therein subject to any general laws consistent with those rights.

17. The stipulated limitations were equally inadequate, for they were so broad and vague that they could be construed as permitting the imposition of almost any restriction on the rights to which they referred and, in fact, completely nullified the effect of the articles to which they applied. The representative of Lebanon had correctly stated at the fifth session of the Commission on Human Rights that no dictator would have the slightest compunction in acceding to a covenant drafted in such terms, nor, when he had acceded, would he find that it in any way inhibited his repressive activities; he could invoke the exception in the interest of "public order", embodied in articles 13, 14, 15 and 16. Innumerable atrocities had already been committed for the protection of the State against subversive activities under that pretext. The United Kingdom representative in the Commission on Human Rights had consistently argued against the use of that phrase on such grounds.

18. The Secretary-General had pointed out, in paragraph 83 of his memorandum on the draft first international covenant on human rights (E/L.68), that the English equivalent of the civil law concept of "*ordre public*" was "public policy", a concept, as he had rightly noted, "often characterized by legal commentators as vague and indefinite". The United Kingdom delegation agreed that the introduction of that phrase into the covenant as justifying the limitation of the enjoyment of human rights might well constitute a basis for far-reaching derogations from the rights granted. Furthermore, the Secretary-General had drawn attention, in

paragraph 15 of his note on the draft covenant (A/C.3/534), to the fact that the Commission on Human Rights itself had gone on record as interpreting the term "public order" (*ordre public*) as covering both the right to license media of information and the right to regulate the importation of information material. Any phrase capable of such wide interpretation could not possibly be regarded as adequate for the protection of human rights.

19. The provision in article 1, paragraph 2, particularly the phrase "within a reasonable time", might render the whole effect of accession meaningless, for States might become parties to the covenant and yet deny to persons within their jurisdiction the enjoyment of a number of rights without violating it. That was wholly improper and undesirable. It was a general rule of international law that a State on becoming a party to an international agreement was bound to give effect to that agreement *in toto* from the moment of its accession. True, there might have been a small number of comparatively insignificant cases in which that general rule had been disregarded and a similar paragraph included in international agreements. Human rights, however, were in a different category.

20. It had been argued in the Commission on Human Rights that the laws of a particular country, while giving effect to the covenant in general terms, might be at variance with them in some comparatively minor respect. There might be some truth in that argument and it was to be conceded that it would be unreasonable in such a case to make it impossible for that State to accede until it had made the necessary alteration in its law. That might require some time, but, in any case, the method advocated in the draft covenant was neither the right nor the only possible one.

21. At a later stage he would formally submit to the Committee a proposal which the United Kingdom representative had already submitted to the Commission on Human Rights, namely that an article should be included permitting States to make unilateral reservations in respect of particular provisions of the covenant to which their existing law did not give effect at the time of accession. That proposal would, in his opinion, meet the arguments in favour of the existing provision and at the same time satisfy his own delegation's objections to it.

22. Mrs. ROOSEVELT (United States of America) said that, apart from certain relatively minor drafting changes, the first eighteen articles of the draft covenant were basically satisfactory to her delegation. She had been interested in the statement made by the United Kingdom representative, which reflected part of the lengthy debates that had taken place previously, on whether one general limitation would be preferable to an enumeration of specific limitations to the rights concerned. She feared that the latter alternative might result in the loss of all the rights set forth in the draft covenant. While the point involved was not new, it might perhaps be possible for the Committee to provide the Human Rights Commission with some guidance on it.

23. AZMI Bey (Egypt) stated that his country had given proof on many occasions of its great respect for

human rights and had enthusiastically welcomed the adoption of the Universal Declaration of Human Rights. Basic human rights were fully protected by the Egyptian Constitution which reflected the Declaration of the Rights of Man and of the Citizen made during the French Revolution. The advent and anniversary of the Universal Declaration of Human Rights had been celebrated in Egypt and he himself had had the honour of being one of the public speakers on the subject.

24. As long as many countries continued to derive from religion and tradition those of their laws which affected the individual more directly, it would be most difficult to achieve universal implementation of all the fundamental human rights.

25. The first eighteen articles were, generally speaking, acceptable in principle. He would, however, be obliged to deal with two rather delicate points.

26. Article 13 proclaimed the unquestionable right of everyone to freedom of thought, conscience and religion. The article went on to state, quite logically, that "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". It was, however, to be kept in mind that the draft covenant was not simply a declaration of principles but a legally binding document which, as such, had to be ratified by governments in accordance with their constitutional procedures. Attitudes in national legislatures varied from extreme liberalism to extreme reaction and he feared that the retention of the words "freedom to change his religion or belief"—a freedom which, at any rate, was implied in the first sentence of article 13—might make it difficult for many governments to secure ratification. He would therefore suggest the deletion of the words in question.

27. Article 14, paragraph 3, enumerated certain restrictions on the freedom of information. He had no objections to the criteria listed in the paragraph, but thought they should also include contingencies likely to offend the friendly relations between States.

28. Mr. BAROODY (Saudi Arabia) declared that unless the drafting of the first eighteen articles were changed along the lines suggested by his delegation at the third session of the General Assembly in Paris, it would find them unacceptable *in toto*. The draft of the eighteen articles did not sufficiently reflect the various cultural patterns of Member States. It was regrettable that the arguments advanced in that connexion by his and other delegations had been largely ignored.

29. Mr. DAVIN (New Zealand) stated that while the categories of rights outlined in the first eighteen articles were generally acceptable to his delegation, he could not express approval of the form of those articles. It was a matter of regret to his delegation that the draft covenant did not include any general article barring discrimination in economic and social matters. His delegation would support any motion calling for the inclusion of such an article.

30. He agreed with the United Kingdom representative that the rights enumerated in the eighteen articles were not sufficiently clearly defined and that the draft

covenant was more in the nature of a second edition of the Universal Declaration of Human Rights.

31. For the reasons stated, his delegation would have to oppose any proposal to express general approval of

the first eighteen articles in the form in which they stood.

The meeting rose at 4.5 p.m.