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

*Later,* Mr. A. S. BOKHARI (Pakistan).

**Draft first international covenant on human rights and measures of implementation (A/1384, A/C.3/534, A/C.3/535, E/1681 and E/1721 and Corr.1) (*continued*)**

[Item 63]\*

1. The CHAIRMAN opened the debate on the second question which had been put to the General Assembly by the Economic and Social Council concerning the draft first international covenant on human rights, namely, the desirability of including special articles on the application of the covenant to federal States and to Non-Self-Governing and Trust Territories.

2. Mrs. ROOSEVELT (United States of America) suggested that in order to simplify matters, the federal clause and the colonial clause should be discussed separately.

3. Mr. Danton JOBIM (Brazil) said that while he understood the reasons which had prompted the United States delegation's proposal, other delegations might like to compare the two clauses. They should, therefore, be allowed to choose the method they preferred and, for his part, he intended to make only one statement on the two questions.

4. Mr. SOUDAN (Belgium) said he agreed with the representative of Brazil. The question of the federal clause could not be dissociated from that of the colonial clause, for they had certain features in common.

5. The colonial clause was intended to prevent the automatic application of a convention to territories for which a signatory State was responsible and was especially justified in the case of multilateral treaties the purpose of which was to prescribe for the contracting parties rules of conduct which, as they presupposed a high degree of civilization, were often incompatible with the ideas of peoples who had not yet reached a

high degree of development. By imposing those rules on them at once, one ran the risk of destroying the very basis of their society. It would be an attempt to lead them abruptly to the point which the civilized nations of today had only reached after a lengthy period of development. A State signing a convention without reserving, by means of a colonial clause, the right to delay its application to the peoples for which it was responsible would be failing in the high mission it had accepted when signing Article 73 of the United Nations Charter. The aim of the Charter was that the aspirations of peoples should be respected and that they should only be led towards civilization in a progressive manner which was adapted to their varying degrees of development and to the special conditions of each country.

6. By the federal clause, the federal State which acceded to a convention merely assumed international obligations with respect to those provisions of the treaty which, in accordance with its constitution were within the competence of the federal government in domestic matters. As to the other provisions, the State could only recommend their adoption to each of its constituent states. The federal clause made it possible to avoid the obligations of a convention to an extent which could be extremely broad, according to the State. It allowed the federal States to adhere to a convention with ease, as it freed them from putting into force in their territory the provisions which would impose respect for that convention on the constituent states. The latter would thus avoid those obligations without it being possible to consider that the federal State had violated its international obligations. That clause, however, was not justified by the constitutional difficulty for it was equally possible, from the constitutional point of view, for the federal States which were Members of the United Nations to bind their constituent states by a convention, such as the covenant on human rights, just as they had been able con-

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

stitutionally to bind those States by the United Nations Charter. There was no doubt that the Charter was completely binding on both the federal States and each of their constituent states.

7. Both the colonial clause and the federal clause, therefore, tended to restrict the scope of the obligations inherent in participation in a treaty. That similarity called for a comparative, simultaneous examination which, although it might not necessarily lead to conclusions applicable to both clauses, would certainly contribute to a better understanding of the problems involved.

8. Mr. MENDEZ (Philippines) formally proposed that the question should be studied in two parts.

*The proposal was adopted by 17 votes to 16, with 15 abstentions.*

9. The CHAIRMAN invited the Committee to discuss the question of including a federal clause in the covenant.

10. Mrs. ROOSEVELT (United States of America) reminded the Committee that because of the short time at its disposal at its sixth session the Commission on Human Rights had postponed consideration of article 43, which dealt with the application of the covenant to federal States.

11. She read the proposal submitted by her delegation at that time, which stated that with respect to any articles of the covenant which were determined in accordance with the constitutional processes of a State to be appropriate in whole or in part for federal action, the obligations of the federal government should be the same as those of contracting parties which were not federal States, whereas with respect to any articles which were determined to be appropriate in whole or in part for action by the constituent parts of the federal State, the federal government should bring such articles, with favourable recommendation, to the notice of the appropriate authorities of the constituent parts at the earliest possible moment.

12. Her delegation considered that an article based on the principles laid down in that proposal must be included in order to make it possible for federal States to adhere to the covenant.

13. Under the United States Constitution there was a traditional division of power between the federal government and the state governments. The United States obviously wished to assume the widest obligations possible with respect to the application of the covenant so long as they were compatible with that division of power. The federal government was ready to subscribe to the obligations contained in the covenant on any matters within its competence, but it could not do more than bring any obligations within the competence of the appropriate authorities in the forty-eight states to the attention of those authorities, with favourable recommendation, at the earliest possible moment.

14. As was well known, the text of article 43 proposed by the United States was largely based on article 19, paragraph 7, of the Constitution of the International Labour Organisation as amended at Montreal in 1946 and ratified or accepted by approximately forty-six countries.

15. Mr. MOODIE (Australia) firmly supported the proposal to insert a federal clause in the covenant.

16. The Human Rights Commission had not so far exhausted consideration of that question, which involved a thorough understanding of the complexity of federal systems of government and of the constitutions of federal countries. It would therefore be best not to impose any final decision upon the Commission on Human Rights, but to allow that Commission (rather than the Economic and Social Council or the General Assembly) to study the question in detail, to make comparisons and to prepare a draft. If as a result of disagreement among its members, the Commission on Human Rights declined to express an opinion on the fundamental question whether such a clause was necessary for any particular State in the case of an international instrument like the covenant, then the Assembly could intervene in the matter. The question should be settled by experts, in the first instance, if possible. At that stage therefore, he would only explain in general terms why the federal clause was essential for Australia.

17. The idea of a federal clause was not new; it had been applied by the International Labour Organisation thirty years earlier, and again after the Second World War, having regard to the constitutional requirements of States. There were different varieties of federal States. In some, the central government held very wide powers, while in others such powers came within the competence of the constituent states of the Federation. The common feature was the division of legislative powers. The central government could not assume responsibilities which were not within its competence without endangering the basic compromise of federation and, ultimately, the federation itself.

18. Citing Australia as an example, he said that the central government had thirty-nine clearly-defined powers, while the residual powers were within the competence of the states. The Constitution contained a liberal clause providing for its interpretation by the Federal High Court, whose task was to maintain the balance between the federal government and the governments of the constituent states.

19. In the case of the covenant, two indisputable facts had to be taken into consideration. On the one hand, many of the questions dealt with by the Commission on Human Rights were primarily within the competence of the constituent states: they included such fundamental questions as capital punishment and judicial process, retroactive legislation and punishment, liberty of movement, freedom of speech and thought, freedom of association and assembly. On the other hand, it was the wish of the people of Australia that the constituent states should retain and exercise their powers. For the central government unilaterally to accept and ratify the covenant would not only be provocative to State feeling, but would be a breach of the whole spirit of the federation. The constituent states must be consulted and must indicate their views.

20. The Australian delegation believed, therefore, that it would be premature to reject the federal clause and that the question should be referred back to the Commission on Human Rights so that it could study the matter more thoroughly and draft a text.

21. Mr. BOKHARI (Pakistan) was sorry that the Committee had felt it necessary to divide the question, which it would have been advisable to discuss as a whole.

22. The problem of the federal clause was important and its consequences should be understood. The Commission on Human Rights was trying to draw up a text of a covenant protecting human rights. In accordance with the usual procedure, the covenant, once approved, would be submitted to governments. A certain number of them would then perhaps state, in raising more or less imaginary difficulties, that they could not ratify it unless it contained the federal clause because their constitution would not permit them to do so. The contracting States would therefore not be bound to the same degree.

23. It should not be forgotten that each member of the Committee represented a sovereign State able to assume international obligations, and not a federal or central government. When it was a question of voting on one clause of the covenant, however, those States voted as States, but they changed themselves into federal governments when it was a question of signing the covenant. It should be determined whether or not they represented States with sovereign rights.

24. Some representatives might have the impression that they were meeting with real difficulties. Their country's constitution left certain powers to the federal government and gave the rest to the states, provinces or cantons which made up the nation. It was a question of knowing whether, when the representatives voted, they did so in the name of the federation, of its component parts, or of the two at the same time. If the question was not settled at the outset a paradoxical situation might arise because those representatives, after having voted for each article, would state that they could not vote for the articles as a whole.

25. While accepting the hypothesis that such representatives experienced difficulties which were not real, it might be admitted that they were bound to ask the opinion of the parties composing their State regarding certain parts of the covenant. They should therefore consult those parties and then sign, pledging all their responsibility if they had received authority to do so. The world would understand their position if they were unable to sign. But they could take their time; even if that procedure took two or three years it would be a very little time in history.

26. He wondered whether there really existed such serious difficulties as the representatives in question seemed to believe. It was a question of elementary rights such as that which placed everyone under the protection of the law. If one of the States represented on the Committee doubted that that right would be respected in any one of its provinces, it should seriously examine such a state of affairs. It was well known that the rights recognized by the covenant already existed in many legislations, at least in the more developed countries if not in the undeveloped or under-developed ones. It was very improbable that cantons, provinces or states would raise any constitutional or practical objection against the rights set forth in the covenant. It was difficult to imagine a federation which was unable to guarantee that no one could be arrested except in the name of the law.

27. For those who might ask, in an accommodating spirit, why objections to that clause should be raised if it suited some, two arguments might be adduced. In the first place, the members of the Committee represented sovereign States some of which would sign with reservations while others would accept full responsibility. The signatures or ratifications would therefore not have the same force, and it would be unjust for some powerful States to hide behind the federal clause, thus depriving their signatures and even the covenant of any meaning. In the second place, there would certainly be differences between what were known as the federal clause and the colonial clause, but they would also be linked. The constitution of a country did not enter into the case where colonies were concerned, but if, at the time the federal clause was studied, some felt inclined to make concessions, their attitude might influence other representatives to give way on the second point.

28. He considered, therefore, that the federal clause was useless and asked the Committee to think of the unhappy moral consequences which the inclusion of that clause would have: it would encourage the adoption of a colonial clause which was even more open to criticism.

29. Mr. LESAGE (Canada) associated himself with the United States delegation, which stressed the importance of including a federal clause in the covenant.

30. The arguments advanced against the inclusion of a federal clause proceeded along two main lines: such a clause might have the effect of leaving doubt as to the obligations assumed by federal States and would result in a lack of reciprocity as between unitary and federal States. With regard to the first argument, the Canadian delegation did not feel that there could be any doubt. With regard to matters falling partly within federal and partly within provincial or state jurisdiction, the federal government would also be bound to give effect to that part of the covenant which fell within its jurisdiction. In so far as matters falling within the field of local jurisdiction were concerned, the federal government would naturally undertake to draw them to the attention of the appropriate authorities.

31. Uncertainty might be felt, however, in two respects. In the first place, at the time of the signature of the covenant there might be some doubt as to the extent of the obligations assumed by a federal government itself, and as to the relative position of a federal and a unitary State. That objection was not a substantial one, however, for it was always possible to obtain an adequate knowledge of the division of powers in a federal State. Uncertainty might also arise if the question were raised whether a federal State was implementing the obligations which it had assumed. In the basic matters dealt with in the draft covenant few concrete questions would be likely to arise.

32. The Canadian delegation did not attach much importance to the second objection—that the obligations under the covenant would not be equal for all States. The federal authorities would certainly make every effort to encourage the provincial or state governments to take the necessary measures, and the moral obligation would so strongly reinforce the juridical obligation that any lack of reciprocity would be more apparent than real.

33. In Canada the broad principle upon which powers had been distributed was that matters which could be dealt with only from a national point of view were matters for federal action, while local questions were dealt with by provincial legislatures. The draft covenant on human rights, which was a new type of covenant, presented great difficulties, in view of the federal distribution of powers. While on the one hand the covenant created an international obligation, on the other hand its aim was to determine the nature of the laws which, within the country, should govern the juridical relations of individuals with one another and with the State. The federal authority would be placed in a position where it must reconcile two obligations—an international obligation and an internal obligation—for it was bound by its duty towards local authorities to recognize the division of powers within the country.

34. Canada had always been in the forefront of the countries which wished to promote the expansion of freedom and the respect for individual rights in the world, and it was determined to carry out all its international obligations. The federal authority in Canada must, however, recognize the internal obligations upon which the federal structure of that country was based. Only the development of international law would enable Canada to reconcile those two obligations. The only course of action for the time being was to include the federal clause in the covenant. The Canadian delegation felt that, acting in good faith, its government could not become a party to the covenant without a recognition of its special difficulties as a federal State and unless it was in a position to guarantee that it would be able to carry out its obligations.

35. The fact that emphasis was placed on the need for Canada to be in a position to guarantee performance of its obligations under the covenant did not mean that the recognition accorded to human rights in Canada was in danger of being withdrawn or diminished. The rights and freedoms outlined in articles 1 to 18 of the draft covenant were already basic concepts in the federal and provincial laws of Canada and would always remain so. To sign a pact without a federal clause would, however, be tantamount to giving a guarantee that no provincial government would at any time change one of its laws in a way which would have the effect of contravening, even in the most minor manner, any provision of the covenant.

36. He recalled the reservations made by his delegation as to the adequacy of the first eighteen articles and reserved its position regarding the third and fourth questions put to the General Assembly by the Economic and Social Council.

37. Mr. BEAUFORT (Netherlands) said that in the opinion of his delegation the covenant should include a federal clause.

38. He was sure that all the members of the Committee were well acquainted with the problem and with the arguments which could be put forward in favour of or against the inclusion of such a clause.

39. It could not be denied, for instance, that the adoption of a federal clause would result in considerable disparity of obligations between the unitary States, which would be engaged unconditionally, and the non-

unitary States, which would be engaged only to the extent authorized by their respective constitutions. Such inequality of treatment would obviously present serious disadvantages; but it must be remembered, on the other hand, that if a federal clause was not included, a number of Member States might refuse to ratify the covenant.

40. In the circumstances, the representative of the Netherlands felt that the Committee should bear in mind the ancient proverb and choose the lesser of two evils; in the case under discussion, the adoption of a federal clause was plainly the lesser evil. His delegation was all the more disposed to favour the adoption of such a clause because it set much value on the element of mutual confidence in relations between individuals or between States. It should not necessarily be inferred that a federal State, in drawing attention to the difficulties it encountered, owing to the terms of its constitution, did so merely in an effort to evade its responsibilities.

41. In the case in point they were the more entitled to that attitude of confidence as the comments of governments and the amendments proposed at the sixth session of the Commission on Human Rights made it clear that the States concerned had sincerely tried to meet the objections and to ensure acceptance of the draft covenant by the largest possible number of States.

42. The representative of the Netherlands indicated that the text proposed by the Indian delegation (E/1681, annex I, page 20) seemed to him more objective in character than the first United States text (E/1681, annex I, page 20). However, the second United States text (E/1681, annex I, page 21), prepared after a study of the report of the fifth session of the Commission, was also objective in character and the Netherlands delegation was prepared to accept it. Mr. Beaufort suggested, however, the addition of a new paragraph, to the effect that the government of a federal State should, each year, inform the Secretary-General of the United Nations of the progress made by each state, province or canton constituting the federal State, in regard to the implementation of the covenant.

43. He regretted that he could not support the text proposed by Yugoslavia (E/1681, annex I, page 21), according to which federal States would be allowed to ratify the covenant only after guaranteeing its implementation throughout their territory. The Netherlands delegation felt that that amendment presented the question in a very different light and might involve at least postponement of the ratification of the covenant.

44. Mr. DAVIN (New Zealand) thought it necessary that the covenant should include a federal clause, in order to make allowance for the constitutional position of the federal States. New Zealand, which was not itself a federal State, nevertheless understood the difficulties confronting such countries as the United States of America, Canada and Australia, and felt that it would be regrettable if such States were prevented from acceding to the covenant.

45. The New Zealand delegation did not wish to see the Committee include in the text of the draft covenant a clause which might serve as a loop-hole for the evasion of obligations; in its opinion, the Commission on

Human Rights should be entrusted with the task of preparing the text of a federal clause, at its seventh session. The delegation of New Zealand did not consider it desirable to draw a distinction between the articles which a federal government considered as falling within its own jurisdiction and those which it considered as within the jurisdiction of the various states, provinces or cantons; the only distinction should be between the articles which such a government judged to be within its own jurisdiction and those which it considered were not.

46. Moreover, Mr. Davin shared the view of the representative of the Netherlands that the federal governments should report on the measure of implementation given to the covenant by the governments of their constituent states.

47. Mrs. AFNAN (Iraq) congratulated the representative of Pakistan on his admirable statement. She stressed the fact that the members of the Committee represented countries with widely differing ideas and cultures; nevertheless, despite such divergencies, it should be possible to achieve agreement on the subject under consideration, since all those countries were striving towards the same ideal, namely, to ensure respect for human rights throughout the world.

48. She recalled that with regard to certain questions of fundamental importance, the First Committee had already adopted texts which did not contain a federal clause. She hoped that that example would be followed, and urged the members of the Third Committee to abandon the idea of including a federal clause in the text of the draft covenant.

*Mr. A. S. Bokhari (Pakistan) took the chair.*

49. Lord MACDONALD (United Kingdom) recognized the necessity of incorporating in the text of the draft covenant an article designed to cover the particular position of the federal States.

50. Examining the various texts proposed, the United Kingdom representative pointed out that the text submitted by the United States at the fifth session of the Commission on Human Rights provided that in the case of a federal State, certain provisions would apply with respect to any articles of the covenant "which the federal government regards as appropriate under its constitutional system, in whole or in part, for federal action". The text proposed by the representative of India was worded in a slightly different manner, stipulating that the provisions in question would apply with respect to any articles of the covenant "the implementation of which is, under the constitution of the federation, wholly or in part within federal jurisdiction".

51. The United Kingdom Government preferred the text proposed by India, for it could not admit that a federal government itself should have the right to determine which articles of the covenant were appropriate for federal action and which lay within the jurisdiction of the states, provinces or cantons which constituted the federal State. The United Kingdom could not agree that a State party to the covenant should be left free to determine the extent of its own obligations. Moreover, as a general rule, the governments of federal States were not granted such power by their constitutions. In most federal States, at least, such decisions

were taken not by the federal government, but by the supreme judiciary organ, which was responsible for interpreting the constitution.

52. The text proposed by the delegation of India was less likely to give rise to abuse on the part of a federal government which might seek to evade its obligations under the covenant simply by declaring that certain articles did not lie within federal jurisdiction. Moreover, that text appeared to correspond more closely to the constitutional processes of a federal State.

53. Even if the Indian proposal were adopted, however, there would in any event be a considerable disparity between the obligations assumed by a federal government in acceding to the covenant and those assumed by a unitary State; the United Kingdom delegation thought it possible that that disparity could be reduced. When the government of a unitary State acceded to the covenant, the other States parties to the covenant knew that all the articles of the document would automatically be applied throughout the entire territory of the State in question. On the other hand, even if a provision such as that proposed by India were adopted, the other States parties to the covenant would not know to what extent the covenant was being implemented in the territory of a federal State.

54. Accordingly, the representative of the United Kingdom on the Commission on Human Rights had proposed the addition of a supplementary paragraph to the Indian text, a paragraph providing that upon the request of any State party to the covenant, a federal State party to the covenant should make known the extent to which the provisions of the covenant were being implemented by the governments of its constituent states, provinces or cantons.

55. It should be made clear that such a request would not be presented unless a State party to the covenant had reason to believe that a federal State was seeking to evade its obligations by invoking a provision of its own constitution. The representative of the United Kingdom was convinced that no federal government which sincerely desired to implement those provisions of the covenant which lay within its own jurisdiction would have any difficulty in accepting such an article.

56. Mr. VLAHOVIC (Yugoslavia) said that his country, being a federation of six states enjoying equal rights, was keenly interested in the question of the federal clause.

57. His delegation thought it would be dangerous to adopt a clause which established a disparity of obligations between signatory States and did not define the scope of those obligations. It was necessary to provide that the covenant could not be ratified by federal States until they had given a preliminary assurance that it would be applied in all their constituent territories. The Yugoslav delegation had submitted an amendment to that effect to the text which appeared in the report of the Commission on Human Rights on its third session (E/1681, annex I, page 21). It was still convinced of the need to lay down the obligation of a federal government to bring its legislation into conformity with the provisions of the covenant.

58. Mr. PRATT DE MARIA (Uruguay) pointed out that the federal clause might have the effect of

limiting the obligations arising from the Charter in relation to the international safeguarding of human rights.

59. From the standpoint of international law a federal State, as distinct from a confederation, was a separate State with a single representative. The application of the federal clause would establish, in respect of the obligations arising out of treaties, a disparity to the disadvantage of unitary States.

60. With due regard to the difficulties of federal States, the Uruguayan representative considered that the objections of federal States would be amply safeguarded by the traditional procedure of signing treaties with reservations, which would make it unnecessary to introduce a federal clause and so prevent the disparity to which that clause would give rise.

61. Mrs. BEGTRUP (Denmark) considered it highly undesirable to include in the covenant a federal clause which appeared to favour federal States over unitary States.

62. It was clear from the pronouncements which had been made that many Member States would have to overcome serious difficulties before they could sign or ratify the covenant. It was understandable that, by reason of their peculiar constitutional position, federal States would need some time before they could ratify that instrument. That delay, though regrettable, was infinitely preferable to the inclusion of a federal clause of the type proposed, which would probably have the effect of preventing many unitary States from adhering to the covenant.

63. The Danish delegation reserved the right to take further part in the debate if, contrary to its hopes, the Committee should decide to include a federal clause in the covenant.

64. Mr. CASSIN (France) said that his country was traditionally a unitary State and that its people would therefore naturally oppose the idea of a federal clause. France had, however, found it necessary to establish contacts with countries which had a different constitutional structure; those contacts and its own internal development had led it to adopt a somewhat different point of view.

65. Both the federal and the colonial clauses raised only one problem, that of the territorial application of the covenant. If, however, the federal clause was to be considered separately, the main difficulty must be recognized to result from the conflict between the international responsibility of the signatory State and the diversity of the legislation applicable in the territory over which it exercised authority.

66. From the legal standpoint the French delegation was quite prepared to accept the Yugoslav proposal to make the ratification of the covenant by a federal State conditional upon its application of the covenant throughout its territory. That ideal solution was, however, the result of legal geometry of an excessively abstract kind. If a delay of some years were to be avoided, it would be necessary to permit federal States to ratify the covenant without delay, requiring them in return to undertake to apply it forthwith. Better results would probably be obtained by confidence and persuasion than by compulsion.

67. He suggested that the words, "which the federal government regards" or the phrase "under the constitution of the federation" should be replaced by some such words as "the qualified authority of the federation".

68. The French delegation hoped that the General Assembly would accept the idea of a federal clause, which should enable a greater number of States to apply the texts relating to human rights. In approaching the difficult task of reconciling the various elements of modern society and of regulating relations between individuals and States in the interests of the international community, Members of the United Nations and, in particular, their representatives in the Third Committee should not try to secure the acceptance of ideas inspired by their own constitutions. In the existing circumstances the French delegation considered that the adoption of the federal clause was necessary.

69. Mr. CHANG (China) said that the Committee should try to view the question of the federal clause in its proper perspective. Economic and social considerations had only acquired international importance comparatively recently; federal States had originally been formed for purely military and defensive purposes and the decisions taken by their governments had related only to questions of war or peace. If a federal government did not consider itself competent to settle questions which were not strictly military or diplomatic, it was difficult to see where the responsibility for solving them lay. Furthermore, if that government maintained that such questions were the responsibility of its constituent parts, whether they were described as states, provinces or cantons, it might be asked why in those circumstances the responsible parts were not represented on the same footing as the federal government itself.

70. That was a question which called for study, and he would be glad to have the views of the Secretariat and of members of the Committee on the point.

71. Mr. MACCAS (Greece) said that the question of the application of the federal clause did not arise in Greece, which was a unitary State. From the standpoint of constitutional law the advocates of the federal clause, being bound by their constitutions, seemed to be quite justified in contending that federal governments could not bind themselves so long as their constitutions required them to obtain the preliminary consent of the states or parts constituting the federal State.

72. He was nevertheless well able to understand the concern of unitary States at the disparity of treatment which would result from the application of the federal clause in its existing form. That disparity might, however, disappear if the federal clause were converted into a "constitutional clause" under which, in the case of a federal State, ratification of the covenant would be contingent upon the consent of certain organs, either a plebiscite or a decision by a parliamentary body. The inequality inherent in the federal clause in its existing form could thus be removed, even from a chronological point of view, and the wishes of its advocates would still be met.

73. AZMI Bey (Egypt), referring to the statement made by the representative of Greece, pointed out that

the discussion had from the start revolved around the constitutional question. All the arguments which had been presented in favour of the inclusion of a federal clause had in substance related to the constitution of federal States. If the clause in fact owed its origin to constitutional considerations, nothing would be simpler than to adopt a constitutional solution.

74. In view, however, of the protracted nature of the discussion, which had begun in the Commission on Human Rights, he wondered whether other and more remote considerations did not favour the federal clause. In describing the Yugoslav proposal, which was, in Azmi Bey's opinion, very sound, the French representative had used the phrase "legal geometry". There was good reason to believe that, in addition to that "legal geometry", a "legal algebra" full of equations and unknown factors was also involved. Some federal States might fear that human rights would not be applied in their territory; some provinces might perhaps cling to somewhat erroneous and outmoded traditional views which were contrary to the principle of the equality of all individuals.

75. That was perhaps the unknown factor in one of the equations. He therefore feared that certain undisclosed considerations might lie at the root of the federal clause. It must logically be recognized that constitutional forms must be observed by every government ratifying the covenant, like any other convention. Nothing, however, prevented a federal State from consulting its constituent parts and reaching a preliminary agreement before it even started to negotiate with other States. A pertinent example was that of the British Commonwealth of Nations in which preliminary consultation was the normal practice.

76. Those were the misgivings which he entertained and had wished to bring to the Committee's attention.

77. Mr. CORTINA (Cuba) stated that his delegation took the same stand as the delegation of Uruguay and was very anxious about the possible effect of including a federal clause in the covenant.

78. It was advisable, in order to elucidate the question, to refer back to the way in which it presented itself in modern international law in connexion both with bilateral, especially trade, agreements and with the less common multilateral agreements. It must not be forgotten that, although the problem was comparatively new, it had not arisen in connexion with the United Nations Charter or that of the Organization of American States, both of which instruments had profoundly affected the whole legal structure of the Member States.

79. In regard to the Secretary-General's report on the federal clause and the colonial clause (E/1721 and Corr.1 submitted to the Economic and Social Council at its eleventh session), he pointed out that the federal clause raised a purely legal problem and that the case of the International Labour Organisation was not relevant to the question under discussion. In fact, past experience showed that it had always been possible in practice to eliminate reservations formulated by federal States and that such States had accepted the principles recommended to them. The adoption of the federal clause would be equivalent to introducing a multilateral reservation. Even if certain constitutions did not

permit immediate ratification, it should be recognized that human rights were a subject in which it would not be advisable to invoke the federal clause.

80. In those circumstances he wondered what useful purpose would be served by adopting such a restrictive and complex clause.

81. Mr. URIBE CUALLA (Colombia) associated himself with the remarks of the representative of Cuba.

82. He considered that the inclusion of a discriminatory clause could not be accepted, because a document as important as the covenant must impose identical obligations on all States. Moreover, it must be borne in mind that federal States had not by their constitution the power to force their constituent parts to adopt measures unwillingly. Furthermore, it was impossible to conceive that a covenant on human rights could be ratified with reservations if the constituent parts of the federal State were not competent to formulate such reservations. Indeed, only the States Members of the United Nations, sovereign States, had the power to formulate such reservations.

83. In view of those considerations the Colombian delegation would be obliged to reject the federal clause as discriminatory.

84. Mr. ORTIZ TIRADO (Mexico) stated that he had listened attentively to all the arguments put forward and regretted that he had not been able to intervene in the debate on the first question put to the General Assembly by the Economic and Social Council.

85. Mexico, which was proud of having one of the most advanced constitutional systems, was a federal State; hence it must be affected by the problem under discussion. The problem itself deserved very close study, for the goal to be attained was a very lofty one: to reaffirm faith in the fundamental human rights to which the United Nations Charter attached cardinal importance.

86. He associated himself with the remarks of the representatives of Pakistan, Uruguay, Colombia and Cuba, and considered that the inclusion of the federal clause would import a glaring inequality between federal and unitary States.

87. Moreover, it was very difficult to define precisely the character of a federal State and to indicate those of its functions which required the consent of its constituent parts. One of the major arguments against the insertion of the federal clause was, however, the exalted nature of the document under consideration by the Committee. The object was to defend an ideal and to consolidate what had already been achieved in different countries. He recalled the distinction that had been drawn so frequently, particularly at previous meetings of the Committee, between moral obligations deriving from the Universal Declaration of Human Rights and legal obligations deriving from the covenant. He wondered, as did the representative of China, why some States were to be subjected to a different rule.

88. As regards Mexico, he observed that the question of human rights was within the competence of the federal bodies throughout the whole territory. Nevertheless, he could see no reason to justify the adoption of a federal clause, the more so as, even if the introduction of such a clause were held to be the lesser evil,

it might entail the non-participation of a certain number of States. He associated himself with the remarks made by the representatives of Uruguay and Cuba in regard to multilateral covenants. He agreed on the need for certain reservations in that type of covenant, but considered that the federal clause would introduce an element of uncertainty into the covenant.

89. In conclusion, he declared that it would be better to think the question over, to wait and perhaps refer it back to another body; at any rate, such a discriminatory clause, which jeopardized the whole value of the covenant, should not be accepted.

90. Mr. AZKOUL (Lebanon) stressed the peculiar character of the covenant. In the first place, the document represented not an ideal to be realized in respect for human rights, nor even a higher level attained in certain countries, but the minimum level that the members of the Commission on Human Rights were prepared to accept as an international obligation. In the second place, the covenant implicitly related to matters within the internal jurisdiction of States. He pointed out that the United Nations had thus started a real revolution in the history of mankind, for since the adoption of the Charter the international community had in its turn become responsible for the individual.

91. Without in any way wishing to question the value of the constitutional system in force in federal States, he remarked that in the case in point the system gave rise to difficulties which, moreover, were the natural consequence of its advantages. In those circumstances federal States might be expected to accept the consequences of such difficulties. He recognized that real difficulties were involved but considered that federal States should do everything possible to overcome them.

92. Some progress, though still not enough, had already been made in that respect. At the outset, for instance, the United States had recognized as the sole obligation to be imposed on federal States merely that they should communicate the articles of the covenant to their constituent states. It had eventually accepted a Lebanese amendment providing that the federal State, in transmitting the articles, should also recommend their adoption. Moreover, while the United States text had left it to a federal government to decide whether or not the articles of the covenant came within its competence, the Indian delegation had gone even further and had made that decision depend upon the very

terms of the constitution itself. That amendment had since been accepted by the United States. The United Kingdom, for its part, had tried to advance one more step in order to ensure that human rights should be guaranteed by federal States: it had proposed that a federal State, if so requested by other States parties to the covenant, should submit a report on the effect given to the provisions of the covenant in its territory.

93. The fourth stage had been the support given by some delegations to the submission of an annual report. He stated that his delegation was prepared to make a formal proposal to that effect if no other delegation had already done so.

94. Lastly, Yugoslavia had asked that federal States should ratify the covenant only after securing its application throughout their whole territory. He considered that that measure would be too radical, for it would result in nullifying the federal clause, particularly in the case of some insufficiently advanced States which would not be in a position to accept the covenant.

95. He thought that, between the fourth stage of which he had spoken and the Yugoslav suggestion, it should be possible to lay down some steps to be taken by federal States. For instance, they might make a statement indicating which of their constituent states had been able to accept the articles of the covenant, and those articles to which the remainder could not commit themselves. Such a step would enable the other signatory States to know what the situation was in the federal States. As the line of demarcation between federal and local authority was impossible to determine, that step would at least allow a list of the States accepting the articles of the covenant to be made available.

96. He considered that the suggestion of the Greek representative would not clear up the difficulty. It was merely another way of presenting the Yugoslav amendment, according to which federal States would be bound to await the agreement of their constituent parts before ratifying the covenant.

97. In conclusion, he stated that he had every consideration for the difficulties of the federal States, but he asked them to furnish the largest possible number of guarantees in order to wipe out any inequality between them and the unitary States.

The meeting rose at 6 p.m.