



Friday, 7 December 1951, at 10.30 a.m.

Palais de Chaillot, Paris

C O N T E N T S

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Draft international covenant on human rights and measures of implementation (A/1883, A/1884 (chapter V, section I), E/1992, E/2057 and Add.1 to 5, E/2059 and Add.1 to 8, E/2085 and Add.1, A/C.3/559, A/C.3/L.88, A/C.3/L.180, A/C.3/L.182) (<i>continued</i>).	83
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Chairman : Mrs. Ana FIGUEROA (Chile).

Draft international covenant on human rights and measures of implementation (A/1883, A/1884 (chapter V, section I), E/1992, E/2057 and Add.1 to 5, E/2059 and Add.1 to 8, E/2085 and Add.1, A/C.3/559, A/C.3/L.88, A/C.3/L.180, A/C.3/L.182) (*continued*)

[Item 29]*

GENERAL DEBATE (*continued*)

1. Mr. DEHOUSSE (Belgium) recalled the important part played by smaller Powers in the elaboration of instruments relating to human rights owing to the fact that smaller countries were freer to take initiative in the matter than were the major Powers. For example a valuable contribution to the debate had been made at the 360th meeting by the representatives of Guatemala and Mexico, who had expressed constructive technical and philosophical views on the subject.

2. The Belgian delegation considered that the Committee had to solve five main problems in drafting the covenant.

3. The fundamental question was that of the number of covenants to be drafted. Several distinct points of view had been put forward. The straightforward concept of the single covenant, the purpose of which was to eliminate any distinction between the relative importance of the various rights involved, was not altogether practical.

4. In the first place, as the United States representative had pointed out (360th meeting), civil and political rights were capable of almost immediate implementation, whereas economic, social and cultural rights had reached widely differing degrees of maturity in various countries and their implementation might therefore take a much longer period of time.

5. In the second place, excessive perfectionism presented a danger which would be greater in the case of the single instrument than if two or more covenants were drawn up ; so much time would be taken by any attempt to frame a covenant which was perfect in every respect that it might never see the light of day.

6. In the third place, constitutional differences between various countries gave rise to further difficulties which might well prove to be insuperable at the existing stage of international development ; that had been illustrated by the difficulties experienced by certain States in ratifying the Pleven¹ and Schuman² plans. The opposition to the inclusion in international agreements of the kind of provisions which did not exist in some national constitutions applied particularly to economic, social and cultural rights, whereas civil and political rights were sanctioned by long tradition in many parts of the world.

7. For those reasons, the delegations of Belgium, India, Lebanon and the United States of America had proposed amendments (A/C.3/L.184 and A/C.3/L.185) to the draft resolutions submitted by Chile (A/C.3/L.180) and Chile, Egypt, Pakistan and Yugoslavia (A/C.3/L.182), asking the Commission on Human Rights to draft two separate covenants to be submitted to the General Assembly at its seventh session for simultaneous approval, and in order that they might be opened at the same time for signature.

8. The second point that he wished to stress was his delegation's attitude towards the inclusion of economic, social and cultural rights in an international treaty. The relationship between civil and political rights and economic, social and cultural rights was incontestable, and it was essential for the latter to be guaranteed by an international instrument.

9. In the third place, he pointed out that careful attention should be given to the problem of the inclu-

* Indicates the item number on the General Assembly agenda.

¹ Organization of a European Community for Defence.

² Treaty Instituting the European Coal and Steel Community.

sion of the federal clause. In some countries there was a wide distribution of jurisdiction among component states, but the federal power had the supreme jurisdiction in international matters. In order to achieve its widest application, it was extremely desirable to provide for the extension of the human rights provisions of the covenant to the component states of federations. In that connexion, the Commission on Human Rights might with advantage consider the experience of the International Labour Organisation which had introduced various federal clauses into international labour conventions and had achieved satisfactory results.

10. His delegation's fourth point related to the right of peoples and nations to self-determination. Although it had been argued that human rights properly so-called were personal and individual and the right to self-determination was essentially collective, such a clause was not superfluous, since the protection of human rights was incomplete unless it could be applied internationally. Nevertheless, the question had to be approached objectively and unemotionally. The application of the concept of self-determination might involve the multiplication of frontiers and barriers among nations. It was originally a concept of nineteenth century economic liberalism, whereas in existing circumstances the idea of international solidarity was of far greater importance. Moreover, the concept of a people or nation was difficult to define and the various characteristics of self-determination could not easily be specified.

11. Certain delegations which had spoken in favour of the self-determination clause did not seem to be sufficiently interested in the solution of the question, but appeared to regard the clause in a negative sense, as a weapon for use against the colonial Powers. Although he sympathized with the aspirations of certain newly-formed nations, the colonial problem was one of the most important of modern times and could not be treated lightly or disregarded.

12. Some of the representatives who had expatiated most eloquently on the necessity of introducing various rights into the covenant disregarded the fact that in their own countries certain political parties were forbidden, religious groups were suppressed and the right of habeas corpus was non-existent. They quoted at length from the constitutions of their countries; nevertheless, a perusal of the *Year Book on Human Rights* showed that the United Kingdom, whose long tradition of human rights was well known to all, had contributed only a few short texts to that volume, whereas the acts of less liberal States were quoted at length.

13. The right to self-determination was also being advocated by countries in which national minorities were oppressed and where the right of secession did not exist. It was impossible to speak of the right of self-determination without also providing for the right of secession.

14. An emotional and sentimental approach to the question could only serve to hinder the Committee's

progress. It was essential to draft the provision on the right of self-determination in a positive manner and to render it conditional on the degree of political maturity prevailing in the country concerned.

15. His final remarks related to the vital problem of implementation. Human rights had been proclaimed in the Universal Declaration, and that proclamation had to be given effective implementation. The Declaration proclaimed direct rights both in the State and in the international sphere, but without international measures of implementation the State would remain a screen between man and his rights.

16. Alternative methods of effective implementation had been discussed exhaustively by the Commission on Human Rights at its second session, in 1947, and were embodied¹ in the Commission's report to the Economic and Social Council². The first suggestion was to improve the existing international machinery for the enforcement of human rights by extending to the Commission on Human Rights the power to make direct recommendations³. The second proposal was to establish the right of individuals to petition the United Nations, as a means of initiating procedure for the enforcement of human rights⁴. It was also suggested that a special United Nations organ should be established to supervise and enforce human rights, to establish jurisdiction in that organ, to consider alleged cases of violation and to establish local agencies for purposes of implementation. In addition, the Commission had discussed the Australian proposal for the establishment of an international court of human rights⁵.

17. No decision had yet been reached on those suggestions owing to the difficulty of making the choice between individual petition and State action. It was essential for the General Assembly and the Commission on Human Rights to examine the question of petitions exhaustively, since it represented the real foundation of the protection of human rights. The intervention of States in the field was dangerous, for it would give rise to the introduction of political considerations. On the other hand, individual petitions would require some type of intermediate agency for purposes of screening and conciliation.

18. In that connexion, he recalled a proposal made by the delegation of India⁷ at the seventh session of the Commission on Human Rights for the addition of an article of the covenant stating that the proposed human rights committee might be seized of cases of non-compliance with the provisions of the covenant by parties thereto on its own motion when the facts seemed to warrant such consideration. He thought that in those circumstances the human rights committee would become the forerunner of the international court of

¹ See *Official Records of the Economic and Social Council, Sixth Session, Supplement No. 1.*

² *Ibid.*, annex C, p. 39.

³ *Ibid.*, p. 40.

⁴ *Ibid.*, *Ninth Session, Supplement No. 10*, annex 111, part. I. See also document E/CN.4/AC.1/27.

⁷ See document E/CN.4/621.

human rights. He regarded the Indian proposal as the minimum which could be accepted.

19. As regards implementation, a distinction had to be made between various rights. For example, it might be advisable to use the system of petition in the case of civil and political rights, and the system of reports in the case of economic, social and cultural rights. In any event, special organs for measures of implementation would have to be set up gradually.

20. In that connexion, he supported the Uruguayan proposal (E/1992, annex VII) for the appointment of an attorney-general of human rights who would act as a kind of preliminary tribunal in the implementation system.

21. In conclusion, he stated that, although it might seem that little had been achieved in the past six years for the protection of human rights, there was no cause for discouragement; the progress made was slow but appreciable, since the draft covenant as a whole was already under discussion.

22. Mr. ALEMAYEHOU (Ethiopia) considered that, in spite of the decision taken at the 359th meeting to end the procedural discussion and open a general debate, the subject of procedure with respect to the item under discussion was far from settled. It was not clear whether the general debate was to take the form of a simple exchange of views, followed by general recommendations to the Council, of an article-by-article discussion of the draft covenant, or of a general discussion on the non-controversial portions of it, accompanied by a careful study of the controversial sections leading to the issue of clear-cut directives to the Council and the Commission for the completion of the work. After having given the matter careful consideration, the Ethiopian delegation favoured the last named alternative.

23. With regard to the substance of the matter, he recalled that the Commission on Human Rights had prepared a number of articles on economic, social and cultural rights but had been unable to come to a decision whether they should be included with those dealing with civil and political rights, or whether they should be made the subject of a separate instrument. The Commission had also revised a number of articles relating to measures of implementation and had drafted other articles providing for a periodic report on economic, social and cultural rights by States parties to the covenant. Again, however, the Commission had been unable to decide whether those measures of implementation should apply to the whole or to a part of the covenant. In addition, under the terms of General Assembly resolution 421 (V), section D, the Commission on Human Rights had been asked to study ways and means of ensuring the right of peoples and nations to self-determination, but owing to lack of time, had been unable to comply with that directive, or with the request (resolution 421 (V), section E) that it should re-examine the preamble and the first eighteen articles.

24. Those were, consequently, the questions which seemed to demand the Third Committee's immediate attention. Among them, that which enjoyed highest

priority, emphasized as it was by Council resolution 384 (XIII), section C, was the question whether articles on economic, social and cultural rights should be included in the covenant, or whether the Assembly should reverse its previous decisions and decide that they should be stated separately.

25. The Ethiopian delegation's attitude on that point was that the General Assembly should maintain its original decision. It believed that any attempt to divide human rights into categories was artificial and erroneous, since all human rights were meaningless in themselves and existed only so far as they related to man. With regard to the articles on implementation and the question whether they should apply to the whole covenant or only to a part of it, he believed that the measures of implementation referred to in part V of the draft covenant, providing for a periodic report by States parties to the covenant, should apply to the whole.

26. In conclusion, he would like clear provision to be made in the covenant for the gradual and progressive implementation of the rights relating to economic, social and cultural matters, since it would be a matter of great difficulty for under-developed countries, such as Ethiopia, to implement them overnight.

27. Mr. D'SOUZA (India) believed that there was no cause for the surprise which had been expressed at the fact that the various bodies entrusted with work on the covenant on human rights should have taken so long over their deliberations and should be still far from agreement on many issues. The very nature of the question made the attainment of rapid and complete agreement extremely difficult.

28. As would be seen from the memorandum by the Secretary-General (A/C.3/559), the undecided issues included the question of the federal clause, the application of the covenant to Trust Territories and Non-Self-Governing Territories, and the right of peoples and nations to self-determination. But the most important undecided issue—important because it involved considerations of fundamental principle—was the question whether there should be one, or two, or even more covenants. He would address himself exclusively to that problem.

29. There were some who believed that the gap between those who supported a single covenant and those in favour of the drafting of an additional instrument or instruments had been considerably narrowed. That belief was based on the most recent proposal by the United States representative (360th meeting) that there should be two covenants, but that they should be recognized as identical in importance and should be adopted simultaneously. The remaining differences of opinion seemed at first sight so small that some people might be tempted to ask why there was any need for two covenants at all. The truth was, however, that there was a deeper divergence between the two approaches than at first appeared.

30. Those representatives who, like himself, believed that there were profound differences between political

and civil rights on the one hand and cultural and economic rights on the other, could not possibly regard on an equal footing two covenants containing respectively the two groups of rights. Assuming that by the word "covenant" was meant a treaty solemnly entered into by States and capable of being observed and executed in its smallest detail, it was essential that the provisions of a covenant should be expressed in the clearest, most definite, and most unmistakable terms. Yet one of the two sets of rights which were under consideration was generally recognized as being capable of only gradual implementation, in accordance with the resources and general situation of each given State.

31. It was, indeed, not necessarily axiomatic that the two groups of rights were equal in importance. Political and civil rights were of an absolute nature and, even making allowance for periods of national stress and emergency, governments were under the undeniable obligation of guaranteeing those rights to the citizens, and the citizens had an equal obligation to retain and exercise them. The conception of political and civil rights was also of extremely long standing, whereas the principle that the State should contribute to the welfare of the citizens by the provision of social and economic rights and amenities had arisen at a much later date. Furthermore, those rights were not absolute since they admitted of degrees of application: it was impossible to lay down, for example, to precisely what standard or level of education a person had a right; it was generally conceded that only primary education should be regarded as a right, but there was no inherent reason why secondary or university education should not equally be considered as a right to which all had a claim. Lastly, there was no obligation to exercise economic, social and cultural rights as there was in the case of political and civil rights.

32. That last consideration was closely connected with the grave differences in political and social ideology with which the world was faced. The democratic way of life, as most nations understood it, involved the maximum of respect for individual liberty, and consequently for private initiative. Accordingly, the tradition in many countries had been and still was to entrust considerable responsibility for the great social services essential to the maintenance of cultural and economic rights to the initiative of private agencies. Those who believed in the value of that method would naturally entertain considerable mistrust of a single covenant vesting the supreme authority with respect to those rights in the State.

33. The fact that a proposal to that end had been rejected by the Commission on Human Rights was by implication approval for the principle of a dual covenant. The rejection of the proposal had been an expression of the healthy feeling of the majority that an attempt to combine two non-identical types of obligations and degrees of responsibility would lead to a weakening of those of an absolute nature, without any corresponding strengthening of those of a relative nature.

34. It had been suggested that those representatives who had demanded a division into two covenants were

indifferent to the principle of unity. In that connexion he would point out that India, throughout its long history, had pursued the ideal of metaphysical unity with a steadfastness elsewhere unknown and with a willingness to sacrifice many mundane benefits. Nevertheless, in the drafting of its constitution, India had confined political and civil rights to the chapter on fundamental rights made justifiable by an appeal to the supreme court. Cultural and economic rights were regarded more in the nature of objectives, and the Government had to report to Parliament from time to time on their implementation.

35. India recognized the need for unity, but had never confused unity with uniformity. It recognized the fundamental unity of the two sets of rights, in that they proceeded from the same stem, but their subsequent development had diverged to an extent which it would be imprudent to ignore.

36. Finally, he could not agree with the objections that had been raised against a reversal of the General Assembly's former decision (resolution 421 (V)) on the subject. If, in the light of information which had subsequently become available, the General Assembly decided to reverse its former decision, that would indeed enhance its prestige and authority and avoid any tendency for it to become a slave to fixed procedure.

37. Mr. MENDE BRUN (Argentina), offering his congratulations to all those working on the difficult task of preparing the draft covenant on human rights, stated that the 1949 Constitution of Argentina specifically provided for the inclusion of economic, social and cultural rights. His delegation was accordingly in favour of the inclusion of all rights in a single instrument. In addition, it was anxious that special attention should be paid to the right of self-determination and also to the application of rights in general to all colonial and Trust Territories.

38. Sir Lionel HEALD (United Kingdom) assured the Committee that the recent change of government in the United Kingdom had made no difference to his delegation's approach to the question of human rights nor, indeed, to any other question of principle of concern to the United Nations. Thus, it maintained the view expressed at the fifth session that the Universal Declaration of Human Rights was a noble instrument and that a covenant should be drafted that would carry the Declaration into practical effect. In accordance, however, with his Government's traditional approach to legal problems, namely, its desire not to accept obligations unless they were definite and concrete, it believed that a document purporting to define rights was not enough; the decisive factor was the extent to which it would be effective in practice.

39. His delegation wished to see the widest possible extension of human rights and their recognition in all countries in which those rights were denied or had not been assured. It must, however, insist on the most careful consideration of the principles involved in the covenant, because it would be a tragedy if it were to remain a dead letter, either because States were unwilling to ratify it or because it was so loosely drafted as to be capable of various interpretations.

40. The Universal Declaration of Human Rights had already had an undoubted impact upon States and individuals, as was shown by a recent United Nations handbook, which laid particular emphasis on the encouragement the adoption of the Declaration had given to the efforts of the specialized agencies.⁸ Yet, whereas some of the so-called moral rights enshrined in the Declaration could be defined as legal rights with sufficient precision to be enforceable, others were not capable of such definition and their inclusion in a covenant would only lead to confusion. The success of any covenant must depend upon the number of States willing and able to ratify it; and that in turn largely depended on how far its obligations were sufficiently clear to warrant their acceptance as legal obligations.

41. The manner in which the Commission on Human Rights had included articles on economic, social and cultural rights in the draft covenant seemed to show some confusion with regard to the kind of obligation to which a covenant ought to give rise.

42. One view had been that the covenant was not to be a treaty at all in the ordinary sense of that word, because ratification could not await the enactment of all the requisite previous legislation, as was the usual practice in international law. It was therefore to be ratified only on the understanding that domestic legislation would gradually be brought into harmony with its provisions; the implementation of human rights would thus depend more on usage than on law.

43. Another view had been that provisions relating to economic, social and cultural rights were by their very nature essentially different from those relating to political and civil rights and thus their implementation should be left exclusively to the competent organs of the United Nations and the specialized agencies. It might well be asked what would be gained by setting out such rights side by side in the same instrument with other rights which had juridical validity and the implementation of which could be stated clearly in the covenant itself.

44. A third view had been that the economic, social and cultural rights should be included in the covenant, but that measures of implementation should be incorporated in separate protocols, enabling governments to implement the rights in question according to circumstances.

45. It had also been suggested that the drafting should be considered from the point of view of the end to be achieved rather than of the precise nature of the undertakings to be assumed. That last suggestion was paradoxical; for the end—the enjoyment of economic and social rights—could hardly be achieved unless the nature of the undertakings to be assumed by each State were clear. The ethical considerations—the ends to be achieved—were already set forth in the Declaration. He agreed with the French representative that the

Declaration itself would be weakened if the covenant merely reiterated those considerations without formulating explicit obligations for implementation.

46. The aims set forth in the Declaration could be achieved by many means, such as national legislation, international co-operation, technical assistance or action by the specialized agencies. The covenant could provide another such means, but for that purpose it must have its distinctive character, that of a treaty clearly defining the mutual obligations of States. The political and civil rights could be so defined; the first eighteen articles of the draft covenant went far towards fulfilling that requirement.

47. Whether the economic, social and cultural rights could be so formulated in a general instrument as to create the kind of obligation that would really safeguard such rights was doubtful. The only sure means for their implementation was through the specialized agencies, which had already done so much to gain a wider recognition of those very rights. Thus, those who demanded the inclusion of economic and social rights in the covenant, but had so far been unable to specify precise obligations for their implementation, would be better advised to do everything in their power to promote the activities of the specialized agencies.

48. There had been some discussion at the fifth session of the General Assembly with regard to the priority to be attached to the two categories of rights, but the Third Committee, with the concurrence of the United Kingdom delegation, had taken the view that they were of equal importance. If the United Kingdom delegation urged that both categories should not be included in a single instrument, it was not because it regarded economic rights as less important, but because it sincerely believed that they could not in fact be dealt with in the same way as the civil and political rights. On that point the United States representative's arguments (360th meeting) had been cogent. The difference lay in the fact that the struggle for political freedom had been begun long before the idea of social security had been conceived, as civil and political liberty must be assured before the full enjoyment of economic, social and cultural rights became possible. Furthermore, as the object of civil and political rights was to achieve personal freedom, they necessarily involved limitations of the power of the State, whereas, since the object of economic, social and cultural rights was to secure personal well-being, positive action by the State was required on a national scale.

49. Whereas the protection of civil and political rights could be ensured by legislative action of a permanent character, that of the other rights was an evolutionary process, requiring constant adaptation to changing conditions, many of which were outside the power of the State. The State could not provide remedies for breaches of economic, social and cultural rights, due to historical, economic or natural disasters, as it could for breaches of civil and political rights.

50. In suggesting that the Committee should reconsider the decision it had taken at the fifth session of the General Assembly, his delegation must stress the

⁸ *The Impact of the Universal Declaration of Human Rights*, United Nations Publications, Sales No. 1951.XIV.3, chap. IV, section 2.

fact that it was not doing so because it attached less importance to economic than to civil rights. The whole history of legislation in the United Kingdom during the past fifty years went to refute any such suspicion. It did so merely because the inclusion of rights which gave rise to precise obligations together with rights which did not would necessarily weaken any covenant. That difficulty might be overcome by drafting two covenants, thus allowing States to have the option of ratifying one or both.

51. The possibility that some economic and social rights could be formulated in such terms as would create legal obligations should not, however, be excluded. The efforts of the Commission on Human Rights to cope with the almost impossible task assigned to it under Assembly resolution 421 (V) should not be underrated; but again to place too heavy a burden upon the Commission would be a mistake. The governments themselves should give more thought to

those problems than they had hitherto done. The fact that the Commission's request for the comments of governments on the draft covenant had received only nine replies was somewhat surprising. More tangible proof of interest—which undoubtedly existed—would perhaps reassure the Commission.

52. The United Kingdom Government, one of the historic initiators of the struggle for the affirmation of human rights and the sole country to ratify the Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms, was sincerely convinced that the drafting of an effective covenant would be a major triumph for the United Nations. His delegation accordingly thanked the Commission on Human Rights for its devoted work and hoped that it would continue successfully to further the cause of humanity.

The meeting rose at 12.35 p.m.