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Sixth Session

SUMMARY RECORD OF THE HUNDRED AND THIRTY-EIGHTH MEETING

Held at Lake Success, New York,
on Wednesday, 29 March 1950, at 2.30 p.m.

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Articles 3 and 4.

Chairman:	Mrs. F. D. ROOSEVELT	United States of America
Members:	Mr. WHITLAM	Australia
	Mr. STEYAERT	Belgium
	Mr. SANTA CRUZ	Chile
	Mr. CHANG	China
	Mrs. WRIGHT	Denmark
	Mr. RAMADAN	Egypt
	Mr. ORDONNEAU	France

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Members (continued):

Mr. KYROU	Greece
Mrs. MEHTA	India
Mr. AZKOUL	Lebanon
Mr. MENDEZ	Philippines
Mr. HOARE	United Kingdom of Great Britain and Northern Ireland
Mr. RODRIGUEZ FABREGAT	Uruguay
Mr. JEVREMOVIC	Yugoslavia

Representatives of specialized agencies:

Mr. EVANS	International Labour Organisation (ILO)
Mr. ARNALDO	United Nations Educational, Scientific and Cultural Organization (UNESCO)

Representatives of non-governmental organizations:

Category A:

Miss SENDER	International Confederation of Free Trade Unions (ICFTU)
Mrs. BERG	World Federation of United Nations Associations (WFUNA)

Category B:

Mr. NOLDE	Commission of the Churches on International Affairs
Mr. CRUICKSHANK	Inter-American Council of Commerce and Production
Miss TOMLINSON	International Federation of Business and Professional Women
Mr. BEER	International League for the Rights of Man
Mrs. SCHAEFER	International Union of Catholic Women's Leagues
Mr. PERLZWEIG	World Jewish Congress

Secretariat:

Mr. LAUGIER	Assistant Secretary-General in charge of the Department of Social Affairs
Mr. HUMPHREY	Director of the Division of Human Rights
Mr. LIN MOUSHENG	Secretary of the Commission

/DRAFT

DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS (E/1371, E/CN.4/365, E/CN.4/353/Add.10, E/CN.4/370, E/CN.4/374, E/CN.4/375, E/CN.4/379, E/CN.4/380)(continued)

Article 1 - General Debate

1. The CHAIRMAN opened the general debate on article 1 of the draft International Covenant on Human Rights (E/1371). She called the Commission's attention to the fact that most of the countries which had sent in comments on that article (E/CN.4/365, E/CN.4/353/Add.10) held the view - shared by the United States - that the article as such should be deleted and that any ideas of value which it might be found to contain should be incorporated in the preamble. The Yugoslav delegation had submitted an alternate text for article 1 (E/CN.4/370)

2. Mr. HOARE (United Kingdom) said that, as indicated in its comment, his Government was of the opinion that the substance of article 1 would be dealt with more appropriately in the preamble and that the article should therefore be deleted.

3. While the discussion of the preamble had revealed a diversity of views, there appeared to be general agreement that the preamble should set out the circumstances in which the Covenant had come to be framed. The text of the preamble which the United Kingdom delegation preferred - that contained in the report of the third session of the Commission (E/800) - quite properly referred back to the Charter and the Universal Declaration of Human Rights. Article 1 merely approached the same subject from another angle, but appeared to add nothing new. Should it be found to contain a valuable idea, that idea should be inserted in the preamble.

4. Mr. JEVREMOVIC (Yugoslavia) introduced his delegation's amendment to article 1 (E/CN.4/370), in which the phrase "founded on the general principles of law recognized by civilized nations" was replaced by "founded on the general principles of law attained by humanity in its endeavours to achieve progress, prosperity and the development of democratic relations".

5. The term "civilized nations" was objectionable, in that it appeared to cast discredit on those less fortunate peoples whose economic and political development had been retarded by their century-long struggle for freedom and

/independence.

independence. Moreover, the historical truth of the matter was that human rights and fundamental freedoms were the result of the endeavours of all mankind rather than of a few nations; the Charter, too, spoke of all the peoples of the United Nations without singling out any of them. The Yugoslav amendment would therefore remove the tinge of discrimination discernible in article 1 and would give it a broad basis of fact.

6. Mrs. MEHTA (India) remarked that in the view of her delegation article 1 should be deleted and its substance incorporated in the preamble.

7. At the preceding meeting, the Chinese representative had stressed the significance of the Universal Declaration of Human Rights. Mrs. Mehta recalled that the Commission had been originally entrusted with drawing up an international bill of human rights and had decided at its second session that the bill should consist of three parts, of which the Declaration was merely the first. The Declaration was intended to lay down broad general principles, which were to be defined in the Covenant with the precision necessary to permit implementation by States. Consequently the significance of the Covenant, which was an integral part of the as yet uncompleted bill of human rights, was certainly no less than that of the Declaration.

8. Mr. RAMANDAN (Egypt) felt that article 1 should be either deleted or transferred to the preamble, since only provisions which imposed definite obligations on States should be contained in the body of the covenant.

9. Mr. AZKOUL (Lebanon) agreed that the existing text of article 1 was superfluous; it was even misleading, since it implied that recognition of human rights and fundamental freedoms derived from international law, whereas in fact the contrary was the case.

10. The States parties to the Covenant should recognize that the rights they undertook to guarantee were not conferred on mankind by themselves or even by the United Nations, but were in fact inalienable and older than society itself. The totalitarian concept that the State was the source of human rights and freedoms, which it could consequently curtail at will, was the great tragedy of modern times. It was for the Commission - and later for the General Assembly - to refute that fallacy in the International Covenant on Human Rights.

/11. The source

11. The source of the rights of each individual was not any man-made organization, but God Himself. For the purpose of the covenant, the Lebanese delegation felt that the idea would be brought out clearly enough if mention were made of "inalienable rights". He therefore proposed that article 1 should be replaced by the following text (E/CN.4/379), which should afford adequate protection against oppression to the peoples of the world: "The States parties hereto declare that they recognize the rights and freedoms set forth in part II hereof as being among the inalienable human rights and fundamental freedoms derived from the dignity inherent in the human person.".

12. Mr. CHANG (China) supported the widely held view that article 1 should be deleted and that any valuable idea it might contain should, after further consideration, be placed in the preamble.

13. He felt that the draft covenant - like the Declaration - should contain no specific mention of the origin of human rights, in view of the controversial nature of the subject.

14. Mr. WHITLAM (Australia) agreed that article 1 should be deleted and that the ideas it might contain should be considered at a later stage. Its existing text was objectionable in that it reflected only the view of European jurists; nor was the text proposed by the Yugoslav representative acceptable, for, as the Lebanese representative had pointed out human rights and fundamental freedoms were the basis of international law rather than the reverse.

Article 2 - General Debate

At the CHAIRMAN's suggestion, it was agreed that the two paragraphs of article 2 would be discussed separately.

15. Mr. HOARE (United Kingdom) introduced his delegation's amendment (E/CN.4/374) to paragraph 1 of that article.

16. An important question of principle was involved. As stated in its comment, the United Kingdom Government held that the normal practice with regard to the acceptance of international obligations was that accession was only effected after or simultaneously with the taking of the necessary constitutional

/measures

measures for execution. It was a well-established practice for States which were generally in favour of the provisions of a convention to sign it as an earnest of their intentions, without prejudice to subsequent reservations on any specific articles; they then studied the effects of the convention on domestic legislation and made such changes in the latter as might be required; the final step was a solemn ratification of the convention, which at once brought it into force on the territory of the ratifying State, unless the convention itself contained some special provision concerning the date of its entry into force. The Commission should consider the matter most carefully before it departed from that practice and introduced what might well prove to be a dangerous innovation.

17. Indeed, the effect of the existing text of article 2, paragraph 1, according to which ratification of the draft covenant would be no more than a vague promise to be fulfilled by some unspecified date, would be to confuse the situation. It would be impossible to say at any time which of the provisions of the Covenant were in force in the territory of any State which had ratified it. Moreover, some States which had ratified the Covenant in good faith might give priority to other domestic legislation and defer for a long time the measures necessary to bring their laws in conformity with the Covenant. Finally, States acting in bad faith might ratify the Covenant in the knowledge that they would not be required to take immediate steps concerning their legislation, and without any intention of amending it at any time.

18. It was the aim of the Commission to make all the provisions of the Covenant as specific as possible, so that the obligations incurred would be clear and enforceable. The United Kingdom amendment pursued that very aim; if it were adopted, the act of ratification by a State would be equivalent to a declaration that its laws had been brought into line with the provisions of the Covenant. The amendment was being submitted merely as a basis for discussion; if -- as the United Kingdom delegation hoped -- a federal clause were introduced into the Covenant, the amendment would have to be modified. The United Kingdom would also welcome any suggestions to meet the difficulty of such countries as the United States, in which any treaty upon ratification became the supreme law of the land.

19. In order to aid States which might be prevented from ratifying the Covenant by the existence of laws conflicting with it on some minor point, the United Kingdom proposed a new article to follow article 2 (E/CN.4/375),

/permitting

permitting reservations in respect of any provision of the Covenant. Such reservations were limited by the fact that they were not to be of a general character, that they must specify the nature of the domestic law concerned and the reasons for maintaining it in force, and that they must be accompanied by an undertaking to bring the law in conformity with the Covenant as soon as practicable.

20. Thus, the United Kingdom text for article 2, paragraph 1, would preserve established international practice, while its proposed new article -- and, it was to be hoped, a federal clause -- would go a long way towards meeting the difficulties any State might encounter in bringing its laws into conformity with the Covenant before ratifying it. Such a procedure was vastly preferable to the departure from normal practice suggested in the existing text of article 2, paragraph 1.

21. Mr. ORDONNEAU (France) said that his delegation had chiefly drafting changes to propose with respect to that paragraph. Thus, in the first sentence, the words "respect and" should be inserted between "undertakes to" and "ensure". In the French text of that sentence, the word "juridiction" should be replaced by "compétence", which was the proper term in that case. Finally, the second sentence should become a separate paragraph and the phrase at the end, "si les mesures, législatives ou autres, qui sont déjà en vigueur, ne le prévoient pas", which did not exist in the English text, should be deleted.

22. Mr. WHITLAM (Australia) remarked that he might submit drafting amendments when article 2 was considered for the second time; for the moment, he would only suggest that the word "defined" in the first sentence of paragraph 1 should be replaced by "recognized". The expression "the rights defined" might be appropriate when rights were being granted from above, as by some sovereign overlord, or in a bargaining instrument between two or more parties. In the Covenant, however -- as in the Charter and in the Universal Declaration of Human Rights -- there was no question of either bargaining or conferring from above. As the Lebanese representative had suggested, the rights to be protected by the Covenant were inherent in mankind; they were the attributes of human personality. The peoples of the world would be asserting for themselves the rights that belonged to them; such rights could not be defined, they could only be recognized.

/23. It was

23. It was in virtue of that principle that the first recital of the preamble of the Declaration spoke of the "recognition....of the equal and inalienable rights of all members of the human family", and that the final paragraph of the preamble once more mentioned "effective recognition" of those rights. It was for the Commission to ensure that the rights proclaimed in the Declaration were effectively recognized and secured by means of such international treaties as the draft Covenant on Human Rights, so that mankind might enjoy the best kind of freedom -- freedom under law. He therefore hoped that the Commission would accept his amendment.

24. Mr. AZKOUL (Lebanon) asked what were the implications of the United States proposal that the words "territory and subject to its" (E/CN.4/365,page 14) should be inserted in the first sentence of paragraph 1 of article 2. If the phrase were intended to imply the exclusion of aliens on United States territory from protection under the draft convention, he would have to oppose the United States amendment. If, on the other hand, the addition was merely intended for purposes of clarification, he would have no objection to it.

25. He agreed with the French proposal (E/CN.4/365, page 16) to add the words "respect and", and with the Australian proposal (E/CN.4/353/Add.10, page 3) to substitute the word "recognized" for the word "defined" in article 2, paragraph 1.

26. He had been surprised that there was no reference to non-discrimination in the article under discussion, whereas there were frequent references to non-discrimination in the Universal Declaration of Human Rights. The article would gain in value if its first sentence were to be completed by the words "without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status" and if the sentence so completed were made a separate sub-paragraph.

27. Concerning the phrase "within a reasonable time", he agreed with the United Kingdom representative that it was dangerously vague and that it should be replaced by a more suitable phrase. It was true that any convention entered into force once it had been ratified. An exception might be justified in the case of the present draft Covenant in order to secure the largest possible number of ratifications, but such an exception must not go to the extreme of "reasonable time", a concept that could not be objectively defined and that

/was rendered

was rendered even more impracticable by the fact that what might be "reasonable" in the case of one State might not necessarily be so in the case of another. The principle that ratification meant entry into force must be retained. It should, however, be borne in mind that many States would need a certain minimum period of time to give effect to the provisions of the draft Covenant and it was reasonable to meet their requirements in that respect. The time-limit should, however, be unmistakably fixed; it might amount to two or even three years, if that were necessary, although he himself considered that one year would be adequate. He therefore proposed that the words "one year" should be substituted for the words "a reasonable time" but he would be willing to consider shortening or extending that period if convincing arguments were advanced.

28. The United Kingdom proposal concerning specific reservations appeared to meet the difficulty to which he had alluded and was preferable to the existing text of the draft Covenant. He feared, however, that adoption of the United Kingdom proposal would open the door too wide and thus interfere with the attainment of the desired goal. For one thing, it would be impossible to know all the individual reservations made upon ratification by signatory States without a perusal of the actual records at Lake Success.

29. Furthermore, the United Kingdom proposal for an additional article (E/CN.4/375) contained the rather vague phrase "as soon as practicable" in specifying that a reservation "shall also be accompanied by an undertaking to bring the latter into conformity with the terms of the Covenant". Mr. Azkoul thought that it would be preferable to avoid such ambiguities by providing a fixed time-limit. If his own proposal were adopted, each signatory State which failed to take measures within one year to make its law conform with the terms of the draft Covenant would be required to notify the Secretary-General of the fact, giving reasons. To give effect to that idea, he proposed the following sentence to be added to article 2: "Each State party hereto undertakes, if it has been unable to adopt the measures provided above within the said period, to inform the Secretary-General of the United Nations thereof and the reasons therefor".

30. It might be asked what should be done in the case of States failing to conform their laws to the provisions of the Covenant within the one-year period. He believed that most of the signatories could and would make the necessary changes within the one-year period, but for those who failed to do so several alternatives might be considered, depending upon a variety of factors including the actual number of States in that category. For example, the Secretary-General might report the matter to the Commission on Human Rights and the latter might decide to grant an extension of the period. While that aspect of the question admittedly raised a difficulty, he did not think that it would prove insurmountable.

31. The CHAIRMAN noted that the matter of non-discrimination referred to by the Lebanese representative appeared to be covered by article 20 of the draft Covenant.

32. Mr. AZKOUL (Lebanon) thought that the reference to non-discrimination should more suitably be included in article 2 which dealt with the general obligations of the contracting parties. He reserved his right to revert to the matter at a later stage.

33. The CHAIRMAN, speaking as the representative of the United States of America, read the draft of article 2, paragraph 1, suggested by the United States (E/CN.4/365, page 14). She pointed out that the only change proposed by the United States was the insertion of the words "territory and subject to its..."

34. The purpose of the proposed addition was to make it clear that the draft Covenant would apply only to persons within the territory and subject to the jurisdiction of contracting States. The United States was afraid that without such an addition the draft Covenant might be construed as obliging the contracting States to enact legislation concerning persons who, although outside its territory were technically within its jurisdiction for certain purposes. An illustration would be the occupied territories of Germany, Austria and Japan: persons within those countries were subject to the jurisdiction of the occupying States in certain respects, but were outside the scope of the legislatic of those States. Another illustration would be the case of leased territories: some countries leased certain territories from others for limited purposes, and there might be questions of conflicting authority between the lessor nation and the lessee nation.

/35. In the

35. In the circumstances, it seemed advisable to resolve those ambiguities by including the words "territory and subject to its..." in article 2, paragraph 1. In reply to the representative of Lebanon, she would state that aliens on the territory and under the jurisdiction of the contracting State concerned would not be excluded from protection under the draft Convention.

36. Concerning the United Kingdom proposal, she did not believe that the second sentence of article 2, paragraph 1, should be deleted. The sentence was necessary to make it clear that the obligations of the draft Covenant would be carried out by the adoption of legislative or other measures to give effect to the rights defined in the draft Covenant. The United States was not in a position to adopt all requisite legislative and other measures prior to its ratification of the draft Covenant. While the rights now set forth in the draft Covenant were already provided to a substantial degree in the United States, it was not yet possible to assess the full impact of the draft Covenant on the laws of the United States. In the case of many matters covered by the draft Covenant, the views of the United States Supreme Court would be necessary to determine the nature and extent of the shortcomings of United States laws and it was not possible to obtain those views prior to the deposit of an instrument of ratification of the Covenant. It also seemed to the United States that it should be in the same position as the United Kingdom Government, and indeed most other Governments, with respect to the non-enforceable character of the provisions of the Covenant, as such, in the courts. The Constitution of the United States provided: "This Constitution, and the Laws of the United States which shall be made in Pursuance therof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the land." Unless, therefore, a sentence similar in character to the second sentence of article 2, paragraph 1, were retained, the Covenant would become the supreme law of the land and enforceable as such in the courts of the country. In most countries, however, including the United Kingdom, the provisions of the Covenant would not be enforceable in the courts. Only the legislative enactments of the British Parliament, for example, carrying out the obligations of the Covenant, would be enforceable.

37. For the United States, it was not a matter merely of desiring equality for the sake of equality. It was easy to write into the draft Covenant a provision that the law enforcing the Covenant and not the Covenant itself would

/be applied.

be applied. To begin to enforce the Covenant as such, instead of the law in conformity therewith, would throw the United States Courts and other law-enforcing agencies into utter confusion. Similar difficulties would be experienced by other countries, including, for example, Mexico, Argentina and Paraguay, where treaties become the law of the land, if the second sentence of article 2, paragraph 1, were omitted.

38. By the retention of the sentence in question, the provisions of the Covenant itself would not be enforceable in the courts of the United States. There would, however, be a firm obligation on the part of the United States and other countries to enact the requisite legislative and other measures to give effect to the rights defined in the Covenant. In that manner, the legislative and other responsible organs of the United States would be in a position to express in more familiar legal terminology the obligations undertaken by the Covenant.

39. The United Kingdom had stated in its comment (E/CN.4/365, page 14) that "The normal practice with regard to the acceptance of international obligations is that accession is only effected after or simultaneously with the taking of the necessary constitutional measures for execution. In this case His Majesty's Government consider that States should take steps necessary to give effect to the rights defined in the Covenant before they accede to the Covenant."

40. While that might be normal British practice, it was not, in the opinion of the United States, required under international law or practice. On 28 May 1948, following a request of the Drafting Committee of the Commission on Human Rights and at the instance of the United Kingdom representative on the Committee, the following question had been referred for an opinion to the Legal Department of the United Nations: "Is it proper and permissible for a State which accedes to, and ratifies an International Convention to state that it will subsequently adapt its municipal (domestic) law to the provisions of the Conventio or is it necessary that the adaptation of the municipal law precede the ratification of the Convention?".

41. The question had arisen in connexion with the very article under discussion. The Legal Department's conclusion had been as follows:

> "...it is clear that under international law a state may enter into a treaty which requires it to make certain changes in its municipal law. It is in fact frequently the case that a State assumes an international obligation which necessitates new domestic

/legislation

legislation or modification of its existing legislation. In some such cases the treaty provisions expressly require a change in domestic law; in other cases the obligation assumed in the treaty involves domestic legislation because of the constitutional or statutory requirements in the particular country. Even though such changes in domestic legislation may be required, they need not take place before ratification or accession -- unless of course the treaty itself so provides. Thus, as far as international law is concerned, the adaptation of municipal law is not a condition precedent to a State binding itself internationally. A State may properly undertake an international obligation and then subsequently take the necessary domestic legislative measures to ensure the fulfilment of the obligation undertaken.

"The principles set forth in the foregoing paragraph have been accepted by the Permanent Court of International Justice, expressly or by implication, in several cases."

42. There had been many instances in which the United States had enacted legislation subsequent to its deposit of an instrument of ratification to a treaty and that had been true in many cases of treaties to which the United States and United Kingdom were both parties. In some instances, as for example in the case of the Convention for the Protection of Migratory Birds, concluded by the United States and Great Britain, a series of legislative acts had been found necessary. That Convention, which had been signed on 16 August 1916, contained the following provision in its Article VIII:

"The High Contracting Powers agree themselves to take, or propose to the respective appropriate law-making bodies, the necessary measures for insuring the execution of the prevent Convention."

43. The Convention had been ratified by the United States on 1 September 1916 and by Great Britain on 20 October 1916; it had become effective on 7 December 1916. The first United States implementing legislation had been approved on 3 July 1918; other Acts of Congress had been passed, further implementing the Convention, in 1929, 1934 and 1935. Canadian legislation had not been enacted until August 1917, a year after the exchange of the ratifications, when the "Migratory Birds Convention Act" had been passed, with further legislation in 1932. It was believed that the first regulations for the Provinces had not been issued until April and May 1918.

/44. The provisions

44. The provisions of a treaty might possibly be so numerous that a series of legislative acts would be necessary in order to enable the ratifying or acceding State to comply fully with the obligations it assumed, or it might be that the provisions of the treaty were so complex in character, or so diffuse in their wording, that only court decisions would reveal the inconsistency of existing legislation and the need for a repeal of certain provisions of law or the adoption of others. Presumably, appropriate organs of the United States Government would promptly recommend the passage of such legislation as was needed to correct obvious gaps in United States law where the obligations undertaken in the Covenant were concerned.

45. France had suggested (E/CN.4/365, page 16) that the words "respect and" should be included in the first line of the first sentence of paragraph 1 of article 2. It seemed to the United States that a State which ensured all the rights and obligations of the Covenant would be fully respecting the rights defined in the Covenant. The United States, however, had no serious objection to the inclusion of the words "respect and", except that the addition of vague words tended to cloud the document.

46. Neither had the United States any objection to the use of the word "competence" in the French text. The word "jurisdiction" expressed the sense in the English version, but it should be borne in mind that the United States would like the entire phrase to read "within its territory and subject to its jurisdiction".

47. The United States had no objection to the French suggestion that the second sentence of paragraph 1 should become a separate paragraph.

48. The words "si les mesures, legislatives ou autres, qui sont deja en vigueur ne le prevoient pas" appeared at the beginning of the second sentence of the first paragraph of article 2 of the English version ("Where not already provided by legislative or other measures"). That phrase should be retained and not deleted.

49. With regard to the Australian proposals regarding article 2, paragraph 1, (E/CN.4/353/Add.10, page 3), the United States could accept the substitution of the word "recognized" for the word "defined" in the two places proposed.

/50. Mr. ORDONNEAU

50. Mr. ORDONNEAU (France) stated that the French comment (d) (E/CN.4/465, page 16) was not being withdrawn; the suggestion it contained was being maintained.

51. Mr. CHANG (China), reserving the right to enter into a fuller discussion of the many important and suggestive contributions made in the discussion so far, stated that he was prepared to accept the Australian suggestion that the word "recognized" should be substituted for the word "defined". He could also accept the addition of the words "respect and", as suggested by France.

52. The United Kingdom amendment to article 2, paragraph 1, raised a most important problem. Although the document under consideration was called a covenant, it was in effect a treaty or convention, differing from all other previous instruments of that kind in that it would cover a great variety of subjects. A convention normally covered one subject only. The fact that the present draft Convention was intended to cover more subjects than any other should be borne in mind, if only to avoid future disappointments and disillusions

53. The problem of how such a complex draft convention was to be ratified by the various national legislatures was admittedly most difficult but by no means hopeless.

54. The United Kingdom amendment was practical in that it introduced the possibility of specific reservations on particular provisions. He wondered, however, what nation would be frank enough to admit that its own legislation might not be up to the standards specified in the draft Covenant. He saw in that question a very real difficulty and suggested that serious study should be made of that point. He favoured some sort of provision for specific reservations on particular points, as a matter of principle, but would not at the moment commit himself concerning the methods to be used in the implementation of that principle.

55. Another fact to be borne in mind was that States differed in their legislative and constitutional practices. The second sentence of the first paragraph of article 2 might be acceptable. He sympathised with those who had doubts concerning the phrase "reasonable time" but considered that the fixing of a time-limit would also involve difficulties. He suggested that the matter should be left open for the time being and that the Commission should study each

/article

article in part II of the draft Convention, bearing in mind the points to which allusion had been made. The Commission could then return to part I and might well find that its consideration of part II had made it easier to agree upon a suitable text.

56. Mr. HOARE (United Kingdom) regretted that there seemed to be no possibility of reconciling the views of the United States and United Kingdom delegations with regard to the procedures and implications of ratification; the Commission would have to make the final decision between them. In the view of the United Kingdom delegation, ratification implied full and complete acceptance of the obligations of the Covenant in the territory of the ratifying State. It was difficult to see how this acceptance could have any meaning if domestic law was not in conformity with it. Obviously, the possibility could not be overlooked that there might be a need for further legislation after ratification if some aspect of domestic law which was not in conformity with particular articles of the Covenant had been overlooked at the time of ratification, but the Commission should avoid accepting the general proposition that ratification should be a matter of principle only, subject to the subseqnent ascertaining of whether domestic law was or was not in conformity with the provisions of the Covenant.

57. While he appreciated the difficulties implied in the United States representative's argument that a ratified treaty had priority over existing law, he felt that the original language of paragraph 1 was not the only nor the best way to meet that difficulty. It could be obviated by a statement to the effect that nothing in the Covenant must of itself and of necessity become the supreme law of the land. Some such statement would dispense with any need to provide that the implications of ratification should be as indefinite as those in the original text.

58. The observations of the Lebanese representative had shown that he shared to some extent the objections of the United Kingdom to the present text. His observations also showed that he was well aware of the difficulties which would arise from his own proposal that the second sentence in paragraph 1 of article 2 should be retained but amended to specify a definite

/time-limit

time-limit for the enactment of the appropriate domestic legislation. That proposal could, however, be further considered at a later stage.

59. The representative of Lebanon appeared to have partially misunderstood the position of the United Kingdom delegation when he had argued that its proposal with regard to reservations was too broad. It was true that the proposal originally put forward by the Danish delegation had been too broad; the United Kingdom delegation had therefore narrowed down that proposal to the point where the dangers inherent in reservations were avoided. In view of the specific provisions embodied in the United Kingdom draft, the Lebanese representative's argument that it would be impossible to know precisely what reservations a Government might be making appeared to be unjustified.

60. He hoped that the Commission would give the most careful consideration to article 2, in view of the importance which the United Kingdom delegation attached to the principle involved.

61. Mr. SANTA CRUZ (Chile) said that he fully appreciated the importance of the views expressed by the United States delegation. There was, however, a further consideration to be taken into account. The Covenant was not a statement of the mutual obligations of States or of the obligations to the United Nations undertaken by States, but of the obligations of the States towards all individuals resident in their territories in order that those individuals should be able to assert their human rights and obtain respect for them from the Governments. The Covenant also provided for measures of implementation such as the establishment of an international tribunal to ensure that those rights were in fact respected. It was logical, therefore, that the time when the Covenant was ratified should be the time when such rights could be invoked. One of the most serious implications of the United States representative's statement that her country might not be in a position to pass the appropriate legislation before the Covenant was ratified was the moral effect which that might have on other countries. The Commission should reflect very seriously about that possibility.

62. The Chilean delegation would support the United States amendment to the effect that the words "territory and subject to its" should be inserted in paragraph 1, the French amendments to that paragraph and the Australian proposal that the words "recognized" should be substituted for the word "defined". Furthermore, he agreed with the Lebanese representative's view that a specific time-limit should be substituted for the expression "within a reasonable time". The necessary reforms in domestic legislation might be a long process; in some countries amendments to the constitution might be required which, in certain cases, would necessitate their approval by two separate congresses. The Chilean delegation was also studying the United Kingdom amendments with the closest attention.

63. Mr. FABREGAT (Uruguay) observed that, although there was a certain difference in emphasis and weight between the Universal Declaration of Human Rights and the draft Covenant, both documents had two essential values: the actual and the potential.

64. By the actual value he meant the ratification under the auspices of the United Nations of all the obligations regarding human rights laid down as general principles in the Charter and the provision of penalties for their violation. The procedure for ratification proposed by the United Kingdom delegation differed in substance from that stated in the original text. The United Kingdom representative had correctly drawn attention to the difference between the implications of signature and ratification. The Covenant would be signed by plenipotentiaries and then submitted by the Executive to Parliament, which would examine it independently. When the Parliament approved its ratification the country as a whole would consider itself bound by all the provisions of that instrument. The procedure proposed by the United Kingdom delegation might prove useful; there might be an intermediate stage between signature and ratification, during which the appropriate legislation would be enacted. That would entail a certain amount of delay before the ratification, but that might be inevitable.

65. The argument that all the requisite domestic legislation must be enacte before ratification was, however, somewhat strange in view of the potential value of the Covenant. That value lay in the fact that the Covenant would provide a stimulus for the enactment of some of the requisite legislation by influencing public opinion to demand respect for human rights. The Universal Declaration had already shown that such an opinion existed in the contemporary sentiment in favour of democracy.

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66. He was inclined to support the Lebanese representative's proposal that the reference to the prohibition of discrimination should be transferred from article 20 to article 2, paragraph 1, for such a statement of principle should be given greater emphasis; his delegation would reflect upon that question. He would support the United States amendment and reserved his right to speak on the other amendments at a later stage.

67. Mr. KYROU (Greece) appealed to the Commission to take a realistic view of the draft Covenant. He wondered whether, in the special circumstances, it might not be possible to find a compromise between the views of the United States and the United Kingdom delegations. The special character of the draft Covenant lay in the fact that it formulated rights, not between two contracting parties, but for a third party -- the human person. It might, therefore, be possible to deviate from the traditional legal procedure upon which the United Kingdom amendment was based. He was therefore inclined to support the United States proposal that the original text of paragraph 1 should be retained. He reserved his right to comment on the other amendments at a later stage.

68. Mrs. MEHTA (India) found some difficulty in coming to a conclusion about article 2 before the Commission had decided what rights it would embody in the draft Covenant. At that stage it was impossible to decide whether all rights could be guaranteed to all individuals, citizen and non-citizen alike; such a general guarantee might not be possible if economic rights, for example, were written into the draft Covenant.

69. She could not support the United Kingdom amendment, because it implied that States must implement the Covenant before they had ratified it. Many States could not be expected to do that and if a large number of States failed to ratify the Covenant it would not come into force. Time must be given to States which wished to implement the Covenant but would be unable to do so before ratification.

/70. Mr. MENDEZ

70. Mr. MENDEZ (Philippines), introducing his delegation's amendment to article 2, paragraph 2 (E/CN.4/365, page 15), said that his Government took a very serious view of an offence committed by a public official, because it was really a double offence, the official taking advantage of the immunities conferred upon him by his office. The phrase "notwithstanding that the violation has been committed by persons acting in an official capacity" was a negative one and could even be deleted without weakening the article, whereas the phrase proposed by his delegation was strong and positive.

71. Mr. HOARE (United Kingdom) said that the principles embodied in paragraph 2 were, in his delegation's opinion, so important that they should be expanded and set out in separate paragraphs as proposed in the United Kingdom amendment (E/CN.4/365, page 15).

72. The CHAIRMAN drew attention to a comment by the Netherlands Government (E/CN.4/365, page 16).

73. Mr. ORDONNEAU (France) explained that the first French amendment (E/CN.4/365, page 16) was merely to correct an error in translation and that the second had been submitted in order to provide appropriate machinery in case the Commission decided to include the stipulation of the right of petition.

74. The CHAIRMAN, speaking as the representative of the United States of America, said that the difficulty in the existing text was the attempt to ensure with regard to any and all violations of the rights or freedoms defined in the draft Covenant "an effective remedy before the competent national tribunals". That appeared to imply that all violations of the Covenant would take the form of justiciable issues subject to adjudication by the courts or by the judicial process, with the usual relief given by courts, such as damages or injunctions. Such an implication overlooked the fact that many of the rights depended upon political action and might be subject to political considerations, which was inevitable when individual rights were set against the rights of a whole people. Many of

/the rights

the rights and freedoms would depend upon specific legislative action, repealing or modifying statutes. In other situations where the exercise of discretion and judgment by administrative officials was involved it would seem highly improper to penalize government officials for errors of judgment, as distinguished from malicious misconduct. It would therefore be undesirable to require a penalty in such a case without making due allowance for the facts involved.

75. The Commission's intention in drafting article 2 appeared to have been to provide the assurance that States would take the appropriate action to guarantee the substantive rights in the Covenant by legislation, as implied by paragraph 1, to be supported by the executive and judicial branches of the Government, as stated in paragraph 2. The existing text of paragraph 2, however, failed to achieve that object owing to the unduly broad terms in which it was couched. The United States amendment, therefore, was an attempt to confine the scope of paragraph 2 to the duties of the executive and judicial branches of the Government.

Articles 3 and 4

76. The CHAIRMAN proposed that the consideration of articles 3 and 4 should be deferred until the Commission had finished the examination of part II of the draft Covenant.

It was so decided.

77. The CHAIRMAN suggested that a time-limit should be set for the reception of amendments to article 5, in accordance with rule 51 of the rules of procedure.

78. Mr. SANTA CRUZ (Chile) observed that that rule had always been given a liberal interpretation both in the Commissions and in the Council itself. It had usually been applied only if a representative so requested. The time-limit had been useful when the Universal Declaration of Human Rights had been discussed by the General Assembly, the Members of which had not been so familiar with the subject matter as were the members of the Commission. Some members of the Commission might wish to alter the amendments which their Governments had submitted in the form of comments. There was no need, therefore, to impose a time-limit.

/79. Mr. HOARE

79. Mr. HOARE (United Kingdom) supported the representative of Chile. He asked the Chairman whether amendments submitted in the form of comments by Governments in document E/CN.4/365 and others would be regarded as amendments submitted by the members of the Commission.

80. The CHAIRMAN replied that the comments of Governments would be regarded as amendments submitted by the members of the Commission, unless the members themselves stated otherwise. She proposed that no time-limit for the reception of amendments should be set in the earlier stages of the discussion but that the Commission should reconsider that question at a later stage.

It was so decided.

81. Mr. KYROU (Greece) observed that there had been no substantial difference of opinion about article 1 and the preamble. He therefore suggested that the representatives of Australia, Chile, France and Lebanon should prepare a joint text for the second reading.

82. The CHAIRMAN suggested the addition of the representatives of the United Kingdom, United States and Yugoslavia to that unofficial drafting group.

It was so decided.

The meeting rose at 5.15 p.m.

6/4 a.m.