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Mr. KOVALENKO	Ukrainian Soviet Socialist Republic
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Mr. HOARE	United Kingdom of Great Britain and Northern Ireland
Mrs. ROOSEVELT	United States of America
Mr. BRACCO	Uruguay
Mr. JEVREMOVIC	Yugoslavia

Representative of a specialized agency:

Mr. PICKFORD International Labour Organisation (ILO)

Representatives of non-governmental organizations:

Category B
and Register:

Mrs. VERGARA	Catholic International Union for Social Service
Mr. MOSKOWITZ	Consultative Council of Jewish Organizations
Mrs. SCUDAN	International Federation of Business and Professional Women
Miss GARTLAN	International Union of Catholic Women's Leagues
Mr. HAYES Mr. JACOBY Mr. PERLZWEIG	World Jewish Congress
Mrs. POLSTEIN	World Union for Progressive Judaism

Secretariat:

Mr. HUMPERFY	Representative of the Secretary-General
Mr. DAS Miss KITCHEN	Secretaries of the Commission

DRAFT INTERNATIONAL COVENANTS ON HUMAN RIGHTS AND MEASURES OF IMPLEMENTATION
(E/1952; E/CN.4/L.67, E/CN.4/L.114/Rev.2, E/CN.4/L.168, E/CN.4/L.166/Rev.1)
(continued)

New article proposed by the French delegation (E/CN.4/L.67) (continued)

Mr. BORATYNSKI (Poland) stated that certain provisions of the French proposal which at first sight might seem quite harmless might nevertheless seriously jeopardize the real value of the covenant. The French representative had stated that the aim of his proposal was to prevent the ratification of the

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covenant by a State from resulting in a weakening of the economic and social rights already realized within that State. The text of the proposal, however, did not express the French representative's intention. A better idea of the real motives which no doubt lay behind the submission of that text could be obtained by comparing it with paragraph 1 of the article concerning the right of peoples to self-determination. If the French proposal were adopted, that right would be purely theoretical, as the Powers which, by virtue of conventions, enjoyed certain rights over the territories of other countries would be able to invoke paragraph 2 of the new article and maintain that the article concerning the right of peoples to self-determination could not be interpreted in such a way as to interfere with their rights. In order, therefore, to express explicitly the intention explained by the French representative, Mr. Boratynski was submitting the following amendment to the United States amendment (E/CN.4/L.114/Rev.2):

"Nothing in this Covenant may be interpreted as limiting or derogating in any Contracting State from the standard of economic, social and cultural rights and freedoms attained and implemented when this is higher than prescribed in this Covenant."

Mrs. ROOSEVELT (United States of America) did not consider that that text could be regarded as an amendment to her delegation's amendment. It was, in fact, a text to replace paragraph 2 of the French proposal.

The CHAIRMAN also felt that the Polish proposal was actually an amendment to the French draft, and that the Commission should therefore decide whether it was in order.

Mr. MEROZOV (Union of Soviet Socialist Republics) did not agree with that point of view. The Polish proposal aimed at removing from the United States amendment all reference to national law and conventions, which could give rise to interpretations contrary to the provisions of the article concerning the right of peoples to self-determination. It would hardly be fair if the Commission were to refuse to consider the Polish amendment, which had been presented in full compliance with the rules of procedure.

/s/ MISOZ

Mr. NISOT (Belgium) wished to know whether, under the terms of paragraph 2 of the draft article proposed by France (E/CN.4/L.67), those States whose legislation in the field of economic and social rights was more advanced than the provisions of the covenant would be required to maintain that legislation at its present level if they did not wish to expose themselves to the accusation of violating the covenant.

Mr. PICKFORD (International Labour Organisation) stated that under the auspices of the ILO a large number of international conventions had been concluded regarding many of the matters dealt with in the economic and social articles. The ILO therefore attached considerable importance to the inclusion in the covenant on economic and social rights of a provision on the lines of article 18 (2).

Mr. JUVIGNY (France) declared that his delegation had no intentions other than those already stated. The rights referred to in paragraph 2 were merely the fundamental rights of the individual. Some people had claimed that the French proposal referred to purely hypothetical situations, but the representatives of Lebanon and Chile had shown that such a situation really might arise. A State could, of course, always denounce a convention; but it should not be able to invoke the covenant as a legal basis for taking a step backward in the field of economic and social rights. Such was the purpose of the French draft article (E/CN.4/L.67). The proposed provisions could also serve as a guide in case of a conflict of laws.

He then examined the various amendments proposed. The United States amendment which proposed that the word "laws" should be replaced by the word "law", took the word "law" in its widest sense. It was thus preferable to keep to the term "loi" in French, which in the context was broader than the word "législation". The word "loi" in the singular in its connotation of legal provisions, could be used in the French text; it was really a question of translation which could doubtless be settled later by the Secretariat.

The Lebanese representative's proposal for replacing "abridging" by "making it possible to abridge" was not logical and he could not accept it. The word "abridging" raised the question of the legal interpretation of the wording of the covenant, of laws and of conventions while the words "or permitting

/derogation

derogation from" referred to the practical possibility that a State might invoke the covenant in order to restrict economic and social rights.

The Polish amendment reiterated the principles on which the French proposal was based, but he could not accept it, because it introduced the idea of a "standard". The text proposed by France was, in fact, a general legal provision referring exclusively to known legal ideas, whereas the idea of a "standard" referred to a factual state of affairs and came within the sphere of statistics.

Replying to the question put by the Belgian representative, he explained that paragraph 2 was intended in particular to resolve conflicts of interpretation between the covenant and international conventions, the ratification of which made them a part of domestic law, and domestic laws in the true sense of the word. If legislative texts or conventions were less advanced than the covenant, it was the covenant that should prevail.

He considered that the Lebanese suggestion to add the words "of any person" after the words "rights or freedoms" was excellent; however, he would prefer to insert the words "fundamental human", which served exactly the same purpose.

Mr. NISOT (Belgium) wished to know whether the aim of paragraph 2 was to oblige States to maintain their legislation at a more advanced level than that provided for by the covenant.

Mr. AZKUL (Lebanon) contended that the paragraph by no means prevented States from advancing in the field of economic and social rights, but that it forbade them to reduce existing rights.

Mr. HOARE (United Kingdom) stated that the English text did not present the difficulty which the Belgian representative seemed to fear, as it did not lay down any obligation as to the degree of realization of rights; that obligation was provided in article 1. In that connexion he could not agree with the Lebanese representative; the text did not in terms forbid the reduction of existing rights, but its effect would be that the covenant could not be invoked to justify any such reduction.

/Mr. NISOT

Mr. NISOT (Belgium) pointed out that there was evidently a discrepancy between the French and English texts.

Mr. JEVRENGVIC (Yugoslavia) said that, with regard to paragraph 1 of the French proposal (E/CN.4/L.67), he had to make the reservations he had expressed during the seventh session with regard to paragraph 1 of article 10, which was drafted in identical terms. States must be prevented from abusing the possibilities of limitation given them by the covenant; and for that reason it would be preferable to refer, in that paragraph, to the principles of the Charter and of the Universal Declaration of Human Rights.

He considered that in paragraph 2 the words "or as permitting any impairment of" should be deleted, since they could be interpreted as implying that a State was not bound by its ratification of the covenant to alter laws or conventions less perfect with regard to economic and social rights. That provision would enable States to evade the obligations of the covenant by concluding new conventions. He would be able to support paragraph 2 only if it were drafted more clearly, so as to preclude any arbitrary interpretations. The covenant should have the force of law, overriding any conventions and domestic laws regarding human rights, which should provide for a degree of realization at least equal to that called for by the covenant; on the other hand, if they provided for a higher degree of realization, the covenant should not serve as a pretext for reducing the obligations provided for to the level of the obligations laid down in the covenant.

Mr. JUVIGNY (France) thought the Yugoslav representative's fears unjustified. It was enough to refer to the explanation he had given when submitting his delegation's draft (E/CN.4/L.67) to realize that that was so. Moreover, he saw no need for a reference to the Charter or to the Universal Declaration of Human Rights, and he felt that the words "fundamental human", which he had agreed to insert in paragraph 2 of his draft article before the words "rights or freedoms", should satisfy the Yugoslav representative.

/Mr. JEVRENGVIC

Mr. JEVREMOVIC (Yugoslavia) pointed out that it was in paragraph 1, and not paragraph 2, of the French text that he would like to see a reference to the Charter or to the Universal Declaration of Human Rights. He wished to stress the fact that the phrase "broader limitations than those herein stipulated" was not sufficient to prevent abuses on the part of a State, for reasons he had already stated.

Mr. XIROU (Greece) stated that his delegation had no misgivings as to the intentions behind the French proposal (E/CH.4/L.67). In view of the difficulties of interpretation, however, which paragraph 2 appeared to entail, he wondered whether its drafting might not be altered in such a way as to make clear that the contracting States, acting in conformity with their legislations or with existing conventions, remained at liberty to recognize or guarantee rights and freedoms to a greater extent than in the covenant.

Mr. JUVIGNY (France) agreed that such a drafting should remove any ambiguity. However, by merely leaving the State free to comply with its legislation or with existing conventions, such a provision would lose the nature of a guarantee which the original text gave it. Consequently he could not accept the suggestion of the Greek representative.

Mr. BCSATYNSKI (Poland) disagreed with the French representative's objection that the Polish delegation's text was not drawn up in juridical language. In the English text of the Polish amendment the word "standard" was by no means used in the sense of "standard of living", but in the sense of "degree of realization", an idea that applied to rights guaranteed either by the domestic legislation of States or by international instruments. In any case the important thing -- and, it would seem, the intention of the French representative -- was to ensure that, in a country where economic, social and cultural rights were more fully recognized and guaranteed than in the covenant, the State could not, by invoking the covenant, impose new restrictions or limitations on the exercise of those rights. That being so, it did not seem necessary to mention the laws of the State or existing conventions; but, if the French representative considered it indispensable, he was prepared to include a formula to that effect in his text.

/Mr. JUVIGNY

Mr. JUVIGNY (France) acknowledged that the Polish proposal had the advantage of being less ambiguous than the original text. The fact remained, however, that the provision at present under discussion was to provide for the settlement of conflicts between different legal texts. Even taking into account the improvement which the Polish representative was prepared to introduce into his text, Mr. Juvigny still objected to the word "standard", which had no precise legal meaning.

Mr. MERGLOV (Union of Soviet Socialist Republics) was sorry that the representative of France had not taken advantage of the opportunity afforded him to make his proposal (E/CN.4/L.67) agree with his previous statement. The French representative could not fail to perceive that a great many representatives had expressed concern regarding the interpretation of his text, the ambiguity of which had been emphasized on several occasions.

The French proposal involved a danger which the Commission had not yet noticed. In stating that the covenant could not be interpreted as abridging "any right or freedom" and not merely economic, social and cultural rights, it seemed to imply that certain rights incompatible with the enjoyment of economic, social and cultural rights could not be subjected to any limitation or restriction. Such a provision, paradoxical as it might seem, was tantamount to saying that none of the rights recognized in the covenant could be invoked to put an end to any injustice or form of servitude authorized by existing texts. Therefore if the French representative was sincere he should obviously withdraw a text whose adoption might have the most serious consequences.

Though the Polish text accorded exactly with the intentions of the French representative, the latter was persisting in adducing unsound arguments against it. As the Polish representative had explained, the word "standard" was the same as "the degree of realization" of the rights provided under a country's laws. A comparison between that degree and the degree of realization provided for the same rights by all the provisions of the covenant was not only possible but essential. The word used in the Polish amendment could not be mistaken for "standard of living" in the social meaning of that term, and any attempt in that direction masked a desire to confuse the issue and systematically to reject the Polish amendment. The amendment stipulated that the covenant should lay down

/a minimum

a minimum and that its provisions should not be an excuse for abrogating any previously adopted provisions which were wider in scope.

He warned the Commission against the danger to which the adoption of the French text, which was a double-edged weapon, would give rise.

Mr. AZKUL (Lebanon) said that the USSR representative had rightly stressed the danger of the French proposal (E/CN.4/L.67), which might be interpreted as giving States the right to invoke existing texts in order to limit the right of peoples to self-determination. The danger had been removed, however, by the French representative's agreement to specify that it was a question of fundamental human rights and not of the rights of States. He was sure that the French representative would be willing to make further improvements in his text if necessary.

Following the statement just made by the USSR representative he saw yet another danger -- not in the French proposal but in the Polish text. By specifying that the provisions of the covenant could not be interpreted as limiting economic, social and cultural rights, the Polish amendment might imply that civil and political rights could be infringed in order to put into effect the clauses of the covenant relating to economic, social and cultural rights. Wrong intentions would thus be attributed to delegations which had voted in favour of two separate covenants. The Polish amendment could not therefore be accepted without important changes.

Mr. Arkoul did not believe that the French text could be interpreted as sanctioning any injustice as it referred to "rights or freedoms", a phrase which could obviously not be applied to an injustice. The Greek representative's suggestion appeared to him to be satisfactory but he saw no reason why the Commission should not support the French proposal which, as amended, seemed very satisfactory.

Mr. JUVIGNY (France) said that having considered at length how the idea expressed by the word "standard" should be translated in French, he thought that the word "portée", which had a specific legal meaning, was most suitable. The term seemed confusing, however, as it might lead people to think that while the standard of economic, social and cultural rights could not be limited, the very substance of those rights could always be impaired. In the circumstances he maintained his original text (E/CN.4/L.67).

/He supported

He supported the objections of the representative of Lebanon as regards the Polish amendment. It might, moreover, be asked whether the amendment was compatible with General Assembly resolution 543 (VI) which laid down that the two covenants should contain as many similar provisions as possible, an objection which could not be raised as regards the French text as it reproduced a text adopted for the other covenant.

Mrs. ROOSEVELT (United States of America), referring to the question of translation raised by the French representative as regards the word "laws", suggested that the word "lois" should be used in the French text and "law" in the English text, it being understood that both terms would be used in their widest sense.

She thought that the French text, as amended, was perfectly clear and should be adopted.

Mr. KOVALENKO (Ukrainian Soviet Socialist Republic) did not share the Lebanese representative's view that all ambiguity would be removed in the text under consideration if the French delegation agreed to the proposed drafting. If all that was necessary was merely to prevent the restriction or limitation of economic, social and cultural rights, paragraph 1 of the French proposal would do quite well by itself.

As regards paragraph 2, if the reasons behind the proposal in question were really those given by the representative of France, it would be logical for the latter to accept the Polish text which set down the French representative's suggestions in perfectly clear terms. His refusal proved that the intentions behind the French text were different from those stated by the author. The French representative had in fact stated that paragraph 2 was intended to provide for the settlement of any conflict between the covenant and other legal texts. Briefly, he wished to stipulate that should the provisions of the covenant conflict with national legislation or any convention, the latter would prevail, which was tantamount to denying the legal value of the covenant. Such a clause would allow States which did not agree with certain provisions of the covenant to avoid any obligations thus imposed on them. He therefore asked the members of the Commission to think of the consequences which the adoption of the French text might have and to support the Polish amendment.

Mr. BOARE

Mr. HOARE (United Kingdom) said that it was necessary, for the reasons given by the French representative, to include in the covenant a provision such as paragraph 2 of the draft article submitted by France (E/CN.4/L.67). In the case of a conflict between the covenant and national legislation of States it was essential that the provisions of the covenant should prevail only if they provided for more extensive rights than the national legislation of the State concerned. The arguments which delegations that were opposed to paragraph 2 of the proposal had drawn from paragraph 3 of the article on the right of peoples to self-determination confirmed the objections which he had raised against the insertion of that paragraph in the covenant. By interpreting the covenant in such a way that it necessarily prevailed over any other convention or treaty concluded between certain States, they were aiming at radically changing the structure of present international law. The Commission on Human Rights was not competent to take such action.

The fact that some delegations said paragraph 2 of the French proposal would narrow the scope of paragraph 3 of the article on the right of peoples to self-determination clearly showed that it was a mistake to adopt that paragraph. Nevertheless if paragraph 2 of the French draft article seemed ambiguous because of the general nature of the rights and freedoms mentioned in it such ambiguity should be removed.

With that aim in view, the Polish representative was proposing that the article should specify that the standards already attained in a State as regards economic, social and cultural rights and freedoms must be safeguarded when the latter were higher than those prescribed in the covenant. Article 1 of the covenant laid down that States should ensure the full realization of those rights. The Polish proposal thus implied that the covenant did not go far enough and did not prescribe sufficiently high standards. In fact, it was impossible to prescribe higher standards than those stated in article 1.

The French representative had agreed to insert the word "fundamental" before the words "rights and freedoms" in paragraph 2 of his draft article. He doubted whether that addition was really necessary, because the covenant itself related to fundamental rights and freedoms. The addition did, however, meet certain objections that had been raised. On the other hand, it considerably modified the meaning of the paragraph by referring to fundamental human rights in general, and not to those particular rights or aspects of rights which were recognized or guaranteed by law or conventions in force in the various States.

/What was

What was required was a reference to the particular recognition or guarantee of a fundamental human right accorded by national legislation or by conventions, since it was with that particular recognition or guarantee that there might be a conflict. He therefore proposed an amendment (E/CN.4/L.170) in that sense.

Mr. JUVIGNY (France), replying to the statement of the representative of the Ukrainian SSR, wished to emphasize that he had never attempted to deny or detract from the value of the covenant. He had clearly pointed out that the covenant should prevail if national legislation in any given country was less liberal than the provisions of the covenant as regards fundamental rights and freedoms. In the contrary case national legislation should prevail. If the covenant and such legislation contained identical provisions, no problem would arise.

Mr. KOLKOZOV (Union of Soviet Socialist Republics) noted that the French representative admitted that in the case of a conflict between the covenant and national legislation on conventions or treaties in force, the latter should prevail only if they were wider in scope than the provisions of the covenant. The French representative should include that statement in paragraph 2 of his draft article. The latter was ambiguous and could be interpreted as meaning that national legislation or existing legal instruments should always prevail over the covenant. The Polish amendment (E/CN.4/L.168) avoided that ambiguity and expressed the French representative's ideas.

The mere insertion in the French delegation's text of the word "fundamental" before the words "rights and freedoms" would not dispel all the USSR representative's misgivings. He quoted several examples which showed that the paragraph as drafted would always enable a conflict between existing texts and the covenant to be settled in favour of the opponents of the right of peoples to self-determination or of those who enjoyed alleged acquired rights.

In spite of what the Lebanese representative maintained there was no danger that the Polish amendment (E/CN.4/L.168) would invalidate civil and political rights to the advantage of economic, social and cultural rights which came under a separate covenant. The amendment adequately reflected the French delegation's ideas and removed any ambiguity in paragraph 2 of the French draft article (E/CN.4/L.67).

Mr. DOPATYNSKI (Poland) paid a tribute to the sincerity of the United Kingdom representative who had shown very clearly what he thought of paragraph 3 of the article on the right of peoples to self-determination, and had admitted that the covenant should include a provision safeguarding the rights acquired by certain States in the territory of other States. Mr. Dorotyński drew the attention of the members of the Commission to the possible consequences of such an interpretation of paragraph 2 of the French draft article (E/CN.4/L.67). He wished to put the French representative's arguments in concrete form in his amendment (E/CN.4/L.168). If they were valid the Commission should adopt that amendment.

Replying to the remarks of the Lebanese representative, he recalled that his delegation had always been in favour of a single covenant, but as the Commission had to draw up two covenants he had not thought that civil and political rights should be mentioned in his amendment.

Mr. SANTA CRUZ (Chile) recognized that it was the French delegation's intention that the covenant should not serve as an excuse for a State not to implement certain rights which its legislation already guaranteed more widely than the covenant. It was essential that the text adopted by the Commission should not be interpreted as permitting a State not to grant fundamental rights and freedoms under the pretext of safeguarding other rights not covered by the covenant.

States recognized in principle that every human being should enjoy certain fundamental economic, social and cultural rights. Some States, however, realized that it was impossible for them to grant such rights immediately and the covenant provided certain limitations for such cases. Those limitations should not cause any retreat from the level already reached in the fields of economic, social and cultural rights.

The Chilean delegation therefore suggested that the French draft article should be amended. The amendment admitted that in certain States legislation, regulations, judicial decisions and customs might guarantee the exercise of economic, social and cultural rights to a larger extent than the covenant. The amendment requested such States to agree not to abrogate those legislative and other provisions and not to suspend their application under the pretext that they had signed a covenant which merely provided for the progressive implementation of those rights.