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<u>Chairman:</u>	Mr. MALIK	Lebanon
<u>Reporteur:</u>	Mr. WHITLAM	Australia
<u>Members:</u>	Mr. NISOT	Belgium
	Mr. SANTA CRUZ	Chile
	Mr. CHENG FAONAN	China
	Mr. GEORBAL	Egypt
	Mr. JUVIGNY	France
	Mr. KYRCU	Greece
	Mrs. MEHTA	India
	Mr. WAHEED	Pakistan
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Members: (continued)

Mrs. BRÜSSEL	Sweden
Mr. EDVALENKO	Ukrainian Soviet Socialist Republic
Mr. MOROZOV	Union of Soviet Socialist Republics
Mr. ESCAPE	United Kingdom of Great Britain and Northern Ireland
Mrs. ROOSEVELT	United States of America
Mr. FORTOLA	Uruguay
Mr. JEVREMOVIC	Yugoslavia

Representative of a specialized agency:

Mr. FICKFORD	International Labour Organisation (ILO)
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Representatives of non-governmental organizations:

Category B:

Mr. NOLDE	Commission of the Churches on International Affairs
Mrs. DARGONS	International Council of Women
Miss SCURAN	International Federation of Business and Professional Women
Miss ROBB	International Federation of University Women
Mr. BEER	International League for the Rights of Man
Miss SCHELFER) Mrs. CARPICHAIL)	International Union of Catholic Women's Leagues
Mr. JACOBY) Mr. HAYES)	World Jewish Congress
Mr. RONALD) Mrs. FOLSTEIN)	World Union for Progressive Judaism

Secretariat:

Mr. HUMPHREY	Director, Division of Human Rights
Mr. DAS) Miss KITCHEN)	Secretaries of the Commission

/DRAFT

REPORT INTERNATIONAL COVENANT ON HUMAN RIGHTS AND MEASURES OF IMPLEMENTATION:
PART III OF THE FIRST COVENANT DRAWN UP BY THE COMMISSION AT ITS SEVENTH SESSION
(E/1952, E/CN.4/1955/Ann.5, E/CN.4/L.76, E/CN.4/L.115) (continued)

Article 32 (continued)

Mr. MORIS (United Kingdom) said that some delegations had taken the position that there should be no limitation on the rights set forth in the covenant; since they preferred to eliminate article 32 altogether, their objection to the French amendment (E/CN.4/L.76) to that article should be seen in the light of that view and discounted accordingly.

In his opinion, an article in the nature of a general limitation clause was essential in the covenant on economic, social and cultural rights. The ultimate purpose of the covenant was the full realization everywhere of the rights enumerated in it. That purpose being so all-embracing, and the content of the rights being extremely broad, it was obvious that in the practical application and exercise of those rights the States parties to the covenant would, at all levels of that realization, have to limit them in some way. The intent of article 32 was precisely to limit such limitations by stating that they were permissible only in certain circumstances and under certain conditions. While the Chilean representative had been technically correct in saying that article 1, which speaks of progressive realization of the various rights, was in itself a limitation, that article gave no indication of what kind of a specific limitation would be legitimate, and article 32, which provided precisely such guidance, was therefore necessary, as without it States would be able to claim that the covenant did not prevent them from limiting the exercise of economic, social and cultural rights on any grounds whatever.

The objection had been raised that there was no general limitation clause, corresponding to article 32, in the covenant on civil and political rights; but that covenant contained one group of rights -- such as the right to a fair trial or the right of habeas corpus -- which must be completely recognized and on which no limitation could be placed, and another group -- such as the freedom of thought, expression, assembly and association -- on which definite limitations were imposed within the relevant articles themselves. Where economic social and cultural rights were concerned, the Commission must recognize that at any level of their realization -- and even when they were fully realized

/overwhere

... there would be clashes of interests which would have to be regulated by the State. A general limitation clause was particularly desirable since it would indicate to the State what limitative action on its part was permissible.

He would vote for the French amendment (E/CH.A/L.76), which stated new and solid grounds for such limitation, and for the United States amendment (E/CH.A/L.115) to it, as "prevention of disorder" was far more restricted than "public order", which might possibly be understood to mean public policy. One stipulation in the French amendment, "recognition of and respect for the rights and freedoms of others", was particularly important. The United States and French representatives had already given practical examples of its application. Certainly respect for the rights and freedoms of others was a legitimate limitation on the trade union rights and was recognized as such in article 16 as drafted at the seventh session of the Commission. That limitation should apply to article 2, which not only recognized the right to form and join trade unions, but implied the right of trade unions to take steps for the protection of the workers' economic and social interests. Moreover, a trade union must be allowed to exclude from its membership persons not belonging to trades with which it was concerned. Obviously, similar limitations should be placed on all the other economic, social and cultural rights, lest they be exercised by some individuals at the expense of the general welfare.

Mr. JUVIGNY (France) agreed with the United Kingdom representative that in the covenant on civil and political rights limitations had been inserted wherever required. Even article 3, which guaranteed the right to life, contained such a limitation in that it permitted the taking of life in the execution of a sentence of a court and in self-defence. Article 5 limited individual freedom by defining cases which were not to be considered forced labour; while articles 6, 8 and 9 set limitations on the limitation of freedoms by defining in what circumstances it was legitimate. There was no need for a general limitation clause in the covenant on civil and political rights, since nearly every article in it either contained a specific limitation or was itself, to a certain degree, of a limiting character. No such specific restrictions had been included in the articles dealing with economic, social and cultural rights, and a general limitation clause was therefore necessary to preclude the conflicts between the rights of individuals that had been ably illustrated by the

United States representative. Such a clause would, moreover, be in keeping with the general terms in which these articles were couched.

It should be remembered that many of the rights in the present covenant were subject to technical conventions containing limitations. Thus, there was an ILO convention dealing with trade unions; throughout that convention, certain limitations had been imposed either on the exercise of the right in question or on administrative action which could be taken to restrict the right; thus, by prohibiting dissolution by administrative means, it rendered such measures subject to review by the courts in order to preclude any possibility of arbitrary action. It was obvious that the exercise of economic and social rights must be subject to some limitation; thus, all countries had to be free to regulate the right to social welfare laws, for example, even beneficiaries should also contribute allowances he received for his dependants. True, the word "progressively" in article 1 was in itself a limitation; but care should be taken not to distort its meaning. The progressive realization of the rights set forth in the covenant should depend entirely on the resources available to a State, and should not be invoked by States as grounds for failing to implement a right when resources were available. It was quite another matter to limit the exercise of a right on the grounds that it was harmful to the rights of others or to the general welfare; article 31, particularly as amended by France, would, as the United Kingdom representative had justly pointed out, place a limitation on the limitations which the State could impose.

On the national plane, courts provided recourse against arbitrary action; on the international plane, if the covenant were to be truly enforced, some similar form of recourse would have to be provided. Far from representing an attempt to undermine the covenant, however, the general limitation clause, which defined the only possible limitations, would facilitate international implementation by protecting economic, social and cultural rights from possible arbitrary State action.

Mr. SANTA CRUZ (Chile) remarked that he was fully aware that there were specific limitations in articles on civil and political rights; he had wished to draw attention at the preceding meeting to the fact that there was no general limitation clause in the civil and political covenant such as article 30 would constitute in the covenant on economic, social and cultural rights, and also to the fact that article 29 of the Universal Declaration of Human Rights, which

/the French

The French and United States representatives had invoked, had been drafted to apply to civil and political rights, and not to economic, social and cultural rights. The historical reason for that was that it had been found too difficult to draft specific limitations in the Declaration with regard to civil and political rights, and a general clause had therefore been decided upon. Nevertheless, when the covenant on civil and political rights had been drafted, that precedent had been departed from, and specific limitations had been included in the various articles. In view of that, it seemed altogether illogical to propose a general limitation clause for the covenant on economic, social and political rights, on which it was far easier to impose specific limitations.

At the seventh session, the representative of Pakistan had therefore appealed to the Commission to examine that covenant article by article in order to see where specific limitations might be required, and had been supported by the Lebanese representative. Mr. Santa Cruz himself at the preceding meeting had asked for concrete examples of rights which required a general limitation clause, and had received illustrations no more satisfactory than those given at the seventh session. The fact was that there was much less need for a general clause in the present covenant than in the covenant on civil and political rights, which were guaranteed by States, whereas the economic, social and cultural rights were merely recognized. Under article 1 of the covenant on economic, social and cultural rights, States merely undertook to take steps, to the maximum of their available resources, with a view to achieving progressively the full realization of the rights recognized therein. In the light of those provisions, no further limitations were necessary for most of the subsequent articles. Taking up those articles one by one, he pointed out that under their provisions, States parties to the covenant would rarely undertake to take steps -- which were to be limited by their resources -- to realize in some unspecified future the right to gain one's living by work, to social security, to education, to culture, to food, clothing and adequate housing, to health, to protection of mother and child, etc. The taking of such steps could not possibly be in conflict with the general welfare in a democratic society or with the legitimate requirements of morality and public order, and those rights consequently required no limitations such as contained in article 32 and in the French amendment. That was all the more true since

/the rights

the rights were so broadly drafted that the States would always be able to impose internal regulations to prevent abuse. The right to education would no more extend to mental defectives under the covenant -- to take up an example given by the United States representative -- than it did under domestic legislation, which never specifically provided for their exclusion.

He agreed that article 27, which dealt with trade union rights, might require further limitation, and was willing to consider whether a provision to that effect should be included in that particular article. Oddly enough, those who now clamoured for a general limitation clause, had voted to exclude from that article the specific limitation contained in the original draft -- apparently in order to be able to argue that a general limitation clause was necessary.

There was one right, however, which would be completely nullified by that clause: the right of peoples and nations to self-determination, as adopted by the Commission at the present session (E/CN.4/53). The Commission had recognized that that right included permanent sovereignty of the peoples over their natural wealth and resources and had gone on to say that in no case might a people be deprived of its own means of subsistence on the grounds of any rights that might be claimed by other States. A general limitation clause which stated that limitations could be imposed on that right on the grounds of recognition of and respect for the rights of others made that right completely inoperative, since it was obvious that there would always be a conflict of interests in that field between an under-developed country or colonial territory and the highly industrialized Powers which had gained control over their natural resources.

He appealed to the delegations of industrial countries to appreciate that he had no intention of attacking them, since admittedly the standards of living in their countries were much higher than in under-developed countries. His purpose was rather to defend the future of the peoples in under-developed areas by making it imperative upon their governments to raise their standards of living by complying with the provisions of the covenant. Since the inclusion of the general limitation clause would vitiate the contents of that covenant, he was completely unable to accept it, but was prepared to consider the insertion of specific limitation clauses in any of the separate articles.

/Mr. BORATYNSKI

Mr. LORSTENSKI (Poland) said that to place such limitations as those embodied in article 32 on the exercise of economic, social and cultural rights would amount to destroying the level of social achievement attained by a country. The general welfare could be promoted, for example, by an improvement in the tax system, but such measures had nothing to do with the enforcement of fundamental human rights. Free and compulsory education should not be subjected to the limitation that it must be solely for the purpose of promoting the general welfare in a democratic society. As the Chilean representative had shown, none of the economic, social and cultural rights required limitation. He could appreciate the reasons why some countries had supported the limitations in article 1, although he could not share them; but it would be retrograde to impose limitations once a certain stage in the progressive realization of the rights had been attained.

Mr. ROOSEVELT (United States of America) urged the Commission to weigh very carefully whether the omission of a general limitation clause might not do more harm than good to the covenant. Article 32 had been included at the previous session after thorough discussion in which the general feeling had emerged that States would be very much more cautious in the steps they took towards applying the provisions of the covenant if there was no limitation clause to safeguard them against emergencies. They would consider every stage in their education programs, for instance, with the most meticulous attention if there was no limitation clause. The question of morality or the prevention of disorder would be bound to arise. If a parent had the right to insist on the education of his child in all circumstances, regardless of the claims of morality, the State would be very cautious about granting the full right to education. Similarly, it was well known that abuses of social security often occurred; the draft covenant stated the recognition of the right in the broadest terms. Governments would, therefore, be very cautious in implementing it unless they were safeguarded by a limitation clause. The Chilean representative had stated at the previous meeting that some of the rights in the draft covenant on the civil and political rights could not be derogated from, even in a case of

/emergency.

emergency. That was not true, however, of the rights in the other covenant. Without a carefully-worded general limitation clause, there would be needless obstacles to speedy implementation. The Chilean representative had not said that there might not have to be some limitations, although he had opposed a general limitation clause. She therefore supported the French amendment (E/CN.4/L.70), which was an improvement on the original text, but would maintain the United States amendment (E/CN.4/L.115) in view of the explanation of the connotation of the words "public order" given by the Secretariat at the seventh session (E/CN.4/SR. , paragraph 197).

Mr. JUREWICZ (Yugoslavia) said that his delegation maintained the view, expressed at the seventh session, that no fundamental human right, and in particular no economic, social and cultural right, was absolute. That was why he had voted for paragraph 1 of the additional article proposed by the French delegation (E/CN.4/L.67/Rev.1). He could not, however, accept a general limitation clause, because it would be open to varying interpretations, even interpretations diametrically opposed to the Commission's intentions. The Commission had adopted an article prohibiting discrimination in the enjoyment of all economic, social and cultural rights on the ground of sex. Under the general limitation clause a government might plead the just requirements of public order to refuse equal pay for men and women. Already the States' obligations with respect to the economic, social and cultural rights were very vague and there were many loopholes by which they could avoid fulfilling their commitments. A general limitation clause would weaken the draft covenant still further. He might, however, be prepared to consider the inclusion of specific limitations where necessary. He agreed with the French representative that such limitations should be subject to review by the courts, but found it curious that the French delegation had voted against the insertion of paragraph 3 of the old article 1 (E/19), page 20) in the text of the article 1 adopted by the Commission, since under that paragraph the Contracting States undertook to ensure that a person would have an effective remedy in the event of the violation of any of his rights or freedoms as recognized in the covenant.

Mr. KISHO (India) agreed with the USSR and Chilean representatives that hardly any of the articles on economic, social and cultural rights required limitation. The only exception appeared to be article 21, dealing
/with trade

with trade union rights. Indeed, limitations had been incorporated in article 16, which dealt with the right of association. Article 27, in fact, was not really an economic or social right but a political right and should be in the other draft covenant; that would also be true of the right to property, if it was finally adopted, and that too would call for a limitation provision. She would vote for the original text (E/1992) of article 32, but would ask for a reconsideration of article 27 at the appropriate time, to find whether it required a specific limitation or else incorporation in the other draft covenant.

Mr. KOROZOV (Union of Soviet Socialist Republics), speaking on a point of order, did not want to curtail the debate on such an important subject, but wondered whether it would be in order for him at the appropriate time to move as a previous question whether the Commission did or did not in principle wish for the inclusion of a general limitation clause in the draft covenant; and, should it decide that it did wish for its inclusion, whether he could then propose that no decision should be taken at the current session.

The CHAIRMAN replied that such a procedure would be entirely in order. A question of principle could always be raised, provided that it did not refer to a specific text, and, under rule 61, it would be put to the vote before any text. The question would of course be put in positive form, namely whether the Commission wished for the inclusion of a general limitation clause. If the Commission favoured its inclusion, the USSR representative could then move the adjournment of the debate under rule 45.

Mr. HIGGINS (United Kingdom), speaking on a point of order, drew the Chairman's attention to what had been, in his opinion, a similar procedural situation in connexion with the proposal to delete article 29. The Chairman had then ruled that the United Kingdom representative could, if he preferred, raise the question of principle, but that it could be put to the vote only immediately before the final vote on the article. As that ruling had been accepted, the same procedure should be adopted with regard to article 32.

/The CHAIRMAN

The CHAIRMAN said that the true analogy was with the procedure adopted in connection with article 23 rather than with article 29. In connection with article 23 he had ruled that if the United Kingdom representative wished to raise the question of principle rather than press his proposal for the deletion of the article, the vote on the question of principle would have priority. The United Kingdom representative had been on the point of accepting that suggestion when the Chilean representative had made an alternative suggestion, which the United Kingdom representative had preferred.

Mr. SANTA CRUZ (Chile), speaking on a point of order, said that the vote on the principle should be taken without prejudice to the possibility of further consideration whether a specific limitation should be incorporated in article 27. That would meet the point raised by the representative of India.

Mr. MOPOZOV (Union of Soviet Socialist Republics) agreed with the Chairman's rulings and wished to make it quite clear that he was not proposing the deletion of the article, but only raising the question of principle. He accepted the Chilean representative's proviso as an amendment to his own first proposal.

The CHAIRMAN said that the question of principle would be put to the vote immediately the debate ended, provided the procedural position had not changed in the meantime.

Mr. FORTUNA (Uruguay) said that the Uruguayan delegation was not convinced by the arguments presented in favour of the inclusion of a general limitation clause in the covenant on economic, social and cultural rights. It maintained its earlier position of willingness to accept an article along the lines of article 32 as a compromise to facilitate accession to the covenant by other States. It attached great importance to the specific statement in the text of definite conditions to justify limitations such as determination by law, compatibility with the nature of the rights and promotion of the general welfare in a democratic society. The conditions set forth in the present text of article 32 represented the maximum which the Uruguayan

/delegation

delegation could accept in a general limitation clause. It was unable to support either the French or the United States amendments adding other concepts which, though not dangerous in themselves, were open to differing and opposing interpretation.

The Uruguayan delegation would vote only in favour of article 32 in its present form. If the French amendment was adopted, it would be obliged to abstain in the vote on the article as a whole.

Mr. GIBRAN (Egypt) said that the discussion in the Commission had raised doubts in his mind regarding the general limitation clause, and especially the French and United States amendments. To some extent he agreed with the representative of Yugoslavia that human rights were not absolute and that some limitation was necessary to ensure effective enforcement and universal exercise. He felt, however, that the nature of the articles in the covenant on economic, social and cultural rights made limitations generally unnecessary except in the case of article 27. The various articles in the covenant on civil and political rights contained specific limitations because of the different nature of these rights, and because in certain cases the particular articles were drafted negatively to prevent abuse by the State.

His doubts regarding the advisability of a general limitation clause had been emphasized by the United States amendment which, by providing for limitation to prevent disorder, could be interpreted broadly to abolish the right of self-determination of peoples. Any proposal for self-determination could, under the United States amendment, be considered as a possible cause of disorder or insecurity.

The French amendment would tend to exaggerate and distort the purpose of economic, social and cultural rights. He agreed with the representative of Chile that considerations of morality and public order were unrelated to economic, social and cultural rights and that such considerations were more relevant to civil and political rights.

The Egyptian delegation would vote against the French and United States amendments and would abstain in the vote on article 32 as a whole.

/s/ Mr. WAHED

Mr. WHEED (Pakistan) recalled that at the preceding session the delegation of Pakistan had taken the position that limitation of economic, social and cultural rights was in general unnecessary. It had further maintained that if limitations were considered essential to respect the rights of others and prevent abuses, such safeguards must be related to individual rights rather than embodied in a general clause.

In the light of article 1 and the Chilean representative's article-by-article analysis of the covenant on economic, social and cultural rights as so far adopted, the delegation of Pakistan concurred fully in the objections to the general limitation clause. The Commission in its first article had recommended progressive implementation in accordance with the resources available to each State. Immediate implementation was not, therefore, required. A general limitation clause, particularly with the French amendment, would curtail the rights enumerated and would unjustifiably restrict their exercise. Such a provision would in effect nullify the Commission's achievements at the present session.

In view of the provisions of article 1 and the special limitations contained in each article where deemed necessary, a general limitation clause was inadvisable. The delegation of Pakistan would be unable to support the French and United States amendments. However, it had no objection to a re-examination of article 27 if the Commission so desired.

The CHAIRMAN, speaking as the representative of Lebanon, associated himself with the position of the delegation of Pakistan, and said that he would vote against a general limitation clause.

If a majority of the Commission wanted such a clause, the Lebanese delegation would exercise its vote to restrict the limitation as far as possible and to weaken the generality of the limitation clause.

Mr. MOROZOV (Union of Soviet Socialist Republics) said that the French representative had no valid arguments to adduce in favour of the general limitation clause. The example of misappropriation of funds for social assistance to which he had alluded could hardly be taken as a serious justification for a general limitation clause when such problems could be handled under the terms of national legislation penalizing such offenses.

/s/for

After the brilliant analysis by the Chilean representative, it was clear that there were no grounds whatever for placing limitations of any kind on the articles in the covenant on economic, social and cultural rights.

Referring to the United Kingdom representative's statement on trade unions, he said that any delegation could at a subsequent stage propose additions or limitations to any article. It was the intention of the USSR delegation to propose broadening of the rights enunciated in article 27. The United Kingdom representative seemed to imply that the right to join trade unions set forth in article 27 could be extended only in respect of organizations protecting the interests of the specific worker wishing to exercise the right. Differing views might be held as to which organizations protected the interests of workers. Such grounds were therefore unacceptable as limitations.

It was significant that the advocates of limitations had failed to propose specific limitations in respect of individual articles, and now stressed the general limitations clause as an essential protection from arbitrary limitation of rights. In his opinion, however, a general limitation clause would destroy the rights which the Commission had so carefully sought to safeguard in the individual articles.

The thesis of the United States representative, that a general limitation clause would encourage States to move ahead more rapidly in the field of economic and social rights, was indefensible. A provision justifying violations could hardly be construed as a factor encouraging compliance with a State's obligations. The United States representative had further said that individual limitations to each article would constitute a greater limitation than a general limitation clause. He pointed out in that connexion that there was no assurance that a majority of the Commission would accept limitations of individual articles but that in any case he could not agree that it was preferable to insert a broad general limitation clause applicable to all articles. If the need for limitation of specific articles was pressed, the Commission would be free to review the articles and consider whether any of them required limitation.

In drafting the covenant on civil and political rights, the Commission had sought to reduce limitations as far as possible, and had accepted only mild restrictions in a few cases. In both covenants, however, the structure must be adapted to the aims and objectives sought.

/The more

The more vague a general clause, the greater was the possibility of application to all articles of the covenant. Special consideration must therefore be accorded to all vague and general texts. Article 32 was so broad and far-reaching that it would destroy all of the work accomplished by the Commission in drafting the Covenant.

The USSR delegation therefore rejected the arguments in support of the maintenance of article 32 in the covenant and affirmed its opposition to any such article.

The meeting rose at 1 P.M.