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Draft first international covenant on human rights and measures of implementation (A/1384, A/C.3/534, A/C.3/535 and E/1681) (*continued*) 111

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

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

[Item 63]\*

1. Mr. AZKOUL (Lebanon) recalled that at the end of the 288th meeting it had been understood that the Committee would not meet until the afternoon of the following day. He therefore apologized for not having been able to prepare the speech which the Committee members were entitled to expect after he had moved the adjournment of the meeting.

2. In order to determine the adequacy of the first eighteen articles of the covenant, the question had to be considered in the proper perspective. Those who had attended the early meetings of the Commission on Human Rights had witnessed the gradual emergence, from the original vague and confused notion, of an instrument then called "the international bill of human rights"; it had then been realized that several documents would be required in order to accomplish a wholly satisfactory piece of work.

3. He gave his delegation's view on the difference between the covenant and the Universal Declaration of Human Rights. That difference lay, in the first place, in the psychological origin and, in the second place, in the purposes and nature of those two instruments. The psychological origin of the two texts differed because they were inspired by different human faculties. The Declaration was the product of the intelligence of the United Nations, which had surveyed all the possible concepts of human rights. The covenant expressed the will of the United Nations, which decided which of the rights selected by the intelligence should be respected in law. The Declaration contained a larger number of rights than the covenant, since the intelligence acknowledged more rights than the will could

undertake to apply owing to circumstances and to the stage of development reached by humanity.

4. He then analysed the two instruments from the point of view of their purposes and their nature. The Declaration did not represent an undertaking between nations; it represented a moral commitment, which was the necessary consequence of any conviction. A man who professed a certain theory was bound to put his principles into practice. The moral obligation undertaken by governments towards their citizens was, perhaps, more important than a legal duty. But it was a condition of responsibility towards third parties that there had to be a legal duty; only in such circumstances could States proceed against a State which had violated human rights.

5. The difference between moral and legal obligations was the key to the form of the two instruments. Provisions which were admissible in a text based on ethics were not necessarily suitable in a text based on law. The fact that certain terms were used both in the Declaration and in the covenant therefore amply justified the attitude of any delegation which might refuse to accept certain articles. Thus, the Lebanese delegation, in spite of some doubts, had accepted the "public order" reservation in the Declaration, since it considered that term to be admissible in the Declaration, but it thought that the expression would be out of place in the covenant. In Lebanon, where the people had a very clear idea of their rights and obligations, it would be intolerable for the government to use such a wide reservation as a pretext for evading its moral obligations. Generally speaking, it might be said that the national conscience of peoples transcended the texts which public authorities might try to use in order to destroy the meaning of fundamental principles.

6. Furthermore, the Lebanese delegation could not accept in the covenant expressions such as "reasonable and necessary", which would suffice to enable a State to violate human rights with absolute impunity. He

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

quoted the example of Nazi Germany (where he had lived for a number of years), where propaganda had succeeded in convincing everybody that there was a state of emergency in which any restriction was permitted. He was sure that the sole reason for the limitation of human rights in vast regions of the world was that propaganda had convinced the populations that their countries were in a state of emergency.

7. All excessively general terms should be avoided in a legal text under which any offender was liable to prosecution. The United Kingdom representative had spoken of the term "arbitrary" at the 288th meeting. That term would be appropriate in the Declaration, but dangerous in the covenant.

8. Under the Declaration, a citizen whose rights had been violated could appeal to public opinion. In such a case, if the State were to take shelter behind the law, public opinion might object that the law was unjust. In the case of the covenant, however, a State could not accuse another of arbitrary exercise of power if the other State was acting in accordance with the covenant itself; for the question was no longer one of moral law.

9. The Lebanese delegation therefore considered that the eighteen articles were appropriate neither to the covenant nor to the juridical obligations arising therefrom. Some means would have to be found of improving those articles. His delegation had urged the Commission on Human Rights to enumerate the admissible limitations to the rights it laid down. With the assistance of the United Kingdom, it had enumerated the exceptions to article 5 and had eliminated vague and general terms from that article. In that connexion, attention had been drawn to one difficulty which was that if, in a covenant dealing with human rights, the permissible limitations were set forth, the covenant would become something quite different: a document limiting human rights. After considering the matter, and in a spirit of willingness to accept a compromise, the Lebanese delegation felt obliged to state that the argument was unconvincing, since it was based on sentiment and not on reason. It disregarded the essential difference between affirmation and negation. When an article laid down that everyone had the right to freedom of thought, then, even if a thousand exceptions were to follow, that short statement would have more weight than all the limitations, since the absolute was synonymous with the infinite. If a choice had to be made between the danger that certain States might extend the scope of the limitations they admitted and the danger of leaving the door open to all restrictions, a list of exceptions was the better alternative. It was essential to impose limitations which would prevent States from going further than the United Nations authorized them to go.

10. The third difficulty, which was a practical one, consisted in listing all the admissible limitations, without omitting any of them. With the assistance of other delegations, the Lebanese delegation had made every effort to draw up exhaustive lists of exceptions. It had already done so in the case of certain articles, but in the case of certain other rights the United Nations did not yet seem to be prepared to reach a compromise on the number of limitations to be admitted. In the

case of articles for which it was impossible to draw up lists of exceptions, the only solution was to accept defeat, in the hope that the position would be remedied in time. Only rights that could be stated clearly should be included in the covenant; the question of the others should be left to the future. It was already understood throughout the world that the covenant could not be complete. Certain delegations had even proposed that it should be entitled "covenant on civil and political rights" or "first covenant on human rights".

11. The covenant should include the whole set of rights and freedoms which the signatory nations could undertake to observe in their relations with other States at that stage of history.

12. In conclusion, he wished to bring out two main ideas. The first was that the form in which the eighteen articles were presented was vague and imprecise. It would enable any dictator to sign the covenant and yet not lay himself open to attack. It might be said that, even if the form of the text was better, a dictator would still sign it; nevertheless, it was essential to draft the covenant in such a manner that it would represent a challenge to all dictators and that they would be unable to sign it. The fact that a country could not sign the covenant would condemn it more thoroughly than the propaganda of thousands of books and pamphlets.

13. The second idea related to the number of articles. He wanted the Committee to consider the supplementary articles in detail and to study the possibility of increasing their number. In that connexion, he wished to point out a slight difference between the approach of the United Kingdom and that of Lebanon. He thought it would be dangerous to make the inclusion or exclusion of certain rights dependent on whether or not those rights were fundamental. Such rights might be fundamental for some and not for others, and they might be unnecessary today and essential tomorrow. The covenant should not include only those rights which the United Nations already considered themselves able to observe. Everyone agreed, for example, that the right to live was fundamental and that no one had the right to take the life of another person; when an individual died of poverty or starvation, however, society no longer maintained that a fundamental right had been violated; in that connexion he referred to the category of so-called "social" rights. Hence the topic lent itself to subtle, and even dangerous distinctions. The Lebanese representative therefore hoped that the United Kingdom delegation would change its position on the matter.

14. Mr. LESAGE (Canada) said that Canada was second to none in its recognition of the important human rights and liberties, and the Canadian legal system was based on respect for those rights and freedoms. His delegation was wholly in accord with the objective of the covenant.

15. As the United Kingdom representative had said (288th meeting), regarding the note by the Secretary-General (A/C.3/534), the question of the "general adequacy of the first eighteen articles" involved first, the scope and secondly, the drafting qualities of the articles.

16. His delegation thought that the scope of the articles was satisfactory, since they appeared to cover

fundamental civil rights and freedoms, and that no additions should be made. The Commission on Human Rights or some governments might, however, think it desirable, on reconsideration, to omit one or two of the articles or paragraphs in the first part of the draft covenant. It might be felt for instance that the points to be covered should be limited to what might be considered as the traditional category of fundamental personal rights. And certain provisions might be held not to be in that category. That was particularly the case of article 10, paragraph 2 (b), providing that indigent persons should be entitled to free legal aid, or the clause providing compensation for inevitable and unfortunate miscarriages of justice. That consideration was of particular significance in relation to the remarks made by the United Kingdom representative on the need for giving effect to the provisions of the covenant within a reasonable time. The inclusion in the covenant of matters which would require new legislation in many countries could unduly delay implementation.

17. As regards the form of the draft, he pointed out that the articles defining rights, freedoms and the necessary exceptions were not drafted in such a way as to allow certainty of interpretation. The draft suffered from a second defect, which was perhaps less serious: a lack of uniformity and precision in the use of language.

18. He drew the Committee's attention to overlapping and a lack of co-ordination in the draft; thus paragraph 1 of article 5 dealt with slavery, while article 12 affirmed that everyone had the right to recognition everywhere as a person before the law, while article 17 provided that all were equal before the law. Comparison between articles 13 and 14 revealed that while article 13 dealt with freedom of thought and with beliefs, article 14 proclaimed the right to hold opinions without interference. A distinction seemed to be contemplated between thought and belief. It was probably purely a verbal problem, but it would be well to remedy that defect in the draft covenant.

19. To illustrate further the lack of precision in the draft, the Canadian representative pointed out that the articles under consideration drew no distinction between rights and freedoms; vague terms which might cause confusion of thought must be avoided. In general, the draft covenant seemed to be trying to follow both the opposing schools of thought which had found expression at the 288th meeting and to lay down general principles and precise rules at the same time. A uniform approach must be adopted if the text was to be harmonious.

20. In conclusion he said that his delegation would welcome the opportunity to submit in writing to the Commission on Human Rights views relating to the draft covenant as revised by the Commission at its sixth session.

21. Mr. Danton JOBIM (Brazil) said that, generally speaking, his delegation found the first eighteen articles of the draft covenant satisfactory. One had only to think of the many difficulties encountered by the Commission on Human Rights in the execution of its task to understand that it was impossible to avoid some faults both of form and of substance.

22. There was no need to repeat that certain articles, notably those which covered ground already covered in the Universal Declaration of Human Rights, were drawn up in vague terms. His delegation fully realized that the lack of precision might allow certain governments deliberately to ignore those rights which the covenant was intended to prescribe. But the value and meaning of those rights were unanimously recognized. That was quite clearly proved by the importance attributed to them by countries at a high stage of political development. There could be no doubt that a dictatorship which ignored human rights was fully aware that it was doing so. No one could believe that it was doing so because it had no knowledge of the elementary principles of freedom or the real meaning of the daily application of those principles by the civilized world.

23. The most important element in the work carried out by the Commission on Human Rights was the fact that in the near future, human rights as recognized in nearly all the free nations of the world, were to be incorporated in an international instrument. Those rights would thus be removed from the controversial sphere of natural law and placed in the realm of positive international law.

24. Precision of language was not perhaps of primary importance, since governments possessing clearly drafted constitutions were not always those which showed most respect for fundamental human rights and freedoms. The development of political education and the good faith of governments were essential elements in the establishment of a system in which those rights and freedoms would be respected.

25. Proceeding to deal with individual articles, he suggested that article 3 should be supplemented by a new paragraph abolishing the death penalty for political offences except where required for reasons of national defence.

26. The draft covenant, when dealing with the case of conscientious objectors made no mention of the compulsory national service which might be required of women in the interests of national defence. He thought that perhaps something should be done to fill the gap.

27. According to article 6, paragraph 5, *habeas corpus* apparently applied only in the case of a person under arrest. His delegation thought that any one whose personal safety was threatened or whose liberty of movement was jeopardized should be allowed that right.

28. Under article 8 liberty of movement might be subjected to limitations necessary for the security of immigration countries. Such countries must indeed be given some latitude to provide in their national legislation measures for the distribution and settlement of immigrants. It might be necessary for a certain time to limit an immigrant's freedom to settle in the district of his choice in order to avoid the formation of small racial groups in certain regions. Other reasons of a demographic and economic nature might also render such limitations necessary.

29. He added that his delegation reserved the right to make further comments when the draft covenant was considered article by article.

30. Mr. PANYUSHKIN (Union of Soviet Socialist Republics) said that in deference to the Committee's

decision he would confine himself to submitting the comments of his delegation on the first question under discussion, namely, the general adequacy of the first eighteen articles of the draft covenant on human rights. The question might, as the Secretariat had indicated (A/C.3/534, paragraph 4), be divided as follows: (1) whether the catalogue of rights contained in the first eighteen articles was adequate and (2) whether the existing eighteen articles as drafted were adequate to protect the rights to which they related.

31. It would appear from an analysis of the draft covenant that it did not fulfil its purpose, which was to give full effect to the Universal Declaration of Human Rights proclaimed in 1948. A whole series of rights recognized as fundamentally necessary in 1948 was omitted altogether. Further, it was a step backward compared to the constitutions of many States: it did not meet the essential needs of millions of human beings and would not provide an example for States which had not only already proclaimed more rights than it contained, but had already ensured their effective enjoyment.

32. The USSR delegation thought it necessary at that stage to point out that the absence, in the draft under consideration, of any mention of certain fundamental rights and freedoms, such as the right to work, the right to social security, leisure and culture, emasculated several rights included by the Commission on Human Rights, such as the right to life, to personal freedom and freedom of conscience. At the proper time, the USSR delegation would submit detailed proposals to remedy those deficiencies.

33. The first eighteen articles were far from constituting a complete statement of fundamental human rights and freedoms. They omitted any mention of the right of every person to participate in the government of his country. His delegation thought that the covenant should mention the duty of the State to guarantee to every citizen, without distinction of race, colour, nationality, origin or social class, property, language, religion, sex, and so on, the right to admission to the administration of his country, to vote in elections or to stand for election on the basis of universal, equal, free and secret suffrage, and to hold any public post in the State and in society. Electoral rolls based on property, educational or other qualifications which limited the participation of citizens in elections to representative bodies must be abolished.

34. None of the eighteen articles of the draft covenant contained any provision on the right of self-determination of peoples, yet that was a right which the covenant should guarantee to every people and every nation. The State responsible for the administration of the Non-Self-Governing Territories must help in making that right a fact by acting in accordance with the purposes and principles of the Charter. States should also guarantee to their national minorities the right to use their own languages and to build their own schools, libraries and other cultural institutions.

35. The foregoing remarks suggested that the catalogue of rights contained in the first eighteen articles was quite incomplete. Indeed, those articles did not even suffice to guarantee enjoyment of the rights which they proclaimed. The text as it stood suffered from

serious defects in that it did not fully guarantee the rights and expressed them in vague and loose terms. To be acceptable, the draft must be radically altered.

36. Article 14, relating to freedom of opinion and expression, was a particular case in point. The article did not fully guarantee the right, for it did not contain sufficient guarantees on the part of the State. Moreover, it made no provision to safeguard freedom of speech and of the Press from being used against the interests of the people and of democracy. The USSR delegation thought the following sentence should be inserted:

“In the interests of democracy, everyone shall be guaranteed by law the right of free expression of opinion, and in particular freedom of speech, of the Press and of artistic expression, provided that freedom of speech and of the Press is not used for war propaganda, for inciting to enmity among nations, racial discrimination and the dissemination of slanderous rumours.”

37. Articles 15 and 16, concerning the right of assembly and the right of association, were drafted in terms which, on the pretext of ensuring national security, public order, the protection of health or morality or the rights and liberties of others, in fact entitled States to restrict the enjoyment of those rights, whilst by contrast they contained no provisions banning the establishment of fascist or anti-democratic associations or unions. His delegation would like to see the following provisions inserted in articles 15 and 16 respectively:

“In the interests of democracy, freedom of assembly, manifestation and demonstration, and freedom to organize associations and unions shall be guaranteed by law.”

“All associations, unions and other organizations of a fascist or anti-democratic nature, and any form of activity on their part, shall be prohibited by law, subject to penalty.”

38. Lastly, article 17, which proclaimed the equality of all before the law, without discrimination, also failed adequately to guarantee the enjoyment of the right. The Human Rights Commission, at its sixth session,<sup>1</sup> had thought fit to omit a paragraph which it had approved at its fifth session and which had provided that every person had the right to be protected against discrimination or incitement to discrimination. The USSR delegation thought that article 17 was not sufficiently explicit in its prohibition of propaganda encouraging discrimination on racial or national grounds, and accordingly, it was in favour of inserting the following provision:

“Any form of propaganda in support of fascist or nazi ideas, propaganda in favour of discrimination based on race or nationality and propaganda inciting to hatred or contempt shall be prohibited by law.”

39. That was all his delegation would say for the time being on the subject of the first question to be considered by the Committee. It reserved the right to deal with the subject in further detail when the Committee came to consider the draft covenant article by article. Its desire was to point out at the outset that the draft

<sup>1</sup> See document E/CN.4/SR.196.

covenant contained serious defects and should be radically redrafted so that it would constitute a real guarantee of the implementation of the fundamental human rights and freedoms.

40. Mr. BAROODY (Saudi Arabia) noted with regret that in spite of the repeated efforts of his delegation during the third session of the General Assembly in Paris, the draft covenant before the Committee still contained a phrase which he had constantly criticized as liable to cause friction, namely, "freedom to change his religion".

41. The Human Rights Commission had chosen to ignore the warnings of the Saudi Arabian delegation: paragraph 1 of article 13 of the draft covenant was a word-for-word reproduction of article 18 of the Universal Declaration of Human Rights. Therefore, he was obliged to repeat what he had said on the subject at previous sessions, in the hope that the Human Rights Commission would come to recognize the soundness of his arguments before taking a final decision concerning the covenant.

42. The Saudi Arabian delegation urged that the phrase in question should be deleted, for it considered that the freedom to change one's religion was implicit in the first part of the article. Contrariwise, it did not understand why the authors of the article, which dealt with freedom of thought, conscience and religion, had thought it necessary to make a distinction between those three freedoms and not also to proclaim the freedom to change one's opinions or beliefs. That was a strange idea, to say the least, and one was justified in looking for the motives behind it. Presumably the supporters of conflicting ideologies feared to venture onto the dangerous ground of political and social thought.

43. But that was not the only consideration prompting the Saudi Arabian delegation to urge the adoption of its amendment. Its attitude was mainly due to fear of the repercussions which such a provision would have upon the Moslem world. It must not be forgotten that in the course of history missionaries had often abused their rights. Political propagandists were taking the place of religious missionaries, but the methods used varied little. The latter had merely been the precursors of the former. Mr. Baroody recalled two historical precedents: the crusades, which had ravaged the Moslem world with fire and sword, and the wars of religion which had torn Europe and still left their mark upon

relations between Catholics and Protestants. The crusades, in particular, had concealed undeniable economic and political ambitions under the cloak of religion. It might be argued that times had changed, and that the world was going through an age of tolerance and enlightenment. He regretted his inability to share that optimistic view, which he considered mistaken, at least as far as religion was concerned. The appeal of religion was essentially emotional and modern propaganda did not refrain from making use of people's religious beliefs for its own ends. There had existed and still did exist groups which claimed to be the chosen people or proclaimed the superiority of their beliefs over those of others.

44. But the Declaration of Human Rights proclaimed the equality of all. In its efforts to make the Declaration universal, the Committee must avoid any provisions which some people might use as a pretext for fomenting hatred and, in their own interest, encouraging the differences between men.

45. Article 13, as it stood, apart from its political repercussions, was liable to raise legal difficulties in a number of countries. He would like to ask the colonial Powers, as he had asked the French representative at the third session of the General Assembly in Paris, whether their governments had consulted the Moslem populations of the territories under their administration on that point.

46. The Moslem world enjoyed great freedom of thought and religious tolerance. "There is no compulsion in religion" was a well-known saying there. The Arabs also said that religion was a question between man and his Creator, but was expressed in human relationships. However, mention of a person's freedom to change his religion could not fail to be a painful reminder, for Moslems, of their past sufferings and to allow the phrase to stand in the draft covenant would undoubtedly produce an unfortunate reaction.

47. He urged the Third Committee to bring those views to the attention of the Human Rights Commission.

48. The CHAIRMAN asked the Secretariat to make very full summary records of the meetings at which the draft covenant on human rights was considered, so that the Human Rights Commission could refer to the Committee's discussions.

The meeting rose at 12.45 p.m.