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Chairman: Mr. Jiří NOSEK (Czechoslovakia).

AGENDA ITEM 58

**Draft international covenants on human rights
(A/2714, A/2686, chapter V, section I, E/2573,
A/C.3/574) (*continued*)**

GENERAL DEBATE (*continued*)

1. Mr. GALVEZ (Argentina) said that the Argentine Government had taken little part in the drafting of the covenants on human rights but had followed the work with close attention. Argentine legislation for the past ten years had been almost entirely concentrated on social problems and the current Government of Argentina had given predominant attention to the human person. It believed that the only reason for the existence of "government" as an element in the State was the achievement of the common weal of the territory's inhabitants and that any activity likely to be injurious to that purpose was an attack on the very essence of the State. It believed that the greatest good that the individual could achieve was the plenitude of his spiritual, intellectual, physical and economic personality, with no limitation other than that of the common weal; for the common weal was not the sum of individual "weals", but the well-being of the community. On that basis, the State was not an end in itself but a means of helping the individual to attain the full development of his personality. As such, the State acted as a force regulating the essential rights of the human person. Accordingly, government could act only by using justice to give each his due. Justice was in fact the reason for the existence of government and an integral part of the State. That was why the Argentine Government had adopted a policy which had been called "justicialist", the principles inherent in which were known as "human rights" when enacted into law. All basic social problems in Argentina had been solved on that basis. The Argentine Republic could proudly claim that it was one of the most advanced countries, in respect of a system of legislation directed exclusively to recognizing and regulating the rights inherent in the human person. The draft covenants embodied no principles which had not been long accepted by Argentina.

2. Although Argentina could accept all those principles so far as its internal law was concerned, it was another matter to accept them for an international instrument requiring signature and ratification.

3. The recognition of human rights was closely linked with the special characteristics of each State. To attempt to draft covenants which entailed the adoption of a common technical system of implementation would mean considering the individual as a direct subject of international law—and that was far from the case in existing circumstances. Every State had varying degrees of power over its people, and there would, accordingly, always be that barrier between the declaration of a principle and its implementation.

4. Perhaps for lack of a definition, which it would obviously be very hard to attempt, many rights of varying significance and meaning had been included in the draft covenants on the same footing. He agreed with the Belgian and Brazilian representatives that the drafters had not always borne in mind the need for the covenants to be signed by the greatest possible number of Member States. As they stood, the covenants could not be signed even by a very small minority. They suffered from a lack of universality. Success would be possible only if a common denominator were found for all the social structures of the States Members of the United Nations. The measures of implementation could certainly not be put into practice. If the reason for making the implementation of human rights mandatory was the fact that failure to do so entailed hatred and violence and the instability of world peace, the United Nations as it was organized could and should take part in any dispute caused by that failure, and no element of security could be added to that already in existence merely by setting up new committees or high commissioner's offices, which would in fact simply be used to envenom existing political disputes.

5. Obviously, the progressive implementation of human rights in countries in which the appropriate legislation could not yet be enacted could not be subjected to a technical procedure adopted internationally and made mandatory, because in almost all cases insufficient economic development, a low standard of living and scanty administrative resources were the main factors impeding such progressive implementation.

6. The Argentine Government put more faith in measures of persuasion, such as an adjustment of international prices, the gradual solution of the problems of production, a better world distribution of primary products, and direct assistance.

7. Argentina had no colonies; it had full protection and superannuation for workers; there was no discrimination as between men and women; education was free at all levels; the freedom of teaching, speech and the Press were guaranteed, and the freedom of the Press was really genuine, as there was no "yellow Press" living on blackmail and sensationalism; from the judicial system to the health services there was not a single point on which Argentina could not speak impartially. But no one had or could have imposed that system on Argentina; it had grown naturally from

Argentine modes of thought and social organization. That organization, spontaneously accepted, and closely linked as it was with Christian beliefs, had rendered impossible the existence of discrimination of any kind or any failure to respect the fundamental rights of the human person in general.

8. Two examples might be cited of the lack of universality in the draft covenants. Article 14 of the draft covenant on civil and political rights (E/2573, annex I) embodied a whole range of penal matters without order of differentiation. Proof by testimony was guaranteed, as though that was the only method; whereas in most civilized legislation, evidence in writing was given preference over oral testimony.

9. Article 11 of that draft covenant laid down that no one should be imprisoned merely on the ground of inability to fulfil a contractual obligation. But such cases depended on the motive behind the failure; if there was intent to deceive, an offence would be involved.

10. In general all the articles dealing with penal matters might be summed up in a couple of sentences and the details, which required the inclusion of all sorts of exceptions that were really part of a good system of penal procedure, could be dispensed with.

11. Those articles had been cited as instances; but there were many more which suffered from defects of substance and form; even the terminology lacked uniformity. He would go into detail later and submit the requisite amendments.

12. He might have seemed unduly sceptical, but the Argentine philosophic position was at heart optimistic. His delegation wished to be realistic; it did not wish to be a party to a failure; it was expressing its doubts in order to ensure that correct action was taken.

13. Mrs. LORD (United States of America) wished to place on record her Government's views on some major matters of principle, leaving aside the detailed provisions which the United States regarded as unsatisfactory.

14. The draft covenant on civil and political rights was seriously deficient in guarantees of the rights laid down. In many cases, for example in articles 9, 18, 19 and 21, the right declared was subject to provisions enabling Governments to ignore the guarantees in exceptional circumstances which were loosely defined.

15. Article 14 of the draft covenant on economic, social and cultural rights (E/2573, annex I) and article 26 of the draft covenant on civil and political rights seriously threatened the principle of freedom of expression by requiring the prohibition of incitement to racial, religious and national hatred and hostility. While most members would condemn the advocacy of hostility of any kind, such a prohibition would entail acceptance of the principle of totalitarian control over all forms of expression. Furthermore, it was doubtful whether the terms themselves could be defined with sufficient precision for an international treaty.

16. The United States of America was still devoted to the principle of equal rights and self-determination for all peoples. Nevertheless, it objected strongly to paragraph 3 of article 1 in both covenants. The paragraph defined the right of economic self-determination too rigidly; the second sentence completely ignored the possibility that foreign nationals might have acquired rights by treaty or under international law, and might even be taken to mean that Governments had the right

to expropriate private property without compensation. Such a paragraph would tend to discourage the flow of private capital to the under-developed countries. Not only would it prevent many Governments from ratifying the covenants, but it would also weaken support for the United Nations.

17. Other representatives had referred to the omission of important rights. Conspicuous among those omitted was the right to own property, an important human right which was essential to the complete development of human liberty, as article 17 of the Universal Declaration of Human Rights had recognized. It was regrettable that the Commission on Human Rights had failed to include it in the draft covenant.

18. The implementation articles in part IV of the draft covenant on civil and political rights included no provision to prevent the proposed human rights committee from duplicating the work of other United Nations organs and specialized agencies. That omission might lead to serious overlapping.

19. The difficult question of reservations was of less interest to the United States than it might have been, since the United States did not intend to sign or ratify the covenants in view of the international atmosphere, in which the use of treaties to promote respect for human rights seemed unproductive. However, the United States' view was that the covenants should include an article clearly providing for reservations by Governments. It should be liberal with regard to the substantive articles, but it should not permit reservations to the implementation articles, which constituted a carefully elaborated system liable to be seriously disturbed by reservations.

20. The general debate had strikingly shown what different interpretations had been placed on the words of the draft covenants by different delegations. There had been differences of opinion on self-determination; some Moslem delegations did not seem to be in complete agreement with regard to the article on freedom of religion; and the Soviet representative had interpreted some terms quite differently from the representatives of the free world. In Soviet terminology "democracy" meant communism, "freedom" meant freedom to act only in the interests of communism, and "rights" meant not individual rights but the rights of the collectivity as determined by the Communist Party, while "self-determination" was, by Stalin's definition, always subordinate to the dictatorship of the proletariat.

21. In the matter of human rights, the United States was moving steadily forward. It was its earnest desire to see human liberty secure both at home and abroad and it believed that much could be done to that end through the United Nations.

22. Mrs. HARMAN (Israel) said that her Government would have no difficulty in acceding to the draft covenants, since their general purport and specific provisions accorded with the democratic régime and the system of the rule of law of Israel's constitutional and judicial practice.

23. The Commission on Human Rights, the Economic and Social Council and the General Assembly had for seven years been engaged in an immensely difficult and complex task—that of formulating universally acceptable principles for the effective and enduring protection of human rights and of transforming them into a working rule of law compatible with the constitutional

laws of States with divergent legal traditions and in varying stages of economic development. The work had naturally been hard, sometimes discouraging. There had been a temptation to revel in the grandeur of the principles enunciated without always paying due heed to the imperative need for precise formulation in terms of a legal code. The Commission on Human Rights was to be congratulated on the fact that the Third Committee at last had the draft covenants before it.

24. The main onus of responsibility for the enforcement of human rights should devolve on the States themselves; detailed application had to be left to their legislatures, executives and judiciary organs. The work done by the United Nations would be valid only if it endorsed that fact. Conversely, the States would, in due course, have to adjust their judicial machinery, where necessary, to conform with the provisions of the covenants.

25. A considerable degree of uniformity of practice as between States already existed with regard to the provisions of the draft covenant on civil and political rights, although some thorny problems of definition remained to be settled before national legislations could be brought fully into line with them. In the progressive application of the covenant on economic, social and cultural rights the importance of the part to be played by the specialized agencies, the Economic and Social Council and other international bodies in helping to create conditions for the implementation of the rights had been fully recognized. Nevertheless, the States themselves would have to provide the lasting solutions. The reporting machinery provided for in part IV of the draft covenant was well conceived and adequate.

26. A multilateral treaty seeking universal acceptability had to permit of reservations. It would surely be contrary to the widest interest of the cause of human rights if countries which could not constitutionally accept, for example, the federal State clause, were prevented thereby from acceding to the covenants.

27. While her Government fully endorsed the principle of self-determination, there might be something to be said for excluding the statement of the right from the draft covenants and incorporating it elsewhere so long as there existed a sharp division of opinion as to whether it was an individual or a collective right. A distinction might be made between the right of self-determination of a collectivity, which might not belong in covenants dealing with the human rights of the individual, and the personal right to self-determination, that of the individual to determine his ethnic, linguistic, religious and cultural affiliations.

28. There was still a considerable difference of opinion about the right of petition. While the primary responsibility for the implementation of human rights had to rest with States, an individual unable to obtain the redress he was seeking under domestic law should have available to him the right of appeal to a properly constituted international organ. Non-governmental organizations of undoubted good standing should be able to submit such petitions to the human rights committee provided for in part IV of the draft covenant on civil and political rights.

29. The covenants should, in accordance with the pledge taken by Member States under Articles 55 and 56 of the Charter, command the widest acceptability. That consideration had been well expressed in article 51 of the draft covenant on civil and political rights

and in article 26, paragraph 2, of the draft covenant on economic, social and cultural rights.

30. To achieve the greatest possible conformity with existing judicial, legislative and executive practice would be a formidable task for a committee of sixty members. The readings of the draft covenants in the Third Committee would certainly serve to bring out both the continuing divergencies of views and the substantial measure of general agreement; but they were unlikely to be definitive and conclusive. The first reading would probably not even be completed at the current session.

31. In order to expedite the work, the report of the tenth session of the Commission on Human Rights (E/2573) and the records of the Third Committee's discussions should be submitted to Governments so that they would be able to examine the draft covenants far more minutely than a large committee could.

32. A questionnaire compiled by the Secretary-General in consultation with the Chairman of the Commission on Human Rights might prove useful as a guide to Governments in drawing up their comments, which should include, *inter alia*, an evaluation of the draft covenants in relation to existing legislation and policy, with particular reference to their immediate ability to sign and ratify. The Governments might also indicate whether they would require amendments or reservations, preferably specifying them, at least in general terms.

33. Those comments, arranged and documented by the Secretary-General, would considerably expedite the Third Committee's work in completing the readings at the tenth session. The General Assembly might also consider it advisable to take the sense of Governments about the establishment, at the tenth session, of an *ad hoc* committee on human rights under rule 98 of the rules of procedure. Governments could delegate specially authorized members to that committee, which could divide up into sub-committees for detailed drafting and devote all its time to that one subject.

34. Without in the slightest degree derogating from the importance of the draft covenants as the central objective of the Third Committee's work on human rights, it might be suggested that supplementary and alternative methods be pursued parallel with the work proceeding on them. The time had perhaps come for a review of the work done in the past seven years, for a summary of the achievements and the drawing of conclusions. A comparative study of legislation and practice in all countries safeguarding human rights might be an invaluable guide to the Third Committee's future action. A small committee of highly qualified persons might be appointed by the Secretary-General to study in conjunction with leading members of the Secretariat, the activities of the United Nations for the universal protection of human rights and to report, with recommendations, to the General Assembly, preferably at its tenth session. The report would be of great value in speeding the work on the draft covenants and would facilitate the work of the Commission on Human Rights. The information would also be invaluable to a general review conference, should it be convened.

35. The Commission on Human Rights might at its eleventh session take up the items which had long remained on its agenda but had had to give way to the draft covenants. It might thus be able to bring them to the stage of preparation to which it had so successfully brought the draft covenants.

36. The Israel delegation would comment in greater detail on the draft articles when the Committee embarked upon the remainder of the first reading.

37. Mrs. TOMSIC (Yugoslavia) thought that the general debate would assist the Committee in its detailed task of codifying human rights in the form of covenants which would lead to human relations worthy of the sacrifices that had been made through the ages and the infringement of which would constitute a threat to international peace.

38. The Commission on Human Rights and the other bodies which had contributed many years of labour to drafting the covenants deserved congratulation. Despite its shortcomings, their work had already helped to relieve world tension. From the point of view of some countries, the statement of certain rights might not appear a great achievement, but mankind as a whole had become more conscious of human rights, and, even when some rights had not been susceptible of expression in legal terms, they had nevertheless become accepted standards. The aim was not to establish laws and coercive measures but to promote the creation of and respect for accepted standards in human relations.

39. The draft covenants had reached the General Assembly at a time when the world was moving towards a new era, in which the desire of the common people to live in peace would prevail over the forces of war and aggression. Conditions were therefore favourable to efforts to protect human rights.

40. The drafting of the covenants was itself a major achievement and a definite step forward from the Universal Declaration of Human Rights. Not only had the draft covenants clarified and elaborated the rights stated in the Declaration, but they had also included many other rights taken from or based on the Charter of the United Nations or the Declaration. It was also agreed that the formulation of civil and political rights unavoidably entailed consideration of economic and social rights, especially where there were differences between developed and under-developed countries. The covenants had also achieved a large area of compromise between widely differing political, economic and cultural opinions. They would not completely satisfy all States, but most of their content would satisfy a majority of States.

41. There remained the controversial questions. The Yugoslav delegation was still not convinced that there should be two separate covenants. It was clear that, in fact, the rights dealt with by the two covenants formed a mutually interdependent whole, and that no definite line of demarcation could be drawn between the two sets of rights, despite their unequal development in different parts of the world. The separation of civil and political rights from economic, social and cultural rights was a legal formality resulting from their different historical development. Furthermore, certain economic, social and cultural conditions were a prerequisite of the full enjoyment of civil and political rights.

42. The distinction had had important consequences in that the implementation of the covenant on civil and political rights was to be immediate, while that of the covenant on economic, social and cultural rights would be gradual. The Yugoslav delegation noted with regret that the crude vertical division between the two sets of rights could not but harm those rights in the covenant on civil and political rights which could be implemented immediately or in a relatively short time because of the

existence of the principle of progressive implementation in the covenant on economic, social and cultural rights.

43. Yugoslavia was able to accept immediately all the rights embodied in the draft covenants. All of them were incorporated in the Constitution, legislation and everyday life of the country. Their introduction had the same origins as the Organization's decision to draft the covenants; the bitter experience of the Second World War had taught the world that respect for human rights in individual countries constituted a basic defence of international peace. It was not enough, however, to confirm that conviction by legislation. Yugoslavia was therefore directing its efforts towards creating a material and economic basis and educating the broad masses of the people for the implementation of that legislation.

44. That point could be illustrated by the examples of economic rights and a political right, the fundamental principles of which were embodied in the Yugoslav Constitution. The economic rights of the Yugoslav people were increasing, not only through legislation, but also in actual practice. Workers in all branches of economy managed the factories, enterprises and farms, disposed of the product of their work and directly participated in its division into wages and general funds, thus helping to raise the general standard of living. Attempts were being made to increase the participation of citizens in the management of all social organs, not only by election, but also by participation in local health, social welfare and educational institutions.

45. Women in Yugoslavia had formerly been regarded as second-class citizens and most of them had been illiterate. The struggle for national liberation had raised the position of thousands of women and had given them political equality. The principle of equality had been guaranteed by the Constitution and by legislation and then a number of measures had been taken to eradicate illiteracy. Much remained to be done, however, since the material conditions necessary to enable women to participate fully in public life could not be created overnight. Nevertheless, the representatives of countries where women had recently been granted political rights would agree that recognition of the principle of equality provided a stimulus for the achievement of the requisite economic conditions.

46. Although the Yugoslav delegation believed that all human rights should be stated in a single instrument and that a single system of implementation should be provided, it had participated in the preparation of the two draft covenants, in pursuance of the General Assembly's decision, and had tried to stress the unitary character of the two groups of rights, in order to reduce the difference between the two covenants to a minimum. The existence of two different systems of implementation in the draft before the Committee was a serious drawback.

47. She could not agree with representatives who argued that the right of peoples to self-determination had no place in the covenants because it was a collective right. That assertion was particularly unacceptable because the right was solemnly proclaimed in the Charter and because it was inexorably assuming an ever-increasing importance in the lives of peoples throughout the world. The contention that there was no place for the right in the draft covenants was tantamount to a denial of its very existence. Yugoslavia championed the right of self-determination as a result of its past and current experience as a multi-national State; it knew the meaning of fighting for and enjoying that right. Every

individual in Yugoslavia had struggled for the right with weapons during the war and through self-sacrifice and hard work in the post-war years. The right of self-determination belonged to peoples and nations, but was exercised in such a way that every individual belonging to the people or nation availed himself of it personally. Thus, the right of every individual to choose his nationality and to apply the principle of self-determination should be recognized.

48. The logical connexion between the proclamation of the right and its practical implementation was clear. Thus, the provisions of article 1 of the draft covenants, including the provision on permanent sovereignty over natural wealth and resources, were only a component part of the general rights in which every individual participated. The fact that men lived in society constituted the basis of the activities of all organizations, including the United Nations. It could not be contended that the draft covenants were being prepared for "man as such"; that unduly individualistic concept of human rights had brought about a situation in which one of the most important parts of the covenants was being disputed.

49. If the inclusion of the right of self-determination in the covenants were considered illogical and juridically incorrect only because it was formulated as a collective right, a remedy might be found by wording it as an individual right and assigning to it the corresponding place in the covenants. Nevertheless, it would be inadmissible to omit the right and to create the impression that the United Nations wanted to impede progress in a matter of such great importance. Infringement of the right could lead to intolerance among peoples and nations and consequently to the disturbance of world peace.

50. The Yugoslav delegation's views on the admissibility of reservations to the covenants were based on its conviction that the implementation of human rights required the maximum amount of application and the minimum amount of restriction. It was important to draft the articles of the covenants in such a way as to make them acceptable without any limitations or reservations. The existing drafts already embodied a number of reservations enabling States to exclude or limit the exercise of certain rights by their citizens. Further reservations might reduce the effect of the covenants. If, however, it became essential to allow certain reservations, they should be reduced to a reasonable minimum. If reservations were indeed inevitable, the only ones to be taken into consideration should be those permitted in the covenants themselves. To allow reservations to all parts of the covenants, provided that those reservations were in accordance with the objects and aims of the covenants, amounted to granting an unlimited right to make reservations. Moreover, reservations to whole parts of the covenants should not be allowed; the articles to which the reservations applied had to be specified. The whole question should be approached with caution, lest attempts be made to achieve through devious means what could not be achieved directly.

51. With regard to the federal State article, the Yugoslav delegation considered that the adoption of such a clause would create inequality between various States with different internal structures. The covenants were so important that they transcended narrow objections concerning federal systems; each central Government should

be responsible for the implementation of the instruments throughout the territory under its jurisdiction. Any State which genuinely wished to implement human rights for its nationals would find ways and means of doing so without creating such difficulties for other States as would arise from the adoption of a federal clause. Moreover, it was questionable whether the United Nations had the right to call upon unitary States which were facing difficulties in their development as the result of their past history to respect human rights, when the central Governments of federal States could not do so in respect of their component territories.

52. The Yugoslav delegation would oppose any attempts to introduce a territorial clause into the covenants. Respect for human rights should be ensured on a universal basis, without any discrimination, and to grant certain countries the right to decide when they would begin to implement the covenants or even to discontinue implementation by unilateral action was tantamount to recognizing the practice of discrimination and condoning the basic principles of classical colonial policies. Moreover, the guaranteeing of human rights in Non-Self-Governing and Trust Territories was one of the prerequisites of the development of those territories towards full self-government and independence. The obligations of the administering Powers in that respect were clearly defined in the Charter of the United Nations and the international community could not therefore retreat in a sphere where its competence had been established. The fact that the necessary conditions for the implementation of the rights laid down in the covenants did not exist in some of the Non-Self-Governing and Trust Territories clearly showed that the creation of such conditions should no longer be left to the hazard of unilateral action by certain States, but should be regulated by the international community.

53. The mere presentation of views and repetition of reasons would not help the Committee very much in its future work especially since only few attempts had been made to find common solutions. There were profound disagreements of principle concerning several fundamental problems. The Yugoslav delegation wondered whether the current discussion was not leading the Committee into a blind alley.

54. The covenants should be genuinely universal, in that they should codify all human rights and that the majority of States should find it possible to adopt them. They should not fall short of what had already been recognized in the Charter, the Universal Declaration of Human Rights and in real life, but they should also not go beyond what the majority of States could accept. The moderate and realistic approach did not mean that fundamental principles could be laid aside. She asked along what lines they could all withdraw from their present stands without prejudicing the task ahead. It seemed that the most serious obstacle to the preparation of a really universal instrument lay in disagreement on two groups of problems, the first being the questions of the right of self-determination and of the territorial and federal State articles and the second the questions of measures of implementation and reservations.

55. There could be no compromise on such basic principles as the right of self-determination, the equal responsibility of all States, irrespective of their structure, and the obligation of States to ensure that human rights should be respected in all the territories under their control. Indeed, no representatives had made frontal at-

tacks on those principles, but some practical objections had been advanced. That led to the conclusion that opposition could be met only by discussion of measures of implementation and of the role of the international Organization in that regard, and not by debating on the rights as such; it seemed to the Yugoslav delegation that the solution should be sought in that direction.

56. The very nature of the covenants precluded the possibility of regarding them as a means of waging "cold war". If agreement were reached on measures of implementation, as a means of eliminating obstacles to the enjoyment of human rights, and not as a means of interfering in the internal affairs of signatory States, the United Nations would be in a better position to achieve the necessary compromise dictated by the vast differences of social systems throughout the world. In the case of certain countries such a compromise would not mean new achievements. The international community, which had learned from bitter experience that the infringement of human rights within a country endangered human rights and peace in the world, had

rightly concluded that the aims of the Charter could not be achieved only by declarations of will, but by measures on the part of the majority of countries to ensure the introduction of those minimum human rights which had already become the basic achievements of the current era. The formulation of human rights themselves as well as the realization of that task, would ensure to those who were entrusted with the conduct of public affairs the help not only of their own people but also of all peoples.

57. Mr. FOMIN (Union of Soviet Socialist Republics) observed, in connexion with the United States representative's statement at the current meeting, that according to the interpretation of her statement into Russian, she had presented the USSR delegation's position on certain matters in a distorted manner. He therefore wished to reserve the right to reply to the United States representative when he had acquainted himself with the text of her statement.

The meeting rose at 12.25 p.m.