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Third session

COMMENTS FROM GOVERNMENTS ON THE DRAFT INTERNATIONAL DECLARATION
ON HUMAN RIGHTS, DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS
AND THE QUESTION OF IMPLEMENTATION

COMMUNICATION RECEIVED FROM NEW ZEALAND

/The New Zealand

The New Zealand Government have given careful consideration to the proposals of the Commission for an international bill of human rights, which proposals, in their opinion, form a satisfactory basis for the consideration of further action. The New Zealand Government desire, however, to stress the intrinsic complexity and difficulty of any attempt to formulate in an international treaty definitions of human rights and fundamental freedoms to be secured by states to individuals within their respective jurisdictions. It is true that members of United Nations have combined in the Charter to "reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations, large and small" and have thereby, and in the other relevant provisions of the Charter, established the basis for the development of international action in this field. But the states concerned have achieved varying stages of economic and social development; their economic and social structures do not conform to a single pattern, the historical conditions from which they draw their philosophical ideas are not uniform. In these circumstances, however desirable may be the early conclusion of an agreement or agreements on human rights, it is essential that sufficient time should be allowed for each government to consider the views and comments of other governments, for differing viewpoints to be reconciled, and for the greatest possible measure of agreement to be achieved. Some delay would be preferable to the over-hasty adoption of texts which any considerable number of states might, upon reflection, be unwilling to ratify.

The New Zealand Government are not convinced of the wisdom of insisting that final consideration of the proposals made by the Human Rights Commission should be completed at the next regular session of the General Assembly. If the comments of governments and the discussions in the third session of the Commission and in the seventh session of the Economic and Social Council do not reveal a wide measure of agreement, an opportunity should be given to governments to reconsider their views in the light of the varying positions taken by governments. The short intervals between the meetings of the Commission, the Economic and Social Council and the General Assembly may not be adequate for such reconsideration.

The comments of the New Zealand Government now forwarded must not be taken as representing their final views. It has, in fact, been found necessary to record express reservations of the position of the New Zealand Government on certain articles proposed for inclusion in the Covenant on Human Rights until their scope and proper interpretation is clarified.

/The present

The present comments are put forward in a spirit of constructive criticism in an endeavour to assist the appropriate organs of the United Nations in arriving at a wide measure of agreement. The New Zealand Government hope that other members of the United Nations will approach the proposals in a similar manner and they must reserve the right to reconsider their views in the light of the comments and views of other governments.

The Covenant

The New Zealand Government are of the opinion that the first essential step in the implementation of the human rights provisions of the Charter of the United Nations is the conclusion of an international treaty defining those human rights and fundamental freedoms which can at this stage be framed as binding obligations upon states. Such a treaty would enable the United Nations to make a significant advance in its obligation to "promote...universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion". (Article 55)

The New Zealand Government have accordingly given particular attention to the draft international covenant on human rights prepared by the Commission and have drafted a number of amendments for consideration by the Commission. These amendments are set out in the revised draft of the covenant attached hereto as Annex A. Comments on the revised draft, including comments on certain articles to which no amendments have been proposed, are contained in Annex B.

It is believed that the amendments proposed, when read with the comments, will be self-explanatory. In general, the amendments have been designed for the following purposes:

- (a) To state clearly the relationship of the Covenant to the United Nations Charter.
- (b) To clarify the intent of certain articles and the permitted limitations upon the rights in question, in order to ensure that the obligations imposed on acceding states will be clear and precise.
- (c) To state certain amendments of substance which are thought to be justified in view of the purpose of the Covenant and current international practice and thought.
- (d) To state the principle of non-discrimination in relation to certain "social and economic rights" included in the Commission's draft of the Declaration but not of the Covenant.

/The Declaration

The Declaration

A clear distinction must be drawn between the purpose of the Covenant and the purpose of the Declaration. The Covenant is a document which will impose far-reaching obligations on acceding states and which accordingly demands detailed and precise drafting appropriate to a legal document. There are obvious advantages, however, in stating, in simple language and as briefly as is consistent with the avoidance of ambiguity, the essence of each human right and fundamental freedom. In the opinion of the New Zealand Government, this should be the aim and the purpose of the Declaration. The rights and freedoms so stated should be progressively elaborated and defined in detail in a form suitable for an international treaty. Certain of the rights and freedoms will no doubt be dealt with in this way in the Covenant presently under consideration. Others should in time be dealt with in further covenants. Others again may demand elaboration and implementation through the medium of some other type of international action. The Declaration should, however, state the philosophical basis of human rights and fundamental freedoms, define the essence of each and state, in a form comprehensible to the peoples of the world, the objectives of the United Nations in the field of human rights and fundamental freedoms.

Two comments follow from this appreciation of the purpose of the Declaration. The first is that the Declaration cannot in itself impose any legal obligation on states or call for any measures of implementation, although it may, with reference to the rights and freedoms not dealt with in detail in the Covenant, provide a guide to the interpretation of the relevant provisions of the United Nations Charter.

The second comment is that the Commission's draft of the Declaration is unnecessarily long and confused in language, being both declaratory and mandatory and frequently passing from statements of principle to points of detail without, however, achieving a definition which could found a legal obligation.

The New Zealand Government have endeavoured, in the time available, to redraft the Declaration in the light of the foregoing assumptions of its proper purpose. A redraft is attached hereto as Annex C. In advancing this redraft, the New Zealand Government desire to stress that it is intended to indicate the lines along which, in their opinion, a shorter and more consistent Declaration might be framed and not as a final statement of their views on the proper content of the Declaration. In these circumstances, it is not desired to offer detailed comments on the Declaration at this stage.

/Implementation

Implementation

The arguments against undue haste developed in the opening paragraphs of these comments apply with particular force to the complex and controversial question of implementation. The procedures for implementation, on which, in the final event, the success of international action to ensure the observance of human rights must depend, merit the most close consideration by all Members of the United Nations. The New Zealand Government, for their part, recognize the necessity for a mutual inter-change of views on this subject and at this stage propose to offer only preliminary and tentative comments on the suggestions put forward by the Commission.

The Working Group on implementation has suggested (E/600, page 44) that states "must take action to ensure that their national laws cover the contents of the Bill, so that no executive or legislative organs of government can override them, and that the judicial organs alone shall be the means whereby the rights of the citizens of the states set out in the Bill are protected". The New Zealand Government would observe that in New Zealand, and in other countries where there is no rigid constitution and the legislature is the supreme organ representing the will of the people, it would be constitutionally impossible to provide expressly that no legislative organ could override the provisions of the Covenant. They would suggest, however, that the safeguards sought by the Working Group on implementation are, to all intents, achieved by the following:

(a) Article 1 of the revised draft Covenant (Annex A), which provides that every state party thereto undertakes to ensure that its law secures to all persons within its jurisdiction, without distinction, the human rights and fundamental freedoms set forth in Part II thereof.

(b) Article 2 of the revised draft Covenant, which requires that, on the request of the Secretary-General "any state party to this Covenant shall supply an explanation as to the manner in which the law of that state gives effect to any of the provisions of this Covenant".

(c) A state acceding to the Covenant accepts responsibilities of which it cannot divest itself without a breach of its international obligations.

The New Zealand Government suggest that these provisions together constitute a condition closely approximating the objective of the Working Group on implementation and amount to a measure of implementation the significance of which should not be underrated. To endeavour to specify

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in the Covenant the methods by which states acceding thereto should implement their provisions in municipal law, when the constitutional procedures of those states will vary considerably, would be tantamount to making it impossible for some states to accede to the Covenant.

The New Zealand Government draw attention to the fact, noted in the Commission's Report, that the Charter of the United Nations, an international treaty of unquestioned status, contains numerous references to human rights, including some, e.g. the statement of purposes in Article 1, which call for positive action on the part of the Organization for their promotion and observance. Moreover, the General Assembly and the Economic and Social Council clearly possess certain powers and responsibilities with reference to human rights and fundamental freedoms, e.g. in Articles 10 and 62(2) of the Charter.

In the absence of definition of the different rights and freedoms and clarification of procedures, questions may arise both as to the proper definition of the terms "human rights" and "fundamental freedoms" and as to the scope of the competence of different organs, particularly in relation to the provisions of Article 2(7) of the Charter. The full exercise of the powers and responsibilities of the different organs of the United Nations in relation to human rights and fundamental freedoms and to their promotion and observance will be facilitated therefore by the adoption and entry into force of a comprehensive covenant and the establishment of such procedures as may be deemed necessary.

The Working Group on implementation has suggested that the Economic and Social Council should give the Human Rights Commission an equal right to that which the Council itself possesses to make recommendations. The New Zealand Government would observe that any suggestion that a functional commission should be granted powers of recommendation direct to state members of the United Nations, and the other powers implicit in the proposals of the Working Group, would raise general questions of organization requiring careful consideration by the Council in relation not only to activities in the field of human rights, but also to the whole scope of the economic and social responsibility of the Council. The New Zealand Government would suggest that, until human rights and fundamental freedoms have been further defined and the procedures for implementation further considered, it would not be advisable to effect the delegation of powers proposed by the Working Group on implementation.

/The New Zealand

The New Zealand Government consider that there is clear need for the establishment of a satisfactory procedure for dealing with petitions and that action to this end should be proceeded with irrespective of agreement on other measures of implementation. It is not considered essential that such a procedure should be established in detail within the Covenant on Human Rights; it would be adequate for the Covenant to contain references to the procedure for handling petitions to be established by the General Assembly or the Economic and Social Council. This procedure should cover:

- (a) The receipt of petitions from individuals, groups, associations or states, including determination of their receivability in accordance with properly prescribed rules.
- (b) Endeavours to negotiate settlements, through private discussions with the states concerned, in cases where the petitions were deserving of such consideration.
- (c) Reports on results of negotiations, and transmission of those cases where conciliation has failed to the General Assembly or the Economic and Social Council, as may be thought fit, for further action. The Assembly or the Council might call on the assistance of the Human Rights Commission for an initial study of these reports and advice on appropriate further action.

Subject to considering the views of other governments, the New Zealand Government concur in the proposal of the Working Group on implementation that these functions should be discharged by a small committee of independent experts, to be appointed either by the General Assembly or the Economic and Social Council from lists submitted by states which have acceded to the Convention on Human Rights. They are not at this stage able to agree, however, that such a committee should carry responsibility for collecting information on human rights; this should continue to be the responsibility of the Secretariat and the Human Rights Commission.

The New Zealand Government are fully appreciative of the force of the arguments which led the Working Group on implementation to reach the conclusion that an international court should be empowered to constitute the final guarantor of human rights. They are not yet convinced, however, of either the advisability of or necessity for a new and special court of human rights. They are concerned that steps should be taken to ensure the full and effective implementation of the provisions of the proposed Covenant on Human Rights and will accordingly give careful consideration to the views of other governments on the various measures of implementation,

/including

including the question of the suggested new international court. At this stage they desire only to observe that:

- (a) The jurisdiction of the International Court of Justice is sufficiently wide to cover questions of human rights arising either under the Charter of the United Nations or under the proposed Covenant on Human Rights, when it comes into force (Article 36(1) of the Statute of the International Court of Justice).
- (b) A large number of states has already accepted the compulsory jurisdiction, in relation to other states accepting the same obligation, of the International Court of Justice.
- (c) Various organs of the United Nations have the right to seek the advisory opinions of the Court under Article 65 of its Statute.
- (d) The International Court of Justice has power to form one or more chambers for dealing with particular categories of cases (Article 26 of the Statute).
- (e) The decision of an international court, whether the International Court of Justice or the suggested court of human rights, can never in itself amount to enforcement, but, as recorded by the Working Group on implementation, "cases have hitherto been rare of states deliberately going against international judicial decisions or arbitral awards" (E/600, page 63).
- (f) Under Article 94 of the Charter, "every member of the United Nations undertakes to comply with the decision of the International Court of Justice in any case to which it is a party. If any party to a case fails to perform the obligations incumbent on it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment".

In these circumstances, the New Zealand Government suggest that provision might be made that any state which has acceded to the Covenant could bring before the International Court of Justice a case concerning the alleged breach of the terms of the Covenant by a party thereto. This, coupled with the right of the appropriate organs of the United Nations to request advisory opinions from the Court, would, it is suggested, provide the means for obtaining authoritative judicial decisions on questions of human rights in those cases where such a decision was called for. It is assumed that, whatever the procedure finally adopted, reference to an international court would generally occur only after consideration of the matter in question under the

/procedure

procedure for petitions outlined earlier.

The New Zealand Government advance these comments on the question of an international tribunal in the hope that they will assist in clarifying a problem of great importance and complexity. They reserve the right to consider the matter further on receipt of information on the views of other governments and the result of the further consideration of the matter by the Human Rights Commission.

ANNEX "A"

REVISION OF THE DRAFT INTERNATIONAL COVENANT ON HUMAN
RIGHTS PREPARED BY THE HUMAN RIGHTS COMMISSION

The numbering of the corresponding Articles in the Commission
draft is shown in brackets. Amendments are underlined.

Preamble (Article 1)

Whereas faith in fundamental human rights has been reaffirmed in the
Charter of the United Nations,

And whereas the Charter further provides that the United Nations shall
promote universal respect for and observance of human rights and fundamental
freedoms for all, without distinction as to race, sex, language or religion,

The states parties hereto, recognizing the rights defined in Part II
hereof as human rights and fundamental freedoms, agree to accept the
provisions of this Covenant.

Part I

Article 1 (Article 2)

Every state party hereto undertakes to ensure:

(a) that its law secures to all persons within its jurisdiction
without distinction, whether on grounds of nationality, race, colour,
sex, language, religion, political or other opinion, property status,
social origin, or otherwise, the enjoyment of the human rights and
fundamental freedoms set forth in Part II hereof.

(b) that every person shall have an effective remedy for any violation
of these rights and freedoms, notwithstanding that the violation may
have been committed by persons acting in an official capacity.

(c) that such remedy shall be enforceable by a judiciary whose
independence is secured, and

(d) that its police and executive officers shall act in support of
the enjoyment of these rights and freedoms.

Article 2 (Article 3)

On the request of the Secretary-General of the United Nations made under
the authority of a resolution of the General Assembly, any state party to
this Covenant shall supply an explanation as to the manner in which the law
of that state gives effect to any of the provisions of this Covenant.

Article 3 (Article 4)

1. No state may take measures derogating from its obligations under
Article 1, other than such strictly limited and temporary measures as may

be necessary

be necessary to meet the exigencies of war or other grave public emergency.

2. Any state party hereto availing itself of this right of derogation shall inform the Secretary-General of the United Nations fully of the measures which it has thus enacted and the reasons therefor. It shall also inform him when each measure ceases to operate and when the provisions of Article 1 are being fully executed.

Part II

Article 4 (Article 5)

It shall be unlawful to deprive any person of his life save in the execution of the sentence of a court following his conviction of a crime for which this penalty is provided by law.

Article 5 (Article 6)

It shall be unlawful to subject any person to any form of physical mutilation or medical or scientific experimentation against his will.

Article 6 (Article 7)

No person shall be subjected to torture or to cruel or inhuman punishment or to cruel or inhuman indignity.

Article 7 (Article 8)

1. No person shall be held in slavery or servitude.
2. No person shall be required to perform forced or compulsory labour.
3. For the purposes of this Article, the term "forced or compulsory labour" shall not include:

(a) any labour exacted as a punishment for crime of which the person concerned has been convicted by due process of law.

(b) any service of a purely military character or national service accepted as equivalent thereto which may be exacted for limited periods in virtue of compulsory military service laws.

(c) any service exacted during emergencies which threaten the life or well-being of the community, such as fire, flood, famine, earthquake, violent epidemic or epizootic disease, or invasion by animals, insect or vegetable pests.

(d) any minor communal services considered as normal civic obligations incumbent upon the members of the community, provided that these obligations have been accepted by the members of the community concerned directly or through their directly elected representatives.

Article 8 (Article 9)

1. No person shall be deprived of his liberty, save in the case of:
 - (a) lawful arrest of a person which is effected for the purpose of bringing him before a court on a reasonable suspicion of having

committed a crime or which is reasonably considered to be immediately necessary to prevent his committing a crime;

(b) lawful arrest and detention of a person for non-compliance with the lawful order or decree of a court or to prevent evasion of the legal process;

(c) lawful detention of a person sentenced after conviction to deprivation of liberty;

(d) lawful detention of a person of unsound mind;

(e) lawful detention of a person in quarantine or isolation for the protection of public health;

(f) Parental or quasi-parental custody of a minor;

(g) lawful arrest and detention of a person to prevent his effecting an unauthorized entry into the country;

(h) lawful arrest and detention of an alien against whom deportation proceedings are pending.

2. Any person who is arrested shall be informed promptly of the charges against him. Any person who is arrested under the provisions of sub-paragraphs (a) or (b) of paragraph 1 of this Article shall be brought promptly before a court and shall be tried within a reasonable time or released.

3. Every person who is deprived of his liberty shall have an effective remedy in the nature of "habeas corpus" by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

4. Every person shall have an enforceable right to compensation in respect of an unlawful arrest or deprivation of liberty.

Article 9 (Article 10)

No person shall be imprisoned or held in servitude in consequence of the mere breach of a contractual obligation.

Article 10 (Article 11)

1. Every person shall be free to move and choose his place of residence within the borders of the state, subject to any general law not contrary to the purposes and principles of the United Nations Charter and adopted for specific reasons of security or in the general interest.

2. Any person who is not subject to any lawful deprivation of liberty or to any outstanding obligations with regard to national service or taxation shall be free to leave any country, including his own.

Article 11 (Article 12)

No alien legally admitted to the territory of a state shall be arbitrarily expelled therefrom.

Article 12 (Article 13)

1. No person shall be convicted or punished for any crime or other offence save by judgment of a competent tribunal and in conformity with the law.
2. Any person accused of having committed a crime or other offence shall be entitled:
 - (a) to a full hearing of his defence to the charge and of any plea which he may make in mitigation;
 - (b) to hear the testimony of all witnesses;
 - (c) to compulsory process for securing:
 - (i) the attendance of witnesses whom he intends to call;
 - (ii) the production of relevant documents;
 - (d) to consult with and be represented by a qualified person of his choice.

Article 13 (Article 14(1))

No person shall be held guilty of any offence on account of any act or omission which did not constitute such an offence at the time when it was committed, nor shall he be liable to any greater punishment than that prescribed for such offence by the law in force at the time when the offence was committed.

Article 14 (Article 15)

No person shall be prevented from having access to the courts to obtain redress for any infringement of his civil rights, nor shall any person, unless he is one of a class of generally recognized incapacity, such as minors, persons of unsound mind and persons undergoing imprisonment, be deprived in whole or in part of his legal capacity to enter into lawful contracts or other legal relationships.

Article 15

No person shall be denied the right, either individually or in association with others, to petition or to communicate with the Government of the state of which he is a national or in which he resides.

Article 16 (Article 16)

1. Every person shall be free to hold any religious or other belief dictated by his conscience and to change his belief.
2. Every person shall be free to practice, either alone or in community with other persons of like mind, any form of religious worship and observance and to give public notice thereof, subject only to such restrictions, penalties or liabilities as are strictly necessary to prevent the commission of acts which offend laws passed in the interests of humanity and morals, to preserve public order and to ensure the rights and freedoms of other persons.

3. Subject only to the same restrictions, every person of full age and sound mind shall be free to give and receive any form of religious teaching, to endeavour to persuade other persons of full age and sound mind of the truths of his beliefs, and to publish and disseminate literature for the above purposes. In the case of a minor, the parent or guardian shall be free to determine what religious teaching he shall receive.
4. Subject only to the same restrictions, no person shall be required to do any act which is contrary to any religious or other beliefs dictated by his conscience.

Article 17 (Article 17)

(No text is being submitted - see comments).

Article 18 (Article 18)

All persons shall have the right to assemble peaceably for any lawful purpose including the discussion of any matter on which under Article 16 any person has the right to express and publish his ideas. No restrictions shall be placed on the exercise of this right other than those necessary for:

- (a) the protection of life or property;
- (b) the prevention of disorders; or
- (c) the prevention of the obstruction of traffic or the free movement of others.

Article 19 (Article 19)

All persons shall be free to constitute associations, in whatever form may be appropriate under the law of the State, for the promotion and protection of their legitimate interests and of any other lawful object, including the dissemination of all information of which under Article 16 the dissemination is unrestricted. The rights and freedoms set forth in Articles 16, 17 and 18 shall be enjoyed by such associations.

Article 20 (Article 21)

Any advocacy of national, racial or religious hostility that constitutes an incitement to violence shall be prohibited by the law of the State.

Article 21

No person or group shall be denied access to public facilities for education by reason only of nationality, race, colour, sex, language, religion, political or other opinion, property status or social origin.

Article 22

No person shall be denied benefits provided by the state to ensure the social security of sick, disabled, unemployed, and aged persons and mothers and children, and the health and welfare of the general public, by reason only of nationality, race, colour, sex, language, religion, political or other

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opinion, property status or social origin.

Article 23

No person shall be denied the right to work or to enter into lawful contracts of employment by reason only of nationality, race, colour, sex, language, religion, political or other opinion, property status or social origin.

Article 24

No person shall be denied the right to engage in public employment in the state of which he is a national by reason only of race, colour, sex, language, religion, political or other opinion, property status or social origin.

Article 25 (Article 22)

Nothing in this Covenant shall be considered to give any person or state the right to engage in any activity aimed at the destruction of any of the rights and freedoms prescribed herein.

Part III

Article 26 (Article 20)

1. This Covenant shall be open for accession to every State Member of the United Nations or party to the Statute of the International Court of Justice and to every other State which the General Assembly of the United Nations shall, by resolution, declare to be eligible.
2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations, and as soon as two-thirds of the States Members of the United Nations have deposited such instruments the Covenant shall come into force between them. As regards any State which accedes thereafter, the Covenant shall come into force on the date of the deposit of its instrument of accession.
3. The Secretary-General of the United Nations shall inform all Member of the United Nations and the other States referred to in paragraph 1 above of the deposit of each instrument of accession.

Article 27 (Article 24)

In the case of a Federal State, the following provisions shall apply:

- (a) With respect to any Articles of this Covenant which the federal government regards as wholly or in part appropriate for federal action, the obligations of the federal governments shall, to this extent, be the same as those of parties which are not federal states;
- (b) In respect of Articles which the federal government regards as appropriate under its constitutional system, in whole or in part, for action by the constituent States, Provinces or Cantons, the federal government shall bring such provisions, with a favourable recommendation,

/to the notice

to the notice of the appropriate authorities of the States, Provinces or Cantons.

Article 28 (Article 25)

1. This Covenant shall apply in respect of any colony or overseas territory of a State party hereto, or any territory subject to the suzerainty or protection of such State, or any territory in respect of which such State exercises a mandate or trusteeship, when that State has acceded on behalf and in respect of such colony or territory.
2. The State concerned shall, if necessary, seek the consent at the earliest possible moment of the governments of all such colonies and territories to this Covenant and accede on behalf and in respect of each such colony and territory immediately its consent has been obtained.

Article 29 (Article 26)

1. Amendments to this Covenant shall come into force when they have been adopted by a vote of two-thirds of the Members of the General Assembly of the United Nations and ratified in accordance with their respective constitutional processes by two-thirds of the parties to this Covenant.
2. When such amendments come into force they shall be binding on those parties which have ratified them, leaving other parties still bound by the provisions of the Covenant which they have accepted by accession, including earlier amendments which they have ratified.

Article 30 (Article 27)

In construing the Articles of this Covenant, the several Articles shall be regarded in their relation to each other.

ANNEX "B"

COMMENTARY ON REVISION OF DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS

Preamble (Article 1)

The Covenant is a projection and elaboration of the provisions of the Charter of the United Nations, and it is appropriate that it should commence with a preamble referring to the principal relevant provisions of the Charter (Preamble and Article 55).

The Covenant will constitute a radical advance in the development of international law in the field of human rights and fundamental freedoms. To state, as is done in Article 1 of the Commission draft, that such rights and freedoms are "founded on the general principles of law recognized by civilized nations" may involve the interpretation of the Covenant in the light of "the general principles of law", not in themselves codified, "recognized by civilized nations" prior to the adoption of the Covenant. The New Zealand Government consider that the Covenant, involving important obligations on the part of acceding states, should be clear and precise, should derive its authority from the Charter of the United Nations, and should avoid the danger of restrictive interpretation which might arise from its dependence on general principles which have not been in all cases clearly defined.

Part I

Article 1 (Article 2)

- (i) In New Zealand and certain other states, some of the rights enumerated in the Covenant are secured by common law rather than by legislation; the word "laws" has accordingly been amended to "law".
- (ii) A general clause against discrimination has been included here. This is considered the correct place for such a provision which should be linked directly with municipal law and is preferable to having references to discrimination in several different articles, e.g. in Articles 2 (a) and 20 of the Commission's draft; express reference to discrimination is still required, however, when the essential purpose of a particular article is to provide against discrimination cf. Articles 21-24 of the revised draft.
- (iii) On the phrase "the general principles of law recognized by civilized nations", see comments on preamble above. This phrase constitutes the essence of Article 2 (b) of the Commission draft, which has been deleted for reasons already indicated.
- (iv) Article 2 (c) of the Commission draft is open to the interpretation that it refers to all rights and freedoms recognized in different states, including some which might not be defined in the Covenant.

/The obligations

The obligations imposed on states acceding to the Covenant must be precisely stated and this provision has accordingly been amended to make it clear that it refers only to the rights and freedoms set forth in the Covenant.

Article 2 (Article 3)

"Any State party to this Covenant" has been substituted for "the Government of any party to this Covention" to maintain consistency with the rest of the Covenant.

Article 3 (Article 4)

Paragraph 1 has been redrafted to define more precisely and limit the duration of the permissible derogations from the obligations imposed by the Covenant on acceding states.

PART II

Article 7 (Article 8)

- (i) The exception of labour performed as punishment for crime has been transferred to paragraph 3.
- (ii) Although there is danger in widening the list of exceptions to the general prohibition of forced or compulsory labour, it appears necessary to include national (as distinct from purely military) service in the exempted categories (Section 3 (b)); the words "for limited periods" have been added as a safeguard.
- (iii) Paragraph 3 (b) of the Commission's Article 8 had been redrafted to eliminate the words "similar calamities or other emergencies" - a phrase which might be interpreted so widely as to render ineffective the prohibition of forced or compulsory labour.

Article 8 (Article 9)

- (i) Paragraph 1 of the Commission draft has been deleted; on the assumption that "arbitrary" means "unlawful" it appears to add nothing to paragraph 2 (now paragraph 1, where the word "lawful" has been inserted in sub-paragraph (a)).
- (ii) The words "or to prevent evasion of the legal process" have been added in paragraph 1 (b) (cf. comment of Indian representative on Commission draft, E/600, page 39).
- (iii) A reference to lawful detention in quarantine or isolation for the protection of public health has been inserted as paragraph 1 (e).

Article 10 (Article 11)

- (i) Paragraph 1 has been redrafted to bring the wording into line with other articles.
- (ii) The words "or taxation" have been added in paragraph 2 since it is the normal procedure in many countries to require taxation clearance by persons travelling abroad.

/Article 11

Article 11 (Article 12)

No change has been suggested in this article. It is pointed out, however, that the effect of the article depends on the interpretation of the word "arbitrarily". There is no indication whether the Commission intended this word to mean: (a) "unlawfully", i.e. without justification under the laws of the country concerned, irrespective of the terms of those laws, or (b) the absence of just reasons, according to generally accepted international standards. It is considered that the question merits further consideration and that, if the latter interpretation above is envisaged, the conditions under which aliens may be expelled should be clearly prescribed.

It is generally accepted that a state retains the right to determine the conditions under which aliens may enter and remain within its territory and that breach of any of the conditions prescribed at the time of entry constitutes a good reason for the expulsion of the alien. International provision that expulsion can be effected only under conditions and in accordance with procedures prescribed by law, even though discretion in the exercise of these procedures might rest with the Executive, would represent a worthwhile development in international law. Until the proper interpretation of the article is clarified, the New Zealand Government must reserve their position.

Article 12 (Article 13)

It is considered that the Commission's Article 13 lacks the precision desirable in an international document which will impose far-reaching obligations on acceding states. The New Zealand Government suggest the relevant clause originally advanced by the United Kingdom member of the Commission, subject to certain minor amendments, as a basis for further study. It is the view of the New Zealand Government that the proposed Article 12 does not override long-established rules of procedure and evidence, e.g. under New Zealand law certain documents are privileged and, while the Court may issue an ex parte order for their production, when privilege is claimed on established grounds, the Court will recognize the grounds of privilege and the contents of the document will be protected from disclosure. It would probably be impossible to specify such rules of procedure and evidence within the Covenant; if there is any doubt as to the continued efficacy of these rules, the words "subject to established rules of procedure and evidence", or similar words, should be added after the introductory sentence in paragraph 2.

Article 13 (Article 14)

Paragraph 2 of the Commission's Article 14 has been deleted. It is considered that its inclusion would seriously weaken the provisions of paragraph 1. The Covenant is concerned essentially with the relationship of individuals and states; the question of "international" crimes, which may have

been in mind in

been in mind in the drafting of paragraph 2, can be dealt with more appropriately in other ways, e.g. by the codification of the principles of the Nurnberg judgments.

Article 14 (Article 15)

Although the apparent intent of the Commission's Article 15 can be appreciated, it is considered that it will carry little weight in the absence of express prohibition of acts which would deny or detract from a person's juridical personality. An endeavour to cover this has been made in the proposed Article 14.

Article 15 (New)

This article, based on Article 20 of the Commission's draft International Declaration on Human Rights, is advanced as appropriate for inclusion in the Covenant.

Article 16 (Article 16)

Article 16 now proposed represents a consolidation of certain sections of the Commission article with the comparable article submitted originally by the United Kingdom member of the Commission, designed to clarify the different aspects of the right of freedom of religion and conscience and to define more precisely the restrictions, penalties and liabilities which may be imposed on the exercise of this right. The following points are new:

- (a) The right to give public notice of religious meetings;
- (b) The right to publish and disseminate religious literature.

Article 17 (Article 17)

The Article dealing with Freedom of Information has been the subject of further consideration at the recent Conference on Freedom of Information. Until it has been possible to consider the resolutions adopted at that Conference the New Zealand Government must reserve their position on this Article.

Note

The Commission's Article 20 has been deleted and its provisions against discrimination transferred to Article 1 (a) of the revised draft (see note to that article).

Article 20 (Article 21)

No change has been suggested. It is considered, however, that the article requires further consideration in two respects:

- (a) To ensure that it does not involve any unnecessary restriction on freedom of expression. It is pointed out that the words "that constitutes an incitement to violence" do not imply any intent. The dividing line between reasonable expressions of opinion on national, racial or religious matters, which should be permitted as part of the exercise of the right of freedom of expression,

/and statements which

and statements which amount to advocacy of national, racial or religious hostility within the article proposed, will be difficult to draw.

(b) It is a question whether the article, the aim of which will merit general approval, finds its correct place in a Covenant on Human Rights or whether it could not be included more appropriately in the proposed convention on genocide. As at present drafted, it does not conform to the general pattern of the rest of the Covenant, in that it neither states nor is apparently intended to state the rights of an individual.

Articles 21-24 (New)

These articles deal with what may be called, for want of a better term, social and economic rights. These are stated in the Commission's draft Declaration but not in the draft Covenant. The guarantee of the right to education, to social security and other similar rights, depends on the stage of development in economic and other fields in the states concerned. Apart from the difficulty of finding a common definition of some of these rights, e.g. the right to social security and the right to work, to fit varying economic and political systems, it is assumed that the Commission's exclusion of these rights from the Covenant represented a recognition that a sufficient number of states have not yet reached the stage of development at which they could accept the international obligations implicit in their inclusion in the Covenant. The New Zealand Government would be prepared to accept such obligations, properly defined, at this stage; they express the hope that the time may not be far distant when many other states will be able to adopt a similar position. In the meantime, it is considered that there is value in taking the first step towards that goal and providing that these rights, insofar as states do accord them, shall be accorded without discrimination on the specific grounds listed. Articles 21-24 are advanced on this basis as suggestions for further consideration.

Article 22

- (i) The proposed article refers only to "benefits provided by the State". States in which social security is ensured primarily by means other than state action should be invited to indicate how the article might be amended to meet their conditions.
- (ii) The prohibition of discrimination by reason of "property status" is interpreted to debar discrimination by reason of such matters as ownership of land, but not a provision that, in appropriate cases, income or other resources should be taken into account in assessing the quantum of any benefit which a person may be entitled to receive.

Article 23

It will be noted that "nationality" has been expressly included in the foregoing article. It is for consideration whether this should not be limited in some way to cover the procedure adopted by some states in granting temporary permits to aliens, which permits include an express condition that the aliens in question shall not undertake work.

Article 24

- (i) It is considered that the right to public employment must be confined to nationals.
- (ii) The article is not interpreted as guaranteeing public employment to all nationals; obviously the number which can be engaged must depend on the economic system and the scope for such employment in the particular state.

Nor is the article interpreted as guaranteeing to any individual the right to hold a particular position; appointments to particular positions must in all cases rest within the jurisdiction of the appropriate national authority in the light of the qualifications of the various applicants and other relevant considerations, including, in the case of posts involving the security of the state, the loyalty of the various applicants. The article does not, of course, debar disciplinary action against public servants who have broken their oaths of loyalty or other prescribed conditions of employment.

Article 25 (Article 22)

It is assumed that this article is aimed at the abuse of the rights of freedom of association, of expression, etc., by the advocacy by states, groups or individuals, of the abolition of any of the rights and freedoms included in the Covenant. A wide interpretation might, however, give a state so minded a pretext for curtailing very considerably the exercise of certain of these rights and freedoms. Reasonable discussion of human rights should not be prohibited and is essential to their exercise and full development. No amendment of the article has been suggested, but it is considered that it calls for further study.

PART III

Articles 26-30 (Articles 23-27)

The New Zealand Government do not desire to offer at this stage any detailed comments on the provisions of Part III of the Covenant. It is assumed that, at the appropriate time and in the light of the discussions on the Declaration, Covenant and provisions for implementation, there will be a further examination of these provisions, including the question

/of the number

of the number of accessions by members of United Nations necessary to bring the Covenant into force and the provisions to apply in the case of a Federal State. It is suggested that paragraph (b) of Article 24 of the Commission's draft will require careful consideration to clarify the methods of implementation in the case of acceding Federal States to the extent that the paragraph referred to, if maintained, is relevant.

ANNEX "C"

REVISION OF DRAFT INTERNATIONAL DECLARATION ON HUMAN RIGHTS
PREPARED BY HUMAN RIGHTS COMMISSION

Article 1

1. All men are born free, equal in dignity and rights as human beings, endowed with reason and conscience, and bound in duty to one another as brothers.
2. All men are members of communities and as such have the duty to respect the rights of their fellow men equally with their own.
3. The just claims of the state, which all men are under a duty to accept, must not prejudice the respect of man's right to freedom and equality before the law and the safeguard of human rights, which are primary and abiding conditions of all just government.

Article 2

Everyone is entitled to the rights set forth in this Declaration without distinction; whether on grounds of nationality, race, colour, sex, language, religion, political or other opinion, property status, social origin or otherwise.

Article 3

Everyone has the right to equal treatment under the law and to recognition everywhere in the world as a person before the law.

Article 4

Everyone has the right to life, liberty and security of person and to protection by law of his life, liberty, personal security, property, reputation, privacy, home and correspondence, subject to deprivation only in cases prescribed by law and after due process.

Article 5

Everyone has a right to the protection of the state of which he is a national or of the United Nations.

Article 6

Everyone has the right to move and choose his place of residence within the borders of each state, to leave his own or any other country, and to acquire the nationality of any other country willing to grant it.

Article 7

Men and women have the same right to contract marriage in accordance with the formalities required by the law.

/Article 8

Article 8

Everyone has the right to own property in accordance with the law of the state in which such property is located.

Article 9

Everyone is entitled to freedom of belief, thought and expression, to freedom to seek and receive information and the opinion of others wherever situated, and to access to all publicly available sources of information, opinion and knowledge.

Article 10

Everyone is entitled to freedom of association, including freedom to join trade unions.

Article 11

Everyone has the right, either individually or in association with others, to petition or to communicate with the government of the state of which he is a national, or in which he resides, and to petition or to communicate with the United Nations.

Article 12

Everyone has the right to take an effective part in the government of his country and the right to a free vote in the election of representative organs of government.

Article 13

Everyone is entitled to equal opportunity to engage in public employment and to hold public office in the state of which he is a citizen or a national.

Article 14

Everyone has the right to work and to receive fair and reasonable payment therefor.

Article 15

Everyone has the right to health and, therefore, to the benefits of the highest standard of food, clothing, housing and medical care which the resources of the state or community can provide.

Article 16

Everyone has the right to social security in respect of sickness, disability, unemployment, widowhood, motherhood, childhood and old age to the extent to which the resources of the state or community can provide it.

/Article 17

Article 17

1. Everyone has the right to education.
2. Education should, so far as possible, be free and universal. Access to higher education should be provided on the basis of merit.

Article 18

Everyone has the right to rest and leisure to be ensured through the limitation of working hours and provision of paid vacations.

Article 19

Everyone has the right to participate in the cultural life of the community, to enjoy the arts and to share in the benefits that result from scientific discoveries.

Article 20

Everyone has the right to use the language and participate in the cultural life of the ethnic, linguistic or religious group to which he belongs.
