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DRAFT INTERNATIONAL COVENANTS ON HUMAN RIGHTS

Observations by Governments

The Secretary-General has the honour to circulate, in accordance with resolution 833 (IX) of the General Assembly, the following observations by the Governments of Austria, the Union of Soviet Socialist Republics and the United Kingdom of Great Britain and Northern Ireland.

2. AUSTRIA

(Transmitted by note verbale dated 14 June 1955)

[ORIGINAL: GERMAN]

"In the main the Austrian legal system is consistent with the stipulations of the draft covenants. With respect to some particular provisions, however, the following observations should be made.

"I. Draft Covenant on Economic, Social and Cultural Rights:

"Article 7 (b) (i): Austrian law does not contain a statutory guarantee to the effect that a distinction between the remuneration of men and women workers is inadmissible in any provision concerning contracts of employment.

"II. Draft Covenant on Civil and Political Rights:

"Article 7 and Article 8, paragraph 2: A more precise definition of the terms 'degrading treatment' and 'servitude' would be desirable.

"Article 8, paragraph 3: The provisions of section 18 (j) of the 1947 Constitutional Act and of the Detention Camp Act of 13 July 1947, Bundesgesetzblatt No. 195, might conflict with the draft Covenant.

"Article 15: The Austrian Federal Constitution does not contain any provision prohibiting the enactment of legislation with retroactive effect. Under article 15 of the draft Covenant, however, an act is not punishable unless it constituted a criminal offence under national or international law, or according to the general principles of law recognized by the community of nations, at the time when it was committed. It will not be easy to determine whether existing Austrian legislation enacted with retroactive effect is fully compatible with these stipulations.

"Article 22, paragraph 4: It is impossible for the time being to enter into an undertaking to the effect that domestic legislation will be directed towards equality of rights and responsibilities for the spouses as to marriage, during marriage and at its dissolution.

"Furthermore, there are some differences between the relevant provisions of Austrian law and those of the draft Covenant on Civil and Political Rights, in that some rights which the draft Covenant grants to all persons are, under Austrian constitutional law, exercisable by Austrian citizens only. It will not, however, be necessary to go into this matter in detail until the question of Austria's accession to the Covenant comes up for consideration.

"The following observations relate to the report of the Third Committee, document A/2808 of 29 November 1954 of the United Nations General Assembly, paragraphs 31 and 51: The suggestions made by various States regarding possible accession to the Covenants subject to 'reservations' seems thoroughly justified, for certain provisions of the Covenants could be only gradually incorporated in national law. Provision for such reservations is also made in article 64 of the European Convention for the Protection of Human Rights.

"The proposal, made by one delegation, for a high commissioner (attorney-general) for human rights is open to certain objections, inasmuch as the powers to be conferred on the high commissioner under the proposal would be too sweeping, would interfere with States' sovereignty and, in some circumstances,

might even endanger the security of the State. At all events the right of the high commissioner (or of the regional commissioners appointed by him), under articles 6 and 8, to conduct investigations in the territory of States parties should be restricted by a proviso to the effect that such investigations could not be carried out except with the co-operation, or at least with the knowledge, of the State concerned."

3. UNION OF SOVIET SOCIALIST REPUBLICS

(Transmitted by note verbale dated 2 July 1955)

ORIGINAL: RUSSIAN

".... the views of the Government of the Union of Soviet Socialist Republics on the draft international covenants on human rights were stated by the USSR delegation during the discussion of this question in the Third Committee at the ninth session of the General Assembly."

4. UNITED KINGDOM

(Transmitted by note verbale dated 12 July 1955)

"Her Majesty's Government have the following comments to make on, and amendments to propose to, the texts of the draft covenants on human rights as reproduced at annex I, and the proposals and amendments at annexes II and III, of the report of the tenth session of the Commission on Human Rights. These observations are not necessarily final and HMG reserve the right to make further comments and proposals on questions of both substance and drafting during discussion of the draft covenants."

ANNEX I

"A. Draft Covenant on Economic, Social and Cultural Rights

"Article 1: Delete article 1.

"HMG have on many occasions made it clear that this article is unacceptable to them and has, in their view, no place in a covenant which is concerned with individual human rights. Self-determination is a political principle of very great importance, whose application in practice involves political issues and may have to be subordinated to equally important principles such as the maintenance of peace. Its assertion as an unqualified right of 'all peoples' and 'all nations' not only would do nothing to assist in the solution of these political problems but would have the most far reaching political consequences for many States and not merely for those administering Non-Self-Governing Territories.

"Article 2:

"Paragraph 1: Substitute for the words 'as well as' the word 'or'.

"The existing wording requires States Parties both to take legislative steps and to employ other means to achieve the full realization of each right. In fact the methods to be adopted will vary in different countries in respect of different rights. It cannot be assumed that the full realization of a particular right will require legislation in every country nor that legislation would necessarily be appropriate to national circumstances. On the other hand, legislation, without the employment of other means, may in some instances be sufficient to secure the full realization of a particular right. Legislation and other means should therefore be stated as alternatives, which are not, of course, mutually exclusive.

"Paragraph 2: While HMG consider that the principle of non-discrimination in the exercise of the rights enunciated in this Covenant is an important one which should be embodied in the Covenant, they doubt whether any State could fulfil all the obligations imposed by this paragraph.

Most of the distinctions specified are distinctions which ought not to be made in the exercise of these rights, but the paragraph also requires a guarantee that there will be no distinctions of any kind, or based on any status. In many countries where the realization of a particular right is incomplete there are bound to be inequalities amounting to distinctions in its exercise; in such cases a guarantee that there would be no distinctions at all would be impossible of fulfilment. Moreover, even as regards the particular distinctions specified in this paragraph there are some in respect of which, in relation to a particular right, a guarantee would be impossible. For example, all countries which exercise control over the admission of foreigners to employment thereby make a distinction on the ground of national origin in respect of the right to work enunciated in article 6. And in all countries where the right of men and women to equal pay for equal work has not been fully realized a distinction on the ground of sex is inherent in the fact that the right is not fully realized.

"In the view of HMG the terms of this paragraph will require further and careful consideration.

"Article 3: Delete article 3.

"In HMG's view this article is redundant. Discrimination on the ground of sex in the exercises of the rights enunciated in this Covenant should be covered in the same article as discrimination in its other forms.

"Article 7:

"Sub-paragraph (b): Consideration might be given to the desirability of retaining the words 'as a minimum'; they are not altogether appropriate to the conceptions of fairness and equality in sub-paragraph (b) (i).

"Sub-paragraph (b) (i): Delete the words 'in particular, women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work.'

"HMG consider that this sub-paragraph should state simply the principle of 'fair wages and equal remuneration for work of equal value without distinction of any kind.'

"In some countries, of which the United Kingdom is one, there is a vast field in which wages and other conditions of employment are determined by voluntary agreements freely negotiated between employers and workers entirely independently of government control; in such cases it would be inappropriate for the government to undertake an obligation to 'guarantee' for example, equal pay for equal work.

"Article 8:

"HMG consider that this article should be brought into conformity with article 21 of the draft Covenant on Civil and Political Rights, with the addition relating to persons in the employment of the State which is proposed as an amendment to that Article. In HMG's view it is undesirable that a right which is the subject of articles in both Covenants should be formulated in different terms in the two instruments.

"Article 10:

"Paragraph 2: Delete the last sentence of this paragraph.

"Detailed provisions relating to child labour and the employment of young persons in harmful or dangerous work are out of place in this Covenant: their formulation is the responsibility of the ILO.

"Article 11: Delete article 11.

"This article appears to be already covered by article 12; alternatively article 12 could be expanded by the addition after the words 'adequate standard of living' of the words 'including adequate food, clothing and housing.'

"Article 14:

"Paragraph 1: Insert the word 'and' before the word 'racial' in the last sentence.

"The omission of 'and' appears to be a typographical error.

"Paragraph 2: Substitute for the words 'it is understood' the words 'The States Parties to the Covenant recognize'.

"This amendment brings the wording of this provision into conformity with the wording of other articles of this Covenant.

"Sub-paragraph (b): Substitute for the word 'professional' the word 'vocational'.

"There is no such thing as 'professional' secondary education. 'Vocational' is the correct English translation of the original French text of this sub-paragraph.

"Article 15: Delete article 15.

"It is unrealistic to require that the principle of compulsory and free primary education must be implemented within a fixed period of years, since the economic and other conditions upon which the implementation of such a principle depends are not, in many countries, within the complete control of the State. Moreover, in HMG's opinion the subject is one for UNESCO to deal with by convention, recommendation, or other appropriate means.

"Article 21: Delete the words 'The States Parties directly concerned and the specialized agencies' and substitute 'Any State Party and any specialized agency'.

"In relation to a 'general recommendation' under article 20, the expression 'States Parties directly concerned' has no meaning, and indeed is in contradiction to the conception that the recommendation is a general one addressed to all States. It would be difficult in practice to interpret the category defined by this limiting phrase, and there is no reason why the right to submit comments on a general recommendation should be limited to a particular category of States Parties.

"Article 28: Substitute for this article the following:

"Each Contracting State shall, as soon as possible, take all necessary steps to extend the application of this Covenant to all non-metropolitan territories for whose international relations it is responsible, provided that, where necessary for constitutional reasons or in accordance with customary procedures, the Governments of such territories consent thereto.

"When such steps have been taken and any necessary consents received in relation to all or any of such territories, the Contracting State

concerned shall notify the Secretary-General, and this Covenant shall apply to the territory or territories named in any such notification from the date of its receipt'.

"In the territories for whose international relations HMG are responsible, practically the whole field covered by both Covenants is within the competence of the Governments of those territories, and HMG does not commit those Governments without their prior consultation and consent.

The only effect of a clause in the existing terms of article 28 is thus:

(i) to ensure that the acceptance by the UK Government of a covenant including such a clause is delayed for a very considerable period required to consult and obtain the consent of these Governments, and (ii) in the event of even a single territory finding it unacceptable, to preclude its acceptance by the UK Government for the metropolitan or any other territory.

"B. Draft Covenant on Civil and Political Rights

"Article 1: Delete article 1.

"See comment under article 1 of the draft Covenant on Economic, Social and Cultural Rights.

Article 2:

"Paragraph 2: Delete this paragraph.

"This paragraph can be interpreted as permitting States Parties an indefinite period after ratification within which to secure that the obligations they have accepted by the act of ratification are in fact fully complied with. HMG see no reason for allowing any period after ratification for this purpose; and to allow an indefinite period is to postpone indefinitely the entry of the Covenant into full force in the country concerned. In HMG's view discrepancies between the existing situation in a country and the obligations of the Covenant should be met by legislation or other measures before ratification, or by appropriate reservations to the Covenant.

"Article 3: Delete this article.

"See comment on the corresponding article (article 3) in the draft Covenant on Economic, Social and Cultural Rights.

"Article 4:

"Paragraph 2: There is a difficulty in the practical application of the provisions of this paragraph in relation to articles 18 and 19. It is clear that a State may, in emergency and to the extent strictly necessitated by those conditions, restrict the freedom under article 19 to impart information and ideas of all kinds in speech and writing. But in some cases the imparting of information or ideas can also be regarded as the manifestation of a belief in practice and teaching within the meaning of article 18. There is no right to derogate from article 18 in time of emergency and it is undesirable that there should be any general right of derogation from that article. It seems necessary, however, to secure that action which is legitimate and necessary under a derogation from article 19 in time of emergency shall not be precluded for the technical reasons that the activity prohibited or restricted can also be regarded as coming within the terms of article 18.

"Article 6:

"Paragraph 1: Delete the first sentence.

"It is not clear to HMG what is meant by saying that no one shall be 'arbitrarily' deprived of his life. It seems to them that the conception of the sanctity of human life is better expressed in the second sentence of this paragraph and they are inclined to the view that, since other texts proposed as alternatives to the first sentence have not proved acceptable to the Human Rights Commission, it would be preferable that the first paragraph should consist of the second sentence only.

"Article 9:

"Paragraph 1: Delete the second sentence.

"Add at the end of the paragraph 'and as are not in themselves incompatible with respect for the right to liberty and security of person'.

"One meaning of the word 'arbitrary' is 'extralegal', but since the third sentence of this paragraph already prohibits any deprivation of liberty which is not authorized by law, the word 'arbitrary' seems to be used here as a criterion for assessing action lawfully taken for arrest or detention. It is far too uncertain in its meaning for this purpose. HMG believe the intention to be to require that laws and procedures shall not themselves be such as are incompatible with respect for the right which is the subject of this article. The amendment to the last sentence makes provision in this sense.

"Paragraph 5: Substitute for the words 'deprivation of liberty' the word 'detention'.

"This is a drafting amendment. 'Unlawful arrest' is a form of deprivation of liberty; and paragraph 4 speaks of deprivation of liberty 'by arrest or detention'.

"Article 12:

"Paragraph 2 (a): This is another instance of the use of the undefined term 'arbitrary' to which HMG have drawn attention in their comments on other articles.

"Article 14:

"Paragraph 1: Delete the first sentence.

"This sentence is unnecessary. Article 24 provides that all persons are equal before the law, and article 16 that everyone shall have the right to recognition everywhere as a person before the law.

"Paragraph 2: Begin a new paragraph, numbered 3, with the second sentence.

"This is a drafting amendment. The first sentence is an important statement of principle which should have a separate paragraph.

"Paragraph 3: Renumber as paragraph 4.

"Paragraph 4: Delete this paragraph.

"The subject of compensation for wrongful conviction is not one which can be adequately dealt with in a paragraph of an article in an international

instrument of a general character. The present paragraph is insufficiently comprehensive as a statement of the categories of case in which compensation should be accorded, and at the same time includes cases in which no claim to compensation would be admitted.

"Article 15:

"Paragraph 1: Substitute for the last sentence of this paragraph the following:

"'If the maximum penalty under the law in force at the time when the sentence is passed is less than was provided by the law in force at the time when the offence was committed, the offender shall benefit thereby'.

"This is a drafting amendment. The existing text could apply to changes in the law long after conviction; and the words 'provision... for the imposition of a lighter penalty' could apply to changes which allow, but do not require, the Courts to apply alternative methods of treatment such as probation.

"Article 16: Delete the word 'everywhere'.

"This is a drafting amendment. The term 'everywhere' is inappropriate to an obligation which is accepted by each State Party only in respect of individuals 'within its territory and subject to its jurisdiction'.
(article 2, paragraph 1.)

"Article 17: Re-draft as follows:

"'1. No one shall be subjected to unlawful interference with his privacy, home or correspondence. Everyone has the right to the protection of the law against such interference. Any interference by public authority with privacy, home or correspondence shall be limited to what is required in the general interest and is authorized by laws which are not in themselves incompatible with respect for the right to personal privacy and to privacy of home and correspondence.

"'2. No one shall be subjected to unlawful attacks on his honour and reputation. Everyone has the right to the protection of the law against such attacks.'

"The word 'arbitrary' is used in this article in the same sense as in article 9 and is open to the same objections. It is particularly unsatisfactory as a criterion, additional to the criterion of lawfulness, for determining questions of interference by one private person with the privacy of another. The re-draft substitutes for 'arbitrary', in relation to interference by public authority, the conception that the laws authorizing such interference must not themselves be incompatible with respect for the right which is the subject of this article, and must be limited in their operation to what is required in the general interest. Interference by private persons is, under the redraft, limited to what is lawful.

"Article 19:

"Paragraph 2: Substitute for the words 'or through any other media of his choice' the words 'or through the medium of any lawfully operated devices'.

"In many countries the operation of wireless transmitting apparatus is subject to some form of State licensing.

"Paragraph 3: Add at the end of the paragraph the words 'or for the protection of official information from unauthorized disclosure'.

"In most countries the unauthorized communication of official information is prohibited even if national security is not involved.

"Article 21:

"Paragraph 2: Add at the end of the paragraph the words 'or by persons employed in the administration of the State'.

"A provision relating to such persons is necessary, as in the case of members of the armed forces or of the police.

"Article 22:

"Paragraph 4: Substitute for the last sentence the following sentence: 'In the last mentioned case the law shall make provision by which all necessary protection for any children of the marriage may be assured'.

"The arrangement by which courts, in the majority of divorce cases, assign the custody of children to one of the spouses cannot be described as 'special measures for the protection of the children', nor is it to be assumed that special measures of protection are required in every case. The re-draft attempts to put the conception at the basis of this paragraph in a form which it is believed is more in accordance with the legal system of most countries.

"Article 23:

"Sub-paragraph (b): Delete the words 'shall be by universal and equal suffrage and'.

"The word 'universal' is redundant in view of the opening words of the article. The reference to 'equal suffrage' might be taken to mean conditions which ensure that every vote has equal weight; the fulfilment of such a requirement might involve the institution of some form of proportional representation, as well as, in many countries, some rationalization of the size of constituencies.

"Article 24: Delete the second sentence.

"As HMG have already explained, the second sentence of this article, besides making the unwarranted assumption that all and every kind of discrimination can be eradicated simply by passing laws, goes far beyond the field of discrimination in the exercise of the rights enunciated in this Covenant (which is already covered by article 2 (1)). It even goes beyond the field of human rights since it requires the prohibition of every action or form of conduct which is discriminatory in its effect. This is an obligation which most States would find it impossible to fulfil.

"Article 26: Delete this article.

"HMG regard this article as objectionable because it does not state any fundamental human right, but on the contrary authorizes and requires repressive legislation; and because this requirement would give to régimes which wish to make unjustifiable inroads upon the freedom of speech and expression a basis for claiming that their actions are in accordance with a principle sanctioned by an international Covenant on Human Rights.

"Article 27:

"Paragraph 2: Substitute for the words 'consideration being given to the usefulness of the participation of some persons having a judicial or legal experience' the words 'regard being had to the desirability of its including some persons having judicial or other legal experience'.

"This is a drafting amendment.

"Article 30:

"Paragraph 4: Add at the end the word 'present'.

"As the text stands, paragraph 3 provides for a quorum of 9, but paragraph 4 requires a majority of 8. This is not a workable arrangement. The amendment proposes that, in accordance with ordinary practice, an absolute majority of those present should be required: if no more than a quorum is present, the required majority would be 5. If this number is thought insufficient the remedy is to amend paragraph 3 so as to increase the quorum rather than to impose what would in some circumstances be a quasi-unanimity rule.

"Article 33:

"Paragraph 1: Substitute for this paragraph the following:

"1. When a vacancy is declared in accordance with article 32, the Secretary-General of the United Nations shall notify the States Parties to the Covenant. Each such State may, within one month, submit nominations in accordance with article 28 for the purpose of filling the vacancy.'

"It is just as easy, and less likely to lead to confusion in practice, for each State to send in its nominations for a casual vacancy, as it is for each State to 'complete' its existing list. The amendment proposes that exactly the same procedure shall be followed for filling casual as for filling regular vacancies, except that the nominations shall be submitted, as under the existing text, within one month.

"Article 40:

"Paragraph 2: Delete the comma after the words 'Secretary of the Committee'.

"This is a drafting amendment.

"Article 43:

"Paragraph 3: Substitute for the last two sentences the following: 'The report shall include statements of any minority opinions. Copies of written submissions and records of oral submissions made in accordance with Article 39 (2) (c) shall be annexed to the report.'

"These are drafting amendments.

"New article: Insert a new article after article 43 as follows:

"The Committee shall deal with any matter referred to it under article 40 but shall take no action with regard to any matter:

"(a) For which any organ of the United Nations or specialized agency competent to do so has established a special procedure by which the States concerned are governed,

"(b) With which the International Court of Justice is already seized.'

"This article, which follows the terms of former Article 53, as it was proposed to be amended by Belgium, is necessary to prevent overlapping between the exercise by the Committee of its functions and the exercise of comparable functions by other organs of the United Nations or specialized agencies.

"Article 47:

"Article 46, when read with article 47, appears to preclude the premature withdrawal from the Committee, for reference to the International Court of Justice, of a matter of which the Committee is seized, but if there is any doubt on this point it would be desirable to add to article 47 a sentence on the following lines: 'If, however, a complaint has been lodged with the Committee by a State Party to the Covenant, any dispute between the States Parties to the Covenant arising out of that complaint will not be brought before the International Court of Justice until the report provided for in Article 43 (paragraph 3) has been drawn up.'

"Article 48: Delete this article.

"This article is unacceptable to HMG because article 1, for which it provides special measures of implementation, is itself unacceptable; and it would assign to the Human Rights Committee, which is intended to exercise quasi-judicial functions, the function of dealing with political questions.

"Article 49: Delete this article,

"HMG do not consider that a reporting procedure (which is rightly included in the draft Covenant on Economic, Social and Cultural Rights because of the provision therein for progressive implementation) has any place in a covenant which is intended to impose immediate and specific obligations. They regard article 49 as detracting from the immediacy of effect of this Covenant, and the terms of the article, particularly those relating to reports to be made at the request of the Economic and Social Council long after the Covenant has entered into force, as in themselves introducing the conception of progressivity in the implementation of the Covenant.

"Article 52:

"HMG consider that this article does not, as the General Assembly requested, meet the constitutional problems of federal States.

"Article 53: Substitute for this article the following:

"Each Contracting State shall, as soon as possible, take all necessary steps to extend the application of this Covenant to all non-metropolitan territories for whose international relations it is responsible, provided that where necessary for constitutional reasons or in accordance with customary procedures, the Governments of such territories consent thereto."

"When such steps have been taken and any necessary consents received in relation to all or any of such territories, the Contracting State concerned shall notify the Secretary-General, and this Covenant shall apply to the territory or territories named in any such notification from the date of its receipt."

"See comment under article 28 of the draft Covenant on Economic, Social and Cultural Rights.

"ANNEX II

"Reservations: HMG attach importance to the inclusion in the Covenant of a reservations article on the lines proposed by the UK delegation at the tenth session of the Human Rights Commission (E/2573, annex II A). The purpose of this form of reservations article is to ensure that reservations are made only to part III of each of the Covenants, since in HMG's view the effectiveness of the Covenants could only be impaired by allowing unrestricted reservations; and to ensure, while not requiring that reservations must be unanimously accepted, that they are approved by a substantial majority of the States Parties. This form of reservations article will involve consequential amendments to article 26 of the draft Covenant on Economic, Social and Cultural Rights and to article 51 of the draft Covenant on Civil and Political Rights, as proposed by the UK delegation to the tenth session of the Human Rights Commission (E/2573, annex II B).

"ANNEX III

"Proposal for the establishment of an Office of the United Nations High Commissioner (Attorney-General) for Human Rights. HMG consider that it would be impracticable, at the present stage of development of international society, to set up an organization of the scope proposed. Moreover, it would be undesirable to entrust to a single individual, however responsible, the powers and duties set out in this proposal."
