Current Developments

United Nations Affairs

International Covenants on Human Rights (1966)

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A high water mark in U.N. activities in the field of Human Rights was reached on December 16, 1966, with the adoption of two International Covenants on Human Rights and an Optional Protocol. One of these Covenants relates to Economic, Social and Cultural Rights. It was adopted by 105 votes to none. The other, relating to Civil and Political Rights, was adopted by 106 votes to none. The Optional Protocol to the Covenant on Civil and Political Rights, providing access by private parties to a Human Rights Committee, was adopted by a vote of 66 to 2, with 38 abstentions.

This action by the General Assembly was the outcome of preparatory work which began in the Commission on Human Rights in 1947. After the Commission produced draft Covenants in 1954, provisions were debated year by year in the Third Committee of the General Assembly until completed texts were approved by the Twenty-first General Assembly.

These completed treaties are designed to put into mandatory legal form the aspirations of the Declaration of Human Rights adopted by the General Assembly in December 1948. In his statement to the General Assembly on December 21, 1966, Secretary General U Thant referred to the efforts of “humanitarians, thinkers and lawyers . . . who tirelessly searched for formulas expressing the conscience of the world as regards the legitimate aspirations of men for a worthy place in society.” The President of the General Assembly, Abdul Rahman Pazhwak of Afghanistan, stated that

participation in such agreements should be universal and without reservations for we ought to expect that adherence to these agree-
ments ultimately would become and should become a precon-
dition for membership in all international organizations.

General Scope of the Covenants

The Covenant on Economic, Social and Cultural Rights consists of a preamble and of 31 Articles divided into five Parts. Part I consists of a single Article 1 dealing with the right of self-determination, including the right freely to dispose of natural wealth and resources. Part II consists of four Articles relating to the progressive realization of the rights recognized in the Covenant and the scope and limitation of State action with respect thereto. The ten Articles of Part III set out a large number of particular rights in considerable detail. Part IV contains ten Articles providing for reports and, rather illogically, another Article on the right to enjoy and utilize natural wealth and resources. Part V consists of six Articles relating to signatures, ratifications, amendments, and languages.

The Covenant on Civil and Political Rights consists of a preamble and of 53 Articles divided also into five Parts. Part I, relating to self-determination, is identical with Part I of the Covenant on Economic, Social and Cultural Rights. Part II, consisting of four Articles, contains general undertakings to ensure observance of the rights set out in later Articles and general provisions regarding derogations. Part III, consisting of twenty-two Articles, sets out a long list of rights to be observed. The eighteen Articles of Part IV contain important provisions for a Human Rights Committee, for reports to be sent to it, and for optional declarations that the Committee is competent to hear and deal with communications regarding the non-fulfillment of obligations and to appoint Conciliation Commissions to deal with specific matters. Part V contains two short Articles duplicating corresponding provisions in the other Covenant. The final provisions in the six Articles of Part VI correspond to those in Part V of the other Covenant.

The Optional Protocol to the International Covenant on Civil and Political Rights consists of a preamble and fourteen Articles dealing with the competence of the Human Rights Committee to receive and consider communications from individuals claiming to be victims of a violation by a State Party of any of the rights set forth in the Covenant.

Each of the Covenants enters into force three months after the date of deposit with the Secretary General of the thirty-fifth instru-
ment of ratification or accession. Subject to the Covenant on Civil and Political Rights entering into force, the Optional Protocol becomes effective three months after the date of deposit of the tenth instrument of ratification or accession. At the date of this writing on March 2, 1966, both Covenants had been signed by eleven States and the Optional Protocol by seven.

Economic, Social, and Cultural Rights

The preamble of each Covenant recites that

the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights. . . .

In the category of economic, social, and cultural rights are included the following, which appear in Articles 6 through 25 of the Covenant relating to such rights:

the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts . . .

(Art. 6, para. 1)

the right of everyone to the enjoyment of just and favorable conditions of work . . . in particular

(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work; and

(ii) A decent living for themselves and their families . . .

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level . . .

(d) Rest, leisure and reasonable limitations of working hours and periodic holidays with pay . . . (Art. 7)

The right of everyone to form trade unions and join the trade union of his choice . . .

The right to strike . . . (Art. 8)

. . . the right of everyone to social security . . . (Art. 9)

Special protection . . . to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave . . . (Art. 10)

. . . the right of everyone to an adequate standard of living for
himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions . . . (Art. 11)

. . . the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. (Art. 12)

. . . the right of everyone to education . . .

Primary education shall be compulsory and available free to all; . . .

Secondary education . . . shall be made generally available and accessible to all by every appropriate means . . .

Higher education shall be made equally accessible to all . . . by every appropriate means . . . (Art. 13)

. . . the right of everyone:

(a) To take part in cultural life;
(b) To enjoy the benefits of scientific progress and its applications;
(c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

(Art. 15)

The above extracts indicate the scope of the “Economic, Social and Cultural Rights” covered by this Covenant. There is, however, one basic right the absence of which is remarkable.

Absence of any Right of Property

A report in the U.N. Monthly Chronicle regarding the adoption of these Covenants says that they “reaffirm in a legally binding manner, all the rights recognized in the Universal Declaration of Human Rights.” This is not correct. There is a noticeable absence of any Covenant incorporating the following important provisions in Article 17 of the Universal Declaration:

1. Everyone has the right to own property alone as well as in association with others.
2. No one shall be arbitrarily deprived of his property.

This depressing omission dates back to 1954 when provisions relating to the ownership of property and the payment of compensation when it is expropriated were rejected by the Commission on Human Rights by a vote of 7 to 6 with 5 abstentions. Although the matter had been debated at earlier sessions of the Commission, it came to a head at the tenth session in 1954. The United States representative then proposed a provision incorporating the text of Article 17 of the Declaration. This led to proposals by Egypt, India, and Lebanon.
to add provisions that the right of property should be subject to local law and that expropriation should not take place except subject to compensation prescribed by law. Chile proposed to limit the right to such property "as meets the essential needs of decent living and helps to maintain the dignity of the individual and of the home." Efforts to reconcile the various points of view and to agree upon a composite text failed. Finally, on a motion made by the representative of Uruguay, the Commission decided, by a vote of 12 to 2, with 4 abstentions, to adjourn sine die consideration of the question of including an Article on the right of property in the draft Covenant.

Civil and Political Rights

The civil and political rights covered in the second of the two International Covenants are set out in Articles 6 through 27. These cover a wide range, the scope of which can only be briefly indicated here.

The "inherent right to life" and the prohibition against "arbitrarily" depriving a person of his life are qualified in Article 6 by permitting death sentences for "the most serious crimes." Sentence of death cannot be imposed for crimes committed by persons below the age 18 or carried out on pregnant women and shall not be contrary to the Genocide Convention. Torture, cruel, inhuman, or degrading treatment or punishment, and medical or scientific experimentation without consent are prohibited by Article 7.

No one shall be held in slavery or servitude, and slavery and the slave trade in all their forms are prohibited; and no one shall be required to perform forced or compulsory labor, as defined and qualified in Article 8. No one shall be subjected to arbitrary arrest or detention or deprived of his liberty except as provided by law. Anyone arrested must be informed of the charges against him and the reasons for arrest; he shall be treated with humanity and respect for human dignity (Article 10). And no one shall be imprisoned merely on the ground of inability to fulfill a contractual obligation (Article 11).

Everyone lawfully within the territory of a State shall have liberty of movement, freedom to choose his residence and to leave any country, including his own (Article 12). And no one shall be arbitrarily deprived of the right to enter his own country (Article 12). Aliens may only be expelled in accordance with law and shall be entitled to have expulsion orders reviewed (Article 13).
Articles 14 and 15 deal in considerable detail with criminal proceedings and retroactive criminal legislation; Article 16 with “the right to recognition everywhere as a person before the law”; and Article 17 with “arbitrary or unlawful interference with . . . privacy, family, home or correspondence” and with “unlawful attacks on . . . honour and reputation.”

Articles 18 and 19 cover “the right to freedom of thought, conscience and religion”; the “liberty of parents and . . . legal guardians to ensure the religious and moral education of their children in conformity with their own convictions”; the “right to hold opinions without interference” and the “right to freedom of expression.”

Article 20, which presents difficulties for the United States from the standpoint of freedom of speech and assembly, provides

1. Any propaganda for war shall be prohibited by law.
2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Articles 21 and 22 cover the rights of “peaceful assembly,” “freedom of association,” and “to form and join trade unions”; Article 23 the right “to marry and to found a family,” free and full consent to marriage, equality of rights, and protection for children where marriage is dissolved; Article 24 relates to the rights of the child; and Article 25 to civic rights to take part in public affairs, to vote and be elected, universal and equal suffrage, secret ballots and equal access to public service. “All persons are equal before the law and are entitled . . . to the equal protection of the law” (Article 26); and minority groups shall not be denied “the right to enjoy their own culture, to profess and practice their own religion, or to use their own language” (Article 27).

Right of Self-Determination

In each Covenant paragraph 1 of Article 1 proclaims the right of all “peoples” to “self-determination” and thereby “freely” to determine their political status and to pursue their “economic, social and cultural development.” Paragraph 2 provides:

All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligation arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
These provisions have had an interesting history. The Sixth General Assembly in February 1952 decided to include in the Covenants on Human Rights an article “on the right of all peoples and nations to self-determination” in reaffirmation of the principle set out in the Charter. It requested the Commission on Human Rights to prepare recommendations and to submit them to the Seventh General Assembly. During the discussion of this subject in the Sixth General Assembly it was questioned whether “self-determination” was a political principle or a legal right. If it were a legal right, it might be an appropriate subject of an article in the Covenants on Human Rights. Otherwise, it was said, it should have no place in these legal instruments.

One school of thought maintained that self-determination is a political principle of the highest importance, but not a human right or an individual right. If such a nebulous term were to be regarded as a “right,” it should be defined as precisely as possible, as it meant different things to different persons. Moreover, the concept of a “people” was extremely vague. It was not clear whether a “minority” was to be considered as a “people.”

Another school of thought maintained that self-determination is a “right” as well as a “principle” and is indeed “the most fundamental of all human rights.” It appertains “to all peoples and all nations.” It was considered essential to write it into the Covenants.

The matter was considered by the Commission on Human Rights at its Eighth Session in June 1952. During the debate, some members expressed the view that the right of peoples to self-determination should not be regarded solely from the political point of view, but should also be considered from the economic aspect, since political independence is based on economic independence. It was also urged that the right of peoples freely to dispose of their own natural resources should be recognized. It was said that this would not mean that States would arbitrarily denounce agreements with private parties, but that they would settle the matter of relations between them and foreign private undertakings “which made large profits by exploiting a country’s natural resources without, in most cases, being affected by its legislation.” Realization of the right to self-determination “should enable any State to acquire complete control of its own natural resources and should place that State in a position to apply its national legislation to any private industry.”

A provision for self-determination was adopted by the Com-

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mission at this (Eighth) Session. By a vote of 10 to 6 (Australia, Belgium, France, Sweden, the United Kingdom, and the United States), with 2 abstentions, it was decided to include in it a provision on “permanent sovereignty over . . . natural wealth and resources.”

This led to Resolution 626 of the Seventh Session of the General Assembly in December 1952, which recognized “the right of peoples freely to use and exploit their natural wealth and resources” and that this is “inherent in their sovereignty.” It recommended that all States in the exercise of this right “wherever deemed desirable by them for their own progress and economic development” should have “due regard, consistently with their sovereignty, to the need for maintaining the flow of capital in conditions of security, mutual confidence and economic cooperation among nations.”

No attempt will be made here to review the further development of the subject of “permanent sovereignty” in the Second Committee of the General Assembly. It will be noted here that the provision in paragraph 2 of Article 1 of each Covenant qualifies the “right” by the phrase “without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law.”

However, Article 25 of the Covenant on Economic, Social and Cultural Rights and Article 47 of the Covenant on Civil and Political Rights each provide:

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

The inclusion of this provision, which was adopted in the Third Committee by a vote of 75 to 4 (New Zealand, Norway, the United Kingdom, and the United States), with 20 abstentions, provoked the United States representative in the Third Committee to state on December 12, 1966:

My Delegation wishes . . . to point out that we have a continuing concern about Article 25 of the Covenant on Economic, Social and Cultural Rights, which is repeated as Article 47 of the Covenant on Civil and Political Rights. My Government fully supports the principle expressed therein, namely, that permanent sovereignty over natural wealth and resources is an inherent right of all peoples and an essential element of the sovereign equality of States. However, Article 1, paragraph 2 of the Covenant provides the effective substantive formulation on this question, and it cannot be impaired by Article 25, as
many other delegations have said, including some of the spon-
sors of Article 25. In addition, this repetition of the principle
of Article 1, paragraph 2, has no valid place among the imple-
mentation clauses.

**Discrimination Against Aliens in Developing Countries**

Another provision in both Covenants that provoked strong dis-
sent from the United States was paragraph 3 of Article 2 which reads:

> Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

This was adopted by the Third Committee in 1962 by a vote of
41 to 38, with 21 abstentions, after a long debate on proposals made by
Indonesia and Burma. All of the States of Western Europe and Latin
America (except Mexico and Haiti, which abstained), Australia, Canada, China, Israel, Japan, Madagascar, Nepal, New Zealand, and Turkey voted against this provision after repeated attempts during
the debate to have it eliminated. Despite the close vote, and the strenuous opposition of the older States, it was retained in 1962 and again in 1966.

Ambassador Patricia Roberts Harris, representing the United States in the Third Committee at the Twenty-first General Assembly, vigorously denounced the paragraph in that Committee as creating “a vague double standard between developing and developed coun-
tries” which was “difficult to reconcile with the spirit of universality of the Universal Declaration of Human Rights.”

Again, in the plenary meeting on December 16, Ambassador Harris and others renewed the attack. In demanding a separate vote on paragraph 3, she said:

> Such a provision has no place in this Covenant. It runs counter to the undertaking . . . in paragraph 2 of the same article by authorizing in virtually unqualified terms discriminatory treatment of non-nationals by a certain group of States, the developing countries, a term which is not defined in the Covenant. The implica-
tion . . . seems to be that developed countries may not under this Covenant distinguish between their own nationals and aliens, whereas in fact all States have the right to make certain distinctions between their nationals and aliens with due regard to international law.

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This aroused the indignation of the delegate from the United Republic of Tanzania, who replied:

I must say very frankly and sincerely that we regret very much that the United States has singled out this particular paragraph. The reasons given were not only insufficient but completely irrelevant. After all, this paragraph refers only to the developing countries. Since it refers to the developing countries, I do not understand the reason why the representative of the United States should have singled it out, unless it was a manoeuvre to get the paragraph rejected.

... these Covenants were drafted a long time ago. They were never adopted, however, because to have done so at an earlier time might have been against the interests of certain colonial Powers. Today, however, when we have come to the United Nations to adopt them, someone comes forward with a move that is aimed against the developing countries. We regret that this should happen on a subject like the one before us. Nevertheless, we must accept the challenge, and it is my hope that the developing countries will rally together to defeat this move and that the paragraph will be retained.

The developing countries did rally to this appeal, rejecting the United States request for a separate vote by 67 to 16, with 23 abstentions. This denial of even the right to a separate vote provoked the following vigorous protest from the United States:

We regret the utilization of large majorities in this Assembly to prevent the taking of a separate vote in accordance with the traditionally accepted democratic procedures of this Organization. This paragraph, when voted on in Committee, was adopted by a vote of 41 in favour, 38 against, and 12 abstentions. Thus, less than half of those present approved the paragraph.

A vote here today might have dispelled the cloudy nature of this action, and we regret that it was denied by a procedural motion, especially because article 2, paragraph 3, is seriously defective. The text runs contrary to many existing treaties and is inconsistent with generally recognized principles of international law. (it) appears to imply that there is no standard of international law and practice on which an alien may rely, whereas there is in fact a standard of law binding on all States. Confusion on this point could stand in the way of international cooperation in every phase of economic and social development.

**Human Rights Committee**

The Committee for which provision is made in the Covenant on Civil and Political Rights (but not in the other Covenant) will
consist of eighteen persons “of high moral character and recognized competence in the field of human rights” elected by secret ballot from a list of persons possessing the prescribed qualifications and nominated by the States Parties to the Covenant. Members of the Committee will serve for four years, will be eligible for reelection and will receive such emoluments “from United Nations resources as the General Assembly may approve.” The Committee will normally meet in Geneva.

The Parties to the Covenant will be required to submit reports on the measures adopted to give effect to the Covenant and these will be referred to the Committee by the Secretary General. A State Party may at any time declare that it recognizes the competence of the Committee to receive and consider communications to the effect that one State Party claims that another State Party is not fulfilling its obligations under the Covenant. Procedures as laid down for the communication and consideration of such representations, for good offices to find friendly solutions, and for the appointment of an *ad hoc* Conciliation Commission if a matter is not otherwise resolved. The Commission shall consist of five persons acceptable to the Parties concerned. They will consider the matter and within twelve months submit their report to the Chairman of the Committee for transmission to the Parties concerned.

If a solution is not reached, the States Parties concerned shall, within three months of receipt of the report, inform the Chairman whether or not they accept its contents. Here the matter would apparently end.

**Optional Protocol**

The provision in this Protocol for direct access by individuals to the Human Rights Committee is an important forward step. Admittedly, the right to submit communications is subject to the consent of the State concerned. But that consent may be given in general terms by ratification of the Protocol. And such ratification may become almost an automatic corollary to ratifying the Covenant on Civil and Political Rights—except, of course, in the case of the totalitarian States.

There is undoubtedly substance in the right accorded individuals to submit communications, despite the lack of binding machinery for providing redress. The responding State is required to explain or clarify its position and to state what remedies it may have
provided. Although the examination of communications by the Committee will be conducted in “closed meetings” (Art. 5), it is required to summarize its activities under the Protocol in its annual report under Article 45 of the Covenant (Art. 6).

In explaining the U.S. vote for this Protocol and the Covenant on Civil and Political Rights, Ambassador Harris said on December 12, 1966:

My Delegation voted for the Optional Protocol because we think that those States Parties to the Covenant on Civil and Political Rights which are prepared to do so should have the opportunity to accept the right of individual petition beyond their national frontiers.

We applaud many of the provisions of the Covenant on Civil and Political Rights, particularly the confirmation of the right to liberty and security of person, the right to a free and fair trial, and freedom of association.

On the other hand, Article 20 of that Covenant provides for the prohibition by law of “any propaganda for war” and “any advocacy of national, racial, or religious hatred that constitutes an incitement to discrimination, hostility or violence.”

One of the principles embodied in the Universal Declaration of Human Rights and in the Covenant is freedom of speech. It is the view of the United States that Article 20 of the Covenant does not obligate a State to take any action that would prohibit its citizens from freely and fully expressing their views on any subject, no matter how obnoxious they may be or whether they are in accord with government policy or not.

Conclusion

Whether or not one approves all of the provisions of these important instruments, or even of the United Nations itself, it must be recognized that they represent a tremendous achievement. Certainly, in this respect, the U.N. has proved itself to be a highly efficient organization.

When one considers the almost insuperable obstacles to obtaining multinational agreement to instruments protecting the rights of private property and private enterprise, this achievement in the field of human rights testifies to the extraordinary dedication and ability of those working on the development of these legal instruments and also to the recognition by the new States, as well as those in Western Europe, of the importance of protecting the rights of individual human beings.
That they present serious difficulties as legal instruments is evident from the foregoing review. Ambassador Harris said in the Third Committee that the "rights" set out in the Covenant on Economic, Social and Cultural Rights are "in fact . . . objectives which no government, no matter what its human and financial resources, could implement immediately upon assuming the obligation to ensure them." This is recognized in paragraph 1 of Article 2, which provides that each State Party "undertakes to take steps . . . with a view to achieving progressively the full realization of the rights recognized in this Covenant by all appropriate means. . . ."

It is also clear that accession to the Covenants would internationalize a substantial body of domestic law and carve out a large segment of domestic jurisdiction. The position was squarely put in the plenary meeting on December 16, 1966, by the representative of Uruguay:

The question of respect for human rights could no longer be regarded as a matter exclusively reserved for the domestic jurisdiction of States and it became necessary to admit that States, in freely agreeing to defend and protect those rights, did not infringe their sovereignty but, on the contrary, in the very exercise of that sovereignty established an international system aimed at ensuring respect for human rights inherent in man and existing before the State itself. (Translation from the Spanish.)

However laudable the objectives of these Covenants, it is questionable whether they should be adopted as legal instruments operating as internal domestic law. If domestic law on this important subject of human rights is to be expanded, it would appear more in accord with democratic institutions and procedures to have it written and adopted by duly elected representatives of the people concerned than by the representatives of more than 120 other governments. Speaking for the United States in the Third Committee, Ambassador Harris said:

The United States understands that none of the three instruments which the Committee has adopted would impose an obligation on any State Party to take measures not fully consistent with its own constitutional framework of federal-state relationships.

To summarize the position of my delegation I would say simply that, in each instance where we question these instruments, our concern is that they do not go far enough in protecting the rights of all individuals. Our fear is that some may see opportuni-
ties for and support of discriminatory action detrimental to the achievement of the very rights guaranteed in the Covenants.

Nevertheless, she said, the United States government is convinced that

... we face a new day in which no government and no people can be free of a sense of obligation to meet the demands of the standards of human freedom enumerated in these Covenants. The United States has from its inception imposed upon itself the highest standards, and we welcome the opportunity both to test and to enhance that standard in the context of the promulgation of the Human Rights Covenants.

Although none of our votes, including that of my Delegation, carries any implication with regard to signature or ratification of the Covenants, it can safely be said that the completion of these Covenants and, hopefully, their early entry into force, will add a new dimension to the protection of the rights of man.