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UNITED STATES: PROPOSALS RELATING TO THE
DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS

(Prepared by the Drafting Committee of the Commission
on Human Rights in May 1948 (Annex B of document E/800))

/International

International Covenant on Human Rights^{1/}

Draft prepared by Drafting Committee
of Commission on Human Rights in May
1948 (Annex B of document E/800)

PART I

PREAMBLE^{2/}

The States parties hereto, bearing in mind the general principles proclaimed in the United Nations Charter and in the Declaration of Human Rights, agree to give effect in this Covenant to certain of the principles specified in the Declaration, as follows:

^{1/} (See Article 2 relating to this footnote.)

^{2/} It was agreed by the Drafting Committee that the ideas contained in this text should be included in a preamble when one is written. It was also agreed to draw attention to the following text submitted by the representative of France: "The States parties hereto, being resolved to give effect to the general principles proclaimed in the United Nations Charter and specified in the International Declaration on Human Rights and Fundamental Freedoms adopted by the General Assembly of the United Nations on . . . , have agreed to conclude a preliminary convention, defining the practical scope of certain of these principles."

United States Proposals

PREAMBLE

The States parties hereto, bearing in mind the general principles proclaimed in the United Nations Charter and in the Universal Declaration of Human Rights, approved by the General Assembly of the United Nations on 10 December 1948, agree upon the following articles with respect to certain human rights and fundamental freedoms:

Article 1

The States parties hereto declare that they recognize the rights and freedoms set forth in part I hereof as being among the human rights and fundamental freedoms founded on the general principles of law recognized by civilized nations.

/Article 2

PART I

Article 1

(The United States proposes the deletion of this article since it is included in the proposed Preamble.)

/Article 2

Article 2

Every State party hereto undertakes to ensure:

(a) Through adequate laws and procedures to all individuals within its jurisdiction, whether citizens, nationals, persons of foreign nationality or stateless persons, the rights and freedoms set forth in part II of this Covenant, and further undertakes that such rights and freedoms where not now provided under existing laws and procedures^{1/} be given effect in its domestic law through the adoption of appropriate laws and procedures;

(b) That any persons whose rights or freedoms as herein defined are violated shall have an effective remedy, notwithstanding that the violation has 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 the police and executive authorities shall act in support of the enjoyment of these rights and freedoms.

^{1/} Footnote ^{1/} to reference on first page:

"The Drafting Committee agreed to point out in its Report its view that the Covenant is not self-operative."

Article 2

(United States proposal for this article is not included at this time.)

Article 3

(Note: The Drafting Committee decided not to consider the following Geneva text until articles on implementation had been drafted.)1/

On receipt of a request to this effect from the Secretary-General of the United Nations made under the authority of a resolution of the General Assembly, the Government of any 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.

1/ The limitations suggested by the representative of the United States were submitted in each case as illustrative of the problems arising in the absence of a general limitation clause, which the United States prefers.

/Article 4

Article 3

(The United States proposes the deletion of this article. See the article on Implementation proposed by the United States at the end of the Covenant.)

/Article 4

Article 4

(No decision was made as to which of the following alternative texts was preferred.)

I. Text originally submitted by the Commission on Human Rights

1. In time of war or other public emergency, a State may take measures derogating from its obligations under article 2 above to the extent strictly limited by the exigencies of the situation.

2. (Left over until implementation articles have been drafted.)

II. Text submitted by the representative of the United States of America

The obligations imposed by articles 1 and 2 shall not effect the right of States parties to this Covenant to take action reasonably necessary for the preservation of peace, order or security or the promotion of the general welfare. Such action may be taken only by or pursuant to law, in conformity with article 20 hereof:

(Note. The delegation of the United States pointed out:

(1) That the limitations set forth in the Covenant without the additions suggested by other Governments are not all-inclusive;

(2) That certain Governments which have suggested further limitations have stated that their lists are not all-inclusive; and

/(3) That the

Article 4

The rights and freedoms set forth in this Covenant shall be subject only to such limitations as are pursuant to law and reasonably necessary for the protection of the rights and freedoms of others or for national security or for the general welfare.

Article 4 (continued)

(3) That the matter of restricting the rights and freedoms of the Covenant arises from many sources of law and that the Commission on Human Rights must find the solution for dealing with the problem caused by the omission of further probable limitations not yet enumerated.^{1/})

^{1/} The limitations suggested by the representative of the United States were submitted in each case as illustrative of the problems arising in the absence of a general limitation clause, which the United States prefers.

PART II

Article 5

No one shall be deprived 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.

(Note. The Drafting Committee decided to forward this text to the Commission together with a list of possible additional limitations. The list is as follows:

1. Suppression of rebellion or riots (Union of South Africa).

Deprivation of life by the military or state officers in a national emergency (United States of America).

2. Self-defence and defence of another (Union of South Africa, United States of America).

3. Killing in attempting to effect arrests for certain offences (Union of South Africa).

4. Killing by accident (United States of America).

5. Killing for violation of honour (United States of America).

6. Killing of persons caught in the commission of a felony (United States of America).

7. Killing to prevent an escape (United States of America).

8. Killing by medical operation in absence of gross negligence or malpractice (United States of America).

9. Killing through a voluntary medical experiment (United States of America).

/10. Killing

PART II

Article 5

In the punishment of crime, no State shall deprive any one 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 (continued)

10. Killing by officers of the law to prevent the commission of a crime (see also supra 6) (United States of America).

11. Killing by officers of the law in a local emergency (United States of America).

12. Killing by a member of the military in time of war (United States of America)

/Article 6

/Article 6

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Article 6

No one shall be subjected to any form of physical mutilation or medical or scientific experimentation against his will.

(Note. The Drafting Committee decided to forward this text to the Commission together with a list of possible additional limitations. This list is as follows:

1. Compulsory vaccination (United States of America).
2. Legitimate medical and scientific experimentation in hospitals for the insane, with the consent of parent or guardian of the patient (United States of America).
3. Emergency operations undertaken to save the life of patient, where the patient is unable to give his consent or where a person empowered to give consent on behalf of the patient gives such consent (United States of America).
4. Other limitations may be developed later (United States of America).

Article 6

(Refer this article to the World Health Organization for its study. So many technical problems are involved in the medical field with respect to this article that WHO should report its recommendations concerning this subject prior to further action by the Human Rights Commission.)

Article 7

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

/Article 8

Article 7

No State shall subject any one to
torture or to cruel or inhuman punishment.

/Article 8

Article 8^{1/}

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour except as a consequence of a conviction of crime by a competent court.
3. For the purposes of this Article, the term "forced or compulsory labour" shall not include:
 - (a) Any service of a purely military character, or service in the case of conscientious objectors, exacted in virtue of compulsory military service laws, provided that the service of conscientious objectors be compensated with maintenance and pay not inferior to what a soldier of the lowest rank receives;
 - (b) Any service exacted in cases of **emergencies** or calamities threatening the life or well-being of the community;
 - (c) 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.

^{1/} The representative of the Union of Soviet Socialist Republics proposed that the following text be added after the first sentence of this article: "The slave trade is forbidden in all its forms."

/(Note.

Article 8

No one shall be held in slavery.

(Postpone further consideration of the remainder of this article until the survey by the Secretary-General and the International Labour Organisation of forced labour is completed)

Article 8 (continued)

(Note. (1) The following text, which follows the wording of a relevant article of the International Labour Organisation's Forced Labour Convention of 1930 was suggested by the representative of the International Labour Organisation, and the Committee decided to forward it to the Commission as an alternative text for paragraph 3 (c):

"Minor communal services of a kind which, being performed by the members of the community in the direct interest of the said community, can therefore be considered as normal civic obligations incumbent upon the members of the community, provided that the members of the community or their direct representatives shall have the right to be consulted in regard to the need for such services."

(2) The Committee also decided to forward to the Commission as possible additions to paragraph 3, two further possible limitations submitted by the delegation of the United States:

(d) Service exacted from deserting seamen returned to their ships, having entered into voluntary contracts for a period of service;

(e) Services performed by minors, either in the course of normal family life or pursuant to contracts made in their behalf either by parents or guardians.)

Article 9

(The Drafting Committee voted in favour of the first of the following texts.)

I. Text originally forwarded by the Commission on Human Rights as amended

1. No one shall be subjected to arbitrary arrest or detention.

2. In consequence, no person shall be deprived of his liberty save in the case of:

(a) The arrest of a person 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) The lawful arrest and detention of a person for non-compliance with the lawful order or decree of a court;

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

(d) The lawful detention of persons of unsound mind.

(e) The parental or quasi-parental custody of minors.

(f) The lawful arrest and detention of a person to prevent his effecting an unauthorized entry into the country.

(g) The lawful arrest and detention of aliens against whom deportation proceedings are pending.

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

/4. Every one

Article 9

1. No State shall subject any one to arbitrary arrest or detention.

2. Any one who is arrested shall be informed promptly of the reasons for his arrest and any charges against him. (Delete paragraph 2 of the Commission draft since a general guarantee of liberty has too many limitations for a generalization of this right.)

3. The accused in a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. Pending trial, release on bail or other condition to appear for trial shall satisfy the requirements of release.

4. Any one who is deprived by the State of his liberty by arrest or detention shall be entitled to 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. This remedy may not be suspended unless when in cases of rebellion or invasion the public safety may require it.*

5. (Delete)

* Omit underlined sentence if Article 4 is revised along lines United States proposal.

Article 9 (continued)

4. Every one who is deprived of his liberty by arrest or detention 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.

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

(Note. A list of all the possible limitations suggested by various Governments, together with an analysis of this list, follows the text of this article proposed by the United States, below.)

II. Text proposed by the delegation of the Union of Soviet Socialist Republics

The inviolability of the human person shall be guaranteed by law. No person shall be subjected to arrest except by order of a court or a prosecuting authority.

Any person who is arrested shall be informed promptly of the charges against him. Every person who is deprived of his liberty shall be brought promptly before a court for an order for the trial of his case within a reasonable time or for his release.

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

III. Text proposed by the United States of America

No one shall be deprived of liberty without due process of law.

No one shall be arrested or detained without being promptly informed of the reasons for the arrest or detention and without being entitled to a fair hearing within a reasonable time or to release.

No one shall be denied the right to a fair hearing before an independent and impartial tribunal in the determination of any criminal charge against him or of any of his rights
/or obligations

Article 9 (continued)

or obligations.

No one shall be convicted or punished for crime except after a public trial within a reasonable time, before a fair, independent and impartial tribunal.

(Note. It will be observed that this text also includes the principle now contained in article 13.)

List and analysis of suggested limitations to article 9 of the Covenant on Human Rights

I. In document E/CN.4/AC.1/23 of 7 May 1948 a list of items suggested by Governments for addition to the enumeration contained in article 9 (2) of the draft covenant (document E/600) was circulated, embodying the items suggested in written comments by Governments and, orally, by representatives in the twenty-third meeting of the Committee on 6 May 1948. These limitations are as follows:

1. Arrest and detention of persons suffering from serious contagious disease (Netherlands, United Kingdom, Norway).
2. Arrest and detention of alcoholics (Norway).
3. Arrest flagrante delicto (Brazil); probably covered by item (a) of article 9 (2).
4. Arrest for the purpose of removal from one province to another (Union of South Africa).
5. Arrest for the purpose of removal of persons other than aliens (Union of South Africa).
6. Arrest of witnesses in order to bring them before a court (Union of South Africa) or for their protection (United States).
7. Detention of children in need of care (Union of South Africa).
8. Arrests for breach of military discipline (Chile; oral observation in the twenty-third meeting of the Committee on 5 May 1948).
9. Arrest in civil cases usually involving wrong-doing (fraud, etc.), in the commencement of an action (United States, oral observations, 5 May 1948).

/10. Arrest

Article 9 (continued)

10. Arrest as a means of satisfaction of a judgment in such actions or by way of punishment in such cases (United States; oral observations, 5 May 1948).

11. Detention of persons listed under article 8, paragraph 3 of the Geneva draft of the covenant (this relates to the class of persons who may be subjected to forced or compulsory labour in connexion with military or emergency service, etc.) (United States; oral observations, 5 May 1948).

12. Detention of enemy aliens (United States; oral observations, 5 May 1948).

Subsequently the French draft covenant was presented to the Committee (document E/CN.4/82/Add.8) and in the meeting of the Drafting Committee, held on 12 May 1948, the Chairman in her capacity of United States representative suggested some additional specific limitations of the rights safeguarded in article 9 of the draft covenant.

II. The list of restrictions contained in article VIII of the French draft is as follows:

(a) The arrest and detention of a person effected for the purpose of bringing him before a court on suspicion of having committed a crime or of preventing the imminent commission of a crime or offence;

(b) The arrest and detention of a person, as provided by law, for non-compliance with the lawful order of a court;

(c) Lawful detention in pursuance of a sentence of imprisonment;

(d) The lawful detention of persons of unsound mind;

(e) The lawful arrest and detention of a person to prevent his effecting an unauthorized entry in a country;

(f) The lawful arrest and detention of aliens against whom deportation or extradition proceedings are pending;

(g) The educational supervision of minors.

III. The list of additional specific limitations prepared by the United States representative and presented on 12 May 1948 is as follows:

(h) The arrest and detention of a person suffering from a serious contagious disease;

/(i) The arrest

Article 9 (continued)

- (i) The arrest and detention of an alcoholic;
- (j) The arrest of witnesses in order to bring them before a court or for their protection;
- (k) Arrest and detention for breach of military discipline;
- (l) Arrest and detention in civil cases (tort, or contract cases involving wrong-doing such as fraud, etc.) by way of commencing an action or as a means of satisfaction of a judgment in such cases or by way of punishment in such cases;
- (m) The detention of enemy aliens;
- (n) The detention of persons under the authority of article 8, paragraph 3 of the covenant (relating to the classes of persons who may be subjected to compulsory labour in connexion with military or emergency service);
- (o) Other situations to be enumerated.

IV. The Chinese delegation suggested the following list of possible limitations (document E/CN.4/AC.1/23/Add.2):

- 1. Arrest of persons who violate the provisions of the covenant;
- 2. Arrest of persons suspected as spies;
- 3. Arrest of persons who trespass on prohibited property or areas;
- 4. Arrest of persons who attempt to or destroy public property;
- 5. Arrest of persons for disturbing public order such as shouting "fire" in a theatre when there is no fire;
- 6. Arrest of persons for speeding while driving through a crowded street in the city;
- 7. Arrest of persons who attempt to commit suicide.

V. This analysis is based on the following enumeration of limitations:

- 1. The limitations already contained in article 9, sub-paragraph 2 (a) to (g), of the draft covenant as adopted at the second session of the Commission in Geneva;
- 2. The items suggested by Governments and enumerated in document E/CN.4/AC.1/23;
- 3. The additional specific limitations suggested by the United States of America on 12 May 1948;

/4. The limitations

Article 9 (continued)

4. The limitations suggested by France;
5. The limitations suggested by China.

According to these different lists the covenant would contain the following limitations of the right to liberty:

(a) Arrest for the purpose of criminal proceedings or prevention of a crime.

This item covers item (a) of the Geneva draft, item (a) of the French draft and the Brazilian suggestion concerning arrest flagrante delicto, item 3 of document E/CN.4/AC.1/23. In formulating the final text the Commission may wish to have regard to items 2, 3, 4, 5 and 6 of the Chinese limitations.

(b) Arrest and detention for non-compliance with a court order.

This item covers item (b) of the Geneva draft and item (b) of the French draft. In formulating its text regard should be had of item 10 of document E/CN.4/AC.1/23, "arrest as a means of satisfaction of a judgment in civil actions or by way of punishment in civil cases" (United States) and the analogous item (1) of the United States list and further of item 9 of document E/CN.4/AC.1/23, "arrest in civil cases".

(c) The detention of a person sentenced after conviction to deprivation of liberty.

This item covers item (c) of the Geneva draft and item (c) of the French draft. In drafting the text, the Committee may wish to have regard to the Chilean proposal listed under item 8 of document E/CN.4/AC.1/23 and the United States proposal listed under (k) which are to the effect that arrests and detentions for breach of military discipline should also be covered.

(d) Detention of persons of unsound mind.

This item covers item (d) of the Geneva draft and item (d) of the French proposal. With regard to this item note should be taken of the Norwegian proposal, document E/CN.4/AC.1/23, item 2 and the United States proposal, item (i) above, suggesting that the covenant should also cover the case of the arrest and detention of alcoholics.

(e) The parental or quasi-parental custody of minors.

This item corresponds to item (e) of the Geneva draft and to item (g) of the French proposal. It is submitted that in
/its formulation,

Article 9 (continued)
its formulation, regard should be had to item 7 of document E/CN.4/AC.1/23, the South African proposal concerning the detention of children in need of care.

Restrictions on aliens

(f) The lawful arrest and detention of a person to prevent his effecting an unauthorized entry into the country.

(g) The lawful arrest and detention of aliens against whom deportation proceedings are pending.

In formulating these two items the Committee may wish to have regard to items (e) and (f) of the French proposal and to item (m) of the United States list. Closely connected with these two items are also the suggestions made by South Africa, items 4 and 5 of document E/CN.4/AC.1/23, suggesting an extension of these provisions to cover also arrests for the purpose of removal from one province to another and the removal of persons other than aliens.

VI. Remaining items

The following three additional items remain:

1. Arrest and detention of persons suffering from serious contagious disease (Netherlands, United Kingdom and United States)

It covers item 1 of document E/CN.4/AC.1/23 and item (h) of the United States list.

2. Arrest of witnesses (Union of South Africa and United States)

Item 6 of document E/CN.4/AC.1/23 and item (g) of the United States list.

3. Arrest and detention in connexion with services exacted under article 8 (3)

The United States proposal, item 11 of document E/CN.4/AC.1/23 and item (n) of the United States list, concerns the detention of persons liable to military service, service in cases of emergency and minor communal services.

/Here

Article 9 (continued)

Here the Committee may wish to consider to what extent this limitation is covered by the provision to be made for detentions for the breach of military discipline and further, whether services in an emergency, or "minor communal services" could be considered exceptions from a rule prohibiting arbitrary arrest or detention.

The United States list further contains the item:

4. Other situations to be enumerated

/Article 10

/Article 10

Article 10

No one shall be imprisoned merely on the grounds of inability to fulfill a contractual obligation.

Article 10

No State shall imprison any one solely on the ground of inability to pay a contractual debt.

/Article 11

/Article 11

Article 11

(No decision was made as to which of these texts was preferred.)

Geneva text

1. Subject to any general law not contrary to the purposes and principles of the United Nations and adopted for specific reasons of security or in the general interest, there shall be liberty of movement and free choice of residence within the borders of each State.

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

Alternative text

1. No one shall be denied freedom of movement or residence within the borders of a Contracting State.

2. Any one shall be free to leave any country including his own.

(Note 1. The Drafting Committee decided to forward this text to the Commission together with a list of possible limitations. The list is as follows:

1. Restrictions imposed for the well-being of helpless or dependent persons (United States).

2. Restrictions imposed with respect to land or water constituting a public highway (United States).

3. Restrictions imposed in the interest of public order, morals, health (e.g. quarantine) or safety (United States).

4. Restrictions imposed in accordance with articles 8 and 9 (United States).

5. Restrictions imposed by reason of lawful detentions (France).

6. Restrictions imposed because criminal proceedings are pending against him (France).

7. Restrictions imposed because his departure must be prohibited in order to prevent the imminent commission
/of a crime

Article 11

Subject to any general law adopted for specific reasons of security or in the general interest,* no State shall deny any one freedom of movement or free choice of residence within the borders of the State or freedom to leave any country including his own.

* Omit underlined words if Article 4 is revised along lines of United States proposal.

Article 11 (continued)

of a crime or offence (France).

8. Restrictions imposed on individuals who are "subject to any lawful deprivation of liberty or to any outstanding obligations with regard to national service tax liabilities or voluntarily contracted obligations binding the individual to the Government" (Netherlands).

9. Restrictions imposed on an individual because of national service, or of a judicial order restraining his departure without giving security on account of other alleged outstanding obligations (United Kingdom).

10. Restrictions imposed on emigration to assist a neighbour country to control illegal immigration (United Kingdom).

11. Restrictions imposed on emigration in the interest of protecting primitive or unsophisticated communities from exploitation abroad (United Kingdom).

12. Restrictions imposed where labour has to be controlled and individuals required to work in specified industries and even in specific localities (Union of South Africa).

13. Restrictions imposed where it is necessary in the interests of peace and good government to proclaim reserved areas in favour of the different sections of the population, and to restrict and control the free movement and free choice of residence on the part of individuals belonging to different sections of the population (Union of South Africa).

14. Restrictions imposed in the interests of the general welfare and good government to restrict the influx of large numbers of unskilled labourers into urban areas in circumstances where an adequate supply of labour already exists, and housing accommodation is inadequate (Union of South Africa).)

(Note 2. The representative of the Union of Soviet Socialist Republics suggested that the words "subject to the laws of his own country" be added to the second paragraph of this article.)

Article 12

No alien legally admitted to the territory of a State shall be expelled therefrom except in accordance with procedure prescribed by law.

/Article 13

Article 12

(No change in this Article is proposed by the United States.)

/Article 13

Article 13

(The Drafting Committee voted in favour of the first of the following texts.)

A. 1. In the determination of any criminal charge against him or of any of his civil rights or obligations, everyone is entitled to a fair hearing before an independent and impartial tribunal.

2. In the determination of any criminal charge against him everyone is entitled to:

(a) A public trial, through the Press and public may be excluded from all or some of the portions thereof, other than the judgment, where considerations of security or morals are involved or the preservation of order in the court requires. Exceptions may be made in the interest of juveniles;

(b) Legal assistance of his own choosing; and

(c) The services of an interpreter to assist the accused if he cannot understand or speak the language used in court.

B. Text submitted by the representative of the Union of Soviet Socialist Republics

1. All persons shall be equal before the court or tribunals. Judges shall be independent and subject only to the law. Legal procedure in every State shall be based on democratic principles. The trial of cases in all courts shall be public, subject to exceptions prescribed by law for the protection of public morals and national security, and the accused person shall be assured the right of defence.

2. When any person who does not know the national language is prosecuted, he shall be assured full knowledge of all the material in the case through an interpreter and shall also have the right to address the court in his native language.

/Article 14

Article 13

1. In the determination of any criminal charge or civil suit, everyone is entitled to a fair hearing before an independent and impartial tribunal.

2. In the determination of any criminal charge against him, everyone is entitled to:

(a) A public trial, although the press and public may be excluded from all or part of the trial where considerations of national security or morals are involved or where the interest of juveniles so requires or where the preservation of order in the court so requires;*

(b) Legal assistance, which shall include the right to legal assistance of his own choosing, or, if he does not have such, to be informed of his right and, if unobtainable by him, to have counsel assigned; and

(c) The aid of an interpreter if he cannot understand or speak the language used in court.

* Omit underlined words if Article 4 is revised along lines of United States proposal.

Article 14

Article 14

1. No one 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.

2. Nothing in this article shall prejudice the trial and punishment of any person for the commission of any act which, at the time it was committed, was criminal according to the general principles of law recognized by civilized nations.

/Article 15

Article 14

No State shall enact any penal laws making punishable any act or omission which did not constitute a penal offense at the time it was committed, or providing a greater punishment for a penal offense than that prescribed by the law in force at the time when the offense was committed.

/Article 15

Article 15

No one shall be deprived of his juridical personality.

Article 15

(The United States proposes the deletion of this Article since it does not seem to be sufficiently clear and precise. The United States suggests that instead of including this Article in the Covenant, consideration be given at a later session of the Human Rights Commission to the development of such concepts as are contemplated by other delegations in the term "juridical personality" for possible inclusion in a separate convention.)

/Article 16

/Article 16

Article 16

1. No one shall be denied freedom of thought, belief, conscience and religion, including freedom to hold any religious or other belief, and to change his belief.

2. No one shall be denied freedom, either alone or in association, to manifest his belief in practice, and in worship and observance, and no one shall be required to do any act which is contrary to such worship and observance.

3. No one shall be denied freedom, either alone or in association, to give and receive any form of religious teaching, and to endeavour to persuade other persons of the truth of his beliefs.

4. The above rights and freedoms shall be subject only to such limitations as are prescribed by law and are necessary to protect public order and health, morals and the fundamental rights and freedoms of others.

(Note. The representative of the Soviet Union proposed to replace article 16 by the following text (unofficial translation):

"Every person shall have the right to freedom of thought and freedom to practice religious observances in accordance with the laws of the country and the dictates of public morality".)

/Article 17

Article 16

1. No State shall deny any one freedom of thought, conscience and religion; this includes freedom to change his religion or belief, and either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

2. The above provision shall be subject only to such limitations as are pursuant to law and reasonably necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.*

* Omit paragraph 2 if Article 4 revised along lines of United States proposal.

/Article 17

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Article 17

(The Drafting Committee did not decide which of the following texts it preferred.)

A. Text submitted by the representative of France

1. Speech is free. Every person shall be free to express and publish his ideas in any way he chooses.

2. Every person shall be free to receive and disseminate information of all kinds, including facts, critical comment and ideas, by the medium of books, newspapers, oral instructions or in any other manner.

3. The freedoms referred to in the preceding paragraphs may be subject only to the restrictions, penalties or liabilities provided by law for the protection of public order, national security, good morals, respect for law and the reputation or rights of other persons.

B. Text submitted by the representative of the Union of Soviet Socialist Republics

1. In accordance with the principles of democracy and in the interests of strengthening international co-operation and world peace, every person shall be guaranteed by law the right to the free expression of his opinions and, in particular, to freedom of speech and of the press, freedom of assembly and freedom of artistic representation. The use of freedom of speech and of the press for the purposes of propagating Fascism and aggression or of inciting war between nations shall not be tolerated.

2. In order to ensure the right of the free expression of opinion for large sections of the peoples and for their organizations, State assistance and co-operation shall be given in providing the material resources (premises, printing presses, paper, and the like) necessary for the publication of democratic organs of the press.

/C. Text submitted

Article 17

(No proposal at this time.)

Article 17 (continued)

C. Text submitted by the United Nations Conference on Freedom of Information

1. Every person shall have the right to freedom of thought and the right to freedom of expression without interference by governmental action; these rights shall include freedom to hold opinions, to seek, receive and impart information and ideas, regardless of frontiers, either orally, by written or printed matter, in the form of art, or by legally operated visual or auditory devices.

2. The right to freedom of expression carries with it duties and responsibilities and may, therefore, be subject to penalties, liabilities or restrictions clearly defined by law, but only with regard to:

- (a) Matters which must remain secret in the interests of national safety;
- (b) Expressions which incite persons to alter by violence the system of government;
- (c) Expressions which directly incite persons to commit criminal acts;
- (d) Expressions which are obscene;
- (e) Expressions injurious to the fair conduct of legal proceedings;
- (f) Infringements of literary or artistic rights;
- (g) Expressions about other persons natural or legal which defame their reputations or are otherwise injurious to them without benefiting the public;
- (h) The systematic diffusion of deliberately false or distorted reports which undermine friendly relations between peoples and States.

A State may establish on reasonable terms a right to reply or a similar corrective remedy.

3. Measures shall be taken to promote the freedom of information through the elimination of political, economic, technical and other obstacles which are likely to hinder the free flow of information.

4. Nothing in this article shall be deemed to affect the right of any State to control the entry of persons into its territory or the period of their residence therein.

/Article 17 (continued)

Article 17 (continued)

(Note. The Drafting Committee decided to forward this text to the Commission together with a list of possible additional limitations.

The list is as follows:

1. The disclosures of professional secrets contrary to law.
2. *Disclosures arising out of marital and personal relationships.*
3. Expressions which are fraudulent or part of a fraudulent scheme.
4. Expressions detrimental to public decency or morals (for example, detailed crime stories, reports on executions and suicides, sensational court reports).
5. Matters of contract.
6. Control of advertising or economic matters.
7. Proper conduct of political elections or campaigns.
8. Matters affecting the civil service.
9. Disclosures of governmental information (other than in cases involving national safety, for example, in economic and social matters, such as crop reports, income tax reports, recipients of unemployment relief, and pending judicial decisions).
10. Communications with foreign Governments.
11. Profanity in public places.
12. Operation of radio broadcasting and similar media without a licence.
13. Statements by corporations, partnerships or individuals, in the issue of bonds and shares of stock.

/14. Unforeseeable

Article 17 (continued)

14. Unforeseeable future matters relating to development of new media of information or new social practices.

(These fourteen possible limitations arose out of discussions at the United Nations Conference on Freedom of Information.)

15. Expressions about governmental or public authorities, or groups or persons who are all or in part nationals of a High Contracting Party or who belong all or in part to a certain race (Netherlands).

16. The prohibition of the dissemination of information calculated to engender feelings of hostility among inhabitants of various races (Union of South Africa).

17. The prohibition of notices of prohibited meetings (Union of South Africa).

18. The prohibition of opprobrious epithets, jeers or jibes in connexion with the fact that any person has continued or returned to work or has refused to work for any employer, or the sending of information as to any such fact to any person in order to prevent any other person from obtaining or retaining employment, etc. (Union of South Africa).

19. Other statements, expressions or publications which constitute offences or parts of offences under the common law or in terms of statutes, such as blasphemy, treasonable statements, uttering a forged instrument, perjury, contempt of court (covered in the drafts only to the extent to which it may be injurious to the independence of the judiciary or the fair conduct of legal proceedings), the use of indecent, abusive or threatening language in public places, fraudulent statements, statements, amounting to *crimen injuriae*, false statements in a prospectus, the offer of any inducement to enter into a hire purchase agreement (Union of South Africa).

/20. The restrictions

Article 17 (continued)

20. The restrictions imposed upon the publications of preparatory examination and trial proceedings where the offence charged involves any indecent act or an act in the nature of extortion, or upon the publication of information which is likely to reveal the identity of an accused person under nineteen years of age or of a child concerned in proceedings before a children's court (Union of South Africa).

21. The prohibition of the disclosure of information obtained in an official or semi-official capacity, whether or not the disclosure will affect the national safety or the "vital" interests of the State (Union of South Africa).

22. Restrictions upon the publication of a picture or a public entertainment, where the picture or entertainment is calculated to give offence to the religious convictions or feelings of any section of the public, or where it is calculated to bring any section of the public into ridicule or contempt, or is contrary to the public interest or good morals (Union of South Africa).

23. Restrictions upon the publication of certain electoral matters (Union of South Africa).

24. The restrictions imposed by the laws relating to copyright (Union of South Africa).

25. Restrictions which it may be considered necessary to impose in order to eliminate or control subversive ideological propaganda (Union of South Africa).

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 17, 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 prescribed by law and necessary to assure:

- (a) National security;
- (b) The protection of persons or property;
- (c) The prevention of the obstruction of traffic or the free movement of others; or
- (d) The protection of health or morals.

(Note 1. An additional restriction was suggested as follows: the prevention of foreign political interference (Netherlands).)

(Note 2. The Government of the Netherlands also suggested:

- (a) That a clause be added making public meetings subject to official authorization; and
- (b) That it should be understood that the right to assemble does not include the right to hold pageants or processions in the streets.)

(Note 3. The Government of the Union of South Africa pointed out that the exceptions did not cover prohibition of a public gathering where the Minister of Justice had reason to apprehend that the gathering would engender feelings of hostility between different sections of the population (Union of South Africa).

Article 18

No State shall deny any one freedom to assemble peaceably with others. No restrictions shall be placed on the exercise of this right other than those pursuant to law and reasonably necessary to assure:

- (a) national security;
- (b) public safety; (the phrase "public safety" is proposed as a substitute for paragraphs (b) and (c) of the Commission draft to provide a general limitation rather than a specific one)
- (c) (delete--see note above concerning "public safety")
- (d) the protection of health or morals.*

* Omit underlined words if Article 4 is revised along lines United States proposal.

Article 19

The right of association is recognized provided that right is exercised in whatever form may be appropriate under the law of the State and is directed to lawful aims including the defence and protection of the legitimate interests of the members of the association or the dissemination of information under article 17. Associations shall enjoy the rights and freedoms set forth in articles 16 and 17.

Article 19

1. No State shall deny any one freedom of association with others.

2. The above provision shall be subject only to such limitations as are pursuant to law and reasonably necessary for the protection of the rights and freedoms of others or for national security or for the general welfare.*

* Omit paragraph 2 if Article 4 is revised along lines United States proposal.

/Article 20

/Article 20

Article 20

Equal protection of the law with respect to the enjoyment of any of the rights and freedoms set forth in part II of this Covenant shall not be denied to any one on account of race (which includes colour), sex, language, religion, political or other opinion, property status, or national or social origin.

/Article 21 (deleted)

Article 20

Equal protection of the law with respect to the enjoyment of any of the rights and freedoms set forth in this Covenant shall not be denied to any one on account of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

/Article 21

Article 21 (deleted)

(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

(Deleted by Drafting Committee of Commission on Human Rights in May 1948.)

/Article 22

/Article 22

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 22

(The United States proposes the deletion of this article, since it seems both vague and unnecessary.)

/PART III

Part III
Article 23

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 . . . 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 Members of the United Nations and the other States referred to in paragraph 1 above of the deposit of each instrument of accession.

/Article 24

PART III
Article 23

1. This Covenant shall be open for accession to all States.

2. This Covenant shall be open for signature on behalf of any State. Ratification of or accession to this Covenant shall be effected by the deposit of an instrument of ratification or accession with the Secretary-General of the United Nations, and as soon as fifteen States have deposited such instruments the Covenant shall come into force between them. As regards any State which ratifies or accedes thereafter, the Covenant shall come into force on the date of the deposit of its instrument of ratification or accession.

3. The Secretary-General of the United Nations shall inform all Members of the United Nations and other States which have ratified or acceded of the deposit of each instrument of ratification or accession.

/Article 24

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 favourable recommendation, to the notice of the appropriate authorities of the states, provinces or cantons at the earliest possible moment.

Article 24

(United States proposal for this article is not included at this time.)

Article 25

(The Drafting Committee voted in favour of the first of the following texts.)

A State party to this Covenant may at the same time of its accession thereto or at any time thereafter by notification addressed to the Secretary-General of the United Nations declare that this Covenant shall extend to any of the territories for the international relations of which it is responsible, and the Covenant shall extend to the territories named in the notification as from the thirtieth day after the date of receipt by the Secretary-General of the United Nations of the notification. The Contracting States undertake, with respect to those territories on behalf of which they do not accede to this Covenant at the time of their accession, to seek the consent at the earliest possible moment of the governments of such territories and to accede forthwith on behalf of and in respect of each such territory, if and when its consent has been obtained.

Text proposed by the representative of the Union of Soviet Socialist Republics

The conditions of the present Covenant shall extend or be applicable both to the metropolitan territory which is signatory to the present Covenant, as well as to all the other territories (non-self-governing, trust, and colonial territories) which are being administered or governed by the metropolitan power in question.

/Article 26

Article 25

Any State may, at the time of signature or the deposit of its instrument of ratification or accession or at any time thereafter, declare by notification addressed to the Secretary General of the United Nations that this Covenant shall extend to all or any of the territories for the international relations of which it is responsible. This Covenant shall extend to the territory or territories named in the notification from the date of receipt by the Secretary-General of the United Nations of this notification.

Each State party to this Covenant undertakes to take as soon as possible the necessary steps in order to extend the application of this Covenant to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.

/Article 26

Article 26

(The Drafting Committee decided not to discuss the following Geneva text until the question of implementation had been considered.)

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 27 (deleted)

Article 26

An amendment to this Covenant shall come into force when it has been ratified by two-thirds of the States parties to this Covenant. Such an amendment shall be binding only on those parties which have ratified it.

/Article 27

Article 27 (deleted)

(In construing the articles of this Covenant the several articles shall be regarded in their relation to each other.)

Article 27

(Deleted by Drafting Committee of
Commission on Human Rights in May 1948.)

/Proposed Additional Article

/Proposed Additional
Article

Proposed Additional Article

(The Drafting Committee took no action on the following text, proposed as an additional article by the representative of the United States of America.)

The rights and freedoms set forth in part II of this Covenant are in addition to and not in derogation of such rights and freedoms as may be guaranteed to all under the laws of any Contracting State. In agreeing to this Covenant, the Contracting Parties recognize that there are other rights and freedoms which may be made the subject of future covenants or conventions.

/ANNEX C

Proposed Additional Article

(This additional article proposed by the United States to the Drafting Committee of the Commission on Human Rights in May 1948 is withdrawn by the United States at this time.)

/Article on

ANNEX C of E/800 (Report of Third Session
of Commission on Human Rights in June 1948)

Suggestions for implementation

The Commission refers the Economic and Social Council to annex C of the report of the Commission's second session (document E/600), and the following additional suggestions for implementation of the International Bill of Human Rights brought forward before and during its third session:

Australia. Draft Proposals for an International Court of Human Rights (document E/CN.4/AC.1/27).

China-United States of America. Proposal on Implementation for the Covenant on Human Rights (document E/CN.4/145).

France. Statement by Professor Rene Cassin on the Implementation of Human Rights (documents E/CN.4/147 and E/CN.4/82/Add.10).

India. Proposed amendment to the China-United States Proposal on Implementation (document E/CN.4/151).

India. Proposal on Implementation (document E/CN.4/153).

Summary Record of the eighty-first plenary meeting of the Commission on Human Rights, where the question of implementation was discussed (document E/CN.4/SR.81).

After the adjournment of the Commission, the representative of the Union of Soviet Socialist Republics requested that his statement concerning the drafts and proposals on implementation, made in the eighty-first meeting of the Commission on 18 May, be reproduced as a separate document, and that reference to this document be made in this annex. This statement has been issued separately as document E/CN.4/154.

Article on Implementation Proposed
by the United States for inclusion
in the Covenant

1. Any complaint concerning the application of this Covenant shall be limited to an allegation of violations of substantial importance brought forward by a State party to the Covenant, but no such complaint may be brought forward with respect to nationals of any State not a party to the Covenant.

2. A copy of any such complaint may be filed with the Secretary-General of the United Nations.

3. Any dispute arising from such a complaint not settled by negotiations within six months after the filing of the complaint with the Secretary-General shall, unless the parties to the dispute are in agreement upon another means of settlement, be referred at the request of either party to a fact-finding Committee to be established for the purpose.

4. The Committee shall consist of one person designated by the complaining State or States and one person designated by the State or States against which the complaint was made, and three persons designated by agreement of the States involved. If agreement upon the membership of the Committee is not reached within a period of three months, the President of the International Court of Justice may be requested by either party to complete the designation of the members of the Committee. The five members of the Committee shall be nationals of States parties to the Covenant. States parties to the dispute may present their views to the Committee within three months after the Committee is constituted. The Committee shall, within six months after it is constituted, report its

Article on Implementation Proposed
by the United States for inclusion
in the Covenant (continued)

findings of fact to the parties for their consideration. It shall also transmit a copy of its findings of fact through the Secretary-General of the United Nations to the Commission on Human Rights for its information.

5. The Secretary-General of the United Nations shall furnish necessary services for the Committee.
