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DRAFT INTERNATIONAL COVENANT
ON HUMAN RIGHTS AND MEASURES OF IMPLEMENTATION
Recommendations of the International Group of Experts on
the Prevention of Crime and the Treatment of Offenders
(Memorandum by the Secretary-General)

1. In its resolution 155 (VII) C of 13 August 1948, the Economic and Social Council requested the Secretary-General to convene in 1949 an international group of experts "to advise the Secretary-General and the Social Commission in devising and formulating policies and programmes appropriate to:

- "(a) The study on an international basis of the problem of prevention of crime and the treatment of offenders; and
- "(b) International action in this field."

In its resolution 243 (IX) F of 23 July 1949, the Economic and Social Council requested the Secretary-General to convene a meeting of the committee of experts referred to in resolution 155 (VII) C in 1950.

2. The agenda of the International Group of Experts on the Prevention of Crime and the Treatment of Offenders, which met at Lake Success, New York, in December 1950, included the item: "Detention of adults prior to sentence". The group had before it a series of reports on the matter^{1/} including the Secretariat's observations and comments on the detention of adults prior to sentence with reference to the human rights programme of the United Nations^{2/}.

3. In its report^{3/} the International Group of Experts submitted recommendations concerning the future international action to be taken by the United Nations with respect, inter alia, to the detention of adults prior to sentence.

^{1/} Document E/CN.5/AC.4/L.11 and Add.1, 2, 3, 4, 5, 7, 8 and 9.

^{2/} Document E/CN.5/AC.4/L.11/Add.1

^{3/} Document E/CN.5/231

Some of these recommendations take the form of suggested modifications in the text of the draft International Covenant on Human Rights prepared by the Commission on Human Rights at its sixth session^{1/}. The Group requested the Secretary-General to bring the suggested changes to the notice of the Commission on Human Rights.

4. The International Group of Experts examined with great interest the provisions of the draft International Covenant on Human Rights relating to the detention of adults prior to sentence and, generally speaking, felt that the draft should be approved^{2/} and its final adoption recommended, subject to the following modifications^{3/}.

5.

Article 4

(Text drafted by the

Commission on Human Rights
at its sixth session)

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

In particular, no one shall be subjected against his will to medical or scientific experimentation involving risk, where such is not required for his state of physical or mental health.

(Proposed text)

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected against his will to medical or scientific treatment or experimentation where such treatment or experimentation is not required by his state of physical or mental health.

The Group considered that the introduction of the word "treatment" before the word "experimentation" would emphasize more clearly the necessity of prohibiting the use of certain methods of examination during criminal proceedings, such as examination of the accused while under the influence of drugs, which the Group considered to be contrary to the dignity of the human person.^{4/}

^{1/} Annex I of the Report, document E/1681.

^{2/} Paragraph 28 of Report (E/CN.5/231).

^{3/} The modifications proposed by the Group of Experts are underlined.

^{4/} Paragraph 30 of the Report (E/CN.5/231).

6.

Article 6

(Text drafted by the
Commission on Human Rights
at its sixth session)

1. No one shall be subjected to arbitrary arrest or detention.
2.
3.
4. Anyone arrested or detained on 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...

(Proposed text)

1. No one shall be subjected to arbitrary arrest or detention.
1-bis. Any arrest made, without judicial authority, except in cases of flagrante delicto shall be considered as arbitrary.
2.
3.
4. Anyone arrested or detained on 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 without prejudice to the continuation of the proceedings...

The Group considered that except in cases of flagrante delicto it should not be possible to make any arrest unless by order of a judicial authority^{1/}. The new sub-paragraph would more clearly define the expression "arbitrary arrest" which had been the subject of discussion by the Commission on Human Rights at several meetings^{2/}.

The Group gave special approval to paragraph 4 of the text as now drafted and merely suggested that the first sentence should be completed in order to avoid any error in interpretation.

^{1/} Paragraph 31 of Report (E/CN.4/5/231).

^{2/} Documents E/CN.4/SR.144, 146 and 147.

7. Article 10, paragraph 2

(Text of draft prepared by

the Commission of Human Rights
at its sixth session)

Everyone charged with a criminal
offence shall have the right to be
presumed innocent until proved guilty
according to law...

a)

b)

c) To examine, or have examined,
the witnesses against him...

(Proposed text)

Any person held for trial or charged
with a criminal offence shall be presumed
innocent until proved guilty according
to law...

a)

b)

c) To challenge all charges and
examine all evidence, to examine or
have examined...

The slight change in the first sentence of the text was suggested by
the Group of Experts for the sake of greater accuracy; the addition to sub-
paragraph (c) was suggested with a view to stating more clearly the right of any
person held for trial or charged with a criminal offence not only to examine the
witnesses against him or to obtain attendance of witnesses on his behalf, but to
challenge all the charges and evidence brought against him^{1/}.

8. Additional Article^{2/}

(Text submitted to the

Commission on Human Rights at
its sixth session)

All persons deprived of their
liberty shall be treated with humanity.
Accused persons shall not be subjected
to the same treatment as convicted
persons.

(Proposed text)

Any person who is deprived of his
freedom shall be treated with humanity.
Persons held for trial shall not be
subjected to the same treatment as
convicted persons. They should at
least be detained in separate quarters.

^{1/} Paragraph 33 of Report (E/CN.4/231).

^{2/} Report of the sixth session of the Commission on Human Rights Annex III;
text proposed by the representative of France.

The International Group of Experts considered it very desirable to adopt the proposed additional article concerning the deprivation of liberty and the penitentiary system; it also suggested that an express provision should be made in this article, and in the Covenant, providing for the separation of persons held for trial from convicted criminals^{1/}.

9. Finally, the Group considered that "on the occasion of the signature of the Covenant, the various signatory States should be asked to establish a special new offence, viz. the use of torture to obtain confessions or statements, whether in writing or verbally, from a person charged with an offence. States should be recommended to institute this as a special offence subject to severe penalties^{2/}.

Such a special new offence would be a development of the principle affirmed in Article 4 of the draft Covenant on Human Rights; it should be noted that its scope, like that of Article 4, would go beyond the detention of persons prior to sentence since its aim would be the protection of all accused persons, whether held in custody or left at large.

^{1/} Paragraph 34 of Report (E/CN.5/231).

^{2/} Paragraph 35 of Report (E/CN.5/231).