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DRAFT INTERNATIONAL COVENANT ON
HUMAN RIGHTS AND MEASURES OF IMPLEMENTATION

Articles 26-41 (Measures of Implementation) of the Draft International
Covenant on Human Rights and Proposal by the United States of America
on a Protocol on Petitions, and Amendments submitted thereto.

Note: At its two hundred and fourteenth and two hundred and fifteenth meetings the Commission on Human Rights adopted, in revised form, Articles 20-25 of Part III of the Draft International Covenant on Human Rights as contained in Annex I to document E/1681⁽¹⁾. Chapter I of the present document reproduces the remaining articles of Part III of the Draft Covenant (Articles 26-41), together with the amendments proposed thereto. The left-hand column shows the texts of the articles in the form in which they appear in Annex I to document E/1681, and the right-hand column the same texts in their new form after the incorporation of the various amendments proposed.

In Chapter II the left-hand column shows the articles of the proposal by the United States of America on a protocol on petitions from individuals and non-governmental organizations (E/CN.4/557), while the right-hand column shows the texts in their new form after the incorporation of the various amendments proposed to these articles.

The words added or replaced as a result of the incorporation of an amendment have been underlined.

(1) See document E/CN.4/L.18. The Commission also adopted the various paragraphs of Article 19, but decided to postpone the vote on this Article as a whole until it had discussed, and adopted a decision on, economic, social and cultural rights.

CHAPTER I: ARTICLES 26-41 (MEASURES OF IMPLEMENTATION) OF
THE DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS,
AND AMENDMENTS

Amendments

Article 26

E/1681

Denmark/France (E/CN.4/560/Rev.1)

1. Vacancies shall be filled by election and Articles 21, 22, 23 and 24 shall apply.

2. A member of the Committee elected to fill a vacancy shall, if his predecessor's term of office has not expired, hold office for the remainder of that term.

1. Should a vacancy arise, the provisions of Articles 21, 22, 23 and 25 shall apply to the election.

(Remark: No amendment has been proposed to this text).

Article 27

E/1681

India (E/CN.4/556)

A member of the Committee shall remain in office until his successor has been elected; but if the Committee has, prior to the election of his successor, begun to consider a case, he shall continue to act in that case, and his successor shall not act in that case.

If when a case is pending a member of the Committee dealing with the case ceases to hold office, the case shall be continued by the remaining members of the Committee and the successor of the member who has ceased to be a member.

Amendments

Article 28

E/1681

The resignation of a member of the Committee shall be addressed to the Chairman of the Committee through the Secretary of the Committee who shall immediately notify the Secretary-General of the United Nations.

Denmark/France (E/CN.4/560/Rev.1)

The resignation of a member of the Committee shall be addressed to the Chairman of the Committee through the Secretary of the Committee who shall immediately notify the Secretary-General of the United Nations and the International Court of Justice.

Article 29

E/1681

The members of the Committee, when engaged on the business of the Committee, shall enjoy diplomatic privileges and immunities.

India (E/CN.4/556)

The members of the Committee, the Secretary and the Assistant Secretary, when engaged on the business of the Committee, shall enjoy privileges and immunities similar to those of the United Nations.

(Remark: The word [diplomatic] has been replaced).

Denmark/France (E/CN.4/560/Rev.1)

The members of the Committee, the Secretary and the Assistant Secretary, when engaged on the business of the Committee, shall enjoy the privileges granted to government representatives accredited to the United Nations.

(Remark: The words [diplomatic and immunities] have been deleted).

Article 30

E/1681

The Secretary and the Assistant Secretary of the Committee shall be appointed by the Secretary-General of the United Nations, with the approval of the Committee.

Denmark/France (E/CN.4/560/Rev.1)

The Secretary of the Committee shall be appointed by the International Court of Justice, in accordance with the procedure laid down in Article 24, from a list of three names submitted by the Committee.

(Remark: The words and the Assistant Secretary have been deleted).

Article 31

E/1681

The Secretary-General of the United Nations shall convene the initial meeting of the Committee at the Headquarters of the United Nations.

(Remark: No amendment has been proposed to this text).

Article 32

E/1681

1. The Committee shall, at its initial meeting, elect its Chairman and Vice-Chairman for the period of one year and consider the rules of procedure to be established in accordance with Article 33.

2. Thereafter the holding of these offices shall rotate among the members of the Committee in accordance with arrangements prescribed by the rules of procedure.

Article 33

E/1681

The Committee shall establish its own rules of procedure, but these rules shall provide that:

- (a) Five members shall constitute a quorum;
- (b) The work of the Committee shall proceed by a majority vote of the members present; in the event of an equality of votes the Chairman shall have a casting vote;

(c) The States referred to in Article 38 shall have the right to be represented at

Denmark-France (E/CN.4/560/Rev.1)

The Committee shall, at its initial meeting, elect its Chairman and Vice-Chairman for the period of one year.
(Remark: The beginning of the French text, has been re-cast. The changes do not affect the English text. The words "and consider the rules of procedure to be established in accordance with Article 33" and also paragraph 2 have been deleted.

(Remark: No amendment has been proposed to this part of the text).

Guatemala (E/CN.4/566)

- (a) Seven members shall constitute a quorum.

(Remark: No amendment has been proposed to sub-paragraph (b)).

United States of America (E/CN.4/550)

(c) The States referred to in Article 38 shall have the right to be represented

the hearings of the Committee and to make submissions to it orally and in writing;

at the hearings of the Committee and to make submissions to it orally and in writing, and other States parties to this Covenant shall have the right to make submissions to it in writing.

Denmark-France (E/CN.4/560/Rev.1)

(c) All States parties to the Covenant shall have the right to make submissions to the Committee in writing.

The States referred to in Article 38 shall further have the right to be re-presented at the hearings of the Committee and to make submissions orally.

(Remark: The text has been re-cast.)

(d) The Committee shall hold hearings and other meetings in closed session.

(Remark: No amendment has been proposed to this part of the text.)

Article 34.

India (E/CN.4/556)

Delete Article 34.

E/1681

Denmark-France (E/CN.4/560/Rev.1)

1. A State Party to the Covenant concerned (The amendment to the French text of in a case referred to the Committee may, paragraph 1 does not affect the English if none of its nationals is a member of the text).

Committee, designate as a member, to participate with the right to vote in the deliberations on the case under consideration, a person chosen from the list referred to in Article 20.

2. Should there be several States in the same interest, they shall, for the purpose of the preceding sentence, be reckoned as one only. Any doubt upon this point shall be settled by the Committee.

(Remark: See Indian amendment above).

Article 35E/1681

1. After its initial meeting the Committee shall meet at such times as it deems necessary, and shall be convened by its Chairman or at the request of not less than four of its members and in any event when a matter is referred to it under Article 38.
2. The Committee shall meet at the permanent Headquarters of the United Nations or at Geneva.

Denmark-France (E/CN.4/560/Rev.1)

After its initial meeting, the Committee shall meet whenever a matter is referred to it, and shall be convened by its Chairman or at the request of not less than four of its members.

The Committee shall meet at the permanent Headquarters of the United Nations or at Geneva.

(Remark: the words /at such times as it deems necessary/ and /and, in any event when a matter is referred to under Article 38/ have been deleted from the first paragraph together with the paragraph numbers. There are other minor textual amendments).

Article 36E/1681

The Secretary of the Committee shall attend its meetings and, under the instructions of the Committee, shall make all necessary arrangements for the preparation and conduct of the work of the Committee.

Denmark-France (E/CN.4/560/Rev.1)

The Secretary of the Committee shall attend its meetings, make all necessary arrangements, in accordance with the Committee's instructions, for the preparation and conduct of the work, and carry out any other duties assigned to him by the Committee.

(Remark: There are other minor textual amendments*)

New Article

E/1681

(Note: There is no text corresponding to Article 36 bis of the Danish-French amendment).

Denmark-France (E/CN.4/560/Rev.1)

Article 36 bis

The Members and Secretary of the Committee shall receive emoluments commensurate with the importance of their office and the responsibility it entails.

Article 37

E/1681

The Secretary-General of the United Nations shall provide the necessary services and facilities for the Committee and its members.

Denmark-France (E/CN.4/560/Rev.1)

The Secretary-General of the United Nations shall provide the necessary staff and facilities for the Committee and its members.

(Remark: the word /services/ has been replaced)

Article 38

E/1681

1. If a State Party to the Covenant considers that another State Party is not giving effect to a provision of the Covenant, it may, by written communication, bring the matter to the attention of that State. Within three months after the receipt of the communication, the receiving State shall afford the communicating State an explanation or statement in writing concerning the matter, which should include, to the extent possible and pertinent, references to domestic procedures and remedies taken or pending, or available in the matter.

(Remark: No amendment to the text of paragraph 1 has been proposed)

Article 38 (contd.)

E/1681

2. If the matter is not adjusted to the satisfaction of both Parties within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Secretary of the Committee and to the other State.

Uruguay (E/CN.4/565)

2. If the matter is not adjusted to the satisfaction of both Parties within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Secretary of the Committee and to the other State. At the request of one of the States Parties, the time-limit of 18 months may be reduced by the Committee in cases considered as urgent or where human life is endangered.

New Articles

E/1681

(Remark: There is no text corresponding to Article 38 A of the Indian amendment or to Article 38 bis of the Danish-French amendment).

India (E/CN.4/556)

Article 38 A

The Committee shall have the power to initiate an enquiry on receipt of complaint received either from individual or non-governmental organizations.

Denmark-France (E/CN.4/560/Rev.1).

Article 38 bis

The Committee shall deal with any matter referred to it under Article 38

Article 38 bis (contd.)

or by virtue of any other instrument relating to human rights; but its competence shall not extend, except by special agreement, to questions for which the Charter provides a special procedure, within the framework of the specialized agencies or regional organizations, and where the States concerned are subject to such procedure.

Article 39

E/1681

Normally, the Committee shall deal with a matter referred to it only if available domestic remedies have been invoked and exhausted in the case. This shall not be the rule where the application of the remedies is unreasonably prolonged.

(Remark: No amendment to this text has been proposed).

Article 40

E/1681

In any matter referred to it the Committee may call upon the States concerned to supply any relevant information.

(Remark: No amendment to this text has been proposed)

New ArticleE/1681

(Remark: There is no text corresponding to the additional article proposed in the United Kingdom amendment).

United Kingdom (E/CN.4/558)Additional Article

The Committee may request the Economic and Social Council to lay before the International Court of Justice for an advisory opinion any legal question formulated by the Committee and arising within its competence.

Article 41E/1681

1. Subject to the provisions of Article 39, the Committee shall ascertain the facts and make available its good offices to the States concerned with a view to a friendly solution of the matter on the basis of respect for human rights as recognized in this Covenant.

2. The Committee shall, in every case and in no event later than eighteen months after the date of receipt of the notice under Article 38, draw up a report which will be sent to the States concerned and then communicated to the Secretary-General of the United Nations for publication.

(Remark: No amendment to paragraphs 1 and 2 of Article 41 has been proposed).

Article 41 (contd.)

India (E/CN.4/556)

3. If a solution within the terms of paragraph 1 of this article is reached the Committee shall confine its report to a brief statement of the facts and of the solution reached. If such a solution is not reached, the Committee shall state in its report its conclusions on the facts.

3. If a solution within the terms of paragraph 1 of this article is reached the Committee shall confine its report to a brief statement of the facts and of the solution reached. If such a solution is not reached, the Committee shall state in its report its conclusions on the facts and attach thereto the statements made by the parties to the case.

New Articles

E/1681

(Remark: There is no text corresponding to Article 42 of the Indian amendment or to Article 43 of the Danish-French amendment).

India (E/CN.4/556)

Article 42

The Committee shall submit to the General Assembly, through the Secretary-General, annual report of its activities.

Denmark-France (E/CN.4/560/Rev.1)

Article 43

If three months after the Committee has made its report, there should still be a dispute over a point of law regarding the interpretation of this Covenant, the International Court shall not be seized of the matter at the request of one of the States parties to the dispute except by virtue of a special agreement.