

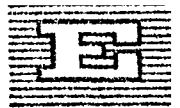
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COMMISSION ON HUMAN RIGHTS

Seventh session

Item 16 of the Agenda

DRAFT REPORT OF THE SEVENTH SESSION OF THE  
COMMISSION ON HUMAN RIGHTS

CHAPTER III (Continued)

DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS  
AND MEASURES OF IMPLEMENTATION

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MEASURES OF IMPLEMENTATION

1. In the discussion of item 3(c) of the agenda: Consideration of provisions for the receipt and examination of petitions from individuals and organizations with respect to alleged violations of the Covenant - Studies of questions relating to petitions and implementation, the Commission had before it the following documents besides those mentioned in paragraphs above:
2. The Commission considered item 3(c) of the agenda at its 209 to 215, 240-241, 243, 245 and 248 to meetings.

General Discussion

3. A general discussion was held in the 209th to 214th meetings on the question of implementation relating to the draft Covenant as drawn up by the

Commission, at its sixth session. The following main points were discussed: the question of international measures of implementation outside the Covenant and not restricted to Parties to the Covenant; international implementation by annual reports to be submitted by Governments of Member States; implementation through the International Court of Justice; deletion of Articles 19-41 from the draft Covenant and the assertion that national sovereignty was infringed by those provisions; embodying of all provisions on international measures of implementation in separate instruments distinct from the Covenant; retention of some international measures of implementation in the Covenant and embodying of others, notably those relating to petitions from individuals and non-governmental organizations, in an optional clause in the Covenant or in a separate protocol or separate protocols; questions relating to screening of petitions by an independent body, by the Secretariat or by an executive body of non-governmental organizations having consultative status; establishment of a United Nations High Commissioner or Attorney-General for Human Rights with comprehensive functions or with limited functions; name of the body charged with international implementation; the long delay involved in the procedure of the proposed implementation machinery; the membership of the proposed Human Rights Committee; the right of the proposed Human Rights Committee to request advisory opinions from the International Court of Justice; delimitation of the jurisdiction of the Human Rights Committee; submission in writing to the Human Rights Committee by Parties to the Covenant not directly concerned in the dispute, and collection and examination of information concerning the implementation or observance of the draft Covenant. At the 213th meeting of the Commission a cable (text in E/CN.4/561 and Corr.1) from the Assistant Secretary-General in charge of the Trusteeship Department was read out to the Commission in answer to a request from the representative of India as to whether any difficulties had been encountered in connection with petitions received by the Trusteeship Council.

4. At the 213th meeting on 24 April 1951, the Commission rejected by 2 votes to 15, with 1 abstention, the draft resolution of the Union of Soviet Socialist

Republics (E/CN.4/553/Rev.1) by which the Commission would resolve to omit from the draft Covenant Articles 19-41 on the grounds that they envisaged forms of control in implementing the draft Covenant which constituted an attempt to intervene in the internal affairs of States and violated their sovereignty.

Articles 19-25

5. Considerable discussion took place in the Commission as regards the proposals laying stress on the qualification of members for the proposed Human Rights Committee having judicial or legal experience and as regards the election of the Committee by the International Court of Justice (E/CN.4/SR.214 to 215). At the request of the representative of Chile and the Chairman of the Commission, the Secretariat subsequently circulated in document E/CN.4/584 precedents in which either the Permanent Court of International Justice or the International Court of Justice (or the President of that body), had been entrusted with the task of making nominations, other than those of arbitrators, referees, members of conciliation commissions or judicial experts.

6. The Commission voted on Articles 19-25 of the draft Covenant and the amendment proposed thereto by Denmark and France (E/CN.4/560/Rev.1), India (E/CN.4/563), Guatemala (E/CN.4/566) and China (E/CN.4/568) at its 215th meeting (E/CN.4/L.18 and see Annex ). It was agreed to postpone any final decision on Article 19, paragraph 1, until the Commission had decided upon measures of implementation for the economic, social and cultural rights to be included in the draft Covenant.

7. Among the decisions taken by the Commission at the 215th meeting (E/CN.4/L.18), the following may be noted: that the number of the members of the Committee should be increased from seven to nine (Article 19, paragraph 1, 13 votes to 2, with 3 abstentions); that the Committee "shall be composed of nationals of the States Parties to the Covenant who shall be persons of high moral standing and of recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having a judicial or legal experience" (Article 19, paragraph 3, 10 votes to 4, with 3 abstentions); that the election of the Committee from the nominations made by States Parties to the Covenant shall be carried out by the International Court of Justice (Article 23, paragraph 1, 12 votes to 2, with 4 abstentions), and that in the election of the Committee consideration shall be given to equitable geographical distribution of membership and to the representation of the main forms of civilization (Article 24, paragraph 2, 10 votes to none with 8 abstentions).

8. The representative of India withdrew her amendment (E/CN.4/556, Article 23) which proposed that the Human Rights Committee should be elected "by the General Assembly by a two-thirds majority", but wished it recorded so that her proposal might be considered by the General Assembly if it were found that the International Court of Justice was unable to comply with the request concerning the election of the Committee (E/CN.4/SR.215).

#### Articles 26-36

9. Articles 26-36 of the draft Covenant were considered at the 239th and 240th meetings in the light of the amendments submitted by Denmark, France, Guatemala, India, Uruguay (E/CN.4/617 and Corr.1) and the United Kingdom (E/CN.4/620).

10. The representative of India had proposed (E/CN.4/556 and E/CN.4/617) that Article 24 should be deleted. It was so decided by 10 votes to 6 with 2 abstentions. This article had provided that a State Party to the Covenant concerned in a case referred to the Committee might, if none of its nationals were a member of the 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. It had also provided that if there were several States in the same interest, they were to be reckoned as one only and that any doubt on this point was to be settled by the Committee.

Members of the Commission felt that the violation of human rights and the international concern therein should not be subject to national interests, especially as the vote of such a person might decide the issue. It was suggested, on the other hand, that the rule was to be found in the Statute of the International Court of Justice and that if such a provision was made in judicial matters, there was all the more reason for including it for a body that would essentially be concerned with conciliation. Another suggestion was that rather than delete the article it might be laid down that a member of the Committee who was a national of a State directly concerned in a case before the Committee should not participate in the Committee's deliberations on that case.

11. The other notable changes decided upon by the Commission were as follows (E/CN.4/L.18/Add.1): that the Secretary of the Committee (the reference to the Assistant Secretary was omitted) shall be appointed by the International Court of Justice from a list of three names submitted by the Committee (Article 30, 13 votes to 3 with 2 abstentions) instead of being appointed by the Secretary-General of the United Nations, with the approval of the Committee, and that he shall enjoy diplomatic privileges and immunities (Article 29, 13 votes to 4); the deletion of the provisions that the Offices of the Chairman and Vice-Chairman, after the initial election for one year, would rotate among the members of the Committee (Article 32, 16 votes to 2); the raising of the quorum to seven instead of five (Article 33 (a), 14 votes to none with 3 abstentions); that all States Parties to the Covenant having an interest in any matter referred to the Committee under Article 38 shall have the right to make submissions to the Committee in writing (Article 33 (c), 7 votes to 2, with 9 abstentions).