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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)

Note: After paragraph 11 in E/CN.4/635/Add.2, add the following:

Articles 37 to 41 and proposals for new articles

12. Articles 37 to 41 and proposals for new articles to be added to Part III of the draft Covenant were considered at the 240, 243, 245 and 249th meetings. The Commission had before it proposals and amendments by Denmark and France, Guatemala, India, the United Kingdom and Uruguay (E/CN.4/617 and Corr.1, E/CN.4/558/Rev.1, E/CN.4/560/Rev.1/Corr.1, E/CN.4/620, E/CN.4/634/Rev.1 and E/CN.4/627 and Add.1 containing the financial estimates of the various proposals).

13. The proposal of Denmark and France for an Article 36 bis reading "The members and Secretary of the Committee shall receive emoluments commensurate with the importance and responsibility of their office", was adopted by 13 votes to 3 with 2 abstentions.

14. In voting on Article 37 concerning the providing of services and facilities for the Committee and its members by the Secretary-General of the United Nations the Commission did not approve by 6 votes to 6 with 5 abstentions the proposal of the Union of Soviet Socialist Republics by which it would be decided that the vote on Article 37 would not prejudice the question of the sources of financing and the servicing of the Committee. The amendment of Denmark and France to replace the word "services" by the word "staff" was adopted by 9 votes to 3 with 5 abstentions and the article as amended was adopted by 11 votes to 2 with 4 abstentions.

15. Article 38 was voted on by parts at the 240th meeting. An amendment by the representative of Greece to omit from paragraph 1 the words "which should include, to the extent possible and pertinent, references to domestic procedures and remedies taken or pending, or available in the matter," was rejected by 10 votes to 3 with 5 abstentions. Paragraph 1 in its original form was adopted by 16 votes to 2. Paragraph 2 was also adopted by 16 votes to 2. The Commission then adopted by 14 votes to none with 4 abstentions the following paragraph 3 proposed by the representative of Uruguay: "Subject to the provisions of Article 39 below in serious cases, where human life is endangered the Committee may, at the request of a State Party to the Covenant referred to in paragraph 1 of article 38, deal forthwith with the case on receipt of the initial communication and after notifying the States concerned." An amendment to insert the words "in particular" before the words "where human life," was not adopted, the vote being 6 for, 6 against and 6 abstentions.

16. The Commission, at its 245 and 249 meetings considered a proposal for a new article 38A submitted by the representative of India which provided (E/CN.4/617 and E/CN.4/SR.249) that the Committee may initiate an enquiry on receipt of complaint received either from individuals or from groups or from non-governmental organizations. Opinion was expressed in the Commission that such a provision would not grant a right of petition as such, but only empower the Committee to act if it so decided on receipt of information. Others were of the view that the right of petition should be dealt with in a separate protocol. The proposal

was rejected in a roll call vote by 10 votes to 7 with 1 abstention as follows:

In favour: Chile, Egypt, Guatemala, India, Lebanon, Sweden and Uruguay  
Against: Australia, China, France, Greece, Pakistan, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom, United States of America and Yugoslavia  
Abstention: Denmark

17. At its 249th meeting the Commission considered proposals by Denmark and France, Guatemala and United Kingdom relating to an article covering the delimitation of the powers of the Committee. Members of the Commission discussed the question whether it was advisable to adopt provisions without knowing the exact nature of their implications, especially as the procedures prevailing amongst the various organs of the United Nations and the specialized agencies were not clearly known. Vote was taken on the basis of the proposal of the United Kingdom (E/CN.4/620). The words "The Committee shall deal with any matter referred to it under article 38," was adopted by 14 votes to 2, with 1 abstention. The words "save that it shall have no power to deal with any matter (a) for which any organ or specialized agency of the United Nations competent to do so has established a special procedure by which the States concerned are governed or" was adopted by 11 votes to 4 with 3 abstentions. The proposal of Denmark to add the words "for which a regional organization has established a special procedure to which the States concerned are subject," to the paragraph was rejected by 9 votes to 5 with 3 abstentions. Sub-paragraph (b) reading "with which the International Court of Justice is seized other than by virtue of Article . . . . of this present Covenant," was adopted by 10 votes to 3 with 5 abstentions. The whole Article was adopted as Article 38 bis by 9 votes to 4, with 4 abstentions. The Commission rejected by 9 votes to 7, with 1 abstention the insertion of an amendment by the representative of Guatemala to insert after the opening phrase the following: "It shall also deal with any matter which may be referred to it or which it may decide to examine as a result of complaints from sources other than States (individuals, groups or non-governmental organizations etc.) by virtue of other international instruments relating to human rights

making provision for such complaints insofar as this matter affects States that have acceded to the said instruments."

18. Article 39 was adopted without any changes by 15 votes to 2 with 1 abstention and Article 40 was also adopted without change by 14 votes to 2 with 2 abstentions.

19. The Commission adopted by a vote of 11 in favour, 2 against and 5 abstentions a proposal submitted by the United Kingdom for an additional article to be inserted after Article 40. The text adopted reads as follows: "The Committee may recommend to the Economic and Social Council that the Council request the International Court of Justice to give an advisory opinion on any legal question connected with a matter of which the Committee is seized."

20. Article 41 was voted by parts. The first paragraph was adopted without change by 16 votes to 2. An amendment by Uruguay (E/CN.4/SR.249) to add to paragraph 2 the words "The Committee shall complete its report as promptly as possible, particularly when requested by one of the States Parties where human life is endangered," was adopted by 16 votes to none with 2 abstentions, and the paragraph as amended was adopted by 16 votes to none with 2 abstentions. Paragraph 3 was adopted by 16 votes to 2 after the amendment by the representative of India to add the words "and attach thereto the statements made by the parties to the case," had been adopted by 11 votes to 4, with 3 abstentions.

21. The Commission adopted by a vote of 6 in favour, 5 against and 7 abstentions, a proposal submitted by India for a new Article 42, which read as follows: "The Committee shall submit to the General Assembly, through the Secretary-General, an annual report of its activities."

22. The Commission adopted by a vote of 6 in favour, 3 against, with 9 abstentions, a proposal submitted by Denmark and France (E/CN.4/560/Rev.1/Corr.1) for a new Article 43. The text of the article as adopted reads as follows: "The States Parties to this Covenant agree not to submit, by way of petition, to the International Court of Justice, except by special agreement, any dispute arising out of the interpretation or application of the Covenant in a matter within the competence of the Committee."

Proposal to include measures of implementation in a  
separate instrument

23. At the 249th meeting the representative of Yugoslavia requested that discussion on his draft resolution (E/CN.4/551), which asked the Commission to decide to omit from the draft Covenant the clauses concerning measures of implementation and to embody them in a separate instrument, should be deferred till the final decision on article 19 had been taken.

TERRITORIAL APPLICATION OF THE DRAFT COVENANT

24. At the 242nd meeting the Chairman stated that as far as item 3(e) of the Agenda (The territorial application of the Covenant) was concerned, he would rule that the text forwarded by the General Assembly by its resolution 422 (V) would be incorporated in the draft Covenant, but that this would not prevent any member of the Commission from making a statement on the item at the report stage. The article appears as Article ..... in Annex .....