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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

A N N E X I. (1)

Note: The Commission did not consider the Preamble, Parts I and II (Articles 1-18), or Part IV (Articles 42-45) of the draft Covenant prepared at its sixth session.

The Preamble, and Parts I and II will be reproduced here from the text of the report of the sixth session of the Commission.

(1) The Commission has not taken a decision on the order of the various Parts of the draft Covenant. The order in which they are presented here should therefore be considered as tentative.

PART III

Article 19

Note: The Commission decided to postpone the vote on the whole of Article 19 until its eighth session. The following is the provisional text of the Article:

1. With a view to the implementation of the provisions of the International Covenant on Human Rights, there shall be set up a Human Rights Committee, hereinafter referred to as "the Committee", composed of nine members with the functions hereinafter provided.

2. The Committee shall be composed of nationals of the States Parties to the Covenant who shall be persons of high moral standing and recognised 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.

3. The members of the Committee shall be elected and shall serve in their personal capacities.

Article 20

1. The members of the Committee shall be elected from a list of persons possessing the qualifications prescribed in Article 19 and specially nominated for that purpose by the States Parties to the Covenant.

2. Each State shall nominate at least two and not more than four persons. These persons may be nationals of the nominating State or of any other State Party to the Covenant.

3. Nominations shall remain valid until new nominations are made for the purpose of the next election under Article 25. A person shall be eligible to be renominated.

Article 21

At least three months before the date of each session the Secretary-General of the United Nations shall address a written request to the States Parties to the Covenant inviting them, if they have not already submitted their nominations, to submit them within two months.

Article 22

The Secretary-General of the United Nations shall prepare a list in alphabetical order of all the persons thus nominated, and submit it to the International Court of Justice and to the States Parties to the Covenant.

Article 23

1. The Secretary-General of the United Nations, on behalf of the States Parties to the Covenant, shall request the International Court of Justice to elect the members of the Committee from the list referred to in Article 22 and in accordance with the conditions set out below.

2. On receipt of the list from the Secretary-General of the United Nations, the President of the International Court of Justice shall fix the time of elections for members of the Committee.

Article 24

1. No more than one national of any State may be a member of the Committee at any time.

2. 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.

The persons elected shall be those who obtain the largest number of votes and an absolute majority of the votes of all the members of the Court.

3. The quorum of nine laid down in Article 25, paragraph 3, of the Statute of the Court shall apply for the holding of the elections by the Court.

Article 25

The members of the Committee shall be elected for a term of five years and be eligible for re-election. However, the terms of five of the members elected at the first election shall expire at the end of two years. Immediately after the first election the names of the members whose terms expire at the end of the initial period of two years shall be chosen by lot by the President of the International Court of Justice.

Article 26

1. Should a vacancy arise, the provisions of Articles 21, 22, 23 and 24 shall apply to the election.

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.

Article 27

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.

Article 28

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

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

Article 30

1. The Secretary of the Committee shall be appointed by the International Court of Justice from a list of three names submitted by the Committee.

2. The candidate obtaining the largest number of votes and an absolute majority of the votes of all the members of the Court shall be declared elected.

3. The quorum of nine laid down in Article 25, paragraph 3, of the Statute of the Court shall apply for the holding of the election by the Court.

Article 31

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

Article 32

The Committee shall, at its initial meeting, elect its Chairman and Vice-Chairman for the period of one year.

Article 33

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

- (a) Seven 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) All States parties to the Covenant having an interest in any matter referred to the Committee under Article 39 shall have the right to make submissions to the Committee in writing.

The States referred to in Article 39 shall further have the right to be represented at the hearings of the Committee and to make submissions orally.

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

Article 34

The Commission decided to delete this article.

Article 35

1. After its initial meeting the Committee shall meet
 - (a) at such times as it deems necessary;
 - (b) when any matter is referred to it under Article 39;
 - (c) when convened by its Chairman or at the request of not less than five of its members.

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

Article 36

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.

Article 37

The members and the Secretary of the Committee shall receive emoluments commensurate with the importance and responsibilities of their office.

Article 38 (Formerly 37)

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

Article 39 (Formerly 38)

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,

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.

3. Subject to the provisions of Article 41 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 39, deal forthwith with the case on receipt of the initial communication and after notifying the State concerned.

Article 40

The Committee shall deal with any matter referred to it under article 39 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

- (b) with which the International Court of Justice is seized
other than by virtue of article ... of the present Covenant.

Article 41 (Formerly 39)

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.

Article 42 (Formerly 40)

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

Article 43

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.

Article 44 (Formerly 41)

1. Subject to the provisions of Article 41, 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 39, 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. The Committee shall complete its report as promptly as possible, particularly when requested by one of the States parties where human life is endangered.

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.

Article 45

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

Article 46

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.

PART IV

Article 47

The States Parties to the Covenant recognize that in the enjoyment of those rights provided by the State in conformity with this Part of the Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

Article 48

The States parties to the present Covenant,

1. bearing in mind the link between the rights and liberties recognized and defined above, and the economic, social and cultural rights proclaimed in the Universal Declaration of Human Rights;
2. resolved to combat the scourges, such as famine, disease, poverty, the feeling of insecurity and ignorance, which take toll of or degrade men, and prevent the free development of their personality;
3. resolved to strive to ensure that every human being shall obtain the food, clothing, shelter essential for his livelihood and well-being, and shall achieve an adequate standard of living and a continuous improvement of his living material and spiritual conditions;
4. undertake to take steps, individually and through international co-operation, to the maximum of their available resources with a view to achieving progressively the full realization of the rights recognized in this part of the present Covenant.

Article 49

Work being at the basis of all human endeavour, the States Parties to the Covenant recognize the right to work, that is to say, the fundamental right of everyone to the opportunity, if he so desires, to gain his living by work which he freely accepts.

Article 50

The States Parties to the Covenant recognize the right of everyone to just and favourable conditions of work, including:

- (a) safe and healthy working conditions;
- (b) minimum remuneration which provides all workers:
 - (i) with fair wages and equal pay for equal work, and
 - (ii) a decent living for themselves and their families; and
- (c) reasonable limitation of working hours and periodic holidays with pay.

Article 51

The States Parties to the Covenant recognize the right of everyone to social security.

Article 52

The States Parties to the Covenant recognize the right of everyone to adequate housing.

Article 53

The States Parties to the Covenant recognize the right of everyone to an adequate standard of living and the continuous improvement of living conditions.

Article 54

The States Parties to the Covenant recognize the right of everyone to the enjoyment of the highest standard of health obtainable. With a view to implementing and safeguarding this right each State party hereto undertakes to provide legislative measures to promote and protect health and, in particular:

- (i) to reduce infant mortality and provide for healthy development of the child;

- (ii) to improve nutrition, housing, sanitation, recreation, economic and working conditions and other aspects of environmental hygiene;
- (iii) to control epidemic, endemic and other diseases;
- (iv) to provide conditions which would assure the right of all to medical service and medical attention in the event of sickness.

Article 55

The States Parties to the Covenant recognize that:

- (1) special protection should be accorded to maternity and motherhood; and
- (2) special measures of protection should be taken on behalf of children and young persons, and that in particular they should not be required to do work likely to hamper their normal development.

Article 56

The States Parties to the Covenant recognize the right of everyone, in conformity with Article 16, to form and join local, national and international trade unions of his choice for the protection of his economic and social interests.

Article 57

The States Parties to the Covenant recognize:

- 1. the right of everyone to education;
- 2. that educational facilities shall be accessible to all in accordance with the principle of non-discrimination enunciated in paragraph 1 of Article 1 of this Covenant;
- 3. that primary education shall be compulsory and available free to all;
- 4. that secondary education, in its different forms, including technical and professional secondary education, shall be generally available and shall be made progressively free;
- 5. that higher education shall be equally accessible to all on the basis of merit and shall be made progressively free;

6. that fundamental education for those persons who have not received or completed the whole period of their primary education shall be encouraged as far as possible;
7. that education shall encourage the full development of the human personality, the strengthening of respect for human rights and fundamental freedoms and the suppression of all incitement to racial and other hatred. It shall promote understanding, tolerance and friendship among all nations, racial, ethnic or religious groups, and shall further the activities of the United Nations for the maintenance of peace and enable all persons to participate effectively in a free society;
8. the obligations of States to establish a system of free and compulsory primary education shall not be deemed incompatible with the liberty of parents to choose for their children schools other than those established by the State which conform to minimum standards laid down by the State;
9. in the exercise of any functions which the State assumes in the field of education it shall have respect for the liberty of parents to ensure the religious education of their children in conformity with their own convictions.

Article 58

Each State party to the Covenant which, at the time of becoming a party to this Covenant, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory primary education free of charge for all.

Article 59

The States parties to the Covenant undertake to encourage by all appropriate means the conservation, the development and the diffusion of science and culture.

They recognize that it is one of their principal aims to ensure conditions which will permit everyone:

1. to take part in cultural life;
2. to enjoy the benefits of scientific progress and its applications.

Article 60

The States parties to the Covenant recognize the equal right of men and women to the enjoyment of all economic, social and cultural rights, and particularly of those set forth in this Covenant.

PART V

Article 61¹⁾

The States Parties to this Covenant undertake to submit reports concerning the progress made in achieving the observance of these rights in conformity with the following articles and the recommendations which the General Assembly and the Economic and Social Council, in the exercise of their general responsibility may make to all the Members of the United Nations.

Article 62²⁾

1. The States Parties shall furnish their reports in stages, in accordance with a programme to be established by the Economic and Social Council after consultation with the States Parties to this Covenant and the specialized agencies concerned.
2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under this part of the Covenant.
3. Where relevant information has already previously been furnished to the United Nations or to any specialized agency, the action required by this Article may take the form of a precise reference to the information so furnished.

Article 63³⁾

Pursuant to its responsibilities under the Charter in the field of human rights, the Economic and Social Council shall make special arrangements with

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- 1) Wording suggested by the representative of Denmark (see paragraph 40):
Alternative 1: "observance of the rights recognized in Part of this Covenant" (i.e. relating to economic, social and cultural rights)
Alternative 2: "observance of the rights recognized in this Covenant".
 - 2) Wording suggested by the representative of Denmark (see paragraph 40):
Alternative 1: "obligations under Part ... of this Covenant" (i.e. relating to economic, social and cultural rights)
Alternative 2: "obligations under this Covenant".
 - 3) Wording suggested by the representative of Denmark (see paragraph 40):
Alternative 1: "observance of the provisions of Part ... of this Covenant". (i.e. relating to economic, social and cultural rights).
Alternative 2: "observance of the provisions of this Covenant".

the specialized agencies in respect of their reporting to it on the progress made in achieving the observance of the provisions of this part of the Covenant falling within their competence. These reports shall include particulars of decisions and recommendations on such implementation adopted by their competent organs.

Article 64

The Economic and Social Council shall transmit to the Commission on Human Rights for study and recommendation the reports concerning human rights submitted by States, and those concerning human rights submitted by the competent specialized agencies.

Article 65

The States Parties directly concerned and the specialized agencies may submit comments to the Economic and Social Council on the report of the Commission on Human Rights.

Article 66

The Economic and Social Council may submit from time to time to the General Assembly, with its own reports, reports summarizing the information made available by the States Parties to the Covenant directly to the Secretary-General and by the specialized agencies under Article indicating the progress made in achieving general observance of these rights.

Article 67¹⁾

The Economic and Social Council may submit to the Technical Assistance Board or to any other appropriate international organ the findings contained in

1) Wording suggested by the representative of Denmark (see paragraph 40):
Alternative 1: "progressive implementation of Part ... of this Covenant"
(i.e. relating to economic, social and cultural rights).
Alternative 2: As in the text adopted.

the report of the Commission on Human Rights which may assist such organs in deciding each within its competence, on the advisability of international measures likely to contribute to the progressive implementation of this Covenant.

Article 68¹⁾

The States Parties to the Covenant agree that international action for the achievement of these rights includes such methods as conventions, recommendations, technical assistance, regional and technical meetings and studies with governments.

Article 69

Unless otherwise decided by the Commission on Human Rights or by the Economic and Social Council or requested by the State directly concerned, the Secretary-General of the United Nations shall arrange for the publication of the report of the Commission on Human Rights, or reports presented to the Council by specialized agencies as well as of all decisions and recommendations reached by the Economic and Social Council.

Article 70²⁾

Nothing in this Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the Constitutions of the specialized agencies, which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in this Covenant.

- 1) Wording suggested by the representative of Denmark (see paragraph 40):
Alternative 1: "achievement of the rights recognized in Part ... of this Covenant" (i.e. relating to economic, social and cultural rights).
Alternative 2: "achievement of the rights recognized in this Covenant".
- 2) This article was adapted with the understanding that the decision did not prejudice the position of the article in the Covenant.

PART VI

Article 71 (Formerly Article 42)

1. This Covenant shall be open for signature and ratification or accession on behalf of any State Member of the United Nations or of any non-member State to which an invitation has been extended by the General Assembly.
2. 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 twenty States have deposited such instruments, the Covenant shall come into force among 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 signed or acceded, of the deposit of each instrument of ratification or accession.

Article 72 (Formerly Article 43)

(Federal State Article)

Article 73*

The provisions of the present Covenant shall extend to or be applicable equally to a signatory metropolitan State and to all the territories, be they Non-Self-Governing, Trust, or Colonial Territories, which are being administered or governed by such metropolitan State.

Article 74 (Formerly Article 45)

1. Any State Party to the Covenant may propose an amendment and file it with the Secretary-General. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties to the Covenant with a request that they notify him whether they favour a conference of States Parties for

* See General Assembly resolution 422 (V) and paragraph 24 in E/CN.4/635/Add.4

the purpose of considering and voting upon the proposal. In the event that at least one third of the States favour such a conference the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States present and voting at the conference shall be submitted to the General Assembly for approval.

2. Such amendments shall come into force when they have been approved by the General Assembly and accepted by a two-thirds majority of the States Parties to the Covenant in accordance with their respective constitutional processes.

3. When such amendments come into force they shall be binding on those Parties which have accepted them, other Parties being still bound by the provisions of the Covenant and any earlier amendment which they have accepted.