United Nations | *Nations Unies*

ECONOMIC AND SOCIAL COUNCIL | **CONSEIL ECONOMIQUE ET SOCIAL**

UNRESTRICTED
E/CN.4/SR.125
22 June 1949
ENGLISH
ORIGINAL: FRENCH

MASTER FILE

COMMISSION ON HUMAN RIGHTS

Fifth Session

SUMMARY RECORD OF THE HUNDRED AND TWENTY-FIFTH MEETING

Held at Lake Success, New York,
on Monday, 13 June 1949, at 2.30 p.m.

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Articles 2 and 3
Appointment of members of the Committee to examine the provisional questionnaire concerning Trust Territories

Chairman:	Mrs. ROOSEVELT	United States of America
Rapporteur:	Mr. Charles MALIK	Lebanon
Members:	Mr. SHANN	Australia
	Mr. STEYAERT	Belgium
	Mr. SAGUES	Chile
	Mr. CHANG	China
	Mr. SOERENSEN	Denmark
	Mr. LOUTFI	Egypt
	Mr. CASSIN	France
	Mr. GARCIA BAUER	Guatemala
	Mrs. MEHTA	India

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	Mr. ENTEZAM	Iran
	Mr. INGLES	Philippines
	Mr. KOVALENKO	Ukrainian Soviet Socialist Republic
	Mr. PAVLOV	Union of Soviet Socialist Republics
	Miss BOWIE	United Kingdom
	Mr. MORA	Uruguay
	Mr. VILFAN	Yugoslavia
Representative of Specialized Agency:		
	Mr. ARNALDO	United Nations Educational, Scientific and Cultural Organization (UNESCO)
Consultants from Non-Governmental Organizations:		
Category A		
	Miss SENDER	American Federation of Labor (AF of L
Category B		
	Mr. FRIEDMAN	Co-ordinating Board of Jewish Organizations
	Mr. MOSCOVITZ	Consultative Council of Jewish Organizations
	Miss ROBB	International Association of University Women
	Mrs. AIETTA	Catholic International Union for Social Service
	Mr. NOLDE	Commission of the Churches on International Affairs
Secretariat:	Mr. MOUSHENG	Representative of the Secretary-General
	Miss KITCHEN	Secretary of the Commission

DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS (E/800, E/CN.4/224, E/CN.4/258, E/CN.4/265, E/CN.4/318, E/CN.4/319, E/CN.4/322) (discussion continued)

Article 2

The CHAIRMAN requested the Commission to consider article 2 and the amendments to that article proposed by Denmark, France, the United States of America, the Philippines and Egypt.

Mr. SORENSEN (Denmark) explained that his amendment (E/CN.4/258) was intended to establish a procedure enabling States whose

/domestic

domestic law was not in conformity, on certain points, with the obligations provided for in the draft Covenant to accept the draft as a whole straight away, while maintaining for a certain time their national laws which might be founded on well-established tradition, and the amendment of which might take a long time. Denmark proposed that such States should be authorized, at the time of their accession to the Covenant, to reserve the right to maintain their existing laws on the subject for the time being.

It followed that the other Contracting States must be specifically informed of those reservations and their content; that was provided for in the last part of the amendment, in accordance with which the State in question was required to furnish to the Secretary-General full information concerning its domestic law, which information was to be communicated to the other States Parties to the Covenant.

Lastly, the final measure provided for was designed to orient the development of that exceptional situation toward unrestricted adherence to the Covenant through the obligation to be assumed by such a State to consider, within a reasonable time, the possibility of modifying its own legislation with a view to giving full effect to the provisions of the Covenant. A State would be all the more encouraged to carry out that reform as quickly as possible because the competent organs of the United Nations, for example, the General Assembly and the Commission itself, could request it to keep them informed of the progress made in that respect.

It seemed that those measures constituted a procedure both flexible and effective, which would help States in the hypothetical position envisaged to accept without delay the main provisions of the Covenant, and to take their place among those which acceded to it.

It was obvious that such a proposal could be inserted at any other place in the Covenant, and it might even constitute a separate article of part III of the draft: that would have to be decided by the Drafting Committee. The Danish delegation had submitted its proposal as a draft amendment to article 2, because the text of that article, in its original terms, would place the State in question in the position either of being bound by an obligation which it could not fulfil for an indefinite period of time, which would be contrary to the rule that domestic law could not exempt a State from carrying out an international agreement, or of delaying its accession to the Covenant until it had been able to promulgate new laws

permitting it to give full effect to all the rights and freedoms set forth in part II of that document. It was certainly preferable to make it possible for such a State to accede immediately to the Covenant by defining and bringing to the knowledge of its co-Contracting States, the exact extent of its obligations.

Mr. CASSIN (France) explained that the French amendment (E/CN.4/265) was based on quite a different idea from that which had inspired the delegations of the United States of America, the Philippines and Denmark. It provided only for guarantees of enforcement of the Covenant within the signatory State.

The original text considered such guarantees in the form of "a remedy" which, under paragraph (c), must be "enforceable by a judiciary whose independence is secured." The French delegation proposed that the word "judiciary" should be replaced by the word "court" which included, in addition to judiciary courts, administrative courts which, in certain countries such as France, might be called upon to function in that field.

He thought, moreover, that the meaning of the word "remedy" which appeared in paragraphs (b) and (c) of article 2 should be defined. Article 8 of the Universal Declaration of Human Rights, adopted subsequently to the drawing up of the draft of article 2 of the Covenant, contained a formula which was preferable: it read "everyone has the right to an effective remedy by the competent national tribunals". That remedy might, in fact, be something other than a monetary award: it might be either a cessation of the measure protested against, such as illegal arrest, for example, by application of the rule of habeas corpus, or else the repeal of the measure, pronounced by a judiciary court in accordance with a decision which established the illegality of the measure. The text of paragraph (b) should therefore be re-worded so as to ensure for any individual whose rights and freedoms might have been violated, the cessation of the illegal measure, its repeal, or, lacking that, an effective remedy.

The French delegation, like those of China and the Union of Soviet Socialist Republics, attached great importance to the guarantee of respect for human rights within each country. It felt that such a guarantee would appear among the measures regarding application, but since the latter must be restricted to enforcement at the international level, it urged that article 2 should be supplemented so as to ensure to the individual all guarantees possible within the framework of national law and procedure.

/If he had

If he had to choose between the other amendments, Mr. Cassin would prefer that of the Philippines, which was better drafted than the United States amendment. As for the Danish amendment, it seemed that it should be placed among the provisions dealing with the ratification of the Covenant. If its adoption would really make a greater number of accessions possible, by removing a temporary obstacle for certain States, the procedure it recommended should be studied carefully.

Mrs. MEHTA (India) remarked that, in accordance with paragraph (a) of article 2, the signatory State would undertake to ensure the rights and freedoms set forth in part II for every individual, whether he be a citizen or an alien. That clause could be approved only when the list of such rights and freedoms had been definitively established. If, in fact, certain economic and social rights were introduced into part II, it might appear impossible for a State to extend them to aliens residing within its territory. The representative of India therefore proposed that the discussion on that article should be adjourned until the study of part II of the draft Covenant had been completed.

The CHAIRMAN, speaking as United States representative, introduced her amendment (A/CN.4/224).

The new text of article 2 which she proposed would oblige a signatory State "to ensure to all individuals within its territory the rights set forth in this Covenant" and to adopt, if it had not already done so, legislative or other measures to give effect to those rights as a matter of domestic law.

In addition, the United States delegation proposed the inclusion in that article of the following sentence: "The provisions of this Covenant shall not themselves become effective as domestic law". It was well known that, in some States, a ratified treaty became the highest law of the country, in accordance with its constitution: such was the case, for example, in the United States of America, Paraguay, Argentina and Mexico. In other States, on the contrary, a treaty was not automatically incorporated in the national legislation: it was necessary for the provisions of the treaty to be repeated in a legislative or other text in order that it might become enforceable within the country. The United States proposal was designed to place those two categories of States on the same footing. Moreover, it only

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repeated the opinion expressed by the Drafting Committee, in note (1) at the bottom of page 12 of the report of the Commission (E/800), according to which "the Covenant is not self-operative".

It was obvious that such a reservation would in no way lessen the obligation for any State to adopt legislative or other measures, for the purpose of ensuring in its domestic law respect for the rights set forth in the Covenant.

The result would merely be that the United States of America, like other States, would be in a position to adopt provisions of the Covenant, by enacting the legislative or other measures necessary for that purpose.

The United States amendment omitted mention of the judiciary, police and executive authorities whose duty it was to supervise the guarantee of those rights. The general agreement of the State was sufficient; it was not necessary to go into detail concerning the domestic machinery by which that agreement would be put into effect, all the more so because such enumeration might be incomplete.

Mrs. Roosevelt criticized the Danish amendment firstly because it deleted the second half of paragraph (a) in which was set forth the obligation to adapt domestic law to the provisions of the Covenant: that was an essential guarantee which was repeated in the last sentence of the United States amendment. She feared, moreover, that the right to make reservations at the time of accession might enable States to stipulate unilateral restrictive conditions which could be extended finally to all the provisions of the Covenant, in such a way as to change it entirely. In the practice of international law, reservations to treaties were valid only if they were accepted by the co-contracting parties.

She was of the opinion that the obligation to enforce the Covenant should be stated in more definite terms than those of the Danish text. The United States amendment had the advantage of saying clearly and concisely that the Covenant was not self-operative and that the States were under an obligation to adapt their laws to its provisions.

Mr. INGLES (Philippines) explained that the purpose of his amendment (E/CN.4/318) was to delete the second sentence of the United States amendment which was designed to omit mention of the automatic incorporation of the provisions of the Covenant in the laws of certain countries. In the Philippines also, all international treaties and conventions, when ratified were incorporated without further formalities in domestic law. Why was it necessary to demand

of such States that, in the case of the Covenant on Human Rights, that incorporation should be effected in accordance with a different procedure? Moreover, the introduction of that sentence in article 2 could not change the constitutional rule of the Philippines, which would be applied in that case as in all others. What did it matter whether that procedure was different in other States where, in accordance with usage, a special law was necessary to include the provisions of the Covenant in domestic law?

The United States delegation wished all countries to be placed on the same footing in that respect. In short, it evoked the rule of reciprocity in the matter. It did not seem, however, that a rule which pertained to diplomatic or commercial bargaining could be applied to a Covenant of that nature. The Philippine Government, as far as it was concerned, was prepared to agree that the Covenant, when ratified, would automatically become a law of its country.

The last sentence of the United States amendment, according to which a State undertook to adopt the necessary legislation to give effect to the rights in the Covenant deserved to be retained, as it was concerned with measures of implementation such as the introduction of penalties for the violation of certain rights, but that question was quite different from that of incorporating the Covenant in domestic legislation. It was for that reason that the Philippine amendment repeated that sentence with slight modifications.

Mr. Ingles shared the opinion of the French representative as regards the Danish amendment; the question of reservations should be dealt with at the end of the Covenant. He felt, moreover, that all the reservations -- a number of which had been mentioned during the discussion of the articles -- should be grouped together in the same text.

The Philippine representative said, in conclusion, that, if his amendment were not adopted, he would be in favour of simply returning to the original text of article 2.

Miss BOWIE (United Kingdom) preferred the text of article 2 as drawn up by the Drafting Committee. The article was a very important one and should specify the details regarding the implementation of a covenant within a country.

Paragraph (a) of the original draft was better than the condensed text of the United States amendment which omitted, for no reason, the stipulation that rights and freedoms should be ensured to all, whether citizens, nationals, foreigners, or stateless persons, and which

restricted the guarantee of those rights to individuals actually on the territory of a State, while the original text extended it to all individuals within its jurisdiction.

The rest of that article -- paragraphs (b), (c) and (d) -- was equally essential, as those paragraphs stated the manner in which the rights and freedoms defined in part II should be ensured within a country; the paragraphs should be retained in their entirety.

The French representative's criticism of the word "reparation" applied to the French text alone, since the English word "remedy" covered all the forms of redress to which he had referred. Finally, it was well to state that such remedy should be enforceable by an independent judiciary and that police and executive authorities should obey the provisions of the Covenant.

The United Kingdom representative thought, therefore, that the original text of article 2 should be retained. As regards the Danish amendment, there was no reason to discuss it at the moment, as it concerned part III of the Covenant.

Mr. Charles MALIK (Lebanon) supported the remarks of the United Kingdom representative. He agreed that article 2 was one of the basic articles of the Covenant and that it should be made as effective as possible.

The United States amendment did not alter the substance of paragraph (a), but in no way improved the form. It was preferable, therefore, to retain the Drafting Committee's text which provided a guarantee of rights to all individuals within the jurisdiction of a State and stated explicitly that that guarantee applied to foreigners as well as to nationals. Furthermore, the second sentence of that amendment, which eliminated the automatic incorporation of the Covenant in the domestic law of States, the constitution of which provided that every treaty became the law of the land, was useless, to say the least. Where such incorporation was automatic, why should any obstacles be set to it? In the footnote to which reference had been made, the Drafting Committee had contented itself with pointing out that, in its opinion, the Covenant was not self-operative, but had been careful not to insert that statement in the Covenant itself. It was entirely a question of the constitutional law of States; there was no reason why the Covenant should interfere with the application of that law.

Paragraphs (b), (c) and (d) were indispensable; they could not be discarded, for they contained real measures for implementing the

Covenant within the signatory States. In his opinion, there was nothing superfluous in those sub-paragraphs, which expressed very simple ideas with the maximum of detail. It was important that the Covenant itself should indicate how, in what form and by what authority, the rights and freedoms defined in part II should be ensured to the individual.

The four paragraphs of article 2 constituted a coherent whole which could not be dissociated.

Mr. Malik would therefore regret the deletion of paragraphs (b), (c) and (d), which would be the result of the adoption of the United States amendment; he noted with satisfaction that the Philippine representative was prepared to return to the original text if his own amendment were not accepted.

The French amendment was a definite improvement upon the original text of paragraph (c) and should therefore be adopted.

The first part of the Danish amendment was open to criticism, as it would remove an essential element from paragraph (a), namely the incorporation of the rights and freedoms of the individual in the domestic law of the signatory States. The second part of that amendment, dealing with reservations, contained an interesting idea which should be examined at a later date.

Mr. LOUTFI (Egypt) preferred the Philippine amendment to that of the United States, because the former did not exclude automatic incorporation of the Covenant in domestic law where permissible under the constitution, and, where it was not automatic, provided for such incorporation by means of law or other procedure.

The Egyptian delegation proposed a new text (E/CN.4/322) for paragraph (d), which guaranteed that any persons whose rights or freedoms had been violated should have "an effective remedy by the competent national tribunals". That text, which reproduced the wording of article 8 of the Universal Declaration of Human Rights, broadened the scope of "reparation suffisante" on which the French representative had commented, and made paragraph (c) superfluous.

Paragraph (d) could easily be deleted. It made no useful contribution, as the police and executive authorities were everywhere and at all times obliged to apply the laws and judicial decisions of their country.

Article 2 could thus be reduced to a first sub-paragraph containing the Philippine amendment, as there was nothing to be said against that, and a second sub-paragraph containing the Egyptian amendment.

/The discussion

The discussion of the Danish amendment should be postponed until part II, with which it had a logical connexion, was examined.

Mr. MORA (Uruguay) was in favour of the original text of article 2, and shared the view of the United Kingdom and Lebanese representatives that paragraphs (b), (c) and (d) should be retained.

He suggested that the words "set forth" in paragraph (a) should be replaced by the word "defined" which was used in paragraph (b) and was more precise. He thought that Mr. Cassin's comment on the concept of "reparation" was of considerable interest and that it should be taken into account when paragraph (b) was drafted. He also supported the French amendment to paragraph (c).

Mr. VILFAN (Yugoslavia) wished to know the meaning of the distinction made between citizens and nationals in paragraph (a) of the original text.

He thought that it should be pointed out that the legislative and other changes provided for at the end of that paragraph had no other purpose than to increase, if that should be necessary, the number of rights and freedoms already laid down under domestic law, and not to reduce them to those which would be defined in part II of the Covenant.

Mr. SHANN (Australia) was opposed to the deletion of paragraphs (b), (c) and (d), to which he attached great importance. But, having made that reservation, he would be in favour of the adoption for paragraph (a) of the United States text, the conciseness of which in no way deserved the criticism made by the United Kingdom and Lebanese representatives. The general expression "all individuals within its territory" was satisfactory, because it included, without giving details, all categories of residents. He proposed however that the words "within a reasonable time" should be inserted after the word "undertakes" in the last sentence of the amendment.

Mr. Shann was ready to accept the French amendment to paragraph (c).

Referring to the Danish amendment, he could neither support the part which related to the deletion of a phrase that he felt was necessary, nor the final part of the amendment regarding reservations, as that would create a particularly confused situation.

/The CHAIRMAN

The CHAIRMAN, speaking as United States representative, stressed the fact that the sentence of her amendment which rejected the automatic incorporation of the Covenant in the law of certain countries, had the merit of placing all States in an identical position, by suppressing the difference which would exist between States where that integration was automatic, and those States which had to take special measures for that purpose.

Mr. SORENSEN (Denmark) replied to the criticisms which had been made against his amendment. He certainly did not object to having his proposal examined at the same time as part III of the draft Covenant, but he wished to point out that his proposal was closely linked with paragraph (a) of article 2, and that it called for the deletion of the last phrase of that paragraph. In fact, if that part of the paragraph were retained, the State which ratified the Covenant before having adapted its domestic law to the provisions of the Covenant, could be blamed by co-signatory States for not having immediately given effect to all the rights and freedoms defined in the Covenant. As the adaptation of domestic law might, on certain points, involve a rather prolonged delay, efforts should be made to avoid an abnormal situation which might arise. For that reason, the obligations assumed by the State from the time the Covenant was ratified should be defined carefully by restricting them to the guarantee of the rights and freedoms on which no reservations had been made. Otherwise certain States, including Denmark, would not be able to ratify the Covenant, in spite of their sincere desire to accede to most of its provisions.

The adoption of the Danish amendment, contrary to the Australian representative's opinion, would create no confusion, since all the signatory States would be fully informed of the existence and scope of those reservations. On the other hand, there was no need to fear that the right granted to States to formulate reservations would encourage them to abuse that right.

The real purpose of the Danish amendment was to allow of the greatest possible number of ratifications being made from the beginning.

Mr. PAVLOV (Union of Soviet Socialist Republics) drew the attention of the Commission to the motion for adjournment which had been submitted by the Indian representative.

/In his opinion

In his opinion, a final drafting could not be made of article 2, which dealt with the exercise and guarantee of the rights and freedoms laid down in part II, as long as the list of those rights and freedoms had not been definitely decided upon.

If, in fact, political rights were included in that part: the right to participate in the government of one's country as an elector and as an elected person; the right of access to all administrative posts; and so forth, it was evident that such rights should be reserved to citizens only, as was customary in all countries. By adopting the present text of article 2, which provided for the extension of all rights to all residents, whether citizens or not of the country which was to guarantee to them the exercise of those rights, the Commission would prejudge the exclusion of certain rights, and that was not admissible.

Having made that criticism of principle, the USSR representative criticized the drafting of article 2, and in particular the distinction made between citizens and nationals of a State which had been pointed out already by the Yugoslav representative. The nationals were no doubt inhabitants of Trust Territories and Non-Self-Governing Territories, and that distinction existed in practice. But that was a regrettable survival of a state of affairs which was in process of disappearing, and, in any case it should not be introduced in a Covenant which established the principle of the equality of all men.

The United States amendment did not include that discrimination, but its very general terms merited the criticism which had been formulated previously.

In conclusion, the only reasonable solution would be to adjourn the debate on article 2 and to take it up again only when part II of the Covenant had been completed.

The CHAIRMAN, speaking as United States representative, remarked that whatever the provisions of the Covenant might be, their application had to be provided for: that was the purpose of article 2. Manifestly the intention of the signatories would be to have all individuals benefit from the rights and freedoms laid down in the Covenant. It was quite evident that if the Covenant added to the list the rights of citizens, the very definition of those rights would result in their being reserved to nationals alone. There was therefore nothing to prevent an immediate decision being taken on the text of article 2.

Mr. PAVLOV (Union of Soviet Socialist Republics) drew the Commission's attention to the fact that the first paragraph of article 2 provided that the rights proclaimed in the second part of the Covenant should be guaranteed by every State to its citizens and nationals, as well as to persons of foreign nationality or stateless persons within its territory, the latter term being used in the United States text. In those circumstances, what would be the situation with regard to political rights, and particularly, the right to vote and to be elected to office? The USSR representative thought that that point was in contradiction with the Constitution of the United States, which did not recognize the right of foreigners to vote, or to hold office. The same was true in other countries. There was a direct connexion between article 2 and the provisions of the second part of the Covenant and therefore a serious inconsistency existed as regards the point mentioned.

Mr. KOVALENKO (Ukrainian Soviet Socialist Republic) was afraid that if article 2 were adopted at the present time, the possibility of adding new provisions in the second part of the Covenant might be restricted; such provisions might also be inconsistent with that article. Furthermore, such a decision would commit the members of the Commission in advance.

The CHAIRMAN explained that if the Commission adopted article 2, it would only be valid for the draft Covenant as it stood, and any new provisions which it might subsequently be deemed useful to include in the second part, would of necessity be examined and formulated, taking into account the provisions of article 2 in order to avoid any contradiction.

Mr. Charles MALIK (Lebanon) said that he would have voted for the motion of adjournment presented by India if that motion had been put to the vote at the beginning of the meeting, but since the Commission had thought it better to continue the discussion, he believed that it would be preferable to come to a decision although it should specifically state that such a decision was not final and was not a formal commitment on anyone; in that way the possibility of subsequently introducing new provisions in the Covenant would not be excluded. For his part, he would not consider himself in any way bound by such a decision.

/Mr. CASSIN

Mr. CASSIN (France) said that, if the Egyptian amendment were adopted, he would willingly withdraw his amendment to the French text, and would agree to combine paragraphs (b) and (c) of the original text of article 2. He thought that it would be advisable to work out a formula which would allay the fears of certain representatives and yet would not contain anything which might prejudice the remainder of the Covenant.

To that end, it was necessary first of all to ascertain what fundamental ideas should be included in paragraph (a). Mr. Cassin suggested in that connexion to use as a basic text the version prepared by the Drafting Committee; to decide then whether it should be stated therein, as the representative of the United States proposed, that the Covenant was not self-operative, and finally to take account of the first part of the Danish amendment, which concerned the reservations some States might formulate with regard to modifications in their domestic law; a second paragraph would mention the executive authorities and a third paragraph would deal with appeals. The article would thus have the advantage of being constructed logically.

Mr. ENTEZAM (Iran) thought that the Indian proposal was very sensible, but agreed with the Lebanese representative that it was too late to decline to make a decision. Mr. Entezam realized that before ensuring rights to all categories of individuals, as provided in article 2, paragraph 2(a), it was necessary in so far as possible, to know what rights were involved. It was obvious that, in the particular case of political rights, a clear inconsistency existed between article 2 and the second part of the Covenant. It would perhaps be possible, in those circumstances for members of the Commission to reach agreement and take a decision, if it were stated that such decision was not final, and would in no way prejudge any new provision which might be added to the second part of the Covenant. In that event, the representative of India could withdraw her proposal.

Mrs. MEHTA (India) was prepared to withdraw her proposal with the reservation that article 2 should be reconsidered at the proper time.

Miss BOWIE (United Kingdom) pointed out that the United States amendment replaced the whole of the original article 2, and consequently deleted paragraphs (b), (c) and (d) which some delegations considered very important. The United Kingdom representative proposed therefore that the United States amendment should replace only paragraph (a) of the original article 2, and that a separate vote should then be taken on paragraphs (b), (c) and (d) of that text.

Mr. PAVLOV (Union of Soviet Socialist Republics) wondered why the Commission had at all costs to reach a decision on article 2, when it envisaged the possibility of reconsidering that article. He thought that was a bad method which would mean a duplication of work. It was better to establish a good text once and for all. He recalled, in that connexion, that at the meeting on 10 June, the Commission had examined in detail the question of the stamping out of fascism and nazism, and of the fight against incitement to hate and hostility. Neither the French representative nor the Lebanese representative had insisted at that juncture that a decision should be taken, in spite of the fact that the Commission had devoted much time to the question. Furthermore, the Commission had deferred consideration of articles 17 and 21, which were also closely linked to article 2. It was no more necessary to vote on the question under consideration than it had been previously in the case mentioned.

Furthermore, in recommending that a separate vote should be taken on paragraphs (b), (c) and (d), the United Kingdom representative was according undue importance to useless details. Mr. Pavlov thought that, in any event, the article would not be satisfactory, and he proposed to adjourn its consideration and to defer any decision in that respect.

The CHAIRMAN requested the Commission to vote on the USSR proposal to defer any decision on article 2 of the draft Covenant on human rights.

The proposal was rejected by 7 votes to 3, with 5 abstentions.

/Mr. ENTEZAM

Mr. ENTEZAM (Iran) considered that it was fully understood that the Commission agreed that article 2 should be re-examined in the event that certain rights proclaimed in the second part of the Covenant could not be applied to all individuals without distinction.

Mr. CASSIN (France) suggested that the beginning of the United States text should be amended as follows: "... undertakes to ensure to all individuals under its jurisdiction, in so far as they are concerned, the rights and freedoms set forth ..."

Mr. Charles MALIK (Lebanon) acknowledged the value of the French representative's efforts at conciliation, but feared that the wording he had proposed might sooner or later lead to some difficulties, for instance, if the Commission were to establish certain rights to be applied throughout the world.

Replying to Mr. SOERENSEN (Denmark), who had supported the French representative's suggestion and had quoted article 12 of the Covenant as an example, Mr. Charles MALIK (Lebanon) said that there was a fundamental difference between the limitations which could be envisaged in any given article of the operative part of the Covenant, and those which might be laid down in an article, such as article 2, dealing with the whole of the Covenant.

Mr. CASSIN (France) withdrew his proposal.

The CHAIRMAN said that the question might be solved temporarily by the addition of a note stating that article 2 had been adopted provisionally until the second part of the Covenant had been finally drafted. She called for a vote on a proposal to that effect.

The proposal was adopted by 14 votes to none, with 1 abstention.

The CHAIRMAN then invited the Commission to vote separately on the various parts of the United States amendment, emphasizing that the amendment would, as agreed, replace only paragraph (a) of the original text.

Mr. SOERENSEN (Denmark) said that there would be no need to vote on the first part of his amendment if the Commission adopted the United States proposal. The second part of his amendment, which

/included

included certain additions, might be considered together with the third part of the Covenant.

Mr. Charles MALIK (Lebanon) pointed out that the Commission should vote first on the deletion of the second sentence of the United States amendment and of the words "as a matter of domestic law" in the same text. Those changes resulted from the Philippines amendment.

The Commission decided to delete the second sentence of the United States amendment by 9 votes to 1, with 4 abstentions.

The Commission decided to delete the words "as a matter of domestic law" in the last sentence of the United States amendment, by 5 votes to 2, with 8 abstentions.

Mr. SHANN (Australia) recalled that he had proposed the addition of the words "within a reasonable time" after the words "undertakes ... to adopt" in the last sentence of the United States amendment, and requested a vote on his proposal.

The Australian amendment was adopted by 5 votes to 4, with 6 abstentions.

Mr. SOERENSEN (Denmark) requested a separate vote on the first and second sentences of the United States amendment.

Mr. CASSIN (France) proposed to substitute the words "within its jurisdiction" for the expression "within its territory".

The CHAIRMAN, speaking as United States representative, observed that her delegation had used the word "territory" to allow for such temporary situations as the occupation of Germany, for instance.

Mr. PAVLOV (Union of Soviet Socialist Republics) remarked that the Chairman's explanation was extremely interesting as it illustrated the general attitude of the United States of America, which, in view of the fact that the Covenant would not be ready for ratification before the following year, seemed to prejudge the continuation of the occupation.

The CHAIRMAN, speaking as United States representative, protested against the interpretation given to her statement by the USSR representative. The United States delegation had approached the matter from an angle which was solely valid for the present situation without prejudging the development of that situation in any way.

She called for a vote on the French proposal to substitute the notion of jurisdiction for that of territory.

The French proposal was adopted by 9 votes to 3, with 3 abstentions.

/Mr. MORA

Mr. MORA (Uruguay) recalled that he had proposed that the word "defined" should be substituted for the words "set forth" in the first and last sentences of the United States amendment.

Miss BOWIE (United Kingdom) wondered whether it would not be better to deal with purely drafting changes when drawing up the final text of the covenant.

The CHAIRMAN thought that as there were no objections it would be quite easy to agree to the request of the Uruguayan representative.

It was so decided.

The CHAIRMAN then put to the vote the first sentence of the United States amendment.

The first sentence of the United States amendment was adopted by 8 votes to none, with 6 abstentions.

The CHAIRMAN then called for a vote on the second sentence of the United States amendment beginning with the words "where not already provided by legislative or other measures...".

The second sentence of the United States amendment was adopted by 8 votes to 2, with 6 abstentions.

Mr. Charles MALIK (Lebanon) wished to explain that he had abstained from voting on the various parts of the United States amendment, as he preferred the original text of paragraph (a) of article 2; for that reason he would vote against the whole of the new text.

The CHAIRMAN called for a vote on the whole of the new amended text of the United States amendment to replace paragraph (a) of article 2.

The new paragraph (a) was adopted by 8 votes to 2, with 4 abstentions.

Mr. LOUTFI (Egypt) said that the new paragraph (b) he had suggested was to replace paragraphs (b), (c) and (d) of the original text.

Mr. Charles MALIK (Lebanon) said it would be necessary henceforth to take into account the new text of paragraph (a) resulting from the United States amendment, and proposed, therefore, two amendments to the text of the new paragraph (b) suggested by the Egyptian delegation: firstly, to retain the second part of paragraph (b) of the original

/draft,

draft, from the words "notwithstanding that the violation...", and secondly, to retain also the original draft of paragraph (d), but to make it a separate paragraph. In his view it was vital that the two important ideas contained in the amendments which he proposed should not be dropped.

Following an observation by Miss BOWIE (United Kingdom), the CHAIRMAN said that before taking a decision upon the Egyptian amendment, the Commission should vote on the two Lebanese amendments which related to it. She invited the Commission to vote upon the first amendment submitted by the Lebanese delegation.

The Lebanese amendment was adopted by 7 votes to 2, with 6 abstentions.

Mr. CASSIN (France) pointed out, in connexion with the second Lebanese amendment, that paragraph (d) of the original draft should also have been included, if paragraph (a) was to be retained. Since, however, a new and far broader text had replaced the original paragraph (a), paragraph (d) had been rendered valueless. Similarly, paragraph (c) would also become superfluous if the Commission decided to adopt the Egyptian amendment.

The CHAIRMAN put to the vote the second Lebanese amendment, to the effect that paragraph (d) should be retained as a separate paragraph.

The second Lebanese amendment was rejected by 7 votes to 5, with 3 abstentions.

The CHAIRMAN put to the vote the amendment submitted by the Egyptian delegation, as modified by the Lebanese amendment.

The Egyptian amendment, as modified, was adopted by 14 votes to none, with 1 abstention.

The CHAIRMAN put to the vote article 2 as a whole and as amended.

Article 2 was adopted by 12 votes to none, with 3 abstentions.

The CHAIRMAN, speaking as the United States representative, wished to point out, on behalf of her Government, that if the Covenant on Human Rights were signed and ratified, the obligations which it contained would be respected in the United States of America by means of legislative or other measures currently in force or which might be instituted in order to carry out the provisions of the Covenant, especially in connexion with articles 5 to 22. Those articles of the Covenant would not be self-operative as far as United States domestic law was concerned.

Article 3

The CHAIRMAN drew the Commission's attention to the fact that the Drafting Committee had decided not to consider the current text of article 3 (Geneva text) before the articles on the implementation of the Covenant had been drafted. The Commission was faced with the same problem and for that reason she proposed that it should also postpone consideration of article 3.

The Chairman's proposal was adopted by 7 votes to none, with 8 abstentions.

APPOINTMENT OF MEMBERS OF THE COMMITTEE TO EXAMINE THE PROVISIONAL QUESTIONNAIRE CONCERNING TRUST TERRITORIES

The CHAIRMAN announced that the representatives of the United Kingdom, India, the Union of Soviet Socialist Republics, the Philippines, Denmark and Belgium were appointed as members of the committee to examine the provisional questionnaire concerning Trust Territories.

The meeting rose at 5.40 p.m.