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Sixth Session

SUMMARY RECORD OF THE HUNDRED AND NINETEETH MEETING

Held at Lake Success, New York,
on Friday, 12 May 1950, at 2.30 p.m.

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<u>Chairman:</u>	Mrs. ROOSEVELT	United States of America
<u>Rapporteur:</u>	Mr. MALIK	Lebanon
<u>Members:</u>	Mr. WHITLAM	Australia
	Mr. NISOT	Belgium
	Mr. VALENZUELA	Chile
	Mr. CHANG)	China
	Mr. TSAO)	
	Mr. SORENSEN	Denmark
	Mr. RAMADAN	Egypt
	Mr. CASSIN)	France
	Mr. LEROY-BEAULIEU)	
	Mr. THEODOROUPOULOS	Greece
	Mrs. MEHTA	India

Members (continued):

Mr. MENDEZ	Philippines
Miss BOWIE	United Kingdom of Great Britain and Northern Ireland
Mr. ORIBE	Uruguay
Mr. JEVREMOVIC	Yugoslavia

Representative of a specialized agency:

Mr. LEMOINE	International Labour Organisation (ILO)
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Representatives of non-governmental organizations:

<u>Category A:</u>	Miss SENDER	International Confederation of Free Trade Unions
	Mrs. SPRAGUE	World Federation of United Nations Associations
<u>Category B:</u>	Mr. NOLDE	Commission of the Churches on International Affairs
	Mr. MOSKOWITZ	Consultative Council of Jewish Organizations
	Mr. HALPERIN	Co-ordinating Board of Jewish Organizations
	Mrs. CARTER	International Council of Women
	Mr. BEER	International League for the Rights of Man
	Miss SCHAEFER	International Union of Catholic Women's Leagues
	Mrs. FREEMAN	Liaison Committee of Women's Inter- national Organizations
<u>Secretariat:</u>	Mr. SCHWELB	Assistant Director of the Division of Human Rights
	Mr. DAS	Secretary of the Commission

DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS: MEASURES OF IMPLEMENTATION
(E/1371, Annex III, E/CN.4/164/Add.1, E/CN.4/353/Add.10, E/CN.4/358, chapter IX,
E/CN.4/366, E/CN.4/419, E/CN.4/444, E/CN.4/452, E/CN.4/457, E/CN.4/474,
E/CN.4/474/Corr.1, E/CN.4/487) (continued)

1. The CHAIRMAN asked the Commission to resume its discussion of the joint proposal concerning measures of implementation (E/CN.4/474).

Article 12

2. The CHAIRMAN pointed out that alternative B had been automatically dropped by virtue of the Commission's decision against elections by the International Court of Justice; accordingly only alternative A remained to be discussed.

3. Mr. NISOT (Belgium) proposed that the article should begin "The Secretary and the Assistant Secretary of the Committee..." in order to provide for a replacement in case of the Secretary's absence.

Article 12 as amended was adopted by 9 votes to none, with 5 abstentions.

Article 13

Article 13 was adopted by 11 votes to none, with 2 abstentions.

Article 14

Article 14 was adopted by 12 votes to none, with 2 abstentions.

Article 15

Mr. NISOT (Belgium) pointed out that in the General Assembly decisions were sometimes taken by a very small majority, owing to the large number of abstentions. He thought it important to provide against such an occurrence in the case of the committee, and therefore proposed the deletion of the words "and voting" at the end of the first sentence of sub-paragraph (b).

5. Mr. CASSIN (France) supported the Belgian amendment.

6. Mr. MALIK (Lebanon), referring to sub-paragraph (c), said that he interpreted the text as indicating that the States referred to would not have the right to vote; he felt, however, that that fact was not made sufficiently clear in the text and should be stated explicitly.

7. The CHAIRMAN thought that the point was made clear in article 16.

/8. Mr. SCHEELB

8. Mr. SCHWELB (Secretariat) pointed out that articles 15 and 16 dealt with different aspects of the question. Article 15 (c) referred to the right of a representative of a State to be heard in the committee solely as a party to the proceedings. Representatives of States as such would have no right to vote; they would vote only as members of the committee. Article 16 dealt with the internal organization of the committee.

9. Mr. MALIK (Lebanon) declared himself satisfied with the explanation.
Article 15 as a whole, as amended, was adopted by 12 votes to 1, with 1 abstention.

Article 16

10. Mr. NISOT (Belgium) proposed the addition of the words "party to the Covenant" after "A State" at the beginning of paragraph 1.

11. He observed, further, that the article as framed seemed to establish some discrimination against the States not represented in the committee, since a State so represented might be considered, for practical purposes, as having a vote.

12. Mr. CASSIN (France) pointed out that the case of a national of a State who was a member of the committee should not be confused with that of a national of a State taking part in a debate. The article as framed constituted a guarantee that any State could always have one of its nationals on the committee.

13. Mr. NISOT (Belgium) proposed that, in that case, the words "with the right to vote" should be inserted after the word "participate" in paragraph 1.

14. Mr. CASSIN (France) had no objection to that amendment.

15. Mr. ORIBE (Uruguay) asked what was the exact meaning of the phrases "State concerned", in paragraph 1, and "States in the same interest" in paragraph 2. He thought the terms were perhaps too broad, since more than one State might consider itself directly concerned or interested, and suggested that the phrase "parties to a dispute" might be preferable.

16. The CHAIRMAN saw no objection to the existing wording, which signified simply States complaining or complained against.

17. Mr. CASSIN (France) explained that although the article had been modelled on an article in the Statute of the International Court of Justice, it should be remembered that the committee would not be a tribunal. The article had been drafted in such a way as not to give excessive legal significance to the proceedings of the committee, while at the same time covering the fact that several States might be interested in a case.

18. Mr. WHITLAM (Australia) expressed some doubt concerning the exact meaning of the last sentence of paragraph 2.

19. Mr. CASSIN (France) explained that the wording of paragraph 2 had been taken from article 31 of the Statute of the International Court of Justice; he would hesitate to try to improve upon that text by making it more explicit.

20. Mr. NISOT (Belgium) objected to the phrase "as one party only", in the first sentence of paragraph 2; the States in question would not constitute parties in the legal sense. He suggested that the word "party" should be deleted from the English text, and that the French text should read "ne comptent ... que pour un seul...".

21. He was not sure, moreover, whether the French phrase "font cause commune", in paragraph 2, was exactly equivalent to the English phrase "in the same interest".

22. The CHAIRMAN pointed out that the two phrases had been used in the Statute of the International Court, as being equivalent.

23. She agreed to the first suggestion of the Belgian representative.

24. Miss BOWIE (United Kingdom) objected to the deletion of the word "party"; she felt that several States could not in any circumstances be regarded as one State. In her opinion the original wording did not convey any impression of a

dispute or litigation. It was largely a matter of translation; the connotation of the word "party" in English was fairly broad. She saw no objection to its use in the present context.

25. Mr. NISOT (Belgium) explained that the French word "partie" was more restricted in meaning, signifying only a party before a court. He maintained his view that the use of the word would imply a litigation rather than a sort of action at law.

26. Mr. WHITLAM (Australia) and Mr. MENDEZ (Philippines) supported the position of the Belgian delegation, and felt that in the case under consideration the several States should be reckoned as one.

27. Miss BOWIE (United Kingdom) did not press her objection.

Article 16 as a whole, as amended, was adopted by 9 votes to none, with 3 abstentions.

28. Explaining his vote, Mr. TSAO (China) said that he could not support the statement that several States should be reckoned as one, which he considered ambiguous.

Article 17

29. Mr. ORIBE (Uruguay) requested the addition of the words "or upon the request of one of the States parties to the Covenant", at the end of paragraph 1. He thought the text as it stood did not indicate whether a meeting must automatically be convened upon the presentation of a complaint, or whether the convening of such meetings would be left to the discretion of the Chairman or any four members.

30. The CHAIRMAN pointed out that the committee would be a permanent organ, with the right to meet whenever it had business to transact. There was no necessity for the Uruguayan amendment, since any State had the right to present a complaint at any time, and the Committee would be required to meet upon presentation of a complaint.

31. Miss BOWIE (United Kingdom) thought the point raised by the Uruguayan representative was met by the first words of article 21, "The Committee shall deal with any matter...".

32. Mr. ORIBE (Uruguay) thought that the point was a highly important one and should be stated clearly and explicitly. Experience had shown that some international organs had at times evaded their responsibilities and deliberately failed to convene meetings in order to avoid dealing with a particular matter. If, however, the Chairman's interpretation was accepted by the Commission and noted clearly in the summary record, he would not press his amendment.

33. In reply to a question by Mr. MENDEZ (Philippines), Mrs. MEHTA (India) pointed out that article 14 provided for the election of a Vice-Chairman, who could convene meetings in case of inability of the Chairman to do so.

34. Miss BOWIE (United Kingdom) proposed that the first part of paragraph 1 should be altered to read "... the Committee shall meet whenever a matter is referred to it under article 20, or at such other times...".

35. Mr. CASSIN (France), while agreeing that the duties of the committee should be clearly stated, nevertheless felt that it should not be bound by too rigid rules.

36. Mr. NISOT (Belgium) suggested, as an alternative, the addition of the words "and in any event when a matter is referred to it under article 20", at the end of paragraph 1.

37. Miss BOWIE (United Kingdom) accepted the Belgian proposal.

38. Mr. ORIBE (Uruguay) proposed the insertion of the word "normally" before "meet" in paragraph 2. He felt that the committee should be given enough latitude to cover emergencies, and should be enabled to go into the field, if necessary, in order to collect information in connexion with cases brought before it.

/39. Mr. MENDEZ

39. Mr. MENDEZ (Philippines) agreed that the committee should be able to meet at any place it deemed necessary, in case unforeseen circumstances should prevent it from meeting at United Nations headquarters or at Geneva.

40. Mrs. MEHTA (India) supported the Uruguayan amendment.

41. The CHAIRMAN, speaking as the representative of the United States of America, pointed out that any provision enabling the committee to travel in the course of its work would have to be considered from the budgetary point of view and would almost certainly give rise to objections. She preferred the text as it stood. The committee should be able to summon witnesses and collect information, but her delegation could not support any provision which might permit it to become an investigating body.

42. Mr. WHITLAM (Australia) felt that the original wording of the article would not constrain the committee to meet exclusively in one of the two places mentioned. Any responsible body, in such circumstances, must be considered as having the right to change its place of meeting if events or its work required such a change. He felt that that right was implicit in the original text, and would support that text.

43. Mr. NISOT (Belgium) proposed the addition of the words "unless it is impossible", at the end of paragraph 2.

44. Mr. ORIBE (Uruguay) pointed out that two different questions were under discussion; first, the right of the committee to meet wherever it deemed necessary, with the consent of the State concerned, and second, the right of the committee to investigate cases and to enter the territory of a State without its consent. He felt that if the work of the committee was not to be hampered, it must be permitted to meet wherever it deemed necessary; such permission would not affect its official competence, which would be considered later. He had borne in mind the possibility mentioned by the representative of Belgium when wording his amendment.

/45. The CHAIRMAN

45. The CHAIRMAN supported the amendment proposed by the representative of Belgium.

The Uruguayan amendment was rejected by 6 votes to 3, with 3 abstentions.

The Belgian amendment was rejected by 5 votes to 3, with 4 abstentions.

46. Mr. NISOT (Belgium) suggested that before a vote was taken the Commission should indicate whether it agreed with the interpretation which the Australian delegation seemed to give to paragraph 2. It appeared from that interpretation that the Committee would be empowered to make investigations in the field and to that end could enter the territory of States without their consent.

47. The CHAIRMAN interpreted paragraph 2 in its literal sense; i.e., that the Committee would be obliged to meet either at United Nations headquarters or at Geneva.

48. Miss BOWIE (United Kingdom) endorsed that interpretation.

49. Mr. WHITLAM (Australia) stated that his interpretation had not been intended to refer to the substantive powers of the committee, which would be dealt with later.

50. The CHAIRMAN put to the vote the original text of article 17 as a whole, as amended in paragraph 1 by the Belgian delegation.

Article 17 as amended was adopted by 10 votes to 1.

Article 18

51. Mr. LEROY BEAULIEU (France) recalled that alternative B, the French proposal for a second paragraph, had been dropped as a result of the Commission's earlier decision concerning the method of election of the committee, leaving only the agreed text for the first paragraph.

Article 18 was adopted by 9 votes to none, with 2 abstentions.

Article 19

52. Mr. CRIBE (Uruguay) wondered about the financial implications of the article under consideration, a matter which he regarded as most serious.

53. The CHAIRMAN felt that some such provision as that in article 19 would be needed if the covenant were adopted. The question of the extent of the funds would have to be decided later. The Secretary-General's financial estimate (E/CN.4/474/Add.1) did not deal with the matter exhaustively, and a more adequate statement on the financial implications would be forthcoming. In the meantime the Commission should adopt article 19.

54. Mr. SCHWELB (Secretariat) explained that the Secretariat's paper on the financial implications had been drawn up in a provisional form so as not to burden the Commission's current discussion of important issues of principle with technical financial considerations. In preparing a more detailed financial estimate, the Secretariat would be confronted with a number of questions to which no answer could as yet be given, such as the probable number of meetings of the proposed committee.

55. There was another aspect of the problem. The covenant would apply only to signatory States. If the United Nations were to finance the implementation machinery, a specific authorization of the General Assembly would be required. Strictly speaking, it would be the General Assembly's resolution authorizing such a commitment, rather than the covenant itself, which would necessitate a statement by the Secretary-General on financial implications.

Article 19 was adopted by 9 votes to none, with two abstentions.

Article 20

Article 20, paragraph 1, was adopted by 10 votes to none, with 1 abstention.

56. Mr. NISOT (Belgium) called attention to a mistake in the French text only of paragraph 2. He suggested that it should be corrected by the deletion of the words "en notifiant le Secrétaire général des Nations Unies et l'autre État intéressé".

The correction proposed by the Belgian representative was accepted.

Article 20, paragraph 2, was adopted by 10 votes to 1, without abstentions.

57. Mr. TSAO (China) remarked that in the paragraph just adopted, there was a reference to "the Human Rights Committee". He feared that the similarity in names between the Commission on Human Rights and the Human Rights Committee might

/eventually

eventually lead to confusion. The matter might be considered at a later stage.

58. Miss BOWEN (United Kingdom), while agreeing with the Chinese representative, pointed out that article 1 stated that the Human Rights Committee would be referred to in subsequent articles simply as "the Committee". The words "Human Rights" in article 20, paragraph 2, should be deleted.

It was so decided.

59. Mr. ORIBE (Uruguay), in explanation of his vote, reiterated that respect for human rights had been transformed, by the Charter of the United Nations and the draft covenant currently under consideration, into an international question. A violation of human rights affected the international community as a whole, and not merely the injured individual or the claimant State, as the case might be.

60. In the circumstances, the primary object of any implementation procedure must be, not the prevention or the elimination of disputes, but the establishment of the facts, the restoration of the legal situation which had been impaired and reparation for the wrong suffered. That could not possibly be achieved by resort to the diplomatic procedures which were part and parcel of international conciliation. Concerning measures of implementation, the delegation of Uruguay therefore favoured a juridical solution. That was why he had voted against paragraph 2 and would vote against the article as a whole.

Article 20 as a whole was adopted by 10 votes to 1, without abstentions.

Article 21

61. Mr. NISOT (Belgium) suggested the use of the singular in the final phrase of the article, making it read "when a State concerned is governed by such procedure."

62. The CHAIRMAN, speaking as the representative of the United States, stated that she could accept the proposed change.

/63. Mr. SORESEN

63. Mr. SORENSEN (Denmark) asked the authors of the joint proposal concerning measures of implementation whether the "special procedure" referred to in article 21 included recourse to the international Court of Justice, and whether the proposed committee would be incompetent to consider a complaint by one State party to the draft covenant against another State which was likewise a party thereto, if both States had accepted article 36 of the Statutes of the International Court of Justice?
64. Mr. CASSIN (France) replied in the negative. The proposed committee's task would be one of conciliation. "Special procedure" would apply, for example, to the machinery established by a specialized agency, such as the ILO. The latter had recently established a convention on trade union rights, a matter bearing on the right to freedom of association contained in the draft covenant. It was intended that a case involving two parties to the ILO convention concerned should be dealt with in accordance with that convention as a special procedure rather than be referred to the proposed committee.
65. Mr. ORIBE (Uruguay) inquired whether the word "matters" referred to concrete cases or to categories.
66. The CHAIRMAN stated that in the English text, at any rate, the reference was to cases.
67. Mr. CASSIN (France) said that while the English word "matters" might give rise to the question asked by the Uruguayan representative, the French word "matières" could only refer to categories and not to concrete individual cases. Since the paragraph had been originally submitted in French, a more adequate English equivalent should be found for the word "matières".
68. Referring to the suggestion of the Belgian representative, he feared that the use of the words "a State" might prove too restrictive.

69. Mr. NISOT (Belgium) thought that the misgivings of the French representative might be met by the use of the words "one of the States". It was not necessary for the special procedure to be applied to the two States concerned for article 21 to become operative. It would suffice if the special procedure was applied to one of them. The Trusteeship system was governed by special procedure under the Charter. If only one of the two States concerned -- an Administering Authority -- was governed by the special procedure laid down in the Charter, article 21 would apply to matters concerning the Trust Territory, although that procedure would not apply to either of the States appearing before the Committee.

70. Mr. CASSIN (France) thought that while the Belgian amendment would meet the type of case to which the latter had alluded, it would not be adequate to deal with all possible contingencies.

71. Mrs. MEHTA (India) remarked that for the purposes of article 21, "States concerned" were States against which a complaint had been filed and not the complaining States. If a complaint in connexion with an ILO convention were made against a State party to that convention, the complaint should be dealt with in accordance with the procedure established by the latter.

72. Mr. ORIBE (Uruguay) stated that the fact that the Belgian representative had raised the question of trusteeship made it even more essential to clarify the provisions of article 21, and in particular the meaning of the words "matters" and "special procedure".

73. Miss BOWIE (United Kingdom) feared that article 21 had been compressed too much during the drafting in the informal sub-committee. The result was not altogether happy. She wondered whether the Belgian and French representatives would be satisfied by the deletion of the last phrase of the article, namely the words "when the States concerned are governed by such procedure."

74. Mr. NISOT (Belgium) thought that the proposed deletion might meet the case.

75. Mr. SORENSEN (Denmark) suggested that article 21 should be redrafted to read as follows: "The Committee shall deal with any matter referred to it under article 20, but shall have no power in cases in which a special procedure within the framework of the United Nations or the specialized agencies is applicable to the State against which a complaint is made." Alternatively the words "to the receiving State" might be used instead of the words "to the State against which a complaint is made". While he personally would prefer the former alternative, he had suggested the latter to meet the views of some of the other members. The expression "the receiving State" occurred two times in article 20.

76. Mr. MENDEZ (Philippines) expressed concern lest the provision for special procedure should be used as a shield for the violation of human rights.

77. Mr. VALENZUELA (Chile) expressed regret at not having been able to participate in the debate from the beginning. He had studied article 21 most attentively and felt that it raised many questions. It would appear from what had been said that complaints alleging violation of human rights in Trust Territories could not be referred to the proposed Committee. If that were so, it should be stated explicitly, so that members would clearly know what they were called upon to decide by their vote.

78. He noted that the Danish amendment referred to cases in which a special procedure was "applicable". The question was, who should decide whether or not a special procedure was applicable -- the proposed Committee itself, or the Administering Authority, in the case of Trust Territories.

79. The questions which he had raised should be discussed and clearly answered.

80. Mr. ORIBE (Uruguay) recalled that he had asked similar questions. He would also like to know precisely what cases the proposed Committee would be empowered to consider. The scope of the Committee was being progressively reduced; it should be made clear exactly what it would be authorized to do.

81. Mrs. MEHTA (India) said that when article 21 had been considered in the informal sub-committee, she had thought that "special procedure" referred only to ILO conventions, and specifically to the ILO Convention on trade union rights. She had not realized that it would also apply to Trust Territories, and she pointed out that no machinery existed for the specific purpose of considering alleged violations of human rights in Trust Territories. If any doubt persisted on that point, she would vote against article 21.

82. Mr. NISOT (Belgium) considered that the matter of possible violations of human rights in Trust Territories was clearly within the scope of the special provisions in the Charter dealing with the trusteeship system.

83. Mr. SORENSEN (Denmark) observed that article 21 had no bearing whatever upon complaints filed by individuals concerning alleged violations of rights in Trust Territories. According to the terms of the draft covenant, complaints could only be brought by States. In the case of a complaint filed by a State against another State which was an Administering Authority of a Trust Territory, he personally thought that the proposed committee would be competent. However, the Trusteeship Council, having a greater knowledge of that specialized field, might easily be better equipped to deal with such a case.

84. In reply to the question asked by the representative of Uruguay, he explained that "special procedure" was the opposite of "general procedure" and that it would apply to the special procedures established in certain relevant ILO conventions, as had already been mentioned. It might also be held to apply in matters involving Trust Territories.

85. He agreed with the Chilean representative that the question of who should decide when a special procedure was applicable represented a very real problem. That problem had not, however, been created by the Danish amendment to article 21, since it had also been implicit in the original form of that article. Whenever a question of competence was raised, the body concerned usually decided the question itself. He would have no objection to adding another sentence to article 21, reading "In case of doubt, the Committee decides whether it is competent".

86. Miss BOWIE (United Kingdom) considered that the trusteeship system and ILO conventions were covered by the term "special procedure". She suggested that the words "to deal with" should be added to article 21 as amended by the Danish representative, which would thus read, "but shall have no power to deal with cases...". She pointed out that the term "special procedure" referred not only to existing special procedures, but also to possible future ones.

87. The question raised by the Chilean representative as to who should decide whether a special procedure was applicable was indeed very difficult to answer. Experience had shown that most bodies were likely to assert their competence in border-line cases. Thus, if a case involving a Trust Territory were referred to the proposed committee, the latter might assert that it was competent to deal with it, while competence might also be claimed by the Trusteeship Council. Some instances of conflicting claims of competence might perhaps have to be referred to the International Court of Justice for final decision.

88. Mr. MALIK (Lebanon) thought that an interpretation such as that of the United Kingdom representative might lead to inequalities. While the United Kingdom would have the right to file a complaint against the Lebanon with the proposed committee, the Lebanon would not be able to file a similar complaint concerning a possible violation of human rights in a Trust Territory administered

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by the United Kingdom, although it could file such a complaint involving the United Kingdom itself. Complaints involving violations of human rights occurring in any part of the world should be receivable by the proposed committee; the latter's jurisdiction should not be limited to metropolitan areas. After all, the committee would be a serious and impartial body. He could not support any provision which would exclude Trust Territories and Non-Self-Governing Territories from review by the proposed committee.

89. Mr. CASSIN (France) pointed out that the Charter differentiated between Trust Territories and Non-Self-Governing Territories. The inhabitants of Trust Territories had the right, under the Charter, to individual petition, a right not accorded to inhabitants of Non-Self-Governing Territories or, indeed, any other territories.

90. Alleged violations of human rights in Trust Territories could not be considered by the proposed committee, because a special procedure within the meaning of article 21 was prescribed by the Charter. The committee would, however, be free to consider complaints filed by a State involving the Non-Self-Governing Territories of another State, if both were parties to the draft covenant.

91. The matter of trade union rights was covered in an ILO convention and was therefore subject to "special procedure" within the meaning of article 21. It was the task of the Commission to fill any gaps in the international protection of human rights and not to duplicate already existing machinery designed for that purpose.

92. Mr. MENDEZ (Philippines) thought that the wording of article 21, both in its original form and in the form suggested by the Danish representative, was unduly restrictive and that the article should read as follows: "The Committee shall deal with any matter referred to it under article 20, except where special procedure has been provided within the framework of the United Nations." Furthermore, before agreeing to accept an alternative special procedure, it should be ascertained that the special procedure concerned was adequate.

93. Mr. NISOT (Belgium) considered that the Danish amendment was the best of all the alternatives confronting the Commission. It would be impracticable to establish an exhaustive list of special procedures. The Charter itself specified such procedures when it described the competence and functions of the various United Nations organs.

94. Mr. ORIBE (Uruguay) observed that the remarks of the Belgian representative seemed to imply that the provisions of the Charter dealing with recourse to the Security Council, for example, laid down a special procedure within the meaning of article 21, whereas others would undoubtedly regard it as a general procedure. The Charter specified that two parties to a dispute should first attempt to settle it by other means before having recourse to the Security Council. With the Belgian interpretation, however, a vicious circle might be established: the Commission would, in effect, tell the parties to a dispute involving human rights to go to the Security Council, only to be told by the Security Council that they should first attempt to settle the matter by other means, such as reference to the proposed committee. To break that vicious circle, the draft covenant must be clear and explicit.

95. Mr. MALIK (Lebanon) stated that he would vote against article 21, which seemed to him to be intended to limit the competence of the proposed committee.

96. If the argument of the Belgian representative were followed to its logical conclusion, it could be maintained that human rights themselves were clearly within the purview of the Charter and that parties to a dispute involving alleged violations of human rights should ignore the proposed committee altogether, and should take their case direct to the General Assembly.

97. Although not ideal, the trusteeship procedure embodied in the Charter was good and he believed in it. The Trusteeship Council was performing a useful task and he was convinced of the integrity and ability of its members, who were doing good work in difficult circumstances, but it was a political body not concerned exclusively with human rights per se, as the proposed committee would be. He could not, therefore, support the argument that the Trusteeship Council was doing all that was required and that the proposed committee ought not to trespass on its preserves, so to speak.

98. For all those reasons he would vote against article 21 unless it were redrafted so as to enable the proposed committee to consider alleged violations of human rights anywhere in the world.

99. Mr. VALENZUELA (Chile) felt that, quite apart from the principles involved, the text should at least be clear and unequivocal, so that in voting on it the Commission would be fully aware of its possible implications. As it stood, however, the article was far from clear. He could think of a number of cases for which the procedure would be doubtful under its provisions.

100. For example, Italian Somaliland and Eritrea were Trust Territories under the administration of Italy; he was not clear whether a State would be able to bring a complaint concerning possible violations of human rights in those Territories, in view of the fact that the Administering Authority concerned was not a Member of the United Nations. Secondly, considering that the status of South West Africa was still doubtful, he wondered whether the committee would be competent to deal with a complaint brought by a State regarding violations in that Territory. Thirdly, the situation under the terms of the article with respect to the Anglo-Egyptian Sudan, which was under the administration of both the United Kingdom and Egypt would have to be defined. Finally, he asked whether the terms of article 21 would apply in the case of Tangier, which was under international administration.

101. He therefore agreed with the Lebanese representative that the application of the article was not clear with regard to a number of cases and consequently he would vote against it.

102. The CHAIRMAN thought that the article might be unnecessary in view of Article 103 of the Charter, which provided that in the event of a conflict between obligations under the Charter and obligations under other international agreements, the former should prevail.

103. Mr. CASSIN (France) recalled that the purpose of the Commission's work was to provide under the draft covenant for the protection of human rights in general in all cases which were not covered by some other provision. On the basis of that principle the committee's competence would already be very wide, as most cases which arose came into that category. Those few, however, for which some other arrangement existed should remain outside its competence and

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be settled according to the special procedure provided. Instead of giving the committee unlimited scope and infringing on the competence of specialized agencies and other bodies, the Commission should entrust the committee with a reasonably limited amount of work which would not interfere with the activities of other bodies and which it would be able to carry out.

104. Miss BOWIE (United Kingdom) reminded the Commission that the proposed committee's competence was based on the principle that it should deal only with complaints brought by States parties to the covenant. The trusteeship system, however, provided for a much wider protection of human rights by permitting the Trusteeship Council to hear individual petitions and to carry out investigations on the spot. Consequently there was no need to be concerned over the adequate protection of human rights in Trust Territories.

105. The question had been raised whether a hearing of complaints by the General Assembly constituted a general or a special procedure. Her own view was that it was a general procedure under the Charter, but that the General Assembly could set up through its organs such special procedure as it deemed desirable. The Commission, however, should decide on that point. She thought that most States would prefer that the cases should be brought before the committee in the first instance for peaceful settlement, and that only if the latter failed in its attempts should they be taken to the General Assembly.

106. Mr. MALIK (Lebanon) thought that the French representative's apprehensions regarding possible interference in the activities of specialized agencies were unfounded. The draft covenant did not deal with social or economic rights, with which the specialized agencies might conceivably be concerned, but only with personal rights which were outside the latter's competence.

107. As regards protection of human rights under the trusteeship system, he disagreed with the views expressed by the United Kingdom representative. With all due respect for the Trusteeship Council and the work it was doing, it was a political organ, with a political outlook, concerned with the administration of Trust Territories in general, and not merely from the point of view of the protection of human rights.

/The committee,

The committee on the other hand, would be an impartial, non-political body which would deal exclusively with the protection of human rights as such. Consequently it could not be said that the trusteeship system provided a better guarantee of human rights than the proposed committee. Both methods were mutually compatible and equally necessary.

108. Mr. CASSIN (France), in reply to the Lebanese representative, pointed out that the right of association, as laid down in the covenant, constituted a trade union right and consequently entered within the competence of the ILO. There were a number of such rights in the covenant which fell within the competence of specialized agencies, and it would be erroneous to state that the covenant dealt only with personal human rights which were of no concern to specialized agencies.

109. With reference to the question of the trusteeship system, he felt that the Commission had no right to alter, through the covenant, the procedure laid down in the Charter, which made the Trusteeship Council the chief guardian of human rights in Trust Territories. While the Council, after seeing the procedure set up under the committee work efficiently, might subsequently decide to refer some questions to the latter, it could not be divested of its supreme competence in all matters affecting Trust Territories. Moreover, under the trusteeship system the Administering Authorities had the special obligation to permit investigations to be carried out in the territories under their administration. If two parallel procedures were established for the same questions it would put the Administering Authorities at a disadvantage, since, when faced with a complaint in the Trusteeship Council, they would have to permit an investigation within the territories they administered, while States which did not administer Trust Territories would never have to submit to such investigation by the committee of alleged violations in their own territories. Consequently, in order to prevent unequal treatment of States, the respective spheres of activity of the two bodies should be kept separate.

110. Miss BOWIE (United Kingdom) agreed with the French representative's remarks. She observed, in that connexion, that the Trusteeship Council, like the committee, was composed of representatives of States and should therefore not be deprecated as a "political" body.

111. Mr. MALIK (Lebanon) said that he had not used the term "political" in any derogatory sense. It was nevertheless a fact that the Trusteeship Council was a political organ, whereas the committee — as the proposal made by the French representative on the preceding day had shown — was intended to be an impartial non-political body, and its approach to the question of human rights must of necessity differ from that of the Council.

112. The CHAIRMAN asked the Commission to proceed to the vote. She first put to the vote the first alternative Danish amendment to article 21.

113. Mr. ORIBE (Uruguay) stated that he would vote against article 21 and all amendments to it, as there were still a number of basic points in that connexion which had not been clarified.

The first alternative Danish amendment was not adopted, 5 votes being cast in favour and 5 against, with 4 abstentions.

114. The CHAIRMAN put to the vote the second alternative Danish amendment.
The second alternative Danish amendment was rejected by 6 votes to 5, with 3 abstentions.

115. The CHAIRMAN put to the vote the Belgian amendment to article 21, changing the end of the last sentence to read "when one of the States concerned is governed by such procedure".

The Belgian amendment was rejected by 5 votes to 2, with 7 abstentions.

116. The CHAIRMAN put to the vote the original text of article 21.
Article 21 was rejected by 8 votes to 6.

117. Miss BOWIE (United Kingdom) said that she had voted against the Belgian amendment and for the original text of article 21 because it was not the States concerned, but the case, which would be governed by special procedure.

118. Mrs. MEHTA (India) said that she had voted against article 21 in view of the provisions of Article 103 of the Charter.

/119. Mr. MENDEZ

119. Mr. MENDEZ (Philippines) explained that he had voted against the article because it had seemed to imply that the committee would be divested of its powers.

120. Mr. CASSIN (France) viewed with concern the vote just taken on article 21. The purpose of that article had been to reconcile the activities of the new body to be established with the provisions of the Charter, and its rejection by the Commission would leave the committee with unlimited competence.

Article 20 (E/CN.4/474/Corr.1)

121. Mr. ORIBE (Uruguay) wished to know who, under the terms of the article, would decide whether the domestic remedies had been exhausted -- the State bringing the complaint or the person concerned.

122. The CHAIRMAN thought that, according to the text, when a complaint was brought before the committee, it would be for the latter to determine, before taking action on the case, whether the available remedies had been exhausted.

123. Speaking as the United States representative, she said that article 22, as re-drafted, was based on the conception embodied in article 2 of the draft covenant that the covenant would first be implemented internally by the contracting States, and that the proposed international implementation should not interfere with the regular course of domestic justice to protect the rights provided in the covenant.

124. The rule contained in that article, which was in conformity with general international practice, would prevent undue interference by the international implementation machinery before domestic remedies had been applied, thereby guarding against any possible circumvention of domestic remedies for propaganda or other ulterior motives.

125. There was one possible exception under that rule; namely, if it appeared that that domestic remedy had been deliberately withheld or that unreasonable delay had rendered the remedy completely nugatory. That exception was implicit in the first sentence; at the request of some delegations, however, her delegation had agreed to add a second sentence stating specifically that the general rule concerning prior domestic action should not apply, and that the committee should be allowed to take action in cases in which the application of domestic remedies was unreasonably prolonged.

126. Mr. ORIBE (Uruguay), remarked that there might be in some countries other remedies besides the administrative or judicial ones; he therefore proposed the deletion of the words "administrative or judicial".

127. Miss SENDER (International Confederation of Free Trade Unions) pointed out that the article made no provision for cases in which a State failed to act upon the complaints of an individual whose rights had been violated, and in which consequently the domestic remedies could not be said to have been exhausted, never having been applied.

128. Miss BOWIE (United Kingdom), supporting the Uruguayan amendment, suggested, in order to meet Miss SENDER's point, that the first sentence should read "Normally, the Committee shall deal with a matter referred to it only if available domestic remedies have been invoked and exhausted in the case...".

129. She further proposed that the words "the application of" should be inserted before the word "such" in the second sentence.

130. Mr. MENDEZ (Philippines) proposed that the word "invoked" should be replaced by "resorted to".

131. Mr. MALIK (Lebanon) proposed that the word "invoked" should rather be replaced by the word "utilized".

132. After some further discussion, the CHAIRMAN asked the Commission to vote on the text of article 22 and the various proposed amendments.

The Philippine amendment was rejected by 5 votes to 2, with 7 abstentions.

The Lebanese amendment was rejected by 6 votes to 5, with 3 abstentions.

The first sentence of article 22 was amended by Uruguay and the United Kingdom was adopted by 13 votes to none, with 1 abstention.

The second sentence of article 22 as amended by the United Kingdom was adopted by 13 votes to none, with 1 abstention.

Article 22 as a whole, as amended, was adopted by 12 votes to none, with 2 abstentions.

The meeting rose at 6.35 p.m.