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SUMMARY RECORD OF THE HUNDRED AND NINETY-FIRST MEETING

Held at Lake Success, New York,  
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CONTENTS:

Measures of implementation (E/1371, annex III, E/CN.4/366,  
E/CN.4/366/Corr.1, E/CN.4/353/Add.10, E/CN.4/353/Add.11) (continued):  
    Proposal submitted by France, India, the United Kingdom and the  
    United States of America (E/CN.4/474, E/CN.4/487) (continued)  
    Articles 22 A, 23, 24 and 25

<u>Chairman:</u> Mrs. ROOSEVELT	United States of America
<u>Members:</u> Mr. WHITLAM	Australia
Mr. NISOT	Belgium
Mr. VALENZUELA	Chile
Mr. CHA }	China
Mr. TSAO }	

Members (continued):

Mr. SORENSEN	Denmark
Mr. RAMADAN	Egypt
Mr. CASSIN	France
Mr. KYROU	Greece
Mrs. MEHTA	India
Mr. MALIK	Lebanon
Mr. MENDEZ	Philippines
Mr. HOARE	United Kingdom of Great Britain and Northern Ireland
Mr. ORIBE	Uruguay
Mr. JEVREMOVIC	Yugoslavia

Representatives of non-governmental organizations:

Category A:

Miss SENDER	International Confederation of Free Trade Unions (ICFTU)
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Category B:

Mr. MOSKOWITZ	Consultative Council of Jewish Organizations
Mr. HALPERIN	Co-ordinating Board of Jewish Organizations

Secretariat:

Mr. SCHWELB	Deputy Director, Division of Human Rights
Mr. SCHACHTER	Legal Department
Mr. DAS	Secretary of the Commission

MEASURES OF IMPLEMENTATION (E/1371, Annex III, E/CN.4/366, E/CN.4/366/Corr.1, E/CN.4/353/Add.10, E/CN.4/353/Add.11) (continued); PROPOSAL SUBMITTED BY FRANCE, INDIA, THE UNITED KINGDOM AND THE UNITED STATES OF AMERICA (E/CN.4/474, E/CN.4/487) (continued): ARTICLES 22 A, 23, 24 and 25

Article 22 A

1. The CHAIRMAN called upon the representative of India to explain why her delegation was proposing a new article 22 A.

/ s. Mrs. MEHTA

2. Mrs. MEETA (India) recalled the Commission's decision that the committee for the implementation of the international covenant on human rights should be a standing committee. Its function would, however, be extremely limited if it were to concern itself solely with the matters referred to it. That was why her delegation wished the Committee also to supervise the way in which the various States fulfilled the provision of the covenant. For that purpose, it would have to collect information on the legislation and the judicial decisions of the States parties to the covenant. Moreover, on receipt of that information, it might initiate an inquiry if it thought fit. It was indeed better to prevent a violation of human rights than to repair a violation once it had already been committed. In conclusion, she said that the adoption of the text which she proposed would enable the Human Rights Committee to play the part expected of it by the Commission.

3. Miss SENDER (International Confederation of Free Trade Unions) asked how the decision to make the Human Rights Committee a standing committee was to be interpreted. Such a decision would seem unnecessary, if the Committee was to consider only the complaints made by one State against another.

4. Mr. RAMADAN (Egypt) thought that the provisions of the article proposed by the Indian delegation would enable the Human Rights Committee to intervene in the legislation and jurisprudence of a State. Its powers would thus be far too wide.

5. In connexion with the last paragraph of the Indian proposal, he wondered what factors the Committee's inquiry would cover, what direction it would take and finally what effect it would have.

6. The CHAIRMAN, speaking as representative of the United States of America, said that the supervisory power provided for in the first sentence of the Indian proposal was far too extensive. If it adopted that provision, the Commission might give the impression that it was authorizing the Human Rights Committee to interpret the covenant on human rights on its behalf. The Committee

/would thus

would thus be given a legal character. It would, moreover, be enabled to study all the laws, regulations and decrees as well as the judicial decisions of the various States Parties to the covenant.

7. In connexion with the second sentence of the Indian proposal, she pointed out that the United Nations was already collecting information on all subjects concerning the respect for and application of human rights. That information was published in the Yearbook on Human Rights. As for the inquiry which the Committee might initiate, she pointed out that it would be very difficult for the States Parties to the covenant to accept such a proposal.

8. In conclusion, she emphasized that the Commission might quite well extend the Committee's powers in the future, but it should wait until the Committee had gained a certain amount of experience. It would be premature to give the Committee such powers at that stage and she would therefore vote against the Indian proposal.

9. Mr. NISOT (Belgium) agreed with the representatives of Egypt and the United States of America. He would also vote against the Indian proposal for the reasons they had given.

10. Mr. CASSIN (France) approved of the spirit in which the Indian proposal had been submitted. He agreed with the United States representative that a permanent organ should be asked to supervise the observance of human rights in the various States at some future date, but that was only a hope for the future. For the time being his delegation would prefer a less ambitious draft.

11. He pointed out that the adoption of the Indian proposal would mean that there would be two organs in the United Nations for the supervision of the observance of human rights. The Human Rights Committee would exercise its supervisory power over the States parties to the covenant, while the States which had not ratified the covenant would be subject to the jurisdiction of the Commission on Human Rights by virtue of the powers conferred upon the Commission under the Charter. There would be undoubted dangers in such a provision. He recalled that the International Labour Organisation could also have envisaged setting up two organs, one supervising the States members of the

ILO and the other having jurisdiction over the States which had ratified the ILO conventions. Nevertheless, the ILO had never adopted such a provision. Until all the States Members of the United Nations had ratified the international covenant on human rights, it would certainly be difficult to adopt a proposal like that submitted by the Indian delegation.

12. The French representative agreed with the United States representative's views on the second sentence of the Indian proposal: the United Nations was already collecting information with regard to all matters relevant to the observance and enforcement of human rights, and publishing that information in the Yearbook on human rights.

13. The second paragraph of the Indian proposal laid down that the Committee could initiate an inquiry if it thought necessary. The representative of France asked what type of complaints would constitute sufficient grounds for such an inquiry by the Committee. He could in no circumstances agree to the terms of the second paragraph of the Indian proposal. The French delegation hoped, however, that in future the Committee would be able to act not only on the request of a State but also on the request of the Economic and Social Council, the General Assembly or the Commission on Human Rights itself. In that case, it would be able to initiate an inquiry.

14. In conclusion, he said that the Commission on Human Rights should ask the Secretariat to study the powers of the Commission under its terms of reference. Should the Commission decide that those terms of reference were not wide enough, it might ask the Economic and Social Council to extend their scope.

15. Mr. KYRCU (Greece) regretted that he could not support the Indian proposal although he fully appreciated the spirit in which it had been submitted. The two prerequisites for the satisfactory accomplishment of the conciliatory task entrusted to the Human Rights Committee were that the Committee should ensure the best possible co-ordination with the Commission on Human Rights and the Human Rights Division of the United Nations Secretariat, and that it should work in close collaboration with the various Governments. Yet, the power of control granted under the terms of the Indian proposal could not be exercised without prejudicing the conciliatory task to be performed by the Committee. Consequently, the adoption of the Indian proposal would harm the successful work of the Committee.

/s/ Mr. WHITLAM

16. Mr. WHITLAM (Australia) recalled that his delegation had always maintained that an international control organ would have to be set up in the future to supervise the observance of human rights. The Human Rights Committee, as set up by the Commission would however have limited functions incompatible with the power of control provided for in the Indian proposal. Similarly, to authorize the Committee to initiate inquiries would prevent it from fulfilling its conciliatory mission satisfactorily. Consequently, he would vote against the Indian proposal for reasons identical with those already outlined by the Greek representative.

17. Mrs. MEHTA (India) said that her proposal was based on the recommendations of the working group which had met in Geneva, with the Belgian representative acting as Rapporteur. That working group had unanimously suggested the creation of a permanent committee which, inter alia, would be asked to supervise the observance of the provisions of the covenant and, to that end, to collect information with regard to all matters relevant to the observance and enforcement of human rights. She recalled that the question of the creation of national human rights committees was on the Commission's agenda; those national committees could easily forward all useful information to the Human Rights Committee.

18. Replying to the Egyptian representative, she said that under her proposal the Committee would have no right to intervene in the legislation and jurisprudence of a State; on receipt of information, it would merely initiate an inquiry if it thought necessary, and would inform the State concerned that there had been a violation of the covenant.

19. With regard to the terms of reference of the Commission on Human Rights, she observed that it did not enjoy the necessary powers for an effective enforcement of human rights. Hence, there was need for control machinery to supervise the observance of those rights. She agreed, however, with the French representative's proposal regarding a study of the Commission's terms of reference.

20. Replying to the Greek representative, she emphasized that by supervising the observance of human rights, the Committee would in no way prejudice its task of conciliation. Regarding the information to be collected by the Committee,

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she pointed out that the Yearbook on Human Rights contained information which was often out of date. It mentioned judicial decisions made two or three years previously, which it was hardly worth while to study. Such information would not make it possible to prevent violations of human rights. The Committee's task however should be to prevent such violations rather than to provide for reparations after the violations had taken place.

21. Mr. ORIBE (Uruguay) agreed with the principle underlying the Indian proposal. Together with the Australian representative, however, he recognized that the powers of the Committee, as it had been set up, were more limited than those originally contemplated by the Commission. The satisfactory accomplishment of its task would largely depend on the goodwill of the States Parties to the Covenant. Hence, he did not think that it would be wise at that stage to adopt any provisions similar to those proposed by the Indian delegation.

22. The Uruguayan representative agreed with the principle of the creation of an international control organ. Any possible objections to that principle had been already disproved by the work of the Atomic Energy Commission and of the Commission for Conventional Armaments. In view of all those considerations, he would abstain from voting on the Indian proposal.

23. Mr. CASSIN (France) made it clear that he was not submitting any formal proposal to ask the Secretariat to report to the Commission on its terms of reference, but that he reserved the right to submit such a proposal at the end of the Commission's session.

Article 22 A was rejected by 7 votes to 1, with 5 abstentions.

#### Article 23

24. Mr. NISOT (Belgium) proposed that the expression "Etats en cause", in the French text, should be replaced by the phrase "Etats en presence". That change would not affect the English text. The expression "en cause" might give rise to the idea that legal procedure or a dispute between States were involved.

25. Mr. CASSIN (France) agreed to the Belgian representative's suggestion.

Article 23 was adopted by 12 votes to none, with 2 abstentions.

Article 24

Paragraph 1

26. Mr. NISOT (Belgium) proposed that the word "ascertain" in paragraph 1 should be replaced by "establish". In the same paragraph, he proposed the substitution of the phrase "place its good offices at the disposal of the States concerned" for the phrase "make available its good offices to the States concerned".

27. Mr. CASSIN (France) supported the first Belgian amendment. As regards the second, he felt that the original French text was preferable to the English text; in point of fact, the States would call upon the committee to furnish its good offices, and it would be the committee's duty to do so.

28. Mr. NISOT (Belgium) said that he preferred the phrase "place its good offices at the disposal of the States concerned", as it indicated that it was for States to take the initiative in that matter.

29. The CHAIRMAN felt that the English text was sufficiently forceful and should be retained as it stood.

30. Mr. CASSIN (France) stated that if the Commission maintained the English text, the Belgian representative's interpretation was correct.

31. Mr. ORIBE (Uruguay) could not accept the phrase "to the States concerned with a view to a friendly settlement of the matter"; in his opinion, the expression was too vague. In point of fact, the committee's purpose was not to achieve a friendly settlement of a question, but to ensure the observance of human rights. In adopting such a text, the Commission would run the risk of permitting two States to arrive at a friendly agreement at the expense of human rights.



32. The CHAIRMAN, speaking as the representative of the United States of America, wondered how the committee could ensure the protection of human rights without endeavouring, in the event of a violation of those rights, to promote a friendly settlement. The States concerned must agree upon the very interpretation of those rights.

33. Mr. ORIBE (Uruguay) declared that in that case it would be advisable to add, at the end of paragraph 1, the phrase "on the basis of the observance of human rights".

34. Mr. MENDEZ (Philippines) felt that the purpose of the committee was not to promote a friendly settlement of a dispute between two States, but to achieve a definition of human rights which would receive the support of the two States concerned. By directing its efforts toward a friendly settlement, the committee would run the risk of sacrificing human rights, an eventuality which the Philippine representative could not accept.

35. Mr. CASSIN (France) thought that the Uruguayan representative's point was well taken. In the circumstances, two States must not be permitted to make a bargain; they should arrive at a friendly agreement based upon the observance of human rights. The French representative suggested the modification of the Uruguayan amendment to read "in the interests of human rights".

36. Mr. CHA (China) supported the original text of paragraph 1. In his opinion, that text set forth an excellent principle in clear and precise terms. The Human Rights Committee would not be a legal organ; it could not therefore condemn parties for violations of human rights, but it should draw the attention of the Governments to such violations.

37. The CHAIRMAN, speaking as the representative of the United States of America, proposed the following modification to the Uruguayan amendment: "based upon the observance of the human rights set forth in the present covenant".

38. Mr. VALENZUELA (Chile) suggested that paragraph 1 should end with the words "establish the facts", and that the following text should be added as a new paragraph: "The States parties to the Covenant shall not consider as an unfriendly act the intervention of another signatory State in defence of the human rights set forth in the present Covenant."

39. Mr. WHITLAM (Australia) felt that the representative of Uruguay had raised a very important point. If it was decided that the Committee should endeavour to promote a friendly settlement of a dispute, situations might arise in which two States would base their agreement upon their own interests and not upon the observance of human rights. Rarely did States conclude agreements which were based upon justice. For that reason the Commission should insert in paragraph 1 a provision requiring that the settlement of a dispute between two States should be based upon the principles set forth in the covenant. The representative of Australia would, accordingly, support the Uruguayan amendment.

40. Mr. ORIBE (Uruguay) accepted the modification proposed by the representative of France.

41. Mr. NISOT (Belgium) objected to the use of the phrase "friendly settlement of the matter". Such a term would create the impression that differences existed between States. The committee would not be a judiciary organ charged with settling disputes between parties, but it should draw attention to violations of human rights. The representative of Belgium therefore proposed the deletion of the words "friendly settlement of the matter" in paragraph 1, and the substitution at the beginning of paragraph 3, of the words "If the difference of opinion is settled" for the words "If a friendly settlement is reached".

42. Mr. RAMADAN (Egypt) thought it would be preferable to say "If the difference of opinion is eliminated".

43. Mr. NISOT (Belgium) thought that the phrase "friendly settlement of the matter" might be replaced by "amicable solution of the problem". Moreover, he

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raised the following question: if a State, coveting part of the territory of its neighbour, declared that human rights had been violated in that territory, and if that State wished a plebiscite to be held in the territory, would the Human Rights Committee be competent to deal with such a matter?

44. Mr. MENDEZ (Philippines) said it should be borne in mind that the Committee's main purpose was not to secure friendly agreement between States but to ensure the observance of human rights. He suggested that the last part of paragraph 1 should be redrafted as follows: "...make available its good offices to the States concerned for the determination of the issue of human rights in a spirit of conciliation".

45. Mrs. BHATA (India) thought that, if the committee was an organ of conciliation, it must necessarily seek a settlement of the issue on behalf of the individuals whose rights had been violated. It was a matter for regret in that connexion that complaints could be initiated only by States.

46. Mr. ORIBE (Uruguay), replying to the Belgian representative, said that the Commission had in mind only those States which were prepared to honour their obligations as set forth in the covenant.

47. Mr. MALIK (Lebanon), referring to the question raised by the Belgian representative, said that the project on which the Commission was engaged was fraught with both desirable and undesirable consequences. As regards the Belgian representative's proposal to substitute the word "solution" for the word "settlement", he did not think that the use of the latter word would give the Committee a judicial character. Nor did he agree with the Chilean representative's proposal to delete the final sentence of paragraph 1, and would vote for the text proposed by the United States representative for the end of that paragraph. The Chilean amendment should be inserted in article 20, which specified the circumstances under which a State might, by a written communication, draw attention to the fact that another State was not giving effect to the provisions of the covenant.

48. Mr. SORENSEN (Denmark) supported the Uruguayan proposal. It was, in his opinion, essential to prevent two States from coming to terms at the expense of human rights.

49. He pointed out that, if the first Chilean amendment to conclude paragraph 1 of article 24 at the words "shall ascertain the facts" was adopted, the Committee's functions would be confined to ascertaining the facts; it would not make available its good offices to the States concerned. One of the reasons, however, which had led the Commission on Human Rights to ask the delegations of the United States, France, India and the United Kingdom to submit a joint text, had been the desire expressed by a number of delegations for the establishment of a committee whose functions were broader than fact-finding. Such a limitation of the Committee's role might endanger friendly relations between States; a danger which the Chilean representative had sought to obviate in proposing his second amendment. He would personally prefer to retain the reference to good offices with a view to a friendly settlement of the matter on the basis of the protection of the human rights set forth in the covenant.

50. Mr. CASSIN (France) shared the Danish representative's view. It seemed to him that the Chilean representative was mistaken in wishing to limit the work of the Committee in the manner proposed.

51. The second Chilean amendment to insert a paragraph providing that one signatory State should not regard as any intervention by another signatory State in the defence of human rights as an unfriendly act was in accordance with the spirit of the covenant. If the Chilean amendment was adopted, it would be necessary for the Commission to specify the precise duties of the two States concerned.

52. He proposed that the phrase "friendly settlement of the matter" should be replaced by the phrase "friendly solution of the matter".

53. Mr. NISOT (Belgium) and Mr. KYROU (Greece) supported the French proposal.

54. The CHAIRMAN observed that the word "solution" could be substituted for the word "settlement" in the English text.

The French proposal was adopted.

55. Mr. RAMADAN

55. Mr. RAMADAN (Egypt) pointed out that it was more usual to speak of the solution of a question and not of a matter.

56. The CHAIRMAN, speaking as the representative of the United States of America, said that her delegation could not accept the Philippine amendment.

57. Mr. MENDEZ (Philippines) thought that the phrase "friendly settlement of the matter" implied that the Committee should settle political disputes. The Committee to be set up would, however, have the function of pronouncing on violations of human rights which had been brought to its attention and of proposing appropriate means of remedying them in a spirit of conciliation. The Committee would not be an ad hoc political or legal body, but would have a permanent character. Emphasis should therefore be placed on what would be its main function, that of ascertaining, in a spirit of conciliation, the facts relating to violations of human rights which had been brought to its notice.

58. Mr. ORIBE (Uruguay) saw no need for any amendment of the original text which was in conformity with the probable circumstances. There would inevitably be disputes to be settled and differences to be ironed out; the phrase "settlement of the matter" was therefore quite satisfactory.

59. Mr. WHITLAM (Australia) while he appreciated the concern of the Philippine representative, nevertheless felt that his amendment did not fit the text. He preferred the wording proposed by the representative of Uruguay.

60. The CHAIRMAN put the Philippine amendment to the vote.

The Philippine amendment was rejected by 5 votes to 1, with 7 abstentions.

61. The CHAIRMAN invited the Commission to vote on the Belgian proposal, that the words "with a view to a friendly settlement" should be replaced by the words "in order to achieve in a friendly spirit a solution of the question in conformity with the human rights defined in the Covenant".

62. Mr. MALIK (Lebanon) did not think that the text proposed by the Belgian representative was in any way better than the French and United States proposal.

63. Mr. MENDEZ (Philippines) felt that it would be enough to say: "a solution of the question of the human rights involved". There was no need to introduce long and abstract phrases in the article.

64. Mr. CASSIN (France) stated that he would vote in favour of the text proposed by the Belgian representative which he considered excellent. The text had also the advantage of covering the point with which most representatives were concerned.

65. Mr. ORIBE (Uruguay) stated that he preferred the original text as amended by the United States as there was some difference between a friendly solution and a solution reached in a spirit of conciliation on the one hand, and between a solution in accordance with human rights and one which merely took those rights into account on the other.

66. The CHAIRMAN put the Belgian amendment to the vote.  
The Belgian amendment was rejected by 7 votes to 6, with 2 abstentions.

67. Mr. MALIK (Lebanon) explained that he had voted against the Belgian amendment because, in his view, it was identical in substance with the United States amendment which had the advantage of brevity.

68. The CHAIRMAN put to the vote the first paragraph of article 24 which read as follows:

"Subject to the provisions of article 21 the Committee shall ascertain the facts and make available its good offices to the States concerned with a view to a friendly settlement of the question on the basis of the human rights as defined in the present covenant".

The first paragraph of article 24, as amended, was adopted by 14 votes to none, with 1 abstention.

Paragraph 2

69. Mr. WHITLAM (Australia) thought that there would be no need for the States concerned to publish the report immediately after receiving it. The report would, in fact, deal with a number of highly delicate matters, and States should be given sufficient time to study it before it was published. He therefore proposed the addition, after the words "to the States concerned", of the words "after an interval of two months".

70. Mrs. MEHTA (India) and Miss BOWIE (United Kingdom) thought that such a precaution was unnecessary as the States would certainly learn in advance the Committee's conclusions on the case with which they were concerned.

71. The CHAIRMAN, speaking as the United States representative, shared that view.

72. Mr. VALENZUELA (Chile) thought that the report should be sent only to the Secretary-General who would transmit it to the States concerned. Indeed, the States which would have participated in the Committee's debates would be bound to know the contents of the report with which they were concerned. He therefore proposed the deletion of the words "to the States concerned and".

73. Mr. KYROU (Greece) supported the Chilean representative's views; it would be sufficient to state that the report should be sent to the Secretary-General for publication.

74. Miss BOWIE (United Kingdom) considered the Australian proposal to delay the publication of the report by two months dangerous as certain States would be able to make propaganda against the Committee during that interval.

75. Mr. WHITLAM (Australia) withdrew his amendment.

76. Mr. CASSIN (France) said that the Australian representative's view might be met by adding the word "after" following the words "to the States concerned and".

77. The CHAIRMAN put to the vote the second paragraph of article 24 with the amendment proposed by France.

Paragraph 2 of article 24 was adopted by 14 votes to none, with 1 abstention.

Paragraph 3

78. Mr. RAMADAN (Egypt) pointed out that paragraph 3 should be amended in order to bring its language into conformity with paragraph 1. Furthermore, he would like the words "for all useful purposes" to be added after the words "on the facts".

79. Mr. NISOT (Belgium) proposed that the first sentence of paragraph 3 should be amended as follows: "If a settlement of the question is reached, the Committee shall confine itself to pointing that out in its report together with a brief statement of the facts".

80. Mr. VALENZUELA (Chile) thought that the word "brief" should be deleted in view of the importance which world public opinion attached to any report on the facts concerning a violation of human rights.

81. Mr. MALIK (Lebanon) supported the Chilean representative's proposal. He further proposed, in order to bring the text into conformity with the first paragraph, the addition, in the Belgian amendment, of the words "on the basis of the observance of human rights" after the words "if a settlement of the question is reached".

82. Mr. NISOT (Belgium) was opposed to the Chilean amendment. Indeed, there was no need, after a question had been settled and results therefore achieved, to impair international relations by dwelling on the facts.



83. Mr. CASSIN (France) explained that the text was a compromise. The French delegation had originally been in favour of not publishing any report if a friendly settlement had been reached by the States concerned. The United States and United Kingdom delegations, however, had held that the publication of a detailed report, regardless of the outcome of the matter, would correspond more closely to democratic principles. It had finally been decided to retain the principle of the publication of a report even in the case of an agreement between the parties, provided that the report contained only a brief statement of the facts in order not to prejudice international relations.

84. The Belgian amendment called for the deletion of any reference to an agreement. Mr. Cassin stressed the importance of a statement by the Committee on the points on which agreement had been reached, in order to prevent future controversies among the States on the precise scope of that agreement.

85. In conclusion, he wished to state once again that a brief statement would be adequate if an agreement had been reached but that, if disagreement persisted, it would be desirable to publish a detailed account so as to permit the widest possible clarification of the situation.

86. Mr. VALENZUELA (Chile) said that not only the States Parties to a dispute, but all States signatories to the covenant had the right to learn in detail the facts that had occurred, in order to decide what was and what was not a violation of human rights. It was also always necessary to inform world public opinion in order to prevent the conclusion of future Munich agreements with all their disastrous consequences.

87. Miss BOWIE (United Kingdom) also favoured publication of a report containing a detailed statement of facts. The absence of such a report might lead to the spreading of false, distorted or unfair news about the proceedings and conclusions of the Committee.

88. Mr. NISOT (Belgium) urged the members of the Commission to bear in mind that agreement was very often possible only because of mutual concessions. No State would be willing to make such concessions, regardless of their scope, if

world public opinion must be informed of the mistakes which it might have made. Furthermore, it would frequently be difficult for Governments to make concessions if details of the matter were to become known to public opinion in their own countries. There would also undoubtedly be States which would claim that the facts cited against them were matters within their domestic jurisdiction. Such States might perhaps be induced nevertheless to make concessions, provided that the matter did not receive widespread publicity.

89. Mr. MALIK (Lebanon) still believed that the word "brief" served no useful purpose. It was necessary to have faith in the Committee's good sense which would undoubtedly prevent it from publishing a report likely to harm international relations.

90. Mr. ORIBE (Uruguay) agreed with the Chilean and United Kingdom representatives' observations on the word "brief". While the concern of the Belgian representative was entirely legitimate, the Committee would undoubtedly be tactful and diplomatic.

91. One thing was certain: in order to judge whether an agreement was reached on the basis of the observance of human rights, public opinion must be acquainted with all the facts. The happy solution of a dispute made it even more advisable to publish those facts.

92. Mr. MENDEZ (Philippines) also thought that the widest possible publicity should be given to any matter for which a happy solution had been found.

93. The CHAIRMAN invited the Commission to vote on the various amendments to article 24, paragraph 3.

The Belgian amendment calling for the deletion of the word "friendly" in the first line of the paragraph was adopted by 8 votes to 4, with 3 abstentions.

94. The CHAIRMAN stated that there was also before the Commission a Lebanese amendment to the first part of the first sentence of paragraph 3 which, together with the United Kingdom amendment, would make that part read as follows: "If a settlement is reached in accordance with the provisions of paragraph 1".

95. The Chairman put that text to the vote.  
The text was adopted by 11 votes to none, with 1 abstention.

96. The CHAIRMAN put to the vote the proposal to delete the word "brief" in the second line of paragraph 3.

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

97. The CHAIRMAN then put to the vote the proposal that the word "reached" should be inserted at the end of the first sentence of the English text of paragraph 3.

The proposal was adopted.

98. Mr. CASSIN (France) remarked that the addition would not alter the French text.

99. The CHAIRMAN put to the vote the second part of the first sentence of paragraph 3, reading as follows: "the Committee shall confine its report to a brief statement of the facts and of the agreement".

The text was adopted by 13 votes to 1, with 1 abstention.

100. The CHAIRMAN invited the Commission to consider the second sentence of paragraph 3 of article 24.

101. Mr. NISOT (Belgium) suggested the following text for that sentence: "in the negative event, the Committee shall state in its report its own conclusions on the facts".

102. The CHAIRMAN stated that that was a new text.

103. Mr. CASSIN (France) had no objection to the substitution of "in the negative case" for "if a friendly settlement is not reached". He would press, however, for the retention of the rest of the text as drafted.

104. Mr. MENDEZ (Philippines) proposed for the English text the expression "If no solution is reached". The change did not affect the French text.

105. Mr. HOARE (United Kingdom) suggested the phrase "If such a solution is not reached", the word "such" referring to the settlement mentioned in the first sentence.

106. Mr. CASSIN (France) observed that in that case the phrase "Si tel n'est pas le cas" must be retained, as it corresponded more accurately to the proposed English text.

107. Mr. MALIK (Lebanon) said it was a question of translation. It should be left to the technical experts to achieve the perfect equivalence of texts; he therefore proposed that amendments should be made to the English text only, relying on the Secretariat to bring the French text into harmony with it.

108. Mr. CASSIN (France) said there was no better translation of "If such a solution is not reached" than "Si tel n'est pas le cas", and he insisted that it should be retained.

109. The CHAIRMAN put to the vote the second sentence of paragraph 3 as follows:

"If such a solution is not reached, the Committee shall state in its report its conclusions on the facts."

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

110. The CHAIRMAN put to the vote the amended text of paragraph 3 as a whole. The paragraph as amended was adopted by 14 votes to none, with 1 abstention.

111. The CHAIRMAN put to the vote the amended text of Article 24 as a whole. Article 24, as amended, was adopted by 14 votes to none, with 1 abstention.

Article 25

112. Mr. NISOT (Belgium) did not quite understand the purpose of article 25.

113. Mr. SORENSEN (Denmark) said he entirely approved of article 25 if it was intended to limit the cases submitted to the International Court of Justice and to prevent States from taking to the Court cases which were already before the Committee. But if the text allowed a State, by a unilateral decision, to transfer to the jurisdiction of the Court a case which was within the competence of the Committee, he would strongly oppose it. The decisions of the Court would be based on the juridical interpretation of the covenant and would have binding force.

114. To avoid an action of <sup>the kind,</sup> he proposed the insertion of the following words at the beginning of the sentence: "except by agreement between the two interested parties". In that way States would be enabled, by agreement, to have recourse to the International Court of Justice.

115. Mr. CASSIN (France) explained the purpose of article 25. The arguments of the representative of Denmark appeared to be well founded, and Mr. Cassin was ready to take them into consideration. The point of the article lay in an alternative text proposed by the United States of America and the United Kingdom, which would limit the application of the article to States parties to the Covenant. All States, and not only States Parties to the covenant, must however be prevented from taking a case to the International Court of Justice so long as it was still under consideration by the Committee.

116. Version B of the alternative text concerned States which had subscribed to the compulsory jurisdiction clause. Certain States had accepted that clause without reservation, others had formulated reserves. There was therefore inequality among States in the field of jurisdiction -- those States which were bound by the compulsory jurisdiction clause being in an inferior position compared to those which had not accepted it. It was therefore necessary to envisage a special compromise between an interested State which wished to go before the Court and any other State. In illustration, Mr. Cassin cited the fact that at the beginning of the last war certain States had declared that they did not feel themselves bound by the compulsory jurisdiction clause.

117. If the Commission adopted the second paragraph of article 25 proposed by the Drafting Committee, the adhesion to the covenant of those States which had accepted the compulsory jurisdiction clause would be facilitated.

118. The CHAIRMAN, speaking as representative of the United States, said her delegation thought it necessary to include the words printed in brackets in article 25, paragraph 1, since the obligations arising out of the article could be imposed only on States parties to the Covenant.

119. The United States would oppose version B of the second paragraph proposed by the representative of France. The text stipulated that, having accepted the clause concerning the compulsory jurisdiction of the International Court of Justice, a State could not submit a dispute to the Court except by virtue of a special agreement. States having recognized the competence of the Court had, however, agreed to be summoned before the Court, without any special agreement, by any other State which had accepted the same clause, particularly in connexion with any dispute regarding the interpretation of treaties. The United States delegation did not consider that at that stage, by reason of a provision introduced into the draft covenant, States could maintain that their declarations were not binding upon them in the application of the covenant. Mrs. Roosevelt drew the attention of the Commission to Article 103 of the United Nations Charter which stipulated that "in the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail." The Statute of the International Court of Justice, under which the declarations of States provided for in Article 36, paragraph 2 were made, was annexed to the United Nations Charter and was an integral part of it. The declarations were, therefore, obligations upon States in the same way as the Charter. Furthermore, the text proposed by the French representative envisaged not only that the declaration by which States recognized the compulsory jurisdiction of the International Court of Justice -- without further consideration and without a special agreement -- would not bind them in relation to States parties to the Covenant, but, further, that it would not bind them in relation to States which were not parties.

120. Finally, the United States delegation considered that it would not be proper to define the competence of the International Court of Justice in the covenant, which was precisely what the French text did.

121. Mr. HOANE (United Kingdom) said that article 25 was intended to avoid dual jurisdiction -- by the Committee and by the International Court -- upon one matter at the same time, a point upon which all members of the Commission were agreed.

122. He could not approve the alternative text appearing in parentheses in paragraph 1 of the article. It seemed to him, apart from the merits, a fatal objection to that proposal that it sought, in the covenant, to bind States which were not parties to the covenant to impose a limitation upon the exercise of their right to bring a matter before the International Court. Incidentally, he doubted whether it was necessary to establish a waiting period of three months from the publication of the Committee's report before a case could be submitted to the Court.

123. Turning to the text of version B, proposed for paragraph 2 of the article, he pointed out that it also limited the conditions under which States not parties to the covenant might have recourse to the International Court of Justice.

124. Mr. MALIK (Lebanon) wished Mr. Cassin to reply to the arguments of the representative of the United Kingdom. In his opinion it seemed that the provisions of the covenant could bind only the parties thereto. It was therefore necessary to insert in the first paragraph of article 25 the alternative text appearing in parentheses. He agreed with the representative of the United Kingdom that the three months' waiting period should be eliminated.

125. Mr. SORENSEN (Denmark) also felt that the covenant could bind only the parties thereto, but asked whether it was necessary to say so. It was obvious that, in order to benefit from the provisions of the covenant, a State must be a party thereto.

126. Mr. NISOT (Belgium) was entirely opposed to article 25. His Government would not subscribe to a clause which limited, in so far as a particular treaty was concerned, the scope of the general obligations undertaken under Article 36, paragraph 2 of the Statute of the International Court of Justice.

127. Mrs. MEHTA (India) felt, with the representative of Denmark, that the alternative text of the first paragraph was valueless.

128. Mr. CASSIN (France) explained that there had never been any question of imposing obligations upon States which were not parties to the covenant. As the Danish representative had emphasized, only States parties could be called upon to submit their disputes to the Committee. That was why it had not seemed to him necessary to add the words "by a State party to the covenant". If it were desired to safeguard the right of States not parties to the covenant to seek advisory opinions from the International Court of Justice the words "for judgment" could be added after the word "referred".

129. He agreed that text B, proposed by France for paragraph 2 of article 25, was singularly delicate, but it was essential in order to safeguard the position of States which had recognized the jurisdiction of the International Court of Justice as compulsory, without further consideration and without a special agreement. On that point France could not give way.

130. The CHAIRMAN requested the representative of the Legal Department of the Secretariat to make a statement on the interpretation of Article 103 of the United Nations Charter.

131. Mr. SCHACHTER (Secretariat) felt obliged to take issue with the opinion of the representative of the United States of America that the declarations under Article 36, paragraph 2, of the Statute of the International Court of Justice could not be modified by subsequent agreement. In his view it was legally possible for States to modify their declarations accepting compulsory jurisdiction by a later treaty, which, of course, would only have effect for the parties to that treaty. Indirect support for that conclusion could be found in the decision of the Permanent Court of International Justice in the case of the Electricity Company of Sofia. There appeared, moreover, to



be no basis for assuming that such declarations were, in fact, part of the Charter, and therefore covered by the supremacy provision of Article 103. Article 103 surely did not apply to all agreements or declarations made in pursuance of particular Articles of the Charter. Such agreements or declarations could not, therefore, be said to prevail over subsequent agreements, in which the parties clearly intended to modify their previous undertakings.

132. For that reason, he suggested that the Commission was clearly faced with a question of policy in passing upon the French proposal under discussion. If adopted, the French proposal would have the effect of modifying, as among the contracting parties, the declarations of compulsory jurisdiction under the Statute of the International Court of Justice.

133. The CHAIRMAN pointed out that if the Commission adopted the Danish amendment the first paragraph of article 25 would become useless since it would then be possible for States parties to the covenant to submit a case to the International Court of Justice while it was still pending before the Committee.

134. Mr. HOARE (United Kingdom) considered that if the provisions of article 25 were to bind none but States parties to the covenant it was preferable to say so explicitly.

135. Mr. SORRENSEN (Denmark) could see no disadvantage in retaining the words between parentheses provided that States were permitted to consult the International Court of Justice by mutual agreement. As for text B, which had been proposed by France as paragraph 2 of article 25, its scope would appear to be wider than the representative of that country had given the Commission to understand. Mr. Cassin had stated that it applied only to cases already submitted to the Committee for examination, and not to all the legal points related to the interpretation of the covenant. The French representative should, therefore, agree to modify his text in order to make it conform to the explanation he had given.

136. Mr. NISOT (Belgium) demanded the deletion of article 25 in its entirety.

137. Mr. CASSIN (France) drew the attention of the Commission to the serious consequences which might result from the deletion of article 25. The Commission was setting up a new organ which must be enabled to take its place among existing organs and to establish relations with them. Otherwise, the danger of conflicts as to competence would arise. Furthermore, the suppression of article 25 would prevent many States from signing the covenant.

138. The CHAIRMAN put to the vote the Belgian proposal that article 25 should be deleted.

The proposal was adopted by 8 votes to 6, with 1 abstention.

139. Mr. ORIBE (Uruguay) explained that he had voted against articles 21 and 25 as a protest against the fact that the texts had not been discussed with sufficient thoroughness.

140. The CHAIRMAN invited the Commission to examine the additional article (E/CN.4/487) proposed by the United Kingdom.

141. Mr. HOARE (United Kingdom) said that, in view of the lateness of the hour, he preferred the Commission to postpone examination of his proposal until the following meeting.

The meeting rose at 1.45 p.m.