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COMMISSION ON HUMAN RIGHTS

Sixth Session

SUMMARY RECORD OF THE HUNDRED AND EIGHTY-EIGHTH MEETING

Held at Lake Success, New York,
on Thursday, 11 May 1950, at 2.30 p.m.

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Chairman:	Mrs. ROOSEVELT	United States of America
Members:	Mr. WHITLAM	Australia
	Mr. NISOT	Belgium
	Mr. VALENZUELA	Chile
	Mr. TSAO	China
	Mr. SORENSEN	Denmark
	Mr. HAMADAN	Egypt

(31 p.)

Members (continued):

Mr. CASSIN	France
Mr. KYROU Mr. THEODOROPOULOS	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

Representative of a specialized agency:

Mr. LEVINE	International Labour Organisation (ILO)

Representatives of non-governmental organizations:

Category A:	Miss SENDER	International Confederation of Free Trade Unions (ICFTU)
	Mrs. SPRAGUE	World Federation of United Nations Associations (WFUNA)
Category B:	Mr. HOLDE	Commission of the Churches on International Affairs
	Mr. MOSKOWITZ	Consultative Council of Jewish Organizations
	Mr. MALTERRE	Co-ordinating Board of Jewish Organizations
	Miss ROOS	International Federation of University Women
	Mr. PEER	International League for the Rights of Man
	Mr. GANTLAN	International Union of Catholic Women's Leagues
	Mr. MARCUS	World Jewish Congress

Secretariat:

Mr. SCHEYLD	Assistant Director, Division of Human Rights
Mr. SCHACHTER	Deputy Director, General Legal Division
Mr. DAS	Secretary of the Commission
Miss MITCHEN	Secretariat

/DRAFT

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.4/353/Add.11, 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)

Article 2

1. The CHAIRMAN invited the Commission to continue its discussion of the joint proposal concerning measures of implementation (E/CN.4/474). There were no alternative texts to the first two paragraphs of article 2, and if there were no objections, she would put them to the vote.

Article 2, paragraph 1, was adopted 13 votes to none, with no abstentions.

Article 2, paragraph 2, was adopted by 13 votes to none, with no abstentions

2. In reply to Mr. KYROU (Greece) the CHAIRMAN, speaking as the representative of the United States of America, said that she supported alternative B for paragraph 3 because it would permit States to nominate persons for a period of less than five years. Under alternative A, many well-qualified persons would be excluded from nomination if they were unable to serve for five years or if they were not available at the time the nominations were made. Alternative B had a further advantage in that it did not bind States to nominate persons for a lesser period than five years.

3. Mr. CASSIN (France) preferred alternative A, which limited nominations to five years, but which, taken in conjunction with article 3, would also permit countries to present fresh candidates after two years had elapsed. The text covered all the legitimate interests of Governments, and also provided for a permanent list of candidates who would be eligible for election should the need arise.

4. In his opinion, moreover, alternative B had a serious defect as it would permit States constantly to change the panel of nominations. Instead of a permanent list of candidates, the Secretary-General would be confronted with a fluid panel and should it become necessary to appoint a member to the committee under the provisions of article 16, great difficulties might arise.

5. The CHAIRMAN speaking as the representative of the United States of America feared that the text of alternative A, when read in conjunction with article 3 might make it impossible for Governments to nominate new persons to the panel within a five-year period. In the interests of obtaining the best possible candidates for the committee, it would be better to adopt alternative B which would permit Governments to make nominations for any period of time, not to exceed five years. She did not see how, in view of the provisions of article 2, paragraph 2, a situation could arise when no nationals of a country would be on the panel. In her view it was essential that the term of nomination should be elastic.

6. In reply to Mr. MENDEZ (Philippines), she explained that paragraph 3 referred only to the duration of the nomination, and not to the term of office.

7. Mr. HOARE (United Kingdom) endorsed the French representative's remarks. The Commission had accepted the principle that a permanent body should be set up. It therefore would seem advisable to have some measure of continuity and permanence in the arrangements for the composition of the proposed committee.

8. Alternative A merely stipulated that nominations would not be valid for more than five years. In choosing candidates, the State should bear in mind the responsibility they would have to assume and nominees should be in a position to let their names stand for five years. The difficulty with alternative B was that it would empower States to make short-term nominations. The nominating Government would thus be able to act for its own convenience, and might be guided by political considerations in altering the list of nominees. Such a thing would be extremely unwise.

9. The principle underlying alternative A was the more acceptable, and for that reason, as well as for reasons of simplicity of operation, it should be adopted in preference to alternative B.

10. The CHAIRMAN, speaking as the representative of the United States of America, pointed out that the Commission had taken no position on the permanence of nominations but only on the permanence of implementation machinery

/11. Well-qualified

11. Well-qualified people were often very occupied and unable to serve for a period as long as five years. Furthermore, special situations might arise when a person with particular qualifications would be needed for a short term period. If that person were unable to serve a full term of five years, the committee would be unable, under the provisions of alternative A, to avail itself of his services; she therefore thought alternative B was preferable.

12. Mr. CASSIN (France) pointed out that under the terms of article 3 Governments would always be free to express their wishes. The list of nominations would be reviewed every two or three years and it was unlikely that all four candidates proposed by a particular State would withdraw within such a short period of time. He felt, therefore, that, as the United Kingdom representative had said, alternative A was satisfactory. Furthermore, the machinery contemplated in alternative B would entail much extra work for the Secretariat and might prove extremely unwieldy and costly. He felt that the objections raised by the United States delegation were wholly satisfied by alternative A.

13. In reply to the CHAIRMAN, he explained that new nominations would have to be made for each election. A nomination under the provisions of alternative A need not necessarily run for five years, for as soon as new nominations were made the old nominations would become invalid.

14. Mrs. MEHTA (India) said that actually paragraph 3 was unnecessary in view of the provisions contained in article 3. Fresh nominations would have to be made after every election. The authors of the joint proposal had wished, however, to provide for a panel from which casual vacancies could be filled, and in her mind that was the chief purpose of paragraph 3.

15. Mr. SORENSEN (Denmark) did not quite agree with the representative of India. The panel of nominations was needed as a basis for selecting candidates for all elections and for choosing a member of the committee under the terms of article 16.

16. a list of nominations was needed for each election, which must not necessarily be permanent, as fresh candidates could be designated for every election. A permanent panel was required, however, for the purposes of article 16. As a compromise, he proposed that paragraph 3 should be deleted and that the following text should be added to article 3: "Nominations shall remain valid until the following regular election under article 7." New nominations would be made every two or three years which would be valid until the next election. Vacancies and appointments under article 16 could be made on the basis of the existing list of valid nominations.

17. Mr. KYROU (Greece) said that some provision should be made for a permanent list of nominations. He felt, however, that alternative A of article 2, paragraph 3, should be amended to read: "A nomination shall be made for a long-term period not exceeding five years but a person shall be eligible for renomination."

18. In reply to Mr. MENDEZ (Philippines), he said that the phrase "long-term" was intended to prevent the presentation of new candidates every two or three months.

19. Mr. SORENSEN (Denmark) explained that under his amendment the list of nominations would remain valid until three months before the date of an election held under the provisions of article 3.

20. Mr. CASSIN (France) could not agree to delete paragraph 3 of article 2 and therefore could not accept the Danish amendment if it were incorporated into article 3. Alternative A should be interpreted to mean that nominations would be valid for a maximum of five years, but that in practice the list could be reviewed every two or three years when the Secretary-General requested States to submit nominations for a new election. The formula "Nominations shall be valid for the interval between two regular elections" could have been proposed, but he felt that it was too rigid and that it would be better to fix a maximum which would in effect prove less restrictive on States.

/21. The CHAIRMAN

21. The CHAIRMAN, speaking as the representative of the United States of America, could accept the Danish amendment if it was made clear that a new list of nominations would be presented for each election.

22. Mr. CASSIN (France) pointed out that the Danish amendment was more far-reaching than alternative A in that it further limited the freedom of States.

23. Mr. ORIBE (Uruguay) asked why the drafting group had fixed a maximum period for the validity of nominations and why that limit had been set at five years. He also wondered why a negative formulation had been chosen in alternative A and asked whether the Commission could not accept the following wording: "A nomination shall be valid for five years unless expressly altered by the nominating State". He could not express a definite opinion on the paragraph until those points had been clarified.

24. In reply to Mr. NISOT (Belgium), the CHAIRMAN, speaking as the representative of the United States of America, said that nominations could be made by correspondence but that the elections could not be held that way.

25. Mrs. MEHTA (India) pointed out that when the system first went into operation some members would retire after two years and some after three years but that the members elected subsequently would serve for five years. She would have no objection if later elections were carried on by correspondence but she felt that the first elections should not be done in that way. She pointed out that the text said nothing about how the election should be carried out.

26. Mr. CASSIN (France) thought the nominations could be effected by correspondence but that the same procedure could not be followed for elections. If the proposal that the committee should be elected by the International Court of Justice were rejected, the Commission should take the responsibility for the system it adopted.

/27. He repeated

27. He repeated that he could not accept the Danish amendment if it was presented to article 3 but he would support it in place of the first half of alternative A of article 2, paragraph 3.

28. Mr. SORENSEN (Denmark), in reply to Mr. ORIBE (Uruguay) said that the list of nominations would be valid until a new list for the next regular election had been prepared. If he preferred, the Danish amendment could be redrafted to read: "Nominations shall remain valid until new nominations are made for the purpose of the following regular elections." The Uruguayan representative might be satisfied, however, if the point were made clear in the summary records.

29. He would not insist on incorporating his amendment in article 3 and would accept the French suggestion that it should replace the first part of alternative A.

30. Mr. WHITLAM (Australia) wondered why article 3 should provide for nominations when article 2 dealt with the panel of nominations.

31. Turning to article 7 he said that under its provisions members would be elected for five years. Only at the first election would they be given two-year terms. Thereafter, elections would be held at five-year intervals. He thought therefore that in view of the provisions of article 7 the original texts of paragraph 3 were satisfactory because a panel of candidates would always be available from which members could be chosen as the need arose.

32. The CHAIRMAN, speaking as the representative of the United States of America, said that she would agree to insert the Danish amendment in paragraph 3.

33. Mr. TSAO (China) said his interpretation of article 7 differed from that of the Australian representative. After two years it would be necessary to elect four new members who would be chosen for a period of five years. There would then be three members on the committee whose terms of office would have only three years to run. That overlapping would mean that regular elections would have to be held every two or three years.

/34. The CHAIRMAN

34. The CHAIRMAN agreed with the representative of China. Speaking as the representative of the United States of America in reply to a further question, she informed him that a Government could not withdraw a nomination unless the candidate wished to resign or became unable to serve.

35. Mr. SORENSEN (Denmark) endorsed the Chairman's remarks. Nominations should not be made with any particular conflict in mind but should be permanent. If a candidate became unable to serve he could withdraw his name.

36. Mr. CASSIN (France) supported the Chairman and the representative of Denmark. He pointed out that States would be asked to nominate four candidates to ensure that some representative of each State would always be on the panel.

37. Mr. SORENSEN (Denmark) agreed with the representative of Lebanon that the Danish amendment attempted to fix a minimum as well as a maximum period of validity for nominations. In view of the fact that elections would not be held regularly every two years he thought his formula was the best solution.

38. The CHAIRMAN, speaking as the representative of the United States of America, said that Governments would have the right to make nominations in the event of the death or resignation of any of the candidates.

39. Mr. CRIBE (Uruguay) thought that the proposed machinery was too complicated. A term of office of six years could be chosen which could be divided evenly in two- or three-year periods. He thought, however, that the first question to decide was the duration of the validity of nominations. As it stood paragraph 3 provided for a very fluid list and he thought it would be advisable to establish a more stable panel. It might be better therefore to fix the validity of nominations at ten years and elect members for a period of six years with elections to be held every two or three years to replace out-going members.

40. The CHAIRMAN thought that the only point for the Commission to consider at that time was the method of setting up a panel for nominations.

/41. Mr. MALIK

41. Mr. MALIK (Lebanon) thought the text should state that casual vacancies would automatically be filled from the panel.

42. With regard to the Danish amendment he thought it sufficient to fix a minimum and therefore a text stating that "A nomination shall be valid for not less than five years" should be equally satisfactory. A provision could be added to the effect that in the case of the death or resignation of a member the State could present fresh nominations. Under that formula there would be no need to mention renomination.

43. Mr. RAMADAN (Egypt) asked the Commission to proceed to the vote on the alternatives for article 2, paragraph 3.

44. The CHAIRMAN, speaking as the representative of the United States of America, wondered whether the Lebanese representative would be satisfied if the following text were added to alternative A as amended by Denmark: "it being understood that a State party to the covenant is free to fill vacancies in its nominations caused by death or resignation".

45. Mr. HOARE (United Kingdom) noted that article 7 provided for a system of rotation among committee members and was thus connected with the question of nominations. The Commission might therefore wish to discuss article 7 before taking a decision on article 2, paragraph 3.

46. He would stress that the five-year limit established in article 2, paragraph 3, had been chosen deliberately in order to oblige Governments periodically to review their nominations at least every five years and not to remain indifferent to those nominations once they had been made. To emphasize that point he would suggest a drafting change in the Danish amendment for the Commission's consideration, making the amendment read: "nominations shall remain valid for five years or until replaced by nominations in conformity with article 3".

47. The question of filling vacancies was covered by article 8. Such vacancies could possibly be filled by permitting Governments to appoint new nominees to the panel. It did not follow from the text of article 8 that a

person chosen to fill a vacancy arising from the death of a committee member must necessarily be of the same nationality as his predecessor.

48. Mr. SORENSEN (Denmark), while agreeing with the United Kingdom representative's intentions, would prefer not to change his own amendment. He thought that the matter might be clarified, if need be, by a suitable change in article 8.

49. Mr. HOARE (United Kingdom) did not press his suggestion.

50. The CHAIRMAN stated that article 8 dealt with elections to the committee in cases of casual vacancies, while the Lebanese and United States delegations were at present concerned with vacancies occurring on the panel.

51. Mrs. MEHTA (India) thought that the panel should always be complete in order to meet situations which might arise under article 16. She considered that a five-year maximum would be useful.

52. The CHAIRMAN asked whether the Danish representative could accept the suggested United States addition to his amendment.

53. Mr. SORENSEN (Denmark) stated that he could accept the United States suggestion on behalf of his own delegation but that it might be preferable to vote on it separately.

54. The CHAIRMAN invited the Commission to vote on the Danish amendment to article 2, paragraph 3, reading as follows: "Nominations shall remain valid until new nominations are made for the purpose of the next regular election under article 7. A person shall be eligible to be renominated."

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

55. The Commission next considered the addition of the words "it being understood that a State party to the covenant is free to fill vacancies in its nominations caused by death or resignation" to the first sentence of the text just adopted.

/56. Mr. MENDEZ

56. Mr. MENDEZ (Philippines) did not think that the words 'death or resignation" covered the case of the expulsion of a Committee member for reasons of incapacity.

57. The CHAIRMAN thought that the point might be met by adding the words "or any other reason".

58. Mrs. MEHTA (India) considered that the use of the word "resignation" would not be appropriate: a nominee could withdraw but not resign. She therefore suggested the substitution of the word "withdrawal" for the word "resignation".

59. Mr. SORENSEN (Denmark) feared that the use of the phrase "any other reason" might be held to carry the undesirable implication that a Government had the right to remove a nominee.

60. Mr. MENDEZ (Philippines) withdrew his suggestion.

61. Mr. CASSIN (France) thought that the proposed addition to paragraph 3 was unnecessary. Article 2, paragraph 2, had been drafted so as to enable Governments to make as many as four nominations in order to meet the possibility of the death or withdrawal of a nominee.

62. Mr. HOARE (United Kingdom) agreed with the French representative. If members of the Commission really entertained any doubts concerning vacancies on the panel, they could increase the number of possible nominees. He did not consider the substitution of the word "withdrawal" as desirable because it might imply that a Government had the right to withdraw a nomination, a possibility which should be avoided.

63. Mrs. MEHTA (India) agreed with the French and the United Kingdom representatives and concluded that there was no need for the proposed addition to paragraph 3.

/64. The CHAIRMAN,

64. The CHAIRMAN, speaking as the representative of the United States, withdrew the amendment.

65. She invited the Commission to vote on article 2 as a whole.

Article 2, as amended, was adopted by 14 votes to 1, with no abstentions.

Article 3

66. Mr. MALIK (Lebanon) noted that whereas article 2, paragraph 3, which had just been adopted, simply spoke of "nominations", article 3 referred to "the names of persons qualified to discharge the duties of a member of the committee". The language should be uniform whenever possible and he therefore suggested the substitution of the words "their nominations" for the words he had quoted.

67. As a result of the adoption of the Danish amendment to article 2, paragraph 3, he would further propose the insertion of the word "each" before the word "election", and the deletion of the word "the" before the same word in the first line of article 3.

68. Mr. ORIBE (Uruguay) wondered what would happen if Governments declined to submit nominations when requested to do so by the Secretary-General.

69. The CHAIRMAN did not believe that that was likely to happen. A Government refusing to submit nominations would be left without representation on the panel.

70. Mr. ORIBE (Uruguay) thought that the issue was more serious. A State having failed to submit nominations might subsequently declare that it would not recognize any decision of the Committee.

71. Mrs. MEHTA (India) stated that by signing the instrument, a State thereby automatically agreed to abide by its provisions, including those dealing with the nomination machinery.

72. Mr. ORIBE (Uruguay) said that recent experience with so solemn an international instrument as a peace treaty had shown that the parties to such an agreement did not necessarily abide by its provisions.

/73. The CHAIRMAN

73. The CHAIRMAN stated that the only thing that could be done was to hope for good faith on the part of all concerned. She also noted that article 2 laid down an explicit obligation to submit nominations.

74. She inquired of the authors of the proposal concerning measures of implementation whether they could agree to the Lebanese amendments. Speaking as the representative of the United States of America, she stated that her delegation could accept them.

75. Mr. HOARE (United Kingdom) was also willing to accept the amendments.

76. Mr. SORENSEN (Denmark) suggested that the word "regular" should be inserted between the words "each" and "election" in order to meet a point made earlier by the United Kingdom representative in connexion with vacancies.

77. Mr. CASSIN (France) welcomed the Danish suggestion. He considered that the case of vacancies was covered by article 6. He could accept the Lebanese amendment calling for the insertion of the word "each", but did not consider the second Lebanese amendment to be really necessary.

78. The CHAIRMAN, speaking as the representative of the United States of America, considered that the insertion of the word "regular" would not be advisable in view of the possibility of special elections.

79. Mrs. MEHTA (India) agreed with the United States representative. She also recalled that article 8 did not contain any separate provisions on procedure but simply stated that the procedure laid down for the first election should also be followed in order to fill vacancies.

80. Mr. NISOT (Belgium) suggested the substitution of the word "an" for the word "the" before "election", making that part of the paragraph read "at least three months before the date of an election...".

81. Mr. SORENSEN (Denmark) withdrew his suggestion but proposed that the word "to" should be substituted for the word "of" in the first line, making the phrase concerned read "...each election to the Committee..."

82. Mr. ORIBE (Uruguay) considered the election system both dangerous and needlessly complicated. He would vote against article 3 for substantially the same reasons that had led him to vote against article 2. The system laid down in article 3 endangered the desideratum of permanency. Changes in the panel every two or three years would lead to chaotic conditions, compromise the independence of Committee members and grant altogether too much power to Governments.

83. Mr. CASSIN (France) thought that the objections of the Uruguayan representative had been met to a large extent by what the Commission had already adopted.

84. During the deliberations of the authors of the document under consideration, he had suggested the insertion of the words "if they have not already done so" after the word "submit". He wondered whether the addition of those words would meet the position of the Uruguayan representative.

85. Mr. ORIBE (Uruguay) stated that the addition of those words would meet one of the points he had made. It would not, however, meet his position entirely for the composition of the panel would still change every two or three years. The time during which nominees were members of the panel was too short and did not conform with the traditional practice in respect of such panels. The adoption of the procedure envisaged in article 3 threatened to undermine an advance in international law which it had taken a long time to achieve.

86. Mr. CASSIN (France) felt that the Uruguayan representative was somewhat exaggerating the difficulties. A procedure similar to the one contemplated in the document under consideration had been adopted in connexion with the establishment of the Permanent Court of Arbitration at The Hague in 1907 and was therefore not an innovation in international law.

87. In reply to the CHAIRMAN, he formally moved the insertion of the words "if they have not already done so" as an amendment to article 3.

/88. Mr. HOARE

88. Mr. HOARE (United Kingdom) had certain doubts about the French amendment. At first sight there appeared to be a contradiction between the provisions of the Danish amendment to article 2, paragraph 3, which the Commission had adopted and the amendment just submitted by the French representative.

89. He sympathized with many of the objections raised by the Uruguayan representative. He would, however, point out that it was one thing to have nominations for three and two years and quite another to give States the right to submit new nominations whenever a committee vacancy occurred.

90. The CHAIRMAN, speaking as the representative of the United States, shared the United Kingdom representative's doubts concerning the French amendment.

91. Mr. MALIK (Lebanon) agreed with the United Kingdom and United States representatives. To his mind, article 3 meant that new nominations to the panel could be made when the old nominations expired.

92. Mr. NISOT (Belgium) would have preferred a system analogous to that in effect in connexion with the International Court of Justice.

93. Mr. CASSIN (France) said that the purport of his amendment was being completely misconstrued: far from conflicting with the Danish amendment, it was actually in line with it. Since it had, however, been misunderstood, he would withdraw it.

94. Mr. NISOT (Belgium) stated that the current debate demonstrated that the text of article 3 was not at all clear.

95. Mr. CASSIN (France), had decided, on further reflection to reintroduce his amendment in order to clarify the intent of article 3. His amendment had become necessary because of the Lebanese amendment and he would emphasize that it was entirely in conformity with the Danish amendment to article 2 paragraph 3.

/96. The Danish

96. The Danish amendment, in effect, provided that nominations were valid until the next regular election. It was firm on that point. His own amendment simply served to underline the firmness of that validity of the nominations.

97. Mr. HOARE (United Kingdom) declared himself satisfied with the French representative's explanations. He concluded from them that the addition of the words in question would exclude the possibility of submitting new nominations to fill casual vacancies in the committee. He would vote for the amendment.

98. Mr. MALIK (Lebanon) stated that the possibility referred to by the United Kingdom representative was already ruled out by article 2, paragraph 3, so that the French amendment was unnecessary. Article 3 applied only to regular elections.

99. The CHAIRMAN invited the Commission to vote on article 3 in parts.

100. The first line of the article, with the Lebanese and Danish amendments, read:

"At least three months before the date of each election to the committee,".

That wording was adopted by 12 votes to 1, with 1 abstention.

101. The next portion of article 3 to be submitted to the vote read: "the Secretary-General of the United Nations shall address a written request to the States parties to the covenant".

That wording was adopted by 12 votes to 1, with 1 abstention.

102. The Commission next voted on the French amendment, reading: "if they have not already done so".

The French amendment was adopted by 7 votes to 3, with 4 abstentions.

103. Mr. MENDEZ (Philippines) proposed a transposition of the words: "if they have not already done so", so that they would follow the words "within two months".

/104. The CHAIRMAN

104. The CHAIRMAN considered the Philippine suggestion to be out of order, since the voting had already begun.

The final portion of article 3 as quoted was adopted by 13 votes to none, with 1 abstention.

105. Mr. MENDEZ (Philippines) explained that he had abstained because the transposition which he had suggested and to which he attached considerable importance, had not been adopted.

106. Mr. NISOT (Belgium) stated that he would abstain from voting on the article as a whole because he considered that the election system which it contemplated was unnecessarily complicated. He would prefer a system similar to that of the International Court of Justice.

107. The CHAIRMAN invited the Commission to vote on article 3 as amended as a whole.

Article 3, as amended, was adopted by 10 votes to 1 with 3 abstentions.

108. Mr. KYROU (Greece) requested permission to comment on another matter at the present time, since he would be obliged to leave the meeting shortly. He invited the Commission's attention to the statement by the Secretary-General (E/CN.4/474/Add.1) concerning the financial implications of the joint proposal on measures of implementation.

109. As a former official of the General Assembly's Fifth Committee, he considered that technical difficulties were likely to arise out of the financial implications of the joint proposal. He would therefore advise the authors of the joint proposal to confer with the Secretariat.

110. The CHAIRMAN expressed the hope that the representative of Greece would be present during the discussion of article 4, which would involve a point of crucial importance to the entire machinery of implementation to be set up by the Commission: whether the responsibility for election of

the members of the proposed Human Rights committee should rest with the States parties to the covenant or with the International Court of Justice.

111. Mr. KYROU (Greece) replied that his delegation favoured election of the members of the Committee by the States ratifying the covenant, and that his alternate would, when the time came, cast his vote to that effect.

112. Mr. ORIBE (Uruguay) suggested that the Commission should consider article 5 before article 4, since article 5 contained the basic provisions requiring decision by the Commission.

113. The CHAIRMAN asked the representative of France to present his delegation's alternative suggestions for both article 4 and article 5.

Articles 4 and 5

114. Mr. CASSIN (France) observed that there existed two different conceptions of the nature of the proposed committee. One attitude consisted in the assumption that because only certain States would ratify the convention, the committee which would be responsible for its implementation should be elected by those States alone. There were many arguments in favour of such an attitude. His delegation recognized that the interests of the States ratifying the convention must be protected. On the whole, however, his delegation felt that there were more positive arguments on the other side of the question. The International Court was the highest non-political body of the United Nations, and its sponsorship would lend prestige to the new committee. There could be no question of partiality, since the Court functioned as an entity, regardless of the nationalities of its individual members.

115. If the committee were elected by the States parties to the covenant, there would be the danger of creating a small society within the society which was the United Nations. Moreover, the election would have to be carried out

/either

either by an assembly or by correspondence; in the latter case, it would be difficult to ensure fair geographical representation and proper competence on the part of the persons elected, while in the former case, the assembly would in all probability take place during a session of the General Assembly, and there would be some danger of the larger body exerting influence upon the smaller.

116. Mr. NISOT (Belgium) proposed, as an amendment to article 5, that the first sentence should read as follows: "The Committee shall be elected, from the panel provided for in article 4, by the States Parties to the Covenant who shall send representatives to a meeting convened by the Secretary-General for the purpose of such elections."

117. Mr. ORIBE (Uruguay) recalled that the Chilean representative, at the preceding meeting, had commented upon the question from a legal and technical point of view. The Commission could not take a decision until it knew whether or not the International Court could undertake such a function without amendment of its Statute. He suggested that the Commission should hear a statement from a representative of the Legal Division on the matter.

118. Mr. SCHACHTER (Secretariat) remarked that although the judicial activities of the International Court were limited by its Statute, there had been cases in which extra-judicial functions of the Permanent Court of International Justice had been provided for by international instruments and carried out by that Court. These cases concerned the appointment of arbitrators and umpires and thus indicated that the Court did not consider itself forbidden to assume such extra-judicial functions. The question, however, would be one for the Court to decide; it was free to refuse, at its discretion, to undertake such functions.

/119. In reply

119. In reply to a question by the CHAIRMAN, Mr. SCHACHTER (Secretariat) said that precedents existed for the performance of extra-judicial functions both by the Court itself and by the President of the Court in his official capacity. In particular, he mentioned the appointment by the Court itself of members of various mixed arbitral tribunals established by the Paris Treaty of 1930.

120. Mr. VALENZUELA (Chile), while he appreciated the position taken by the French representative, considered it essential that the Commission should not take its decision until the status and capacity of the International Court in the matter had been fully clarified. The Commission should exercise great caution in creating such a precedent. It would not be possible to impose such an extra-judicial function upon the Court; that body was free to agree or refuse. The Chilean representative pointed out that in the case of a refusal, the ratification by States would become null and void and the entire work of the Commission concerning measures of implementation of the covenant would be lost. The Commission should consult the Court before it decided upon the procedure in question.

121. In view of the complexity of the question, the Chilean delegation could not support the proposal for election by the International Court of Justice.

122. Mr. MALIK (Lebanon) agreed with the representative of Chile. He did not feel that the Secretariat had cited any precedent which was truly analagous with the case under consideration. The Commission was setting up machinery for the protection of human rights; that would be a heavy responsibility and a marked departure from the normal duties of the International Court. Mr. Malik wondered, moreover, whether the Court, with its exclusively judicial experience, would be entirely competent to deal with questions of human rights. The Commission must sooner or later decide to what extent it wished to burden the future machinery for the protection of human rights with juridical considerations. For his part, Mr. Malik was convinced that the Commission should endeavour to reduce the juridical element in the question and

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lay more emphasis upon its other aspects. He regretted that he could not support the position of the French delegation; but he felt that a fundamental principle was involved, and he would accordingly vote for election by the States.

123. Mr. SORENSON (Denmark) agreed to a certain extent with the representative of Lebanon regarding over-emphasis upon the juridical aspect of the question. He pointed out, however, that the Commission had been working throughout its entire session to draw up an instrument which would be legally binding. If such an instrument was to exist, certain legal questions must of necessity be faced.

124. The technical difficulties still remained to be considered, however. Mr. Sorenson asked the Secretariat whether any case existed in which the Court had refused an extra-juridical task referred to it by a group of States. He also requested clarification regarding the question of consultation with the Court, whether consultation in advance was customary, and what form it should take. It might, for example, be possible for the President of the Court to be present when the question was discussed in the General Assembly.

125. As regards the remark of Mr. VALENZUELA (Chile), that the composition of the International Court might include some States which were not parties to the covenant, Mr. SORENSON (Denmark) stressed the fact that the members of the Court exercised their functions in a totally impartial manner, regardless of their nationalities. There was no need for hesitation on that account.

126. As regards the appropriateness of the task as a function for the Court, it was true that the function would be a permanent one, rather than temporary, as in the case of appointment of arbiters, investigators, etc. In all other ways, however, Mr. Sorenson felt that the task would be entirely in keeping with the functions performed by the Court in the past with regard to disputes between States.

127. In general, and pending further clarification by the Secretariat, the Danish delegation favoured the judicial approach to the question.

/128. Mr. SCHACHTER

128. Mr. SCHACHTER (Secretariat) had not meant to imply that any cases existed which were precisely analagous to the present one; he had merely stated that the Court was not forbidden to accept such a function, nor was it required to do so.

129. He could not state whether cases existed of the Court's having refused an extra-judicial function entrusted to it by a treaty. The cases to which he had referred concerned the appointment of members of arbitration tribunals, conciliation commissions, or other bodies which were not permanent bodies.

130. As regards consultation with the Court in advance, one instance of such consultation existed, in which the President of the Court had agreed that he would undertake the function in question provided that a certain proposed agreement entered into force.

131. Mr. HOARE (United Kingdom) felt that the juridical aspects of the matter were being unduly stressed by the representatives of Lebanon and Denmark. The essential point for the Commission to decide was what was the most competent body to elect the committee. He himself felt that the States parties to the convention would be the most competent; and he recalled that the members of the International Court itself were appointed by States.

132. Mr. Hoare drew attention to the use of the word "elected" in article 5, and asked whether any precedents existed for an "election" of that kind by the Court.

133. Finally, he could not share the French representative's concern regarding the possibility of creating an international "society within a society". If the right to come before the committee were to be limited to the States parties to the covenant, those States should have the right to control the membership of the committee.

134. The CHAIRMAN, speaking as the representative of the United States of America, said she would comment upon articles 4 and 5 together. She shared many of the views expressed by the representative of Chile, and would support the

original text of article 5, as amended by the Belgian delegation. She could not support the principle of election by the International Court; the States which had assumed the obligations laid down in the covenant were entitled to elect their own committee. The composition of that committee should in no way be controlled by States which had not ratified the covenant.

135. With regard to the question of election by the International Court, the Chairman remarked that the Court was composed of fifteen judges, who might or might not be nationals of States parties to the covenant. The Commission could not oblige the Court to undertake the task envisaged; moreover, there was no provision in the Statute of the Court which gave it the right to hold elections. Drawing attention to alternative B of article 6, she pointed out that if that text were adopted, it might become necessary at some time in the future for the Court to rule upon matters which had been considered by persons appointed by itself. In such circumstances it might well be difficult for the Court to maintain absolute impartiality.

136. Finally, the Chairman pointed out that the procedure of election by the States would be less complicated than that of election by the Court. Permanent representatives of all Member States of the United Nations were always present at Lake Success; but members of the Court might be absent from the Hague at the time an election was to be held, and might be unable to return for it.

137. Mr. MALIK (Lebanon) asked the Secretariat whether any precedent was known for the periodic performance by the Court of an extra-judicial function which was, properly considered, of a permanent nature.

138. Mr. SCHACHTER (Secretariat), in reply to the representative of Lebanon, said he knew of no such precedents.

139. In reply to the United Kingdom representative's question concerning precedents for elections by the Court, Mr. Schachter did not have the relevant international instruments immediately available and was not sure whether or not there were any specific provisions regarding elections. He could supply that information at the Commission's next meeting if it were so desired.

/140. Mrs. MEHTA

140. Mrs. MEHTA (India) felt that the difficulties facing the Commission were not insurmountable. The Commission was engaged in an entirely new activity; it must create precedents, for no precedents existed to guide it. She could see no objection to asking the International Court to elect the committee, and she was convinced that the Court was the proper body to perform that function. Absolute impartiality was indispensable; the committee must be able to command the confidence of the peoples of the world. Since the States ratifying the covenant might possibly be influenced by various considerations, she thought it essential that the task should be entrusted to a body outside and unrelated to the contracting parties; only in that way could true impartiality be ensured.

141. Mr. ORIBE (Uruguay) thought that the question at issue was of highest importance. While it was true that no definite precedent existed for the exercise of such specific functions by the Permanent Court of International Justice, it should be remembered that the latter had existed for only a comparatively short period — from 1914 to the outbreak of the Second World War — during which time no case had arisen which would have made such action necessary. Since the Second World War there had been considerable development in international law. Problems such as the protection of human rights, for which there would have been no solution under classic international law, were now considered as falling within the competence of such international bodies as the Commission on Human Rights and the International Court which, being the principal judicial organ of the United Nations and must consequently assist the latter in carrying out its purposes and principles. If the Statute of the Court were examined in the light of the Charter of which it was a part, it would be seen that the technical difficulties emphasized by some members could be overcome and that the Court could be entrusted with the proposed functions, even if the provisions of its Statute had to be amended accordingly.

/142. The Commission,

142. The Commission, therefore, which was a pioneer in the field of the protection of human rights, must concern itself exclusively with the substantive question of determining the best means to ensure the protection of human rights -- whether it was a committee appointed by the International Court, or one nominated by the contracting States or by some other United Nations organ -- and should not allow itself to be deterred by technical difficulties. The question of those technical difficulties had been raised on previous occasions; for example when the right of the individual to bring complaints before the International Court had been discussed at the Bogota Conference in 1948 in connexion with a proposal to that effect submitted by his delegation with a recommendation for a corresponding modification in the Statute of the Court. The Conference had not been discouraged by the technical difficulties but, on the contrary, had referred the proposal to its judicial organ for study with the request to report thereon to the following conference. Moreover, quoting from article 23, paragraph 3 of the General Act on the Pacific Settlement of Disputes of 1928 and article 43 of the Pact of Bogota, he noted that there was an increasing tendency to resort to the impartiality of judicial organs both in national as well as in international affairs.

143. In conclusion he urged the Commission once more to concentrate upon finding the best way of achieving its purposes and to leave technical difficulties -- which were of secondary importance -- to be settled later.

144. Mr. CASSIN (France) said that the views expressed by the representatives of Denmark, India and Uruguay reflected his own. The question was not whether the Court would be competent to exercise the proposed function under its Statute which clearly did not contain provision to that effect, but whether, having regard to the traditional performance of such extra-statutory functions, under international treaties, it would, after due consideration of the question, accept the function of electing the members of that committee. By adopting the French proposal the Commission would give the Court the necessary time to consider the question in advance and to state its views thereon before the General Assembly took the final decision on the matter.

/145. The arguments

145. The arguments concerning technical difficulties did not bear close examination. Thus, the fact that the Court would select the members of the committee did not mean that it would exert an influence over them or that the latter would be held accountable to it. As regards a possible refusal by the Court to perform that function, recent developments led him to believe that the Court, taking into account the fact that the question had been considered of sufficient importance to give rise to such far-reaching proposals as the establishment of an international tribunal to deal with violations of human rights, would not fail to appreciate the importance of the matter, nor would it hesitate to take an unprecedented step in that regard.

146. On the other hand, the Commission should also consider what would be the consequences of a decision in favour of an exclusive body to be appointed by the contracting States to the covenant. Thus, the General Assembly might refuse to vote the necessary financial appropriations for such a body. Even if not all States ratified the covenant at once, the committee would still work for the protection of human rights in all States and consequently it should be appointed by the International Court. He recalled, in that connexion, that in the case of the ILO a special committee had been appointed to review each year the ratifications of ILO conventions by States irrespective of whether the States of which the Committee's members were the nationals had ratified a given convention; never had their impartiality of the members of that Committee been questioned on the grounds of their nationality. The States which had ratified the ILO covenants had never felt that the members of that Committee should be appointed by contracting States only and not by the ILO as a whole. If the committee had had to deal with complaints brought by individuals, he might have agreed that the principle of reciprocity should be taken into account in the composition of the committee. As a matter of fact, however, the committee would deal only with questions arising between States, and consequently it should be appointed by the International Court so as to ensure the necessary relation between that body and the International Court.

/147. With

147. With reference to the United Kingdom representative's remark that the proposed machinery would be limited, he recalled nevertheless that the Commission, having considered that an ad hoc body would be inadequate, had decided to give the committee permanent status. He therefore urged the Commission that, if it truly desired to have efficient permanent machinery for the implementation of the covenant on human rights, it should give it the necessary composition and not be afraid of setting new precedents. Compared with the magnitude of the task ahead the technical difficulties seemed insignificant.

148. Mr. VALENZUELA (Chile), with reference to articles 38 and 50 of the Statute of the Court, noted that international custom could not be regarded by the Court as a precedent.

149. Mr. WHITLAM (Australia) thought that the question before the Commission was of fundamental importance. The question of the Court's competence was not decisive, as there was no reason why the Court should not perform certain functions if requested to do so under the covenant. The fear had been expressed in the Commission that a committee appointed by States parties to the covenant might not be fully qualified to discharge its quasi-judicial functions. On the other hand, arguments had been put forward in favour of that method of appointment which a number of representatives felt would ensure greater consistency. In his view, however, that system would leave everything in the hands of Governments which had no practical experience in dealing with such questions. In view of the importance of the question and its contentious nature he would therefore provisionally support the idea that selection should be made by the International Court in order that the proposal to that effect might be transmitted to the General Assembly for further consideration.

150. The CHAIRMAN stated that she would put article 5 to the vote in parts. She first called for a vote on the first part of article 5, which read: "The Committee shall be elected by the States parties to the covenant". If that sentence was adopted the French alternative would automatically fall.

The first part of article 5 was adopted by 8 votes to 6, with one abstention.

/151. The CHAIRMAN

151. The CHAIRMAN then took up the Belgian amendment.

152. Mrs. MEHTA (India) questioned the need for special provisions in the article regarding the method by which members of the committee were to be elected. She wondered whether it might not be possible to follow the procedure used in other United Nations bodies.

153. Mr. SCHACHTER (Secretariat) said that the procedure followed by United Nations organs was laid down in their respective rules of procedure and would not automatically apply in the present case. It would therefore be better to lay down the method in the article itself or to entrust it to the committee.

154. Mr. ORIBE (Uruguay) noted, with regard to the Belgian amendment, that according to the proposals now before the Commission the entire system of implementation would be based on the good will of States. In the current state of affairs, and taking into account the importance of the question involved, that was not sufficient.

155. Concerning the Belgian amendment he noted that it did not make clear whether there had to be a quorum of the States parties to the covenant before they could proceed to select the members of the committee. He also wished to know whether the amendment provided for any definite procedure by which such meetings could be called and whether the meetings would be of a formal nature.

156. Mr. NISOT (Belgium) stated that the meetings would be formal. The States which adhered to the covenant were presumably aware of their responsibilities in the matter and could therefore be expected to send representatives to the meetings. If some States did not send representatives, that should not prevent the meeting from taking the proper action. He consequently saw no need for providing for a quorum.

/157. Mr. ORIBE (Uruguay)

157. Mr. CRIBE (Uruguay) thought that the amendment should include some provision for a quorum.

After an exchange of views, it was decided that the Belgian amendment should be dealt with at once, and that the Uruguayan representative would present his amendment concerning a quorum in connexion with article 6 A.

158. The CHAIRMAN then put the Belgian amendment to the vote.

The Belgian amendment was adopted by 8 votes to none, with 7 abstentions.

159. The CHAIRMAN put to the vote the rest of the sentence without the Belgian amendment.

The rest of the sentence was adopted by 11 votes to none, with 4 abstentions.

160. The CHAIRMAN put to the vote the second sentence of article 5.

The second sentence of article 5 was adopted by 12 votes to none, with 3 abstentions.

161. The CHAIRMAN put to the vote the last sentence of article 5.

The last sentence was adopted by 13 votes to none, with 2 abstentions.

162. The CHAIRMAN put to the vote article 5 as amended.

Article 5 as amended was adopted by 8 votes to 5, with 1 abstention.

163. The CHAIRMAN asked whether the decision on the method of appointment of the committee, as just taken in connexion with article 5, should automatically affect the corresponding provisions of articles 4, 6, 7 and 12.

It was so decided.

164. Mr. CASSIN (France) thought that the decision just taken by the Commission did grave damage to the international machinery necessary to ensure the protection of human rights. He feared that the exclusive organ just decided upon might, by its political nature, set some dangerous precedents of partiality. In the circumstances it would have been better if the Commission had adopted the United Kingdom proposal for an ad hoc body; such a decision would at least not have given rise to false hopes, but would have clearly shown to the world that the United Nations was not yet prepared to establish permanent machinery on the question.

/165. Mrs. MEHTA

165. Mrs. MEHTA (India) agreed with the French representative. The Commission's vote had been most disappointing. It would be a delusion to think that a permanent committee elected by the contracting parties to the covenant, would remain impartial in cases involving the very States which had elected it.

166. Mr. THEODOROPOULOS (Greece) stated that he had voted for the article as adopted by the Commission. He took exception to the Indian representative's statement; the Commission's decision had not been guided by the desire to prevent impartiality but, on the contrary, to provide for an organ legally and politically equipped to deal with the questions which would come before it.

167. Mr. MALIK (Lebanon) noted that the question had been fully debated in the Commission and that repeated efforts had been made to reconcile the two opposing views. It had, however, not been possible to reach a compromise, and the Commission had now decided in favour of appointment by the contracting States. While the vote had been rather close, he urged the minority to accede to the views of the majority in a democratic spirit of co-operation. He disagreed with the Indian representative's remarks concerning the committee's partiality; the Commission should proceed on the assumption that the committee would be impartial and that the contracting parties to the covenant would have the wisdom to appoint the most qualified persons to that body.

168. Mr. ORIBE (Uruguay), noted that the debate had turned upon a crucial question. It was precisely because of the importance he attached to the entire matter that he had continuously endeavoured to achieve maximum clarity in the text under consideration and full understanding of its implications. For that reason also he had expressed concern regarding the Belgian amendment which left many loop-holes, and which would base the entire system on the good will of the contracting States which was particularly dangerous where human rights were concerned.

169. In conclusion he said that notwithstanding his own views on the matter, he would accept the majority's decision as even the more limited machinery it had adopted constituted the greatest step forward in the field of human rights, the protection of which depended on the co-operation of Governments.

The meeting rose at 6.40 p.m.

22/5 p.m.