UNITED NATIONS

ECONOMIC AND SOCIAL COUNCIL

GENERAL

E/CN.4/SR.214
15 May 1951

ENGLISH

ORIGINAL: ENGLISH and FRENCH

Dual Distribution

COMMISSION ON HUMAN RIGHTS

Seventh Session

SUMMARY RECORD OF THE TWO HUNDRED AND FOURTEENTH MEETING

held at the Palais des Nations, Geneva,
on Wednesday, 25 April 1951 at 10.30 a.m.

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Present:

Chairman: Mr. MALIK (Lebanon)

Members:

Australia	Mr. WHITLAM
Chile	Mr. VALENZUELA
China	Mr. YU
Denmark	Mr. SÖRENSEN
Egypt	AZMI Bey
France	Mr. CASSIN
Greece	Mr. EUSTATHIADES
Guatemala	Mr. DUPONT-WILLEMIN
India	Mrs. MEHTA
Pakistan	Mr. WAHEED
Sweden	Mrs. RÖSSEL
Ukrainian Soviet Socialist Republic	Mr. KOVALENKO
Union of Soviet Socialist Republics	Mr. MOROSOV
United Kingdom of Great Britain and Northern Ireland	Miss BOWIE
United States of America	Mrs. ROOSEVELT
Uruguay	Mr. CLASULLO
Yugoslavia	Mr. JEVREMOVIĆ

Representatives of specialized agencies:

International Labour Organisation	Mr. COX
United Nations Educational, Scientific and Cultural Organization	Mr. SADA Mr. ELVIN

Representatives of non-governmental organizations:

Category A

International Confederation of Free Trade Unions	Miss SENDER Mr. PATTEET

Representatives of non-governmental organisations:

Category A (continued)

International Federation of Christian Trade Unions	Mr. EGGERMANN
World Federation of United Nations Associations	Mr. ENNALS

Category B and Register

Caritas Internationalis	Abbé HAAS
Carnegie Endowment for International Peace	Mrs. CARTER
Catholic International Union for Social Service	Miss de ROMER Mrs. SCHRADER
Commission of the Churches on International Affairs	Mr. NOLDE
Consultative Council of Jewish Organizations	Mr. BENTWICH Mr. MOSKOWITZ
Co-ordinating Board of Jewish Organizations	Mr. MOWSHOWITZ
International Council of Women	Mrs. CARTER
International Federation of University Women	Miss ROBB
International Federation of Business and Professional Women	Miss TOMLINSON
International League for the Rights of Man	Mr. MADAY Mr. BALDWIN
International Union for Child Welfare	Mrs. SMALL
International Union of Catholic Women's Leagues	Miss de ROMER Miss ARCHINARD
Liaison Committee of Women's International Organizations	Miss ROBB
Pax Romana	Mr. HABICHT
Women's International League for Peace and Freedom	Miss BAER
World Jewish Congress	Mr. BIENENFELD Mr. RIEGNER
World Union for Progressive Judaism	Mr. MESSINGER

Secretariat:

Mr. Humphrey	Representing the Secretary-General
Mr. Das	Secretary to the Commission

DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS AND MEASURES OF IMPLEMENTATION (item 3 of the agenda):

(c) CONSIDERATION OF PROVISIONS FOR THE RECEIPT AND EXAMINATION OF PETITIONS FROM INDIVIDUALS AND ORGANIZATIONS WITH RESPECT TO ALLEGED VIOLATIONS OF THE COVENANT - STUDIES OF QUESTIONS RELATING TO PETITIONS AND IMPLEMENTATION (E/1732, E/1927, E/CN.4/513, E/CN.4/515 and Adda.1-17, E/CN.4/525, E/CN.4/527, E/CN.4/530, E/CN.4/549, E/CN.4/550, E/CN.4/551, E/CN.4/553/Rev.1, E/CN.4/555, E/CN.4/556, E/CN.4/557, E/CN.4/558, E/CN.4/559, E/CN.4/560, E/CN.4/560/Add.1, E/CN.4/561) (continued)

The CHAIRMAN invited the Commission to continue consideration of item 3(c) of the agenda, and warned representatives against the dangers of taking hasty decisions which might have to be reversed.

Mr. SÖRENSEN (Denmark) drew attention to his amendment (E/CN.4/559) to the United States proposal (E/CN.4/557) relating to a protocol on petitions from individuals and non-governmental organizations, and to the joint Danish and French proposal (E/CN.4/560) concerning the amendment and expansion of articles 19 - 41 of the draft Covenant. The last-mentioned document would be completed by another (E/CN.4/560/Add.1), suggesting amendments to article 30 and the rest of the articles in Part III of the draft Covenant.

The purpose of the amendments was to strengthen the independence of the proposed Human Rights Committee, the members of which should be elected by the International Court of Justice, in order to remove their election from the political sphere. Furthermore, by the terms of the joint proposed text of Article 19, the members of the Committee were to sit in a personal capacity, and not as representatives of governments. In that way, the Committee would be raised above the tumult of day-to-day political strife.

The CHAIRMAN said that the Commission could choose one of two procedures: it could either examine the articles on implementation seriatim, taking preliminary decisions on them, or it could hear general statements on the inclusion or exclusion of various issues raised in Part III of the Covenant, deferring the detailed examination of the articles therein until it had concluded its examination of Parts I and II.

In his own view, it might be wise to examine the articles contained in Part III in a preliminary fashion, leaving the door open for decisions at the second reading.

Mrs. MEHTA (India) considered that it was impossible to get a full picture of the machinery of implementation from the proposals submitted by the Danish and French representatives. The only new departure was the provision for the election of members of the Committee by the International Court of Justice. Yet at the same time article 23, in its proposed new form, provided for action by the Secretary-General of the United Nations on behalf of the States Parties to the Covenant. The question arose whether the Committee would be set up on behalf of those States, or on behalf of the United Nations as a whole.

Mr. WHITLAM (Australia) assumed that the French representative would be commenting in detail on the new proposal. At the present stage it would seem that all that was required was for the Commission to decide on its general approach to the problem of the selection of the members of the Human Rights Committee. The Australian Government firmly held the view that the International Court of Justice should be entrusted with their election and he consequently supported the joint Danish-French proposal (E/CN.4/560).

Referring to the point raised by the Indian representative, he must make it clear that, in his Government's opinion, every effort should be made to bring the Covenant within the orbit of the United Nations as a whole. Although the Covenant would certainly be the responsibility of the States Parties to it, it should also represent all States Members of the United Nations on as wide a basis as possible. The proposed article 23 fully met that requirement, since it would entrust the Secretary-General of the United Nations with the task of bringing the Committee into being. For his own part, he was unable to share the Indian representative's doubts, and was prepared to support the proposal.

Mr. VALENZUELA (Chile) would be glad if the authors of the joint Danish-French proposal would enlighten him on a legal point. It seemed to him that the jurisdiction of the International Court of Justice, which was defined in precise

terms in Article 36, paragraph 1, of its Statute, could not be broadened by means of an interpretation. In any event, if the Court was to be made responsible for electing the members of the Human Rights Committee, it would at least be necessary for it to give its previous approval to any such extension of its competence.

Mr. SÖRENSEN (Denmark) said that, when drafting their joint proposal, the French representative and himself had considered the question of the competence of the International Court of Justice. They conceded that it was not open to a limited number of States to extend the Court's competence by mutual agreement. A matter which was outside the Court's competence could not be brought before it without previous amendment of the Charter of the United Nations or of the Statute of the Court itself. In the present case, the Court was merely being asked to appoint the members of the Human Rights Committee. Such action was not wholly outside its competence, for he would recall that on several occasions the President of the Court had appointed members of committees, tribunals or boards. The Court would presumably not refuse to elect the members of the Committee, although in recognition of the fact that that duty could not be imposed upon it, article 23 in its new form laid down that the Secretary-General of the United Nations should request it to do so. Thus the procedure was being initiated on the assumption that in view of its current practice the Court would comply with such request.

At a later stage it might be necessary for the Commission to consult the Court, a representative of which generally attended sessions of the General Assembly, so that it should be an easy matter to arrange informal consultations.

Mr. YU (China) also considered the proposal that members of the Committee should be elected by the International Court of Justice sound, but opposed the procedure laid down in articles 22 and 23, whereby the Secretary-General of the United Nations was to be entrusted with the task of preparing a panel of nominees and of requesting the Court to proceed to the election of members.

The Secretary-General was primarily an administrative officer, and Articles 97 - 101 of the Charter did not suggest that he should be entrusted with political activities. True, Article 99 might be interpreted in a political sense, but the action provided for therein had no connexion whatsoever with the human rights issue. Past experience certainly suggested the need for caution, for the present holder of the office had been criticized by public opinion as well as by certain delegations for exceeding his authority in the political sphere. Whether such criticism was justified or not, the Chinese delegation believed that very great circumspection was required in granting the Secretary-General powers which might easily lend themselves to extension. In any case, there was a tendency to overburden the Secretary-General with responsibilities, and he (Mr. Yu) would recall that on a number of occasions proposals made in the General Assembly, that the Secretary-General should appoint high commissioners or similar officials, had been rejected. The Chinese delegation considered that the Secretary-General should not propose candidates, since the latter might have to assume great political responsibilities.

In his delegation's view, the word "Committee" was not dignified enough, and therefore unsatisfactory. Some such term as "tribunal", "court" or "forum" would be preferable.

He reserved his right to comment further when Part III of the Covenant was examined article by article.

The CHAIRMAN, speaking as representative of Lebanon, was not convinced that the election of members of the Committee by the International Court of Justice from a panel prepared by the Secretary-General would be the best possible procedure. He agreed with the Danish and French representatives that every effort should be made to guarantee the Committee's independence, but was not sure that that independence would ensue from the use of the method proposed. He shared the Chilean representative's view that the question was intimately bound up with that of the Court's competence. But the difficulty would not be solved by causing the Secretary-General to request the Court to proceed to an election. So important an issue could not be left to the hazard of a request which might or

might not be complied with. The procedure should be so designed as to leave no possible doubt that the Human Rights Committee would be independent in its own right.

Turning to the proposed new text for article 19 he was surprised to see it laid down therein that members of the Committee should possess either judicial experience or recognized competence in the field of human rights. That they should be persons of high moral standing went without saying, but recognized competence in the field concerned was, he felt, more important than legal experience. He had already had occasion to question the wisdom of unduly emphasizing judicial or legal experience as a qualification. He still had those doubts. Human rights were far from being a mere matter of law. He would remind the Danish and French representatives that it had not been the lawyers who had stood up to Hitler in Nazi Germany, but the Churches and certain intellectual circles. Everybody knew what would have happened had human rights in Nazi Germany been left to the lawyers. He for his part would keep the references to article 19 to high moral standing and to recognized competence in the field of human rights, and leave it at that. One or two members of the Committee should, of course, be lawyers, but he could conceive of no greater disaster than that the Committee should be made up of lawyers alone. Profound spiritual issues were involved in the problem of human rights. If the sponsors of the proposal wished to retain the reference to legal experience, he would wish to add to their enumeration persons versed in theology, philosophy and even poetry. It was essential that those called upon to serve on the Committee should possess abundant sensitiveness to human suffering and human values. The Committee would have to deal with alleged violations of human rights, and should therefore include members who had experience of the more profound intellectual and spiritual fields of thought.

Mrs. ROOSEVELT (United States of America) thought that the proposed new text of article 23 did not request the Secretary-General to draw up a list

himself, but merely, in accordance with his usual functions, to transmit one compiled by the States Parties to the Covenant. Such a procedure was necessary, but purely mechanical. It could have no bearing on the choice of nominees for membership of the Committee. That responsibility would rest with the States Signatories of the Covenant.

She agreed with those representatives who had argued that the real merit of the proposed procedure was that it removed the whole process of election out of the sphere of politics, and would thus ensure that the members of the Committee were of high personal standing.

The CHAIRMAN recalled that at its last session the Commission had asked the Legal Department of the Secretariat to give an opinion on the competence of the International Court of Justice. The following extracts from the Summary Record of the 188th meeting, held on 11 May 1950, at Lake Success, were relevant:

> "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."
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> "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."

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After some further discussion, in which the representatives of Chile and Denmark had joined, the representative of the Legal Department had added the following comment:

"Mr. SCHACHTER (Secretariat) had not meant to imply that any cases existed which were precisely analogous 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.

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.

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."

Mr. BIENENFELD (World Jewish Congress), speaking at the invitation of the CHAIRMAN, said that the new Danish -French proposals proceeded from the assumption that the United States proposal (E/CN.4/557) would be adopted. His comments, too, were based on that assumption.

Article 36 of Chapter II of the Statute of the International Court of Justice laid down that the jurisdiction of the Court comprised cases especially provided for in the Charter of the United Nations, or in treaties and conventions in force. The Covenant would be a convention in force, and he agreed with the suggestion, implicit in the statement emanating from the Legal Department of the Secretariat and just read out by the Chairman, that the Court should be asked if it could assume the functions described in the joint proposal. Otherwise, there would be a gap in the Covenant.

Turning to the question of the nomination by States Parties to the Convention of candidates for membership of the Human Rights Committee, he would submit that each State should be requested to nominate at least three candidates, in order to make selection possible. If only one person were nominated, and in the Court's opinion his qualifications were inadequate, owing, for instance, to lack of competence in the field of human rights, difficulties would arise.

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He also wished to raise a point in connexion with paragraph 2 of article 1 in the United States proposal (E/CN.4/557), in which the non-governmental international organizations were defined as those organizations in consultative status with the Economic and Social Council. A further proviso was added to the effect that those organizations must be "approved annually by two-thirds of the States parties to this Protocol at a meeting of representatives of those States convened by the Secretary-General of the United Nations." With all respect to the United States representative, whose valuable work in the field of human rights had been widely acknowledged, he must point out that that proviso suggested that certain non-governmental organizations might run the risk of being penalized for their activities in the course of any one year. An organization which had perhaps been very active in defence of human rights might be struck off the list. He could see no reason why the members of the Human Rights Committee should be presented with a list of non-governmental organizations considered worthy to submit petitions. If the International Court of Justice were to be entrusted with the task of electing the members of that Committee, it might also be empowered to receive annually or biennially proposals from the States Parties to the Covenant that one non-governmental organization or another be deleted from the list, on the ground that the latter had not truly and sincerely defended human rights. He would appeal to the Danish and French representatives to include in their amendments to the United States proposal a further amendment to cover that point. The issue would be the more important if the non-governmental organizations were not granted the right to petition in the Covenant itself. It should at least be established beyond all doubt that States signatories to the Protocol would appreciate the role of all non-governmental organizations that were genuinely interested in human rights, and would not attempt to hinder their activities.

There was one other important point which arose in connexion with articles 39-41, which laid down the procedure to be followed by the Human Rights Committee in dealing with cases of violation. The Commission would recall that a suggestion had been made that in cases of urgency the Committee should meet at its own discretion without observing the procedure laid down in those articles. If a case were sub judice, no government would permit inteference by the Human

Rights Committee, which, indeed, would not be able to intervene at all in legal proceedings. All it would be able to do would be to make recommendations to the States concerned. But in advocating speedier action in urgent cases, he was not thinking of cases pending before a court, but of such happenings as had been seen in Germany under the Nazi regime, when men had been consigned to Auschwitz or relegated to a ghetto by administrative order. Such were indeed matters of urgency, upon which the Human Rights Committee should make a recommendation to the States concerned. He was convinced that had the League of Nations not been in an enfeebled condition when the Nazi regime had come to power in Germany, a recommendation emanating from such a body as the proposed Human Rights Committee would have had some effect. He would consequently appeal to the Commission not to tie the Committee hard and fast to a procedure which would have to be followed for two years at least before any result could be achieved. In urgent cases - and such cases were only too likely to arise in a period of tension - the Committee should be able to act speedily without being hampered by strict rules of procedure. Otherwise, it would be unable to save lives, safeguard freedoms and place the issues squarely before world public opinion.

AZMI Bey (Egypt), referring to the Danish-French text proposed for article 24, paragraph 2, pointed out that the Charter laid down the principle of geographical distribution only for the Security Council, and not for any other United Nations organs.

There was surely no justification for introducing such a principle in the present instance. Human rights were the outcome of universal social and cultural concepts, rather than the reflection of regional ideas. Hence he suggested that the paragraph in question be amended to state that in the election of the Committee, consideration should be given to equitable social and cultural distribution.

Mr. CASSIN (France) explained first of all that the joint proposal submitted by the Danish and French delegations (E/CN.4/560/Rev.1) kept within the framework of the draft Covenant on Human Rights adopted by the Commission at its sixth session, and in no way affected the United States proposal concerning a separate protocol.

The Commission was engaged in discussing measures for the international implementation of the Covenant. Part III of the draft Covenant made the necessary provisions for the membership, procedure and functions of the body which would be responsible for implementation. The Franco-Danish proposals referred only to the organization of the Committee, and for the moment he would confine his remarks to that particular subject.

The Indian delegation's proposal that the Human Rights Committee should be an organ of the United Nations itself would be justified if the great majority of States Members was likely to accede to the Covenant. Such, however, was unfortunately not the case. The General Assembly still lacked legislative powers, and States could only legally bind themselves through the machinery of treaties. That being so, measures of implementation could not be enforced on States which had not acceded to the Covenant: moreover, it would not be right to allow States which were not parties to the Covenant to take a direct part in its implementation.

It was to be hoped, however, that there would be a large enough number of accessions to the Covenant to enable it to be brought within the framework of the United Nations, and the Danish and French delegations had therefore agreed to suggest that the Secretary-General of the United Nations should carry out the preliminary administrative formalities. He (Mr. Cassin) associated himself with the United States representative in pointing out to the Chinese representative in that connexion that the powers conferred on the Secretary-General would be purely administrative ones.

He and the Danish representative had also thought it fitting that the members of a peace-making and conciliation body with the noble duty of redressing violations of human rights should be nominated by the highest

possible authority, that was to say, by the International Court of Justice. Admittedly, the Statute of the Court conferred only juridical powers on it, and Article 36 of Chapter II of the Statute, to which the representative of the World Jewish Congress had referred, related only to disputes. But there was nothing to prevent use being made of the Court's voluntary powers, which did not depend on the Statute; in the case of a number of international treaties between 1920 and 1940 the President of the Permanent Court of Justice had, in fact, been requested to appoint arbitrators or peace-makers.

The International Court would not, of course, be under any obligation to act on a request that it elect the members of the Committee, but there was no legal obstacle to such a procedure, and every reason to hope that the International Court would not refuse to lend its aid to the States Parties to the Covenant.

He would like to make it clear, in reply to the Chairman's observations, in his capacity as Lebanese representative, about the qualifications to be required of candidates for membership of the Committee, that he had no intention whatever of giving jurists a monopoly in the protection of human rights. But neither should an attempt be made to exclude them. As to the Chairman's reference to the Nazi regime in Germany, the Commission would recall, to the honour of the German judiciary, the courageous example of the Leipzig Court in acquitting Dimitrov of the charge of having set fire to the Reichstag. In practice, moreover, cases of violation of the Covenant would almost always raise questions of law, and it would be useful if persons with expert experience of such work were available when enquiries had to be conducted.

To meet the criticism of the Lebanese delegation, the article in question could stipulate that the members of the Committee should be persons of high moral standing and of recognized competence in the field of human rights, it being understood that such persons might include jurists as well as philosophers, theologians, publicists etc. It would however be advisable not to omit jurists, since their presence on the Human Rights Committee would no doubt obviate the need to have recourse to the advisory opinion of the International

Court of Justice - a very lengthy procedure - as suggested by the United Kingdom delegation.

Lastly, he would remind the representative of the World Jewish Congress that article 20, paragraph 2, of the draft Covenant provided that each State Party should nominate at least two, but not more than four, candidates. Assuming that the majority of States Members of the United Nations ratified the Covenant, it would be seen that the International Court would have a very wide choice, and would run no risk of being confronted with too short a list of candidates possibly not possessing the desired qualifications.

His delegation was prepared to take into consideration all the comments made on the amendments it had submitted to the Commission, and felt sure that if a joint effort were made constructive results would be achieved.

The CHAIRMAN said that he would like to see in writing the new text of paragraph 2 of article 19 just suggested by the French representative before taking a position on it. In reply to the main point made by the latter, and speaking as representative of Lebanon, he said that he had the highest regard for the legal mind. At the same time, if the French representative agreed that other types of mind were of equal importance in the composition of the Committee, it was surely wrong to single out the legal expert for mention in the paragraph in question, because that would seem to belittle the value of the others. He would ask the French representative to consider that point.

Mr. CIASULLO (Uruguay) said that he would support the general intention of the Danish-French proposal. While not completely meeting his delegation's wishes, it did remedy some of the defects to which his delegation had called attention at previous meetings.

Though the views already expressed in the Commission unfortunately made it appear likely that the right of petition would not be granted under the Covenant to individuals and non-governmental organizations, it was to be hoped that that would be done in a separate protocol as the United States

representative had proposed. His delegation was glad that an important advance would thus be made.

With regard to the jurisdiction of the International Court of Justice, he supported the remarks of the French representative. There were many precedents which suggested that the Court would willingly assist by agreeing to elect the members of the Committee.

As to the qualifications to be required of members of the Human Rights Committee, he felt that the Danish-French formula for article 19, paragraph 2, was a very wide and general one, since it placed jurists and persons with recognized competence in the field of human rights on the same footing.

Lastly, replying to the observations of the representative of the World Jewish Congress on urgent cases, he formally proposed (E/CN.4/565) that the following sentence be added to article 41, paragraph 2, of the draft Covenant:

"At the request of one of the States Parties, the time limit of eighteen months may be reduced by the Committee in cases considered as urgent or where human life is endangered".

Mrs. MEHTA (India) wished to make the following initial observations on the various articles dealt with in the Franco-Danish proposal.

First, supposing the International Court of Justice declined to accede to the Commission's request that it should elect the members of the Committee, did the Commission envisage any alternative procedure? Or did it intend to leave the question to the General Assembly? Secondly, she thought that the functions of what would clearly be a highly competent Committee seemed to be very closely restricted. Article 38 laid down that the Committee should act only on matters referred to it by signatory States, and she wondered whether that would be enough. Would it not be possible, for example, for the Secretary-General or the Economic and Social Council to refer complaints to it on their own initiative? Thirdly, assuming that only some twenty States became parties to the Covenant, who would be responsible for defraying the expense of maintaining the Committee? Would it be those twenty States alone, or would the other forty States Members of the United Nations also be expected to bear their share, even though the Committee was dealing with questions which were no concern of theirs?

Mr. YU (China) thanked the United States and French representatives for helping to clear up a misunderstanding about article 22 of the Franco-Danish amendment. The interpretation of international treaties was never easy, and often resulted in the practice of a kind of "juridical chemistry", which in the past had sometimes led to unforeseen results. The wording of article 22 of the amendment under discussion, namely, "The Secretary-General of the United Nations shall prepare a panel of the persons thus nominated", still seemed to him somewhat obscure. Did it mean that the Secretary-General would have some liberty of action in preparing the panel? The two representatives he (Mr. Yu) had already mentioned had stated that the Secretary-General would have no such discretionary power, and he accepted their interpretation. But he would like to see that made clear in the summary record, for eventual future reference.

With regard to paragraph 2 of article 19 of the Danish-French proposal, he suggested that the words "persons of high moral standing and possessing either judicial or legal experience or recognized competence in the field of human rights" should be amended to read "persons of high moral standing and possessing either judicial or legal experience and recognized competence in the field of human rights". In other words, he would like to see provision made for the inclusion on the Committee of persons experienced both in legal questions and in the field of human rights. If that could be done, the Committee would be a balanced one. The Covenant, after all would be a legal instrument, and members of the Committee should therefore have legal experience; at the same time, it would be intimately concerned with human rights, and members should equally have experience in that field.

Finally, it seemed to him desirable that the International Court of Justice should be asked whether its competence would permit it to accede to the request of the Commission. Experience showed that the International Court of Justice had often been obliged to reject requests of a similar kind in the past, because it had not considered itself competent in the matter. He suggested that the first approach should be unofficial. If the International Court's reply was unfavourable, the Commission might have to consider other alternatives; but he hoped that that would not be necessary.

Mr. EUSTATHIADES (Greece) thought that, so far as the participation of persons possessing legal experience was concerned, the various views expressed might be reconciled by stating in article 19, paragraph 2, that the Committee should be composed of persons of high moral standing and of recognized competence in the field of human rights, it being understood that the Committee should include a number of persons qualified in the judicial or legal field. In other words, even jurists members of the Committee should be required to possess qualifications in the sphere of human rights.

In reply to the Egyptian representative's observation, he was prepared to agree to the omission of any reference to geographical distribution, especially as the International Court of Justice would undoubtedly take that question into consideration on its own account. But he considered that a reference to social and cultural distribution would be unrealistic, since such a concept would be very difficult to define.

With regard to the observations of the representative of the World Jewish Congress on urgent cases, he would point out that serious cases of violation of human rights could be dealt with by other United Nations organs. Other cases might be adequately covered by the second sentence of article 39 of the draft covenant itself, under which the Committee need not wait until domestic remedies had been exhausted where the application of such remedies was prolonged unreasonably.

As to the assistance of the International Court of Justice being sought in the matter of the election of members of the Committee, the view of the Secretariat, which had been mentioned by the Chairman, seemed to correspond with the general feeling of the Commission. Mention had already been made of a number of precedents that had occurred before the second world war in the work of the Permanent Court of International Justice. He would add a few others which had occurred since the war, particularly the nomination of arbiters by the President of the International Court of Justice at the request of the United Nations Educational, Scientific and Cultural Organization. Moreover, although the Statute of the Court did not explicitly grant the Court that right, neither did it specifically withold it, so that it was unlikely that the Court would refuse its assistance

if it were sought. But should it do so, another method of election would have to be found, as the Indian delegation had pointed out. The Greek delegation considered that the only possible alternative would be to draw lots.

Mr. MOROSOV (Union of Soviet Socialist Republics) recalled that at a previous meeting the United Kingdom representative had suggested that the length of time allotted to a speaker should be proportionate to his government's contribution to the United Nations budget. Were that suggestion to be adopted, then, out of the 2½ hours allowed for the present meeting, the representatives of the Union of Soviet Socialist Republics, the United Kingdom, the United States of America and France would be entitled to speak for 1½ hours, while the representatives of the other Governments represented on the Commission would only be entitled to rather more than two minutes each. He did not know how seriously to take the United Kingdom suggestion, but he did not believe that it was in conformity with the United Nations Charter, which authorized not only the major powers, but all representatives, to express themselves fully.

With regard to the substance of the Danish-French proposals, he believed that they represented a new and flagrant violation of the United Nations Charter. He did not propose, in that connexion, to repeat the arguments he had already developed at an earlier meeting. The new amendment implied the grant to the International Court of Justice of functions which it did not legally possess. Article 92 of the Charter stated that "the International Court of Justice shall be the principal judicial organ of the United Nations"; the keyword was "judicial". Article 1 of the Statute of the International Court also insisted on the essentially judicial nature of that Court. There was nothing in those two articles to suggest, even remotely, that the International Court of Justice could elect a Committee of the kind suggested, because, however legal the method of election might be, the Committee itself was essentially an illegal body. It had been suggested that the International Court of Justice should be consulted informally before it was officially asked whether it would undertake the functions proposed in the Danish-French proposal. He had already said that he was convinced that it could not legally exercise those functions, and he could only imagine

that the International Court would reply that it would be obliged to reject the request as outside its competence. It would be necessary to amend both the Charter of the United Nations and the Statute of the International Court of Justice before any such proposal could become acceptable. As matters stood, any such action would constitute a flagrant violation of the Charter.

Mr. DUPONT-WILLEMIN (Guatemala) was entirely in favour of the joint Denish-French proposal. He would like to submit amendments to article 19, paragraph 1, and to article 33, paragraph (a), increasing the number of members of the Committee from seven to nine, and the quorum from five to seven members.

Those amendments took account of the arguments put forward by several delegations and representatives of non-governmental organizations, who had rightly pointed out that if the Committee consisted of only seven members with a quorum of five, a majority of three votes would be sufficient to carry a decision on important issues. Incidentally, if the Committee had nine members, it would be able to divide up into three sub-committees if necessary.

He also supported the Uruguayan amendment concerning emergency procedure. The provision in the second sentence of article 39 hardly seemed adequate.

Mr. VALENZUELA (Chile) supported the suggestion of the Chairman in his capacity as Lebanese representative, that the stipulation that candidates for the Committee should possess judicial or legal experience be deleted from article 19, paragraph 2. He would prefer the wording to be much more general, stipulating merely that the Committee should be composed of nationals of the States Parties to the Covenant.

The very fact of a State's nominating a candidate for membership of the Human Rights Committee would imply that the nominee was a person of high moral standing; it was difficult to imagine who would be entitled to challenge that.

Furthermore, if the International Court of Justice had to select some ten members from a panel of, say, a hundred candidates prior stipulation of the necessary qualifications might lead to the unfortunate conclusion that the ninety

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unsuccessful candidates lacked the necessary high moral standing. The Parties to the Covenant would be sovereign States, and it was for them to nominate the most suitable candidates.

With regard to the proposed Danish-French amendments to article 23, he pointed out that the question of the task of the International Court of Justice was a rather subtle one. In Article 7 of the Charter, the Court was mentioned as one of the principal organs of the United Nations. Was the competence of one of those organs not known?

It would be useful if the Secretariat could prepare a document stating precedents where the International Court of Justice had been asked to make nominations, and describing specific instances, other than the settlement of disputes, in which the Court had acted in that way.

The CHAIRMAN asked the Secretariat to prepare the report requested by the Chilean representative as soon as possible, although he appreciated that it would be a difficult task. It might well prove that precedents would not apply in the present case, and that the Commission would be breaking new ground in asking the International Court of Justice to undertake the functions proposed by the French and Danish representatives. He did not believe that the United Nations had ever asked the International Court of Justice to set up an organization with quasi-permanent duties, as was now being suggested.

Mr. WAHEED (Pakistan) said that his delegation considered that the question of implementation was just as important as the Universal Declaration of Human Rights itself, and realised that the Covenant would be weakened if no implementation clauses were included. He was therefore prepared to support any proposals capable of strengthening the Covenant in that respect. His delegation maintained its original position, that a violation of the Covenant should be regarded in the same way as any other violation of an international treaty, and that any such issue should therefore be referred to the International Court of Justice or other appropriate authority. But he wondered whether the possibility

had been fully explored of referring complaints to other organs of the United Nations, such as the General Assembly, the Security Council, the Trusteeship Council and the like, which were competent to receive urgent and serious complaints in connexion with the non-observance of international agreements. If such existing organs could be used, considerable saving would result, and they might well prove adequate for the purpose.

The Pakistani delegation had supported an earlier French proposal envisaging the submission of annual reports in connexion with the protection of human rights. Apparently the French delegation now considered that such a measure would not be enough, since it had put forward, jointly with the Danish delegation, new proposals which provided for the appointment of a committee to deal with questions of implementation. The Pakistani delegation would base its attitude to those proposals on the replies to the following questions. First, was the Commission convinced that the existing organs of the United Nations were themselves incapable of assuming responsibility for implementation? Secondly, did the Commission consider that something more than normal recourse to the International Court of Justice was necessary? Thirdly, were signatory States alone to be authorized to lodge complaints, or would individuals and non-governmental organizations also be entitled to submit petitions?

Pakistan was in favour of empowering States parties to the Covenant alone to lodge complaints. It would be inadvisable to grant individuals or non-governmental organizations the right to petition, because in democratic countries governments continued in power only so long as public opinion was behind them, and if non-governmental organizations were allowed the right to submit petitions on the ground that they reflected public opinion more accurately than did the government, that would be an unjustifiable slur on the latter.

His delegation appreciated the value of the work done by non-governmental organizations, and welcomed the opportunity given them to express their views; but it felt that to go further and allow them to fulfil a function which should properly be confined to governments would be a dangerous step.

His delegation also opposed the ideas of making the secretary of the Committee responsible for handling complaints, or of appointing a high commissioner for that purpose, since the latter procedure would almost inevitably lead to the creation of a bureaucratic machine.

Mrs. RÖSSEL (Sweden) agreed with the Chairman in his capacity as representative of Lebanon that it would be undesirable to stress the legal qualifications of candidates for membership of the Committee. It was important to insist on their high moral standing and their competence in the field of human rights, though it might also be as well to state that it was desirable that some members of the Committee at least should have legal experience. She shared the views expressed by previous speakers with regard to the appointment of members of the Committee: that was, that the task should be entrusted to the International Court of Justice, as the best way of ensuring objectivity and impartiality.

The meeting rose at 1.00 p.m.