SUMMARY RECORD OF THE THREE HUNDRED AND FIFTY-FOURTH MEETING

held at the Palais des Nations, Geneva,
on Monday, 20 April 1953, at 3 p.m.

CONTENTS:

Draft international covenants on human rights and measures of implementation (item 3 of the agenda) (continued):

Measures of implementation (E/2256) (continued):

1. Article 44 and the United Kingdom and Yugoslav amendments thereto (E/CN.4/L.227 and E/CN.4/L.232) 4 - 6

2. Article 45 6

3. Article 46 and the United Kingdom amendment thereto (E/CN.4/L.227) 6 - 8

4. Article 47 and the United Kingdom and Belgian amendments thereto (E/CN.4/L.227 and E/CN.4/L.245) 8 - 11

5. Article 48 11 - 12

6. Article 49 and the United Kingdom amendment thereto (E/CN.4/L.227) 12 - 13

7. Proposed additional article to part IV submitted by the Philippines delegation (E/CN.4/L.238) 13 - 14


(1¼ p.)
Present:

Chairman: Mr. CASSIN (France), First Vice-Chairman
Rapporteur: Mr. KAECKENBEECK (Belgium)

Members:

Mr. WHITLAM Australia
Mr. DIAZ-CASANUEVA Chile
Mr. CHENG PAONAN China
Mr. ABDEL-CHANI Egypt
Mr. JUVIGNY France
Mrs. CHATTOPADHYAY India
Sir Abdur RAHMAN Pakistan
Mr. INGLÉS Philippines
Mr. DRUTO Poland
Mrs. RÖSSEL Sweden
Mr. KRIVEN Ukrainian Soviet Socialist Republic
Mr. MOROSOV Union of Soviet Socialist Republics
Mr. HOARE United Kingdom of Great Britain and Northern Ireland
Mrs. LORD United States of America
Mr. PEROTTI Uruguay
Mr. JEVREMOVIC Yugoslavia

Representative of a specialized agency:

International Labour Organisation Mr. VALTICOS

Representatives of non-governmental organizations:

Category A

World Federation of United Nations Associations Mr. ENNALS
Mr. de MADAY
Representatives of non-governmental organizations (contd.):

Category B and Register

Consultative Council of Jewish Organizations
Co-ordinating Board of Jewish Organizations
Friends World Committee for Consultation
International Federation of Business and Professional Women
International Federation of Friends of Young Women
International Federation of University Women
International League for the Rights of Man
Liaison Committee of Women's International Organizations
Pax Romana
St. Joan's International Social and Political Alliance
World Union for Progressive Judaism
World Union of Catholic Women's Organizations

Secretariat:
Mr. Humphrey
Mr. Das
Mrs. Bruce

Representative of the Secretary-General
Secretaries to the Commission
DRAFT INTERNATIONAL COVENANTS ON HUMAN RIGHTS AND MEASURES OF IMPLEMENTATION
(item 3 of the agenda) (continued):

Measures of implementation (E/2256) (continued):

(1) Article 44 and the United Kingdom and Yugoslav amendments thereto
(E/CN.4/L.227 and E/CN.4/L.232)

Mr. HOARE (United Kingdom) said that the United Kingdom amendment
(E/CN.4/L.227) to paragraph 1 of article 44 provided for the Secretary of the
Committee to be appointed by the Secretary-General of the United Nations. The
administrative convenience of such an arrangement was explained in paragraphs 5,
6, and 7 of the Secretary-General's memorandum on Measures of Implementation
(E/CN.4/675), with which he agreed. It was clear that the Human Rights Committee
was to be set up under the auspices of the United Nations, and it was right that
its Secretary and staff, like that of other United Nations bodies, should be part
of the United Nations Secretariat. The Secretary-General would be able to find a
candidate with qualifications similar to those required for analogous senior posts
in the Secretariat.

Mr. JEVREMOVIC (Yugoslavia) said that his delegation, too, had to some
extent taken account of the comments in the Secretary-General's memorandum. But
in view of the important duties which would fall to the Secretary, it was essential
that the Committee should have the last word in the selection of the person who was
to carry them out. The Yugoslav amendment took into account both the Committee's
requirements and the Secretary-General's suggestions.

Mr. JUVIGNY (France) said that the attitude of the French delegation was
based on its general conception of the nature of the Committee and of the high
degree of independence which it must enjoy, and did not apply to article 44 alone.
At previous meetings the Commission had adopted certain articles laying down
procedure for the nomination of members of the Committee, and had entrusted their
selection to the International Court of Justice. Although the precise nature of
the functions of the Secretary to the Committee had not yet been defined, it might
be presumed that they would not be purely administrative, since the Secretary would
play an important part in preparing and examining the cases laid before the
Committee. The French delegation therefore thought that the safeguards to be
provided for the selection of a secretary to the Committee should be similar to
those laid down for the election of its members.
The French delegation, of course, in no way imputed any bias to members of the United Nations Secretariat; it was merely anxious to avoid anything that might impair the Committee's complete detachment. Hence, it was unable to vote for the United Kingdom amendment.

The Yugoslav amendment certainly presented less difficulty, since it made the Committee responsible for appointing its own Secretary. But it offered no absolute guarantee of the independence which it was desired to confer on the Committee, because it restricted the Committee's choice to the three candidates proposed by the Secretary-General. Accordingly, the French delegation still preferred the system worked out by the Commission itself at the eighth session and embodied in article 44 as drafted.

The CHAIRMAN put to the vote the United Kingdom and Yugoslav amendments to paragraph 1 of article 44.

The United Kingdom amendment was rejected by 10 votes to 5, with 1 abstention.

The Yugoslav amendment was adopted by 8 votes to none, with 2 abstentions.

Mr. KAECKENBEECK (Belgium) remarked that, now that the Yugoslav amendment to paragraph 1 had been adopted, it was perhaps unnecessary to burden article 44 with the two following paragraphs, which related to matters which could very well be dealt with in the Committee's own rules of procedure.

Mr. INGLES (Philippines) drew attention to page 9 of the Secretary-General's memorandum on Measures of Implementation (E/CN.4/675), where attention was drawn to the impossibility of more than one candidate securing an absolute majority. He accordingly supported the suggestion in the memorandum that the words "the largest number of votes" be deleted.

Mr. HOARE (United Kingdom), appreciating the cogency of the Belgian representative's remarks, suggested that paragraphs 2 and 3 of article 44 be deleted.

Mr. JEVREMOVIC (Yugoslavia) proposed that a separate vote be taken on the Philippines representative's proposal.

The CHAIRMAN pointed out that under the existing provisions for a quorum for the Committee it was quite conceivable that the important election of the Secretary might be made by only four members. The Committee must face the consequences of its decision.
Agreeing with the Yugoslav representative's proposal, he put to the vote in turn the Philippine amendment, the Yugoslav amendment to paragraph 2 and the Yugoslav proposal that paragraph 3 be deleted (E/CN.4/L.232).

The Philippine amendment was rejected, 2 votes being cast in favour and 2 votes against, with 12 abstentions.

The Yugoslav amendment to paragraph 2 (to replace the words "of the Court" by the words "of the Committee") was adopted by 9 votes to 1, with 6 abstentions.

The Yugoslav proposal that paragraph 3 be deleted was adopted by 14 votes to none, with 3 abstentions.

Article 44, as amended, was adopted by 10 votes to 3, with 4 abstentions.

Mr. HOARE (United Kingdom) explained that he had voted for the Yugoslav amendment as being nearest in spirit to the rejected United Kingdom amendment. He had had no intention of detracting from the importance of the Committee, but rather of bringing the administrative side of its work into the sphere of the United Nations Secretary-General's jurisdiction. He had voted for paragraph 2 because, on the basis of the accepted Yugoslav point of view, he thought there were advantages in retaining the condition that the candidate obtaining an absolute majority of the votes of the Committee should be elected.

(2) Article 45

There being no amendments to article 45, the CHAIRMAN put it to the vote.

Article 45 was adopted as read by 14 votes to 3.

(3) Article 46 and the United Kingdom amendment thereto (E/CN.4/L.227)

Mr. HOARE (United Kingdom) said that, although it was not really necessary to mention re-election, he thought it advisable, especially in view of the similar provision in paragraph 3 of article 34, to make it clear that the Committee was not debarred from re-electing its original officers.

Mr. JEVREMOVIĆ (Yugoslavia) observed that, in the absence of any explicit stipulation to the contrary, the eligibility of the Chairman and Vice-Chairman for re-election was not in doubt.

Mr. KAECKENBEECK (Belgium) pointed out that the provision of article 46, as drafted, related only to the initial meeting of the Committee. Any decision regarding the election of the Chairman and Vice-Chairman thereafter would be governed by the rules of procedure adopted by the Committee.
Mr. HOARE (United Kingdom) said that if the Belgian representative was correct, his own amendment would have the advantage of implying that subsequent elections should be for a period of one year.

Mr. FREROTTI (Uruguay) remarked that, as article 46 referred only to the Committee's initial meeting whereas article 47 laid down provisions for rules of procedure, the United Kingdom amendment might better be taken under article 47.

Mr. WHITLAM (Australia) suggested that the phrase "at its initial meeting" be deleted. The article would then conform more closely with the provisions of Article 21 of the Statute of the International Court of Justice. After all, though not a judicial body, the Committee would in fact be acting judicially.

Mr. JUVIGNY (France) pointed out that the deletion of that phrase would not dispose of the question whether sub-paragraphs (a) and (b) of article 47 would apply to the election provided for in article 46. In other words, the issue before the Commission was whether the election of the initial Chairman and Vice-Chairman should be governed by the ordinary legal provisions of article 47, or whether special conditions should be laid down for the initial election, particularly where the quorum and the requisite majority were concerned.

Mr. HOARE (United Kingdom) said there was no possibility of the very strict application of article 47 to the first elections, for, if the provisions of the article were to apply to the election of the Chairman and Vice-Chairman, how, in the event of an equality of votes, could a Chairman not yet elected possibly have a casting vote? The Committee's rules of procedure could not be framed until the Committee was in being. He suggested that it be left to the common sense of the members of the Committee itself to devise its own procedure for the first election in the light of the clear intention of article 47.

Mr. DIAZ-CASANUEVA (Chile) would prefer to see the phrase "at its initial meeting" retained. It was a defect of drafting that the question of what would happen at the end of the first year should have been left in the air. As a simple and informal suggestion, he favoured a rearrangement of the order of ideas.

Mr. WHITLAM (Australia) proposed the following text for article 46 as meeting the trend of the discussion:

"The Committee shall elect its Chairman and Vice-Chairman for the period of one year; they may be re-elected. The first Chairman and the first Vice-Chairman shall be elected at the initial meeting of the Committee."
Mr. HOARE (United Kingdom) said that he would accept the Australian representative's proposal and withdraw the United Kingdom amendment. The rapporteur, however, might well consider whether the new text might not be better placed under article 47.

Mr. DIAZ-CASANUEVA (Chile) supported the latest Australian proposal.

The CHAIRMAN put the Australian proposal to the vote in three parts, the first part running to the semi-colon, the second to the end of the first sentence, and the third comprising the second sentence.

The three parts of the Australian amendment were adopted by 14 votes to none, with 3 abstentions in each case.

The Australian amendment was adopted as a whole by 14 votes to 3.

Mr. PEROTTI (Uruguay) explained that he had supported the Australian amendment because it incorporated in logical form the point he had made.

(4) Article 47 and the United Kingdom and Belgian amendments thereto (E/CN.4/L.227 and E/CN.4/L.245)

Mr. JUVIGNY (France), speaking on a point of procedure, said that the amendment to article 53 to be submitted by the French delegation might, if adopted, involve the inclusion in article 47 of a reference to the last paragraph of article 53.

Mr. HOARE (United Kingdom) said that, consequent upon the amendment to article 46, he wished to delete the word "then" but to retain the words "inter alia" in the United Kingdom amendment (E/CN.4/L.227). He would also withdraw his amendment to paragraph (a), in view of the Commission's decision that the number of the Committee's members should be nine.

The purpose of the United Kingdom amendment to paragraph (c) was to avoid the possibility of the Committee's work being unduly delayed as a result of varying and disputed interpretations of the extremely vague qualification of States as "having an interest in any matter referred to the Committee under Article 52". The amendment recognized that it was right that account should be taken of the interest of a State whose national might be concerned, and its purpose was to exclude from the right to make submissions to the Committee in writing any State whose nationals were not concerned. Only the two States directly concerned would be entitled under his amendment to be represented at the meeting. He thought that the United Kingdom
amendment struck a fair balance between the interest of the two parties directly concerned and that of any State party to the Covenant whose national was concerned.

Mr. KAECKENBEECK (Belgium) explained that the Belgian amendment, though mainly of a drafting nature, bore to a certain extent on the substance of article 47. His delegation was not in favour of using the term "hearings" in the article, as it considered that the Committee, though having some resemblance to a court of justice, would not in fact be a court, its function being not to try a case and deliver judgment in favour of one of the parties, but to endeavour to reconcile them.

Mr. JUVIGNY (France) asked the United Kingdom representative to explain what had led him, in his amendment to sub-paragraph (c) of article 47, to propose that a State whose national was concerned in a matter referred to the Committee should be treated differently at the two stages in the procedure.

Mr. HOARE (United Kingdom) replied that the object of the differentiation made in sub-paragraphs (i) and (ii) of paragraph (c) as drafted in the United Kingdom amendment was to allow the Committee to fulfil its functions as a conciliatory body in the conditions best calculated to achieve successful results. It went without saying that a State party to the Covenant whose national was concerned in a complaint should have the right to make submissions in writing, but in the United Kingdom delegation's opinion, it would be wiser to confine the crucial stage of the hearing to the States directly concerned alone.

Sir Abdur RAHMAN (Pakistan) pointed out that the word "frame" was more usually applied to rules of procedure than the word "establish", used in the first line of article 47. He did not consider that restrictions should be imposed at any stage in the proceedings. But the term "such State" in sub-paragraph (i) of the United Kingdom amendment was in no sense restrictive. Consequently, that amendment was inconsistent.

Mr. JEVREMOVIĆ (Yugoslavia) said that his delegation could not at that stage take up a definite position on the United Kingdom amendment. According to the new article proposed by Australia (E/CN.4/L.228) it would appear that it was proposed to go even further than the United Kingdom representative suggested, and to allow States concerned in a case referred to the Committee to participate with the right to vote when the case was discussed.
Mr. KAECKENBEECK (Belgium) feared that the French translation of the English phrase "concerned in a case" had given rise to some misunderstanding. He thought that phrase should be rendered in French by "est impliqué dans une affaire", and not by "est intéressé par une affaire".

Mr. CHENG PAONAN (China) interpreted paragraph (c) of article 47 as relating to complaints by one State against another, a matter which was also covered by article 52. Furthermore, the Chilean amendment (E/CN.4/L.246) to article 52 raised the issue of complaints emanating from non-governmental organizations in consultative status with the Economic and Social Council, and complaints from persons or groups of persons. He believed, therefore, that the Commission would be well advised to defer its decision on article 47 until it had disposed of articles 52 and 53.

Mr. DIAZ-CASANUEVA (Chile) said that paragraph (c) as drafted was certainly ambiguous, but the solution proposed in the United Kingdom amendment raised the delicate problem of the differentiation between a complaint and the interest which a State might have in any matter referred to the Committee under article 52. It was in the latter article that the issue should be settled, since the main purpose of article 47 was to lay down certain provisions concerning the Committee's rules of procedure.

Mr. HOARE (United Kingdom) agreed with the Chilean representative that it might be better to defer discussion of the article until article 52 had been dealt with.

He pointed out in reply to the Pakistani representative that the "State" referred to in sub-paragraph (c) (i) of the United Kingdom amendment was defined as any of the States parties to the Covenant which under article 52 were entitled to address complaints to the Committee. No other States would be entitled to do so. Article 52 clearly laid down a series of steps - diplomatic action, adjustment of the difference within a specified period of time and reference to the Human Rights Committee in the last resort. That meant that a State which applied the whole of that procedure would obviously consider the matter to be one of great importance. The United Kingdom delegation failed to see why a State which merely took an interest in a case, and had not troubled to take all the prescribed steps, should be allowed to intervene in the proceedings at the crucial stage. He could not but feel that
the text as drafted was most unsatisfactory. His amendment was designed to limit interventions to submissions in writing by a State party to the Covenant whose national was concerned in the difference.

Mr. KAECKENBEECK (Belgium) thought that the Commission should take a decision not only on the United Kingdom amendment, but also on the new article proposed by Australia (E/CN.4/L.228). He too considered that it would be expedient to dissociate sub-paragraph (c) from the remainder of article 47, and that the Commission should reserve its decision on that sub-paragraph until it had discussed subsequent articles of the draft covenant relating to the same question.

The CHAIRMAN said that the Commission now had three proposals before it: that further consideration of article 47 be deferred until articles 52 and 53 had been disposed of; the Belgian proposal that discussion of paragraph (c) alone be deferred; and the United Kingdom amendment, which would stand if the first two proposals were rejected.

Mrs. CHATTOPADHYAY (India) was in favour of deferring the discussion on article 47. Her own delegation, undoubtedly like many others, was very much interested in article 52, and it would be best for the Commission not to anticipate the issues raised therein at the present stage.

Mr. KAECKENBEECK (Belgium) said that if the Commission was prepared to defer discussion of article 47 as a whole he would withdraw his proposal.

The Chinese proposal that discussion of article 47 be deferred until articles 52 and 53 had been disposed of was adopted by 9 votes to 1, with 3 abstentions.

Mr. WHITLAM (Australia), replying to the CHAIRMAN, stated that since the new article proposed by his delegation (E/CN.4/L.228) had a bearing on article 47, it would perhaps be best to defer its consideration too.

It was so agreed.

(5) Article 48

Mr. JUVIGNY (France) repeated in connexion with article 48, sub-paragraph 1(b), the reservation he had previously mentioned with regard to article 47. (1)

The CHAIRMAN took note of that reservation.

(1) See page 8 of this summary record.
Mr. KAECKENBEECK (Belgium) said he had just noticed that article 48, sub-paragraph 1(c), was rather ambiguous. The clause in question should make it clear that the Chairman's action might be taken on two different counts: as part of his duties, it being one of the Chairman's duties to convene the Committee; or as part of his rights, the Chairman having the right to take the initiative in causing a meeting of the Committee to be convened in the same way as any five of its members.

He therefore proposed that article 48 be redrafted to read:

"1. After its initial meeting, meetings of the Committee shall be convened by the Chairman:
   (a) at such times as it deems necessary;
   (b) when any matter is referred to it under article 52;
   (c) at the request of not less than five of its members or on the initiative of the Chairman."

Mr. HOARE (United Kingdom) was prepared to accept the Belgian representative's amendment, but feared that he still had not solved the latent contradiction in the text. According to the proposed amendment, the Committee could only be convened by the Chairman, but sub-paragraph (c) made separate provision for its being convened on the Chairman's initiative. Apart from that apparent duplication, how would the text be applied if the Committee, or five of its members, wished a meeting to be held and the Chairman did not?

Mr. KAECKENBEECK (Belgium), observing that the new text he had proposed for article 48 raised a question of substance, withdrew it, and suggested that the Commission revert to the original text.

Paragraph 1 of article 48 was adopted by 13 votes to none, with 4 abstentions.
Paragraph 2 of article 48 was adopted by 14 votes to none, with 3 abstentions.
Article 48 was adopted as a whole by 14 votes to 3.

(6) Article 49 and the United Kingdom amendment thereto (E/CN.4/L.227)

Mr. HOARE (United Kingdom) said that article 49 dealt with purely administrative matters which could well be left to the discretion of the Committee. That was why the United Kingdom delegation proposed its deletion.

Mr. MOROSOV (Union of Soviet Socialist Republics) did not consider that the discussion of article 49 could be based on the United Kingdom proposal that it
be deleted, since the Commission had agreed that the basic text was that printed in the report of the eighth session (E/2256). That text was now being given a second reading.

Mr. HOARE (United Kingdom) recalled that precisely the same procedural point had been raised at the eighth session, when the Chairman had ruled that a question of principle - such as, in the present instance, whether an article on that subject should or should not figure in the covenant at all - should be decided first. The point at issue was whether the Commission really wished to lay down any specific provisions about the duties of the Secretary of the Committee. If it did, he would have no objection to the text as drafted. But if the decision of principle went against him, he would then be able to record his attitude by abstaining from the vote on the article.

Mr. MOROSOV (Union of Soviet Socialist Republics) pointed out that the formula used in the United Kingdom amendment (E/CN.4/L.227) raised no question of principle, but merely proposed the deletion of article 49. As such, it could not be voted upon; the Commission must first take a decision on the basic text.

As a matter of fact, he would support the United Kingdom delegation on that particular question of principle in relation to article 47, but he was opposed on formal grounds to a vote being taken on the United Kingdom amendment as it stood in document E/CN.4/L.227.

Mr. HOARE (United Kingdom) pointed out that delegations having been invited to submit amendments to the text of the draft covenants, he had had no alternative but to put his point of principle in the form of an amendment. But, to avoid a procedural discussion, he would ask that the Commission simply vote on article 49.

It was so agreed.

Article 49 was rejected by 11 votes to 4, with 2 abstentions.

(7) Proposed additional article to Part IV submitted by the Philippine delegation (E/CN.4/L.238)

Mr. INGLES (Philippines) said that his delegation's proposal called for little comment. The text of the additional article followed that of Article 20 of the Statute of the International Court of Justice, its purpose being to give expression to the Commission's concern about the membership of the Human Rights Committee. The Commission had already endeavoured to ensure the best possible selection of persons of high moral standing and recognized competence. But in his delegation's view, election based on reputation would not quite be enough. It
would be preferable to provide that the member identify himself with the Committee's aims through a solemn declaration. Members must have a sense of the importance and seriousness of their duties, and public opinion should be made aware of the full extent of the Committee's functions and responsibilities. That was the two-fold aim of the Philippines proposal.

Mr. JUVIGNY (France) noted that the English text of the new article as originally submitted by the Philippines delegation reproduced Article 20 of the Statute of the International Court of Justice verbatim, except for the necessary substitution of the word "Committee" for the word "Court". He asked that the wording of the French text of Article 20 of the Statute of the Court should likewise be followed in the French text of the proposal.

Mr. INGLÉS (Philippines) supported the French proposal.

The additional article (E/CN.4/L.238) proposed by the Philippines delegation was adopted by 14 votes to 3.

The CHAIRMAN suggested that the additional article might appropriately be inserted between articles 45 and 46 of part IV of the draft covenant.

It was so agreed.

(8) Article 50 and the Yugoslav and United Kingdom amendments thereto (E/CN.4/L.240 and E/CN.4/L.232)

Mr. JEVREMOVIĆ (Yugoslavia) said that in view of the procedural discussion and the decision regarding article 49 he would withdraw his delegation's amendment to article 50.

He further suggested that the Commission should first consider article 51, as article 50 would cease to serve any purpose should his delegation's amendment to the former be adopted.

Mr. HOARE (United Kingdom) said that the purpose of the United Kingdom amendment was to make it clear that the Committee was a United Nations body to be financed out of United Nations funds, and not by the States parties to the covenant. The reference in article 50 to the Secretary of the Committee had been dropped from the amendment, because when the latter had been drafted his delegation had not known how the Commission would solve the question of the Secretary's appointment, emoluments, etc. In principle, there was no reason why the amendment should not apply to the Secretary also.

It was agreed that further discussion of article 50 should be deferred until article 51 had been disposed of.

The meeting rose at 6 p.m.