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COMMISSION ON HUMAN RIGHTS

DRAFTING COMMITTEE

Second Session

DRAFT COVENANT ON HUMAN RIGHTS

ARTICLE 9

(Deprivation of Liberty)

(Memorandum by the Secretariat)

I. In document E/CN.4/AC.1/23 of 7 May 1948 a list of items suggested by Governments for addition to the enumeration contained in Article 9 (2) of the Draft Covenant (document E/600) was circulated, embodying the items suggested in written comments by Governments and, orally, by representatives in the twenty-third meeting of the Committee on 6 May 1948.

Subsequently the French Draft Covenant was presented to the Committee (document E/CN.4/82/Add.8) and in the meeting of the Drafting Committee, held on 12 May 1948, the Chairman in her capacity of United States representative suggested some additional specific limitations of the rights safeguarded in Article 9 of the Draft Covenant.

II. The list of restrictions contained in Article VIII of the French Draft is as follows:

- (a) the arrest and detention of a person effected for the purpose of bringing him before a court on suspicion of having committed a crime or of preventing the imminent commission of a crime or offence;
- (b) the arrest and detention of a person, as provided by law, for non-compliance with the lawful order of a court;
- (c) lawful detention in pursuance of a sentence of imprisonment;
- (d) the lawful detention of persons of unsound mind;
- (e) the lawful arrest and detention of a person to prevent his effecting an unauthorized entry into a country;

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- (f) the lawful arrest and detention of aliens against whom deportation or extradition proceedings are pending;
- (g) the educational supervision of minors.

III. The list of additional specific limitations prepared by the United States representative and presented on 12 May 1948 is as follows:

- (h) the arrest and detention of a person suffering from a serious contagious disease;
- (i) the arrest and detention of an alcoholic;
- (j) the arrest of witnesses in order to bring them before a court or for their protection;
- (k) arrest and detention for breach of military discipline;
- (l) arrest and detention in civil cases (tort, or contract cases involving wrong-doing such as fraud, etc.) by way of commencing an action or as a means of satisfaction of a judgment in such cases or by way of punishment in such cases;
- (m) the detention of enemy aliens;
- (n) the detention of persons under the authority of Article 8, paragraph 3 of the Covenant (relating to the classes of persons who may be subjected to compulsory labour in connection with military or emergency service);
- (o) other situations to be enumerated.

IV. The Secretariat has the honour to present the following analysis which is based on the following enumeration of limitations:

1. the limitations already contained in Article 9, sub-paragraph 2 (a) to (g) of the Draft Covenant as adopted at the second session of the Commission in Geneva;
2. the items suggested by Governments and enumerated in document E/CN.4/AC.1/23;
3. the additional specific limitations suggested by the United States of America on 12 May 1948;
4. the limitations suggested by France.

According to these different lists the Covenant would contain the following limitations of the right to liberty:

- (a) Arrest for the purpose of criminal proceedings or prevention of a crime

This item covers item (a) of the Geneva Draft, item (a) of the French Draft and the Brazilian suggestion concerning arrest "flagrante delicto", item 3 of document E/CN.4/AC.1/23.

/(b) Arrest

(b) Arrest and detention for non-compliance with a court order

This item covers item (b) of the Geneva Draft and item (b) of the French Draft. In formulating its text regard should be had of item 10 of document E/CN.4/AC.1/23, "arrest as a means of satisfaction of a judgment in civil actions or by way of punishment in civil cases" (United States) and the analogous item (1) of the United States list and further of item (9) of document E/CN.4/AC.1/23, "arrest in civil cases".

(c) The detention of a person sentenced after conviction to deprivation of liberty

This item covers item (c) of the Geneva Draft and item (c) of the French Draft. In drafting the text, the Committee may wish to have regard to the Chilean proposal listed under item 8 of document E/CN.4/AC.1/23 and the United States proposal listed under (k) which are to the effect that arrests and detentions for breach of military discipline should also be covered.

(d) Detention of persons of unsound mind

This item covers item (d) of the Geneva Draft and item (d) of the French proposals. With regard to this item note should be taken of the Norwegian proposal, document E/CN.4/AC.1/23, item (2) and the United States proposal, item (1) above, suggesting that the Covenant should also cover the case of the arrest and detention of alcoholics.

(e) The parental or quasi-parental custody of minors

This item corresponds to item (e) of the Geneva Draft and to item (g) of the French proposal. It is submitted that, in its formulation, regard should be had to item 7 of document E/CN.4/AC.1/23, the South African proposal concerning the detention of children in need of care.

Restrictions on aliens:(f) The lawful arrest and detention of a person to prevent his effecting an unauthorized entry into the country;(g) The lawful arrest and detention of aliens against whom deportation proceedings are pending

In formulating these two items the Committee may wish to have regard to items (e) and (f) of the French proposal and to item (m) of the United States list. Closely connected with these two items are also the suggestions made by South Africa, items 4 and 5 of document E/CN.4/AC.1/23, suggesting an extension of these provisions

/to cover

to cover also arrests for the purpose of removal from one province to another and the removal of persons other than aliens.

V. Remaining Items

The following three additional items remain:

1. Arrest and detention of persons suffering from serious contagious disease (Netherlands, United Kingdom and United States)

It covers item 1 of document E/CN.4/AC.1/23 and item (h) of the United States list.

2. Arrest of witnesses (South Africa and United States)

Item 6 of document E/CN.4/AC.1/23 and item (g) of the United States list.

3. Arrest and detention in connection with services exacted under Article 8 (3)

The United States proposal, item 11 of document E/CN.4/AC.1/23 and item (n) of the United States list, concerns the detention of persons liable to military service, service in cases of emergency and minor communal services.

Here the Committee may wish to consider to what extent this limitation is covered by the provision to be made for detentions for the breach of military discipline and further, whether services in an emergency, or "minor communal services", could be considered exceptions from a rule prohibiting arbitrary arrest or detention.

The United States list further contains the item:

4. Other situations to be enumerated
