

COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

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EUROPEAN COMMISSION OF HUMAN RIGHTS

PREPARATORY WORK ON ARTICLE 3 OF THE EUROPEAN CONVENTION OF HUMAN RIGHTS

Memorandum prepared
by the Secretariat of the Commission

1. In its present form, Article 3 of the European Convention on Human Rights reads as follows:

"No one shall be subjected (nul ne peut être soumis) to torture or to inhuman or degrading treatment or punishment."

2. The Universal Declaration of Human Rights, approved on 10th December, 1948, by the General Assembly of U.N., includes an Article 5 which reads:

"No-one shall be subjected (nul ne sera soumis) to torture or to cruel, inhuman or degrading treatment or punishment."

3. In August, 1949, the Consultative Assembly of the Council of Europe having placed on its agenda (measures for the fulfilment of the declared aim of the Council of Europe in accordance with Article 1 of the Statute in regard to the safeguard and further realisation of human rights and fundamental freedoms", proposals were submitted to the Committee on Legal and Administrative Questions by M. Teitgen, Rapporteur, in which the following passage appeared:

A.27.777
TD.561/HRS/NB

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"The convention and the procedure for its implementation which the Committee will elaborate in due course will ensure for all persons living in the metropolitan territory of Member States the fundamental rights and freedoms set out below:

- Security of person, in accordance with Articles 3, 5 and 8 of the United Nations Declaration ... "
(Doc. A.116) (1).

On 29th August, 1949, the Committee adopted this suggestion (see Doc. A.142). Article 2, para. 1 of the draft it submitted to the Consultative Assembly was worded:

"In this Convention, the Member States shall undertake to ensure to all persons residing within their territories:

(1) Security of person, in accordance with Articles 3, 5 and 8 of the United Nations Declaration" (See Assembly Docs. 1949, 77, p. 204 and Doc. A.290 p.12).

This text was discussed at some length in the Assembly.

On 7th September 1949, Mr. COCKS (United Kingdom) presented two amendments to the Committee's text. The first proposed to supplement paragraph 1 of Article 2 quoted above, as follows:

"In particular no person shall be subjected to any form of mutilation or sterilisation, or to any form of torture or beating. Nor shall he be forced to take drugs nor shall they be administered to him without his knowledge and consent. Nor shall he be subjected to imprisonment with such an excess of light, darkness, noise or silence as to cause mental suffering." (Assembly Doc. 1949, 90, p. 235).

The second amendment was concerned with Article 1 and read as follows:

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(1) The texts drafted by the European Movement, on which the Consultative Assembly's work was largely to be based, proposed to safeguard "security of life and limb" (la sécurité de toute la personne" (Doc. INF/2/E/R, February 1949) or "la sûreté de (la) personne" (Doc. INF/5/E/R 5, p.6, June 1949).

"The Consultative Assembly takes this opportunity of declaring that all forms of physical torture, whether inflicted by the police, military authorities, members of private organisations or any other persons, are inconsistent with civilised society, are offences against Heaven and Humanity and must be prohibited.

They declare that this prohibition must be absolute and that torture cannot be permitted for any purpose whatsoever, either for extracting evidence, for saving life or even for the safety of the State.

They believe that it would be better even for Society to perish than for it to permit this relic of barbarism to remain." (Assembly Doc. 1949 No. 91, p. 236).

Moving his amendment in the Consultative Assembly on 8th September 1949, Mr. COCKS said:

"The object of this Amendment is to give greater emphasis in this Report to the condemnation of torture, which is just mentioned, I think almost too casually, in Article 5 of the Annex (1). I feel that this Assembly, in its very first Session, should proclaim to the world in the most absolute and direct fashion, its condemnation of the terrible wave of barbarism and bestialism which has broken over our world during the last 30 years.

I was brought up as a child in England in the closing years of the 19th century. At that time, so near and yet so far away, the notion that any form of torture would ever be tolerated by the State would have been regarded by any educated person as being absolutely unthinkable. We were taught at that time that, in the greatest days in Athens, torture was condemned as an Oriental depravity, and the sanctity of the human body was proclaimed and protected.

We were also told that although the Romans were less cultivated people and inflicted torture upon slaves and captives on certain occasions, later, under the influence of Hellenic thought, torture was condemned by the more progressive citizens of Rome. We were also told that it was not until the Dark Ages and the Middle Ages that torture become a common instrument of power and authority, when every castle and every prison had its torture chamber and the agonies of the rack and the

(1) The Annex to the report quoted the articles of the United Nations Declaration referred to in article 2 of the draft.

thumbscrew, and in Scotland, the boot, were inflicted upon unfortunate people. Men and women were pressed to death, broken on the wheel or torn asunder by horses in sight of thousands of people.

But we were told that these things had been done away with hundreds of years ago, that the world had become civilised, and that, with the development of civilisation, torture had disappeared. We used to go into the museums and see instruments of torture exhibited. We used to wonder how our ancestors could have been so cruel and so depraved.

The most terrible event in my lifetime in this century has been that torture and violence have returned - returned fortified by many discoveries of modern science - and that in some countries people are even becoming accustomed to it.

As M. Rolin said, this has happened step by step. First, we had sheer violence of the most brutal character. We had the Nazis stamping with their jackboots upon the faces of women and Jews. Then more ingenious forms of torture were applied. People had their toenails or their fingernails torn out, or they had their teeth drilled with holes and filled with acid. Cases occurred in Greece during the Nazi invasion of naked girls being placed on electric stoves and burnt in order to make them disclose the whereabouts of their friends. There was the deliberate infliction upon women of the bacteria of loathsome diseases. All kinds of ghastly mutilations were perpetrated upon thousands of men and women.

Perhaps today, in some countries in the world, similar crimes may still be perpetrated. There may be other countries, too, where they are not being perpetrated now but where it seems to me that people do not regard these offences with the horror with which they should be viewed by civilised people. There is a good deal of complacency.

I feel that this is the occasion when this Assembly should condemn in the most forthright and absolute fashion this retrogression into barbarism. I say that to take the straight beautiful bodies of men and women and to maim and mutilate them by torture is a crime against high heaven and the holy spirit of man. I say that it is a sin against the Holy Ghost for which there is no forgiveness. I declare that it is incompatible with civilisation.

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Therefore, I ask this Assembly to announce to the whole world that torture is wholly evil and absolutely to be condemned and that no cause whatever - not even the life of a wife, a mother or a child, the safety of an army or the security of a State - can justify its use or existence. I say that if a State, in order to survive, must be built upon a torture chamber, then that State should perish. I do not believe in that necessity. It is the States which are built upon torture chambers which will perish, as Nazi Germany perished.

I am confident that Europe, clad in the shining robes of civilisation, treading under her feet this unclean and loathsome serpent, will not only live but will lead the world towards a higher future and a nobler destiny." (CR 1949, pp. 1178 and 1180).

This speech led to the following exchange of views:

"Sir David MAXWELL-FYFE (United Kingdom) - I am sure that I am voicing the thoughts of the whole of the Assembly when I congratulate my old friend and colleague, Mr. COCKS, on the most eloquent and touching appeal which he has just made for a cause so near to his heart. I should like to say that I am in entire agreement with the sentiments which he has expressed. But, Mr. President, we must consider the purpose of the document which we are attempting to put forward. We must also consider whether Mr. Cocks' point is already covered.

It will be seen that Article 2 (1) speaks of the "security of person" in accordance with Articles 3, 5 and 8 of the United Nations Declaration. Article 5 of the Annex states that 'no one shall be subjected to torture or to cruel, inhuman or degrading treating or punishment.'

By the method which we have adopted, in drafting the Resolution, Mr. Cocks' point is covered. There is no doubt that these who join the ultimate Convention will undertake the cause which he has so movingly put before us; they will undertake that no one will be subjected to torture.

Although we are not drafting the ultimate form of the Convention, we are drafting the main lines which it will follow. If in this introductory paragraph we were to pick out one of the freedoms and include a special provision with regard to it, it would not only throw out of balance our whole draft but it might, by the inclusion of this serious point, make weaker and throw doubt upon the other points which are not specially mentioned.

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Therefore, I ask my friend Mr. Cocks not to press his Amendment, but to take comfort and heart from two considerations. First, his point is specifically covered in the Resolution which we put forward, and, secondly, by his speech today he has underlined the eternal truth which we must all remember; that barbarism is never behind us, it is underneath us. It is our task to see that it does not come to the surface, and we are attempting to fulfil that task in the Resolution in favour of a collective guarantee, which is being put before the Assembly. Although I have every sympathy with the sentiments expressed by Mr. Cocks, I ask him not to persist in his Amendment."

Mr. COCKS (United Kingdom) - I should like to thank my friend Sir David Maxwell-Fyfe for his kind remarks about me, but I nevertheless hope that my Amendment will be accepted. I was aware that this matter is covered in the Annex, but I thought that it was not sufficient for condemnation of such a terrible crime as torture to be tucked away almost casually at the end of the Report.

Sir David has said that I ought to be content to underline my point by making a speech, but he and I know that speeches are impermanent; their memory lasts for a very short time, and then they are gone. But documents last; declarations by an Assembly like this are permanent and that is why I wish my Amendment to be embodied in this declaration.

I have picked out one of the fundamental freedoms because I think that today it is most important of all; so much so, that I feel there should be a special declaration against this horrible habit. I must persist in my Amendment."

The PRESIDENT (Translation) - I call upon M. Philip.

M. PHILIP (France) (Translation) - We have all been very much moved by Mr. Cocks' declaration. Moreover, we appreciate the value of the statement of the Committee's Chairman, when he showed us that the introduction of Mr. Cocks' Amendment would unbalance the text as a whole.

Would it not be possible to accept the following solution: Mr. Cocks and the Chairman of the Committee should submit to us this afternoon the draft of a special Resolution which the Assembly can vote on at the same time

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as the Report. It can thus stress the importance which we attach to this question and, as Mr. Cocks wishes it, would be a text which would not be incorporated in the draft Convention for reasons already indicated, but which would underline the definite attitude taken by the Assembly and would give a lead to public opinion and to the Governments.

The PRESIDENT (Translation) - I call upon M. Lapie.

M. LAPIE (France) - There is perhaps another solution. Mr. Cocks' Proposal can be divided into two parts. The first part is a statement of principle which would correspond to the special Resolution mentioned by M. Philip.

The second part could be adopted in altering the first words. Could we not transfer this text from Article I to some other Article, for example Article 2 (2), and after the words "exemption from slavery" add the words "prohibition of torture etc."?

Thus the structure of the text would not be altered and the point which M. Philip wished to keep separate could be included in it.

The Assembly may choose between two solutions: to accept, after debate, the Resolution which my colleague Philip has suggested; or else to accept an Amendment to paragraph (2) of Article 2, the Amendment whose text I shall transmit to the President and which repeats the last paragraph of Mr. Cocks' Proposal.

Mr. Cocks will thus be satisfied and the Assembly will show unanimously what it thinks of tortures inflicted on human beings.

The PRESIDENT (Translation) - I call upon M. Teitgen.

M. TEITGEN (France) (Translation) - I am in complete agreement with the sentiments which were expressed earlier by our colleague, and for good reasons. But I should like to take issue with him.

There are demonstrations, convictions and declarations which threaten, by too much talent and emotion to weaken the thesis which they support.

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We say in Article 2 that security of person is guaranteed in accordance with Articles 3, 5 and 8 of the United Nations' Declaration. And Article 5 of the Declaration to which we refer, states: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

If we add a commentary on these statements, whose terms have been carefully weighed, we shall limit their scope to the comments which we make.

For example, I shall shortly have to tell our very dear colleague that if, in our Resolution, he enumerates a certain number of means of torture which he wishes to have prohibited, he risks giving a wholly different interpretation from that which he hopes to make, namely that the other processes of torture are not forbidden. And this is certainly the opposite of what he intends.

I really think that the best way of stating the fundamental principle which he expressed a short while ago, and behind which every man of heart and conscience will immediately and entirely take his stand, is simply to state that all torture is prohibited.

When this is stated in a legal document and in a diplomatic Convention everything has been said. It is dangerous to want to say more, since the effect of the Convention is thereby limited.

The PRESIDENT (Translation) - I call upon Mr. Cocks.

Mr. COCKS (United Kingdom) - If it is the wish of the Assembly that I should adopt M. Philip's suggestion, I am willing to agree.

The PRESIDENT (Translation) - Mr. Cocks has therefore withdrawn his Amendment.

M. LAPIE (France) (Translation) - I also withdraw my Amendment.

The PRESIDENT (Translation) - M. Lapie's Amendment is also withdrawn.

In these circumstances, Mr. Cocks, Sir David Maxwell-Fyfe and M. Teitgen could draft the text of a Motion which will be voted this afternoon, separate from the text of the Convention, in accordance with M. Philip's Amendment.

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Has anyone anything to say against the Proposal which I have just made?

It is then agreed.

Mr. Cocks' Amendment being withdrawn, I put to the vote Article 1 of the text as proposed by the Committee.

Article 1 was adopted.

The PRESIDENT (Translation) - Mr. Cocks has submitted an Amendment to make an addition to paragraph (1) of Article 2.

It seems to me that this Amendment should also be covered by the additional declaration which will be made.

Mr. COCKS (United Kingdom) - I withdraw my Amendment.

The PRESIDENT (Translation) - The Amendment is withdrawn. " (CR 1949, pp. 1180, 1182 and 1184).

Later the same day, Mr. COCKS duly submitted a draft Resolution in the following terms:

"The Consultative Assembly solemnly declares that any use of torture by public authorities or individuals is a crime against humanity and can never be justified on the grounds that it is being used for extracting information, to save life or to protect the interests of the State or on any other grounds whatsoever.

The Assembly records its abhorrence at the subjection of any person to any form of mutilation or sterilisation or beating." (Doc. 113, p. 274).

The following debate took place on this proposal:

"M. KRISTENSEN (Denmark) - I suggest that we leave out the second paragraph of the Motion. In Denmark we have an Act permitting sterilisation, and I think the same may be the case in other civilised countries. I do not think we can proceed without the admission of sterilisation, and I do not think it is the business of the Council of Europe to prohibit individual countries from having such Acts. Therefore, I propose that we leave out the second paragraph of the Motion.

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Mr. COCKS (United Kingdom) - I am prepared to accept the omission of the last paragraph.

Is it your wish that I introduce the first paragraph now in a few words?

The PRESIDENT (Translation) - Will you speak on the whole of your Motion?

Mr. COCKS (United Kingdom) - When I moved the Amendment to this morning's Report, my purpose was to emphasise the condemnation by this Assembly of all forms of torture, and I suggested to my friend, M. André Philip, that conversations should take place with the object of drawing up a concrete form of words. It should not be included in the Report but it might, if the Assembly agrees, be adopted by the Assembly as a special Resolution.

Thanks to the efforts of Sir David Maxwell-Fyfe, which I now wish to acknowledge, a form of words has been drawn up which has been circulated to the Assembly.

It now reads as follows:

'The Consultative Assembly solemnly declares that any use of torture by public authorities or individuals is a crime against humanity and can never be justified on the grounds that it is being used for extracting information to save life or to protect the interests of the State or on any other grounds whatsoever.'

I accept those words.

We are now reaching the end of the first Session of this notable Assembly. I do not intend at this time to inflict upon my colleagues, but I feel that if this Assembly adopts this Motion, it will make a declaration which will resound throughout the world and will ring, as M. Teitgen said he wanted yesterday, a warning bell against another Dachau.

I want to say, once and for all, that the new Europe is the enemy of the old barbarism, and that it stands, without the slightest reservation, for decency and humanity and for civilisation.

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The PRESIDENT (Translation) - I call upon M. Larock.

M. LAROCK (Belgium) (Translation) - I should like to propose, as an Amendment to the first paragraph of the French text, to delete the word même, where it reads:

Il ne peut, en aucun cas, être justifié même pour arracher les aveux.

The word même has a strange sound. I suggest the deletion of this word. There is nothing like it in the English text, which is, I think, the original text.

The PRESIDENT (Translation) - M. Larock suggests that the word même should be deleted.

Has anyone any objections?

The word même is therefore deleted from the French text.

M. Kristensen suggests that the word "sterilisation" should be deleted from the second paragraph.

M. KRISTENSEN (Denmark) - I think Mr. Cocks has withdrawn his second paragraph.

Mr. COCKS (United Kingdom) - I indicated that I was prepared to withdraw the whole of the last paragraph of the Motion.

The PRESIDENT (Translation) - You therefore withdraw:

'The Assembly records its abhorrence at the subjection of any person to any form of mutilation or sterilisation or beating'.

I call upon M. Bidault.

M. BIDAULT (France) (Translation) - I am sorry that I am more royalist than the King, but indeed I do not understand why Mr. Cocks should delete the third paragraph which we are all more or less ready to accept. I even find that the second paragraph, after we have deleted an adverb, is excellent. The work, which has been achieved by men who undertook a very heavy task and who have produced a text which can really not be contested by any free man throughout the world, should be accepted as it stands.

I beg of you, let us finish with it.

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The PRESIDENT (Translation) - I call upon M. Wistrand.

M. WISTRAND (Sweden) - There is a point in the Motion dealing with sterilisation. There is in some countries legislation for the sterilising of sexual criminals in the interests of public security. I cannot remember the details of that legislation, which is fairly recent, but it would be unfortunate to agree to that paragraph of the Motion without a study of the new social legislation which, in my country at least, is considered to demonstrate considerable progress. Accordingly, it is not possible for me to vote on this Motion at the moment.

The PRESIDENT - I call upon M. Smitt-Ingebretsen.

M. SMITT-INGEBRETSEN (Norway) - I cannot vote for the last paragraph of this Amendment because, as my Danish colleague, M. Kristensen, has said, we, too, in Norway have legislation which permits sterilisation in certain circumstances. We therefore could not vote for the second part of this Motion.

The PRESIDENT (Translation) - I call upon M. de la Vallée-Poussin.

M. DE LA VALLEE-POUSSIN (Belgium) (Translation) - I think that M. Teitgen gave us a serious warning this morning, when he told us that it was very dangerous to tackle the present subject. For my part, I must say that if we delete the third paragraph of the French text, that is to say, the second paragraph of the English text, after the text as a whole has been submitted to us, this would have a disastrous implication.

In these circumstances, it will be impossible for me to vote for it at all, and I suggest that the question should be referred to the Committee, in order to discriminate between forms of torture whose practice is condemned for all time by our own consciences, we cannot introduce the question of those which have not hitherto been discussed. In particular, when we talk of sterilisation, let us not forget that this was an innovation of the Nazi régime. I am not at all of the opinion that our Assembly should enter into this question without knowing where we are going.

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The PRESIDENT (Translation) - I call upon M. Kristensen.

M. KRISTENSEN (Denmark) - As the second paragraph of the English text has been withdrawn, surely any discussion of it is quite superfluous. So far as I understand the position, we are now discussing only the first paragraph in the English text.

The PRESIDENT (Translation) - We shall discuss the text as it was submitted to the Assembly. If anyone withdraws a paragraph, other members may ask that it should be retained.

I call upon M. Larock.

M. LAROCK (Belgium)(Translation) - If I understand our Scandinavian colleagues, the discussion relates solely to the word 'sterilisation'; but the rest can remain, since I do not think that our colleagues object to the question of mutilation or beating. Therefore the paragraph could be retained, deleting the word 'sterilisation'.

The PRESIDENT (Translation) - I call upon Mr. Crawley.

Mr. CRAWLEY (United Kingdom) - It would be simpler if the second paragraph could be withdrawn. Under English Law I believe that corporal punishment still exists for robbery **with violence**. I do not know whether those who drew up the second paragraph had that in mind. It would create considerable difficulty to persist in the second paragraph. There is an important declaration in the first paragraph, and as we can all agree on that, could we not accept Mr. Cocks' assent to the withdrawal of the second paragraph?

The PRESIDENT (Translation) - The text which we are in process of 'mutilating' assumes a rather curious aspect. Indeed, after the speeches which we heard this morning and all the reservations which have just been made, its drafting does not appear to me to be too good.

Rather than to do something undesirable, I suggest that you accept M. de la Vallée-Poussin's Proposal to refer the text to the Committee.

If I may give you my opinion, allow me to say that this solution is preferable, since the amended text becomes weaker little by little and, having regard to the Amendments which we have rejected, I very much doubt whether public opinion will understand the aim which we had in mind.

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What is the opinion of the Assembly on M. de la Vallée-Poussin's Proposal to refer the text to the Committee?

This reference was accepted.

Mr. COCKS (United Kingdom) - What has been decided.

The PRESIDENT (Translation) - The Committee shall then re-examine the text and submit a new Report to the next Session. We have not the time now and, after the Debate we have just had, it seems to me that the question is more delicate than we originally thought.

M. WOLD (Norway) - Is it not the second paragraph only which has been referred to the Committee, since it is that part of the Motion which has been the subject of discussion?

The PRESIDENT (Translation) - The whole of the text has been referred to the Committee." (CR 1949, pp. 1294, 1296 and 1298) (1).

In the interval between these two debates in the Assembly, Article 2, para. 1 of the text proposed by the Committee was adopted. (CR 1949, p. 1184). It was embodied in the Recommendation which the Assembly passed at the close of its first Session (CR 1949, p. 1324 and Assembly Doc. 1949, 108, p. 261).

4. The Committee of Ministers of the Council of Europe then referred the Assembly's Recommendation to the Committee of Experts on Human Rights which it had decided to convene.

Sir Oscar DOWSON (United Kingdom) submitted to the Committee an amendment to insert at the end of Article 2 of the Assembly's text the following articles:

Article

"No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

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(1) The Committee on Legal and Administrative Questions did not in fact report to the Assembly on this Question.

Article

"No one shall be subjected to any form of physical mutilation or medical or scientific experimentation against his will."

(Doc. A.798)

The first of the two proposed Articles was identical with Article 5 of the Universal Declaration and with Article 6 of the draft International Covenant on human rights prepared by the United Nations Commission of Human Rights at its fifth Session at Lake Success, 9th May - 20th June 1949 . (Doc. E/1371, p. 18).

The second followed the wording of a proposed Article 7 which the U.N. Commission, by four votes to three with four abstentions, had referred to the World Health Organisation for an advisory opinion (ibid. pp. 18-19).

With regard to these Articles 6 and 7, the "Preparatory Report" by the Secretariat-General of the Council of Europe to the Committee of Experts contained the following passage:

Article 6

"This Article is covered by Article 2, para. 1, of the Resolution (of the Assembly).

The text is based on the 8th Amendment to the United States Constitution: 'cruel and unusual punishments will not be inflicted'."

Article 7

"This does not appear in the European Convention (1) but is to be covered by a solemn declaration of the Assembly based on a text now under consideration by the Committee (on Legal and Administrative Questions):

"... (see motion for a Resolution by Mr. Cocks referred to above.)

(1) i.e. the draft of the Consultative Assembly

5. The preliminary draft Convention prepared by the Committee of Experts at its first session (2nd - 8th February 1950) provided in Article 2, para. 1 (b) that:

"No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

This follows word for word the amendment by Sir Oscar DOWSON quoted above (Doc. A.833, p.2: see also Doc. A.809, p.3).

6. At the second session of the Committee of Experts (6th - 10th March 1950), Sir Oscar DOWSON presented a new amendment in the following terms:

Article 5

"No one shall be subjected to torture or to inhuman treatment or punishment." (Doc. CM/WP I (50) 2, p. 2) (1)

7. The draft Convention submitted to the Committee of Ministers by the Committee of Experts at the close of its work included without special comment two articles corresponding to the present Article 3 of the Convention.

Article 2, para. 1 (b) of Alternatives A and A/2 (system of enumeration of the rights and freedoms to be protected) was identical with Article 5 of the Universal Declaration and Article 6 of the Draft Covenant (Doc. CM/WP I (50) 15 Appendix, p.1. and Doc. CM/WP I (50) 14, alternative B, p.8)

On the other hand, Article 4 of Alternatives B and B/2 (system of definition of the rights and freedoms to be protected) laid down that:

"No one shall be subjected to torture or to inhuman treatment or punishment" (Doc. CM/WP I (50) 15 Appendix, p. 6: see also Doc. CM/WP I (50) 14, Alternative A, p.2.: "nul ne sera ..." instead of "nul ne peut être ..." - no difference in English text).

It will be noted, however, that the two alternatives differed only slightly.

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(1) Omitting the adjectives "cruel" and "degrading".

8. The Conference of Senior Officials (8th - 17th June 1950) amalgamated the two alternatives.

The following text was agreed upon; it is identical with the actual text of the Convention:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment". (Doc. CM/WP 4 (50) 19, Annexe, Article 3, p. 2; see also Doc. CM/WP 4 (50) 9, Article 4, p.2, and CM/WP 4 (50) 16 Appendix, Article 3, p.2)

9. No further amendment was to be made to Article 3 (Doc. CM (50) 52, p.2; Doc. AS (2) 11, Appendix A, p. 603, Doc. AS (2) 104, p. 1030).

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In the course of the preparatory work for the Convention it was found that Article 3 was in some respects similar to Article 7 of the Draft International Covenant on civil and political rights. (1)

The Secretariat of the Committee has therefore deemed it useful to append to the present document the relevant passage from Annotation on the draft Covenants, prepared by the Secretary-General of the United Nations in 1955 at the request of the General Assembly (Doc. A/2929, pp. 87-88; see Appendix I) (2)

(1) Article 6 up to 1949; Art. 4 in 1950 and 1951; Art. 6 in 1952; Art. 7 since 1953.

(2) See also in this connection Doc. DH (56) 4 p. 10 and 11.

APPENDIX 1

EXTRACT FROM ANNOTATION ON DRAFT INTERNATIONAL COVENANTS
ON HUMAN RIGHTS PREPARED BY THE SECRETARY-GENERAL OF
THE U.N.O.

(Doc. A/2929, pp. 87-88)

ARTICLE 7

Inhuman or degrading treatment

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation involving risk, where such is not required by his state of physical or (mental health).(1)

11. The purpose of this article is to protect bodily integrity and human dignity.

Inhuman or degrading treatment or punishment.

12. The first clause reproduces the text of article 5 of the Universal Declaration on Human Rights.

The opening words of article 5 of the Declaration "No one shall be subjected" were chosen in preference to "It shall be unlawful to subject" to emphasize the right of the individual rather than the obligation of States.

13. The word "torture" in this article was understood to mean both mental and physical torture. The clause prohibits not only "inhuman" but also "degrading" treatment or punishment. It was generally agreed that the word "treatment" was broader in scope than the word "punishment"; however, it was observed that the word "treatment" should not apply to degrading situations which might be due to general economic and social factors. /.

(1) Text adopted in 1954 by the U.N. Commission on Human Rights (Doc.E/2573)
(Note by the Secretariat of the Committee)

Medical or scientific experimentation

14. The second clause of the article was intended to prevent the recurrence of atrocities such as those committed in concentration camps during World War II. One opinion was that improper medical or scientific experimentation was implicitly prohibited in the first clause, but another view was that the text of that clause was not sufficiently precise to prevent such experiments. It was finally agreed that the matter was so important as to require a specific provision, even at the risk of repetition.

15. It was clear that experiments involving risk should not, in principle, be carried out without the free consent of the person concerned. However, it was said that there might be exceptions to this principle where the interests of the health of the individual or the community were involved. The extent of such exceptions gave rise to some discussion. On the one hand it was thought that it should not be left entirely to national laws to define them. On the other hand it was realized that it would be difficult to draw up a complete list of criteria for permitting experimentation without the free consent of the individual concerned. There was general agreement that failure to obtain the consent of a sick, sometimes unconscious, person should not make any dangerous experimentation illegal where "such was required by his state of physical or mental health". A proposal that compulsory measures might be taken "in the interest of community health" was rejected on the grounds that it might lead to abuse.

16. A proposal that "in addition to the consent of the person in question, the approval of a higher medical institution designated by law shall be required before /such/ experimentation is carried out" was not adopted. Such a clause was considered to be more in the nature of a regulation than an appropriate provision for inclusion in the covenant.

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DOCUMENTATION

<u>Organ and session</u>	<u>Records of discussions</u>	<u>Other documents</u>	<u>Article</u>
CR (I)	E/CN.4/AC.1/SR.3,10,16	E/CN.4/AC.1/4/Add.1; E/CN.4/21, annex A, art.4, annex C,art.9, 10, annex G, art.2	
CDH (II)	E/CN.4/AC.3/SR.2; E/CN.4/SR.37, 42	E/CN.4/37, 39, 56, art.5, 6; CES(VI), suppl.1,annex B, art.6, 7	2
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