

3. Disinsection, deratting, disinfection, decontamination and other sanitary procedures shall be carried out so as to avoid injury and as far as possible discomfort to persons, or damage to the environment in a way which impacts on public health, or damage to baggage, cargo, containers, conveyances, goods and postal parcels.

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## **PART V – PUBLIC HEALTH MEASURES**

### **Chapter I – General provisions**

#### *Article 23 Health measures on arrival and departure*

1. Subject to applicable international agreements and relevant articles of these Regulations, a State Party may require for public health purposes, on arrival or departure:

(a) with regard to travellers:

(i) information concerning the traveller's destination so that the traveller may be contacted;

(ii) information concerning the traveller's itinerary to ascertain if there was any travel in or near an affected area or other possible contacts with infection or contamination prior to arrival, as well as review of the traveller's health documents if they are required under these Regulations; and/or

(iii) a non-invasive medical examination which is the least intrusive examination that would achieve the public health objective;

(b) inspection of baggage, cargo, containers, conveyances, goods, postal parcels and human remains.

2. On the basis of evidence of a public health risk obtained through the measures provided in paragraph 1 of this Article, or through other means, States Parties may apply additional health measures, in accordance with these Regulations, in particular, with regard to a suspect or affected traveller, on a case-by-case basis, the least intrusive and invasive medical examination that would achieve the public health objective of preventing the international spread of disease.

3. No medical examination, vaccination, prophylaxis or health measure under these Regulations shall be carried out on travellers without their prior express informed consent or that of their parents or guardians, except as provided in paragraph 2 of Article 31, and in accordance with the law and international obligations of the State Party.

4. Travellers to be vaccinated or offered prophylaxis pursuant to these Regulations, or their parents or guardians, shall be informed of any risk associated with vaccination or with non-vaccination and with the use or non-use of prophylaxis in accordance with the law and international obligations of the

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State Party. States Parties shall inform medical practitioners of these requirements in accordance with the law of the State Party.

5. Any medical examination, medical procedure, vaccination or other prophylaxis which involves a risk of disease transmission shall only be performed on, or administered to, a traveller in accordance with established national or international safety guidelines and standards so as to minimize such a risk.

### **Chapter II – Special provisions for conveyances and conveyance operators**

#### *Article 24 Conveyance operators*

29. Preparatory Work on the Draft Second Protocol to the Convention on Human Rights, Appended to Recommendation 234 (1960) of the Consultative Assembly. V. Article 3 of the Draft - Prohibition of exile - Memorandum by the Directorate of Human Rights - DH/Exp (60) 13 of 28 October 1960)

A. Text of Article 3

1. Article 3 of the draft Second Protocol to the Convention on Human Rights appended to Recommendation 234 (1960) is worded as follows:

"No one shall be exiled from the State of which he is a national.

Everyone shall be free to enter which he is a national."

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B. Explanatory memorandum

2. The explanatory memorandum presented by Mr. Lannung, the Rapporteur, on behalf of the Legal Committee, contains the following comments on Article 3 of the draft:

"Article 3 of the draft departs from Article 12 paragraph 2 of the draft Covenant at a number of points.

In the first place, the Committee thought that in the homogeneous circle of the Council of Europe, the prohibition of exile ought to be absolute - which would be difficult in the wider context of the United Nations. It therefore left out the adjective "arbitrary", which is found in Article 12, paragraph 2 (a) of the draft Covenant.

Assuming that Article 3 of the draft was to contain, in its first paragraph, an absolute and unconditional condemnation of exile, it would appear logical to omit from the second paragraph the first phrase of the corresponding provision of the draft Covenant, Article 12, paragraph 2 (b): "subject to the preceding sub-paragraph". In the opinion of the Committee that phrase would only be justified if we admitted, as in the draft Covenant, the possibility of exile not being arbitrary.

17. The clause relating to the right of the individual to enter his own country was also extensively debated. Some members were of the view that this right should not be subjected to any restrictions whatsoever. The general consensus was, however, that, while the right was not absolute, it should not be made subject to the same kind of restrictions as the other rights defined in paragraphs 1 and 2 of the same Article. It was thought inconceivable, for example, that a State should prohibit one of its nationals from entering its territory for reasons of health or morality. It was pointed out that in the draft prepared by the Commission on Human Rights exile was the only permissible restriction recognised. Several members, however, were opposed to mentioning "exile" in the Covenant, as the laws of their countries either prohibited or did not recognise exile. Some doubts were raised regarding the meaning of the phrase "his own country". The view was expressed that "his own country" should be taken to mean the country of which the individual concerned was a national or a citizen; the necessity of being able to submit ample proof of the fact was also emphasised.

#### Voting on Article 12

18. At the 959th meeting, the Committee voted as follows:
- (a) By 57 votes to 1, with 12 abstentions, the Committee decided to vote first on the revised five-Power amendment (A/C.3/L.812/Rev.2).
  - (b) Paragraph 1 was adopted by 71 votes to none, with 2 abstentions.
  - (c) Paragraph 2 was adopted by 70 votes to none, with 3 abstentions.
  - (d) At the request of the representative of Iraq, a separate vote was taken on the words "public order (ordre public)" in paragraph 3. These words were adopted by 58 votes to none, with 15 abstentions.
  - (e) Paragraph 3 as a whole was adopted by 67 votes to 1, with 3 abstentions.
  - (f) At the request of the representatives of Guatemala, Iraq and Panama, the word "arbitrarily" in paragraph 4 was voted on separately. It was adopted by 29 votes to 20, with 20 abstentions.
  - (g) Paragraph 4 as a whole was adopted by 44 votes to 6, with 22 abstentions.
  - (h) Article 12 as a whole was adopted by 58 votes to 1, with 11 abstentions.

" Nul ne peut être exilé de l'Etat dont il est le ressortissant.

Toute personne est libre d'entrer dans l'Etat dont elle est le ressortissante."

[Doc. 1057 du 17 novembre 1959, p. 5].

Sous réserve de cette légère modification rédactionnelle, la partie du rapport de la Sous-Commission relative à l'article 3 a été intégralement approuvée.

#### E. Work of the Assembly

11. Mr. Lannung, at the Sitting of the Assembly on 22nd January 1960, speaking of the significance of Article 3 of the draft, said:

"Article 3 concerns freedom from exile and goes further than Article 12, paragraph 2, of the draft Covenant of the United Nations because the adjective 'arbitrary' found in the text of the draft Covenant was left out. This would make the prohibition of exile absolute, and I believe that that is the right course in democratic States.

In thus making the prohibition of exile absolute, your Committee has not lost sight of the fact that there may be one or two exceptions of a quite special character. For instance, the Constitution of the Italian Republic forbids the ex-Kings of the House of Savoy and their consorts and male descendants to enter and live in the national territory of Italy. It was thought, however, that, in the homogeneous circle of the Council of Europe, the principle of prohibition of exile should be stated in the strongest possible terms and that if, for one reason or another, a member State could not adhere to the text by reason of a legal provision relating to an isolated case, such country could make a reservation in that respect. Indeed, Norway made a reservation as regards the application of Article 9 of the Convention itself by reason of a constitutional provision forbidding the Jesuits to enter and sojourn in the national territory of Norway, a reservation which, as we all know, was later revoked."

[Official Report of the Assembly, 11th Ordinary Session, 30th Sitting, 22nd January 1960, p. 87]

The Assembly made no change in the text of Article 3 presented by the Committee.

#### F. References

See Appendices to Document DH/Exp (60) 12 regarding the preparatory work on Article 2 of the draft.



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### Paragraph 2 of the Committee's draft

25. The Committee made two amendments to the text proposed by the Assembly

26. The first amendment concerns the words "Everyone shall be free to" which were replaced by "No-one shall be deprived of the right to".

This phrase was suggested by the wording of Article 12, paragraph 4 of the draft International Covenant adopted by the Third Committee of the United Nations General Assembly.

This wording seemed a better solution than the other to a matter of twofold concern to the Committee:

a) On the one hand, paragraph 2 should not relieve persons who wish to enter the territory of the State of which they were nationals, of the obligation to prove their nationality if so required. (A State is not obliged to admit an individual who claims to be a national unless he can make good his claim.)

b) On the other hand, such temporary measures as quarantine should not be interpreted as a refusal of entry.

27. The second change is purely a drafting one. The expression "enter the territory of the State" was found preferable to "enter the State".

28. The Committee considered that this paragraph should not contain the word "arbitrarily", which appears in Article 12, paragraph 4, of the United Nations' draft.

It was understood, however, that an individual's right to enter the territory of the State of which he was a national could not be interpreted as conferring on him an absolute right to remain in that territory. For example, a criminal who, having been extradited by the State of which he was a national, then escaped from prison in the other State, would not have an unconditional right to seek refuge in his own country. Similarly, a soldier serving on the territory of a State other than that of which he is a national, would not have a right to repatriation in order to remain in his own country.

29. The Committee agreed that the terms of paragraph 2 could be invoked only in relation to the State of which the victim of any violation of this provision was a national.

30. The experts of the Federal Republic of Germany declared that the expression "territory of the State of which he is a national" was not to be interpreted in a manner which might be prejudicial to the questions arising from the particular position of Germany as regards its internal relations.