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COMMISSION ON HUMAN RIGHTS

Seventh Session

SUMMARY RECORD OF THE TWO HUNDRED AND THIRTIETH MEETING

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on Monday, 7 May 1951, at 3.30 p.m.

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Present:

Chairman:

Mr. MALIK (Lebanon)

Members:

Australia	Mr. WHITLAM
Chile	Mr. SANTA CRUZ
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 Mr. FOMIN
United Kingdom of Great Britain and Northern Ireland	Miss BOWIE
United States of America	Mrs. ROOSEVELT
Uruguay	Mr. CIASULLO
Yugoslavia	Mr. JEVREMOVIC

Representatives of specialized agencies:

International Labour Organisation	Mr. PICKFORD
United Nations Educational, Scientific and Cultural Organization	Mr. SABA Mr. ELVIN Mr. HAVET Mr. BAMATE

Representatives of non-governmental organizations:

Category A

World Federation of Trade Unions	Mr. FISCHER
International Confederation of Free Trade Unions	Miss SENDER
World Federation of United Nations Associations	Mr. ENNALS

Category B and Register

Caritas Internationalis	Mr. PETERKIN
Carnegie Endowment for International Peace	Mrs. CARTER
Co-ordinating Board of Jewish Organizations	Mr. WARBURG
International Council of Women	Mrs. CARTER
International Federation of Business and Professional Women	Miss TOMLINSON
International Federation of University Women	Mrs. ROBB
International League for the Rights of Man	Mr. BALDWIN
International Union for Child Welfare	Mrs. SMALL
International Union of Catholic Women's Leagues	Miss ARCHINARD
Liaison Committee of Women's International Organizations	Mrs. ROBB
Women's International League for Peace and Freedom	Miss BAER
World Jewish Congress	Mr. BIENENFELD
World's Young Women's Christian Association	Miss ROBERTS

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):

(b) Inclusion in the Covenant of provisions concerning economic, social and cultural rights:

1. Special provisions on educational and cultural rights (E/CN.4/613 and Rev.1, E/CN.4/AC.14/2/Add.4) (continued)

The CHAIRMAN invited the Commission to continue the voting on the Chilean proposal (E/CN.4/613/Rev.1).

He drew the attention of representatives to an omission from the English text. The words "to be fixed in the plan, of the principle of compulsory primary education free of charge for all." should be added at the end of Article 2, the full stop immediately following the words "number of years" being replaced by a comma.

Article 1 had been disposed of at the previous meeting. In dealing with Article 2, he proposed to take a separate vote on the phrase "in its metropolitan territory or other territories under its jurisdiction".

It was agreed by 8 votes to 1 with 7 abstentions to retain the words in question.

Article 2 was then adopted by 9 votes to 3 with 4 abstentions.

Mr. MOROSOV (Union of Soviet Socialist Republics) explained that he had voted against Article 2 because it was altogether unsatisfactory in that it would enable governments to put off indefinitely the introduction of free compulsory education for all. It would also serve to perpetuate the existing educational situation in colonial and non-self-governing territories.

Mrs. ROOSEVELT (United States of America) said that she had voted against Article 2 from the conviction that such a provision should form part of a plan initiated by the United Nations Educational, Scientific and Cultural Organization (UNESCO), and therefore had no place in the Covenant.

Mr. WHITLAM (Australia) said that he had abstained from voting on Article 2, because, although the Australian Government was in favour of primary

education on the large scale envisaged by UNESCO, it felt that there was danger in too facile an acceptance of the view that it should be introduced in all territories on the basis of a common pattern without reference to the conditions peculiar to each territory.

Mr. JEVREMOVIC (Yugoslavia) said he had been unable to vote in favour of Article 2 because of the inclusion of the phrase "in its metropolitan territory or other territories under its jurisdiction", which was, in his opinion, entirely superfluous. Its insertion in that provision was misleading, for it was to be understood that all the articles of the Covenant should apply to every territory under the jurisdiction of any government. There ought in fact to be a general clause to that effect.

Mr. YU (China) said that he had abstained from voting on Article 2, not because he was opposed to its substance, but because it was too detailed. Furthermore, it prescribed a form of implementation for one particular aspect of education. Such invidious treatment of the issue did not appear to him to be appropriate.

Mr. CASSIN (France) said that he had voted for the text of the Article 2, because it had been submitted to the Commission, not with any intention of singling out the territories other than the metropolitan territory under the jurisdiction of the signatory States, but in order to emphasize the fact that States should adopt some positive measures with regard to such territories. As he fully recognized the admirable efforts made by the Union of Soviet Socialist Republics in its struggle against ignorance over the last thirty years, he felt that the representative of that country might in turn admit that the struggle against ignorance in the non-self-governing territories would necessarily require a certain amount of time. So far as France was concerned, the Government had already drawn up plans for the territories under its jurisdiction and would draw up further plans, to show its sincerity.

When the Commission came to review the texts which it had adopted for the various articles, it might perhaps be found advisable to place Article 2 of the Chilean proposal in another part of the Covenant; for example, in the section dealing with the implementation of cultural rights.

He fully recognized the competence of the specialized agencies. His country was, indeed, animated with the best intentions in their regard. No one would, he thought, have any reason to regret the adoption of Article 2. As worded, it would make an excellent impression on public opinion, and it had, moreover, been evolved by a method of work which could only be described as excellent.

The CHAIRMAN observed that it was always open to the Commission to reconsider at a later stage the position that any particular article should occupy in the draft Covenant.

Mr. MOROSOV (Union of Soviet Socialist Republics) said, in reply to the French representative, that illiteracy had been eradicated in the Soviet Union much earlier than that representative had supposed, namely, between 1925 and 1926.

With regard to colonial and non-self-governing territories, he must again state that the introduction of primary education in such territories had frequently been held up without any justification whatever.

Article 3 (formerly Article 3).

The CHAIRMAN recalled that the original Article 3 had already been incorporated as paragraph 6 of Article 1, and was therefore no longer before the Commission. A vote could therefore be taken on Article 4 which would henceforth be numbered 3.

Mr. SÖRENSEN (Denmark) asked that the first paragraph of Article 3 be voted on in two parts, as he could not support the inclusion of the phrase "in accordance with the principle of non-discrimination enunciated in paragraph 1 of Article 1 of this Covenant". He considered that the question of non-discrimination was adequately covered by Article 1 of the Covenant, and was not in favour of the introduction of such a clause in any substantive article.

Mr. CASSIN (France) would not oppose the Danish suggestion.

He also asked that a vote be taken on paragraph 3 of Article 4 in the original version of the Chilean proposal (E/CN.4/613).

Mr. WHITLAM (Australia) associated himself with the Danish representative's remarks.

Mr. YU (China) agreed with the Danish representative that the second part of the first paragraph of article 3 was superfluous.

He considered that the re-introduction of paragraph 3 of Article 4 of the original Chilean proposal would introduce an entirely new element.

Mr. SANTA CRUZ (Chile), after outlining the various reasons for reiterating the principle of non-discrimination, pointed out that the principle had already been re-stated in the article relating to access to educational facilities (paragraph 2 of Article 1 of the Chilean proposal). It would accordingly be logical to make a further reference to it in the article dealing with cultural rights.

The CHAIRMAN put to the vote the words

"The States Parties to the Covenant undertake to encourage by all appropriate means, the conservation, the development and the diffusion of science and culture,"

The words in question were adopted by 15 votes to 1 with 2 abstentions.

The CHAIRMAN then put to the vote the words

"in accordance with the principle of non-discrimination enunciated in paragraph 1 of Article 1 of this Covenant."

The words in question were rejected by 8 votes to 8 with 2 abstentions.

The CHAIRMAN then put to the vote the words

"They recognize that it is one of their principal aims to ensure conditions which will permit everyone:

1. to take part in cultural life;
2. to enjoy the benefits of scientific progress and its applications;"

The words in question were adopted by 15 votes to none with 3 abstentions.

The CHAIRMAN then put to the vote the French representative's proposal that paragraph 3 of Article 4 of the original Chilean proposal (E/CN.4/SR.613) be reinstated.

The French proposal was rejected by 7 votes to 7 with 4 abstentions.

Mr. SANTA CRUZ (Chile) explained that in voting against the French proposal he had been moved by the consideration that, while the protection provided for in the paragraph was useful in certain circumstances and at certain periods in the life of nations, the question was not one involving a fundamental human right. In his submission, the rights of all individuals enunciated in paragraph 2 of Article 3 were of far greater and wider import. Finally, in view of the result of the vote on the corresponding provision of the article on the right to education (Article 1), he would withdraw the last paragraph of Article 3.

The CHAIRMAN then put to the vote Article 3 as a whole.

Article 3 was adopted by 14 votes to none with 4 abstentions.

Miss BOWIE (United Kingdom) stated that she had not explained her vote on each article of the Chilean proposal on the right to education and cultural rights (E/CN.4/613/Rev.1) in view of the fact that she was obliged to reserve her Government's position on the proposal as a whole, as she considered that it would require some revision. There was a certain amount of overlapping between the various articles and clauses. The votes she had cast should not therefore be interpreted as committing the United Kingdom Government.

Mr. SANTA CRUZ (Chile) re-iterated his regret that the Commission should have rejected the idea of any reference in the article on cultural rights to the principle of non-discrimination, thereby destroying the balance between that article and the one on the right to education. He warmly thanked the UNESCO representatives for the suggestions they had submitted, which had served as the basis for the Commission's work, and for their contribution to the discussion.

Mr. CASSIN (France) explained that although he had abstained in the last vote, he felt that by and large the Commission had done a useful job and made progress. It would have no reason to be ashamed of the text it was submitting to the General Assembly on the subject of cultural rights. He associated himself with the Chilean representative's thanks to the UNESCO delegation for their co-operation in the Commission's work.

The CHAIRMAN expressed the hope that UNESCO would continue to be represented at the Commission's meetings, since it was concerned in the question of the implementation of the social, economic and cultural provisions of the draft

Mr. ELVIN (United Nations Educational, Scientific and Cultural Organization), speaking at the invitation of the CHAIRMAN, and thanking the Commission on behalf of the Director-General of his Organization for granting its representatives an opportunity of participating in the discussions, said that it would continue to be represented at any meetings at which it could be of assistance.

2. Special provisions on the equality of rights of men and women as regards economic, social and cultural rights (E/CN.4/592, E/CN.4/597)

The CHAIRMAN invited the Commission to take up the Lebanese proposal (E/CN.4/592) concerning the equality of rights of women as regards economic, social and cultural rights. The Yugoslav representative had submitted an amendment (E/CN.4/597) to that proposal, which he (the Chairman), as representative of Lebanon, would accept; it should therefore be regarded as incorporated in the Lebanese text.

Mr. SÖRENSEN (Denmark) considered that the Commission should not proceed from the implied assumption that women did not enjoy full equality with men. He therefore suggested that the words "the right of women to full equality with men" should be replaced by the words "the equal right of men and women".

The CHAIRMAN said that, as representative of Lebanon, he would accept the Danish representative's suggestion.

Mrs. ROOSEVELT (United States of America) said that women should not be excluded from enjoying equal political and civil rights with men, as well as those at present under consideration. She would therefore propose the substitution of the words "the equality of men and women in the enjoyment of all rights, and in particular of the economic, social and cultural rights, as set forth in this Covenant." for the words "the equal right of men and women in the enjoyment of all economic, social and cultural rights and particularly of those set forth in this Covenant."

The CHAIRMAN, speaking as representative of Lebanon, observed that such language would not entirely accord with the instructions of the General Assembly in its resolution 421 (V), paragraph 7 (a) in section E of which ran:

"Decides to include in the Covenant on Human Rights economic, social and cultural rights and an explicit recognition of equality of men and women in related rights, as set forth in the Charter of the United Nations;"

Mr. MOROSOV (Union of Soviet Socialist Republics) recalled that his proposal that an article be included reading: "Women at work shall enjoy privileges not inferior to those granted to men, and shall receive equal pay for equal work" (E/CN.4/537) had been rejected. The Lebanese proposal was merely a declaration of principle, and entailed no binding commitment on governments as the Soviet Union proposal would have done; in effect, it was not couched in sufficiently strong terms to ensure that women should enjoy the same fundamental rights as would be granted to men. He would therefore abstain from voting on it.

Mr. SANTA CRUZ (Chile) agreed with the Chairman that the General Assembly had instructed the Commission to provide for the explicit recognition of equality of men and women in respect of economic, social and cultural rights. One of the reasons why the General Assembly had adopted that decision was that it was precisely in the field of economic, social and cultural rights that the greatest inequality between men and women at present existed.

The United States representative was undoubtedly right from the point of view of the structure of the Covenant, and it would doubtless be preferable to draft a single article stipulating the equality of men and women in respect of the whole body of rights embraced by the Covenant. However, the Commission could not do otherwise than bow to the General Assembly's wishes, leaving it to the Economic and Social Council or the Assembly itself, should either see fit, to reject the Commission's text. In those circumstances, he would vote in favour of the Lebanese text, as amended by the Yugoslav proposal.

Mr. WHITLAM (Australia) said that the wording of General Assembly resolution 421 (V) was not altogether clear, and might be misconstrued to mean that the equality of men and women should be recognized in respect of economic, social and cultural rights, but not in respect of others. The adoption of the United States amendment would obviate the possibility of the present provision's perpetuating that ambiguity.

Miss BOWIE (United Kingdom) said that it had been argued that the Commission had been definitely instructed by the General Assembly to insert a provision in the draft Covenant giving explicit recognition to the equality of men and women in economic, social and cultural rights. Yet what could be clearer than the injunctions of Articles 1 and 55 of the Charter with regard to non-discrimination as between the sexes? The General Assembly might perhaps have experienced some twinges of conscience that those injunctions had not been heeded. The experience of women working in women's organizations for the recognition of women's rights had been that organizations in which men predominated were only too ready to pass resolutions on the subject without in fact giving women what they were asking for. At the instance of the Commission on the Status of Women the General Assembly had in 1949 instituted an inquiry to ascertain how many members of the United Nations accorded women equal political rights with men. On the basis of the replies, it had been established that 13 out of 59 Member States denied women electoral rights. But the only action the General Assembly had taken had been to pass a further resolution recommending that women should be accorded equal political rights with men. She would ask the Commission whether there could be any purpose in adopting a provision such as the one proposed by the Lebanese delegation. It would seem that the greater the number of resolutions passed, the less intention there was of giving them practical effect. For that reason she would most emphatically oppose the Lebanese proposal.

Mrs. ROOSEVELT (United States of America) said that she would not vote against the Lebanese proposal, but would suggest that the terms of the General Assembly's instructions did not preclude the Commission from drafting a provision ensuring the equality of men and women in all rights as set forth in the Covenant.

She believed that a restrictive meaning was being read, quite incorrectly, into the General Assembly resolution; the latter was merely intended to lay the emphasis on economic, social and cultural rights.

Mrs. MEHTA (India) said that the worst instances of discrimination against women occurred in the field of economic, social and cultural rights. That was why the General Assembly had stressed the point. She would therefore propose that the last part of the Lebanese proposal be amended to read "enjoyment of all the rights, and in particular of all economic, social and cultural rights, as set forth in this Covenant."

The CHAIRMAN, speaking as representative of Lebanon, observed that such an amendment would entirely alter the intention of the original text.

Mr. SANTA CRUZ (Chile) said that no one who had participated in the work of the fifth session of the General Assembly could have any doubts with regard to the spirit in which resolution 421 (V) had been adopted. The instructions given to the Commission by the General Assembly were not at variance with the injunctions of the Charter. There was nothing, moreover, to prevent the Commission from inserting, in respect of the rights already covered by articles 1-18 of the draft Covenant, a provision similar to the one which the General Assembly had requested should be incorporated in respect of economic, social and cultural rights. Alternatively, if the Economic and Social Council and the General Assembly considered it necessary, they could amend the text themselves later. In any event, the Commission was obliged to comply with the General Assembly's instructions and to incorporate in the Covenant an article which explicitly recognized the equality of men and women in regard to economic, social and cultural rights. He personally preferred the Lebanese text as amended by the Yugoslav proposal, because it referred to all the economic, social and cultural rights instead of restricting itself to the rights covered by articles in the Covenant.

He noted that the United Kingdom representative had expressed misgivings regarding the favourable effect which the inclusion in the Covenant of a clause such as that contemplated might have on the extension of women's rights. That

attitude might equally well be taken with regard to all the rights recognized in the Covenant, but would be contrary to the policy that had hitherto been followed by the United Kingdom delegation in the field of human rights. It would seem, indeed, that the United Kingdom representative had no faith in the success of the Commission's efforts to improve the lot of mankind through that instrument. He would recall, however, that, as a result of the adoption of the Universal Declaration of Human Rights and of a number of resolutions by the Commission on the Status of Women, by the Economic and Social Council and by the General Assembly, it had been possible for women to secure recognition of their political rights in a number of countries. He therefore considered that the belief that the adoption of the Covenant would contribute to the improvement of the lot of mankind was fully justified.

Mr. CASSIN (France) recalled that when the article on the right to work had been under discussion, he had submitted a proposal with the object of reconciling the wishes of the General Assembly with the need for evolving a satisfactory wording of the draft Covenant. That proposal had been thrown out, but he had no regrets on that account, because it had referred solely to the right to work, and not to cultural rights.

As to the scope of the General Assembly's instructions to the Commission, in his view they applied solely to economic, social and cultural rights. Any article designed to satisfy the General Assembly's wishes, therefore, should apply to those rights alone.

Miss BOWIE (United Kingdom) said, in reply to the Chilean representative, that it was quite wrong to suggest that, because she considered a repetitive article on equal rights for men and women unnecessary, the rest of the work being done on the draft Covenant was also unnecessary. In fact, she believed that it was required under the terms of the Charter. All that she had claimed was that it would weaken the draft Covenant to include a clause on non-discrimination, when that issue had been settled once and for all by the Charter.

The Yugoslav representative had on another occasion made a moving appeal for recognition of what had been done by Yugoslav women. She felt bound to take the

opportunity of expressing her pride and appreciation at having worked with them both before and during the second world war. None the less, she would urge that their cause and that of all women would not be furthered by the adoption of the Lebanese proposal. No resolution of that kind could accomplish more than what had already been done by the Yugoslav Government in giving women equality with men.

Mr. CIASULLO (Uruguay) acknowledged the validity of the arguments put forward by the United States and United Kingdom representatives, and supported the text proposed by the India representative, which seemed to cover both aspects of the problem, namely, that women should enjoy all rights, but economic, social and cultural rights in particular. However, it would, he thought, be advisable for the General Assembly to revert to the problem as a matter of major importance.

Mr. YU (China) was not in favour of the Lebanese proposal, which confined itself to prescribing equality in economic, social and cultural rights, and might therefore prejudice civil and political rights. He would therefore propose an alternative provision, to read as follows:

"The States Parties to the Covenant recognize the full equality of men and women in the enjoyment of all the rights set forth in this Covenant."

Mr. JEVREMOVIC (Yugoslavia) considered that the instructions given by the General Assembly in resolution 421 (V) were clear and unequivocal, and that the Indian representative's amendment did not fully accord with them. The Commission could discuss the question of equal political rights for men and women at a later stage.

Mr. WHITLAM (Australia) said he would vote in favour of the Lebanese proposal, though he would reserve his Government's right to raise the issue again at a later stage in the consideration of the draft Covenant.

Mr. DUPONT-WILLEMIN (Guatemala) supported the Lebanese proposal as amended by the Yugoslav representative. He felt that for the reasons given in

the General Assembly resolution, as well as on other grounds, the Commission should not hesitate to affirm the principle of the equality of men and women in respect of economic, social and cultural rights. Though such a clause might seem superfluous in relation to highly-developed countries, it must be borne in mind that the Commission was drawing up the text of a Covenant which ought to convey a precise meaning to as many individuals as possible. The Commission should make every effort to do away with all prejudice in that field, even though it meant the repetition - where perhaps not strictly necessary - of so essential a provision as that on equality between men and women. Such prejudice still existed, even in very highly-developed countries.

The CHAIRMAN, speaking as representative of Lebanon, said with regret that he would have to vote against the Indian amendment, even though at first sight it appeared unexceptionable. In fact, it was contrary to the express instructions of the General Assembly, which were that explicit mention should be made in the appropriate place in the draft Covenant, of the equality between men and women in the enjoyment of economic, social and cultural rights. The Indian text would lay disproportionate emphasis on the particular economic and social rights set forth in the Covenant, whereas the Lebanese proposal, drafted in strict conformity with the terms of the General Assembly resolution, would recognize the equality of men and women in the enjoyment of all economic, social and cultural rights, and in particular those set forth in the Covenant.

Mrs. MEHTA (India) pointed out that the Lebanese proposal mentioned only economic, social and cultural rights. The United States representative's objection with respect to other rights in which women should enjoy equality with men therefore still stood.

The CHAIRMAN remarked that it was open to any member of the Commission to make a proposal, at a later stage, concerning equality in political rights for insertion among the first eighteen articles of the draft Covenant.

Mr. SANTA CRUZ (Chile) said that, when the Commission came to re-examine articles 1 - 18 of the draft Covenant, he would propose a similar

provision on equality between men and women in regard to the rights covered by those articles.

Mrs. MEHTA (India) withdrew her amendment.

The CHAIRMAN put to the vote the text that the Chinese representative had proposed should replace the Lebanese proposal.

The Chinese proposal was rejected by 5 votes to 5 with 8 abstentions.

Mr. YU (China) asked that the words "and in particular of the economic, social and cultural rights as set forth in this Covenant" in the United States representative's amendment should be put to the vote separately, since he believed that the inclusion of such a provision might be prejudicial to the provisions relating to political and civil rights in the draft Covenant.

The CHAIRMAN put the words in question to the vote.

It was agreed by 10 votes to 2 with 6 abstentions that they should be retained.

The CHAIRMAN then put to the vote the United States proposal that the words "the equality of men and women in the enjoyment of all rights, and in particular of the economic, social and cultural rights, as set forth in this Covenant", should be substituted for the words "the equal right of men and women in the enjoyment of all economic, social and cultural rights and particularly of those set forth in this Covenant" in the Lebanese proposal.

The United States proposal was rejected by 8 votes to 6 with 3 abstentions.

The CHAIRMAN put to the vote the Lebanese proposal, with the amendments he had already accepted as representative of Lebanon, reading:

"The States parties to the Covenant recognize the equal right of men and women to the enjoyment of all economic, social and cultural rights, and particularly of those set forth in this Covenant."

The Lebanese proposal, as amended, was adopted by 11 votes to 2 with 5 abstentions.

Mrs. RÖSSEL (Sweden), explaining her vote, said that although the General Assembly had instructed the Commission to include in the Covenant special provisions concerning the equality of women with men, the Swedish delegation did not consider that the repetition of references to such equality would lend any additional force to the principle.

Mr. CASSIN (France) explained that he had voted for the proposal out of respect for the General Assembly's instructions. He hoped, however, that that body would later strike that article out, as it had become superfluous.

3. Special provisions on the right to own property (E/CN.4/599, E/CN.4/603, E/CN.4/614)

Miss TOMLINSON (International Federation of Business and Professional Women), speaking at the invitation of the Chairman, considered it essential to include the text of Article 17 of the Universal Declaration of Human Rights in the draft Covenant. She was pleased to see that the United States proposal (E/CN.4/599) closely followed the terminology of that article.

Mrs. ROOSEVELT (United States of America) declined to accept the Soviet Union amendment (E/CN.4/614) to her proposal. After consultation with the Uruguayan delegation, however, she had agreed to amend her proposal so that it would read:

"The States Parties to the Covenant recognize the right of everyone to own property alone as well as in association with others and to be protected from arbitrary deprivation of property. Private property shall not be taken for public use without just compensation."

Mr. CIASULLO (Uruguay) withdrew his amendment (E/CN.4/603) in favour of the amended United States proposal. What was essential was to lay down that expropriation was always permissible, but that it must be founded in law and be accompanied by compensation.

The CHAIRMAN would like to see the last part of the original United States proposal, "and to be protected from arbitrary deprivation of property", retained, as it contained the idea of the protection of the individual. The proposal would then read:

"The States Parties to the Covenant recognise the right of everyone to own property alone as well as in association with others and to be protected from arbitrary deprivation of property. Private property shall not be taken for public use without just compensation."

Mrs. ROOSEVELT (United States of America) said that she was not withdrawing any part of the original United States proposal. Thus the Chairman had quoted the amended proposal correctly.

Mr. SANTA CRUZ (Chile) recognized that the right to own property was one which raised the most important and difficult problems. On reading the various proposals submitted to the Commission, he had been struck by the fact that the question was being approached from the same angle as at the time of the drafting of the Universal Declaration of Human Rights. The Commission had then made a thorough study of the problem, and after lengthy discussions had adopted the very simple and quite inoffensive wording contained in Article 17 of the Universal Declaration.

Fundamentally, the concept of the right to own property was bound up with the different attitudes to economic and social matters obtaining in the various countries. For example, the question of what kind, and what type, of property it could be considered a fundamental right to own had been discussed at length. Was it only the right of the individual to own certain articles of personal, everyday use that was to be recognized, or would his right to own the means of production be recognized as well? Opinions differed profoundly on those basic issues. It was for that reason that Article 17 of the Universal Declaration simply proclaimed the right to own property without further defining what that meant. The words "in association with others", in clause 1 of Article 17, had been inserted at the request of the Soviet Union Delegation, which only recognized individual property to a very limited extent and chiefly recognized collective property.

He considered, therefore, that the Commission would be wasting its time if it tried to define the concept of the right to own property, since it would find itself beset by the same difficulties as had led the General Assembly to limit itself in the Universal Declaration to an exceedingly simple wording.

The Soviet Union amendment did not, in his opinion, reflect the idea underlying Article 17 of the Universal Declaration, which in spite of its failure to define the conditions of the right to own property, in practice left it to each

country to specify the types of property which it acknowledged and recognized under its laws.

With regard to arbitrary deprivation of property, he recalled that when the draft Universal Declaration had been under consideration, one delegation had submitted an amendment similar to that of the Uruguayan delegation (E/CN.4/603), the purpose of which was to specify when and how expropriation could legally take place. That amendment had finally been rejected, because the majority view had been that deprivation of a type of property other than basic property (that was home, personal and household articles) was not a violation of a fundamental right of the individual. The majority had considered that certain countries might wish to proceed in that way in regard to certain types of property, and that that would not violate any of the fundamental, unimpugnable human rights.

He realized that the expropriation procedure mentioned in the Uruguayan amendment conformed with the laws of the country. The same was true of Chile. At the same time, however, that was no reason for recognizing the unlimited right to ownership of the means of production as a fundamental right of the individual.

That being so, he preferred the original wording of the United States proposal, which was very close to the wording of Article 17 of the Universal Declaration, except that, logically enough, it laid an obligation upon States to protect property, without introducing elements which, he considered, conflicted with his conception of the basic rights of the individual.

In conclusion, he said that the outcome of the vote on the Soviet Union amendment was a matter of indifference to him, because in his opinion it was important that it should be left to each State to decide how property could be acquired, as well as precisely what the right to property should cover, and, as originally worded, the United States proposal recognized that option by implication.

Mr. WHITLAM (Australia) foresaw that the use of the word "arbitrary" in an instrument with the binding force of the Covenant would inevitably give rise to difficulties of interpretation. That word had a highly subjective connotation, and it would be very difficult to devise criteria on the basis of which it could be decided whether any particular act of expropriation was arbitrary or not. Moreover, the use of that word in the Covenant might restrict the means by which governments could legally acquire property.

He felt that the phrase "Private property shall not be taken for public use" failed to allow for a distinction between the ownership and the occupation of property. Moreover, he could imagine cases involving property which was neither public property nor yet completely private. To bring such cases within the scope of the Covenant, and to allow for the distinction he had mentioned, he proposed that the Uruguayan amendment should be re-drafted to read "no property shall be taken for public purposes", the last word being more general in connotation than "use".

That was all he would say at that stage of the discussion.

Mr. JÖRENSEN (Denmark) pointed out that the Commission was attempting to draft a Covenant, the provisions of which would be applicable in all countries. The conditions determining the ownership of property varied enormously from country to country, and any attempt to include in the Covenant an article on the right to own property might jeopardise the successful implementation of the Covenant as a whole. He would therefore vote against the adoption of such an article.

He wished, however, to make some remarks on the proposals before the Commission. Danish legislation upheld the sanctity of private property, and guaranteed the right of the individual to just compensation in the event of expropriation. But it was necessary also to protect the individual against expropriation for private purposes, for example, in connexion with land reform; in fact, such protection was even more imperative than protection against exploitation for public purposes.

If the Commission wished to include in the Covenant an article on the right to own property, there were two courses open to it. It could adopt the wording of Article 17 of the Universal Declaration of Human Rights, in which case the subjective implications of the word "arbitrary" would deprive the article of all practical value. Alternatively, it might attempt to draft a more precisely worded article; in view of existing world conditions, however, such an attempt would be doomed to failure from the outset.

Mr. DUPONT-WILLEMEN (Guatemala) doubted whether it would be possible for the Commission to accept the Danish representative's suggestion that no provision on the right to own property should be included in the Covenant. The least that the Commission could do was to repeat the words of Article 17 of the Universal Declaration, since the total omission from the Covenant of any mention of the right to own property would be open to misinterpretation.

He admitted that it would be difficult to insert a provision which went into much detail and he would accordingly vote for the United States proposal as the one offering the best solution of the problem.

He could not support the Uruguayan amendment, because it implied that signatory States would be obliged to pay compensation in all cases of expropriation. In certain cases, however, as the representative of Chile had justly pointed out, expropriation might occur without payment of compensation commensurate with the value of the property.

Lastly, the idea of "arbitrary deprivation" was obviously rather vague. He thought, however, that the concept could be clearly defined in national constitutions, as it generally was.

Mr. MOROSOV (Union of Soviet Socialist Republics) said that the Chilean representative's statement that the right to own private property was not recognized in the Soviet Union was incorrect. Article 10 of the Constitution of that country guaranteed the legal protection of "the personal property right of citizens in their incomes and savings from work, in their dwelling houses and subsidiary home enterprises, in articles of domestic economy

and use and articles of personal use and convenience, as well as the right of citizens to inherit personal property". It was therefore untrue to suggest that the Soviet Union amendment had been submitted as a means of perpetuating conditions existing within the Soviet Union.

His amendment was simply a recognition of the fact that the right to own property must be subordinated to the legislation of the country in which that property was situated. Provided that amendment was adopted, the United States proposal would be acceptable to the Soviet Union.

He presumed that, in spite of the acceptance by the United States representative of the Uruguayan amendment, a vote would be taken on that amendment as such. Otherwise, he would have to assume that the United States proposal contained in document E/CN.4/599 had been withdrawn and a new proposal submitted. Rule 53 of the rules of procedure laid down that a proposal could not be withdrawn once an amendment to it had been proposed. The order of voting should therefore be: first, the vote on the Soviet Union amendment; secondly, the vote on the Uruguayan amendment. He intended to vote against the latter.

The CHAIRMAN pointed out that according to the rules of procedure a delegation submitting a proposal was at liberty to accept any amendment to that proposal which might be introduced. Moreover, a delegation might withdraw its proposal at any time before a vote was taken on it. However, the procedure adopted at previous meetings had been to allow a proposal to be withdrawn at any time until an amendment to it was actually voted on and adopted. A vote would therefore be taken first on the Soviet Union amendment and then on each separate part of the United States proposal, as amended.

Mr. SANTA CRUZ (Chile) wished to make it clear that he had not stated that the right to own private property was not recognized in the Union of Soviet Socialist Republics. What he had said was that that country had a limited conception of the right to own private property.

He felt, moreover, that the Soviet Union representative had misinterpreted rule 53. A motion could always be withdrawn by its proposer so long as no

amendment to it had been adopted by the Commission.

Mr. EUSTATHIADES (Greece) said that the Uruguayan amendment in fact contained a definition of arbitrary deprivation of property, which was the same as that contained in the Constitution of Greece, and in those of many other countries. He therefore had no reason for opposing the adoption of the amendment which embodies a right which was given legal recognition in most countries. However, for the reasons already given by a number of previous speakers, he would have no objection to the Commission's simply adopting the original text of the United States proposal. He would point out, nevertheless, that the phrase "aussi bien seule qu'en collectivité avec d'autres" did not have a very legal ring in French.

AZMI Bey (Egypt) thought that the concept of the right to own property had three aspects.

First, the right to own property was universally admitted. He knew, in fact, of no country which denied it absolutely.

Secondly, each country considered the concept of property as one of the bases of its social structure, and jealously reserved the right to regulate and administer, according to its own conceptions, everything connected with property in its own territory. That idea was accorded an important place in the civil code of all countries.

In the third place, expropriation was usually made subject to a certain number of conditions. (In that connexion, he would point out that the wording of the Uruguayan amendment likewise conformed with the provisions of the Egyptian constitution.) Those conditions were three in number: it could be carried out only in cases affecting the public industry; due compensation had to be paid; and the amount of such compensation should, in general be fixed by a court.

The first of the three aspects of the right to own property was dealt with in the first three lines of the United States proposal ending at the words "... with others". The second, that of conformity with national legislation,

was introduced by the Soviet Union amendment; and the Uruguayan amendment, with which he associated himself, covered the third aspect, namely, the question of deprivation of property. It seemed to him, therefore, that the Commission should adopt a combination of the three texts.

Mr. CASSIN (France) agreed with the Egyptian representative that three separate issues were involved. He would personally have been glad to see a clear distinction drawn between the basic element, the right to own property - which was essential to the maintenance of human dignity and independence - and the economic aspects of that right. Nevertheless, he accepted the first two lines of the United States proposal, up to and including the words "... qu'en collectivité" in the French text, the words "avec d'autres" being unnecessary.

He also agreed that the Commission should recognize the sovereignty of the laws of each country as proposed in the Soviet Union amendment, provided that that stipulation was regarded as secondary.

With regard to the Uruguayan amendment, he was prepared to accept it on the understanding that it would be interpreted in a broad sense. It should be possible, in his view, to interpret the words "in cases of public necessity or utility" as meaning that an owner could be expropriated by the State not only when the latter intended to keep the property itself, but also in cases where it proposed to transfer it to a third party. Similarly, the words "due compensation" did not necessarily imply that the Compensation paid should always be equivalent to the value of the property. In practice, States often distinguished between ownership - the element which gave rise to compensation - and "stock-in-trade" or "good-will", for which the State did not necessarily pay compensation.

It should be noted that the sovereignty of States, though unquestionable in the case of measures governing the right to own property in their own territories, was subject to some limitation when it came to the question of compensation, especially in respect of property owned by foreigners. In such cases, various provisions of international law, recognized in particular by the

International Court of Justice, came into play. For example, when the French Government had expropriated certain banking houses and insurance companies, it had paid compensation to the foreign shareholders concerned on more favourable conditions than those accorded to French nationals. The same thing had happened when properties had been nationalized in Poland, Yugoslavia and elsewhere.

He was not urging that that principle of international law should be incorporated in the Covenant, but merely quoted it as an argument in support of the Egyptian representative's suggestion as to the order in which the various elements of the right to own property should be dealt with.

Accordingly, he would vote in turn for the first part of the United States proposal, for the Soviet Union amendment and for the Uruguayan amendment, on the clear understanding that his votes were based on the interpretation he had just given.

Mr. JEVREMOVIC (Yugoslavia) pointed out that the right of the individual to own property depended on the manner in which that property had been acquired. The property which an individual had acquired by honest work should be given the fullest protection against arbitrary expropriation; but property illegally acquired was often confiscated by the State without payment of compensation, and it would be unfair to expect that any right to compensation should exist in such cases. The Commission should therefore produce a clear-cut definition of the type of property that should be protected by the provisions of the Covenant.

He did not wish to make known the attitude of his delegation towards the various proposals before the Commission until he had seen the Egyptian proposal in writing.

Mr. CIASULLO (Uruguay) said that he had withdrawn his amendment in the hope of bringing the discussion to an end. Apparently he had failed in that endeavour.

As the Australian representative had very rightly said, the object of the Uruguayan amendment was to define the terms "protection" and "arbitrary

deprivation", which were somewhat vague. The reason why Article 17 of the Universal Declaration went no further than the bald statement that "No-one shall be arbitrarily deprived of his property" was that that was just a "declaration", so that precise legal wording was unnecessary. The Commission was now, however, engaged in drafting a Covenant, whose provisions would have the force of law. He could not, therefore, rest content with the United States proposal. The Commission must define what was meant by "protection" and "arbitrary deprivation", and the object of the Uruguayan amendment was to provide that definition.

After listening to the comments of the other representatives, he felt that it could be laid down that there should be no expropriation without just compensation. That would define the concepts both of "protection" and of "arbitrary deprivation". Moreover, the words "just compensation" allowed the State the discretionary powers which the French representative had asked for.

He was also prepared to support the Soviet Union amendment.

Mrs. ROOSEVELT (United States) stated that, at the time of the discussion on Article 17 of the Universal Declaration, she had opposed a Soviet Union amendment couched in the same terms as that now before the Commission. She had then considered the Soviet Union amendment excessively restrictive, and her opinion had not changed since.

The Uruguayan representative had now proposed what seemed to be a satisfactory solution. The phrase: "Private property shall not be taken for public purposes" would cover expropriation for use by both the government and private persons. The phrase "without just compensation" was admirable. The word "arbitrary" had been discussed at length during the drafting of the Universal Declaration. At that time the United States delegation had defined "arbitrary deprivation of property" as deprivation of property without the substantive and procedural guarantees of the law.

She doubted whether the Commission would find a more suitable wording than that of Article 17 of the Universal Declaration.

Mrs. RÖSSEL (Sweden) supported the original United States proposal. The Uruguayan amendment raised extremely complicated legal issues, and she would

be obliged to abstain from voting on it.

Mr. SANTA CRUZ (Chile) said that the Commission should not confine its efforts to introducing into the Covenant the constitutional provisions in force in their own countries. As was the case with all the Council's functional commissions, members were sitting as experts appointed in a personal capacity, in spite of the fact that the Economic and Social Council had elected the various countries represented in the Commission. In those circumstances they bore a general responsibility for drafting a text which paid due regard to every aspect of the questions under review, and not just to those peculiar to their own countries.

As the representative of Yugoslavia had pointed out, the Commission would be making a serious mistake if it set up the right to own property as a fundamental human right, without any limitation. The fundamental human rights were those inherent in the human personality, those that gave man worth and dignity. It would be monstrous to accept the right to own property as a fundamental right without specifying what property was meant. He was seriously concerned by such a trend. The effect of the Uruguayan amendment would be to afford, at international level, protection to all types of property, by conveying that any action by a State in limitation of the right to own property would constitute a violation of a fundamental human right.

The French representative had spoken of the international aspect of the right of aliens to own property. He (Mr. Santa Cruz) would remind him of the attitude adopted by governments in time of war towards the property of enemy nationals. Did those governments consider that in seizing such enemy property they were violating a fundamental human right? If a country decided to expropriate certain property without compensation, would it be violating a fundamental right irrespective of the nature of that property. He did not think so.

The Commission should confine itself to a strict definition of fundamental rights, and avoid confusing them with particular aspects of the economic and social systems in force in certain countries, which would be a mistake and diminish the authority of the other provisions of the Covenant. He could not,

therefore, support the Uruguayan amendment unless some definition was first provided of what was meant by property as an element in a fundamental right to own it.

Mr. WAHEED (Pakistan) favoured the United States proposal as amended. It fulfilled the intention of Article 17 of the Universal Declaration, and also corresponded with the provisions adopted by the Constituent Assembly of Pakistan concerning ownership and conditions of expropriation. Those provisions were as follows:

"No person shall be deprived of his property except in accordance with the Law. No property shall be requisitioned or acquired for public purposes under any law authorizing such requisition or acquisition unless the Law provides for adequate compensation".

Miss BOWIE (United Kingdom) agreed with the Chilean representative that it was the task of the Commission to draft provisions expressing basic rights in terms which could be accepted under the normal democratic procedures of the national legislation of each country. She also agreed that it would be impossible to formulate a satisfactory article concerning the right under discussion without first defining property, and the meaning of the right to own it, and without detailed examination of the difficult problems relating to compensation and the conditions on which it could be paid. Such consideration would take a long time, and could only be carried out by trained jurists. On the other hand, if the provision were drafted in the form of a simple statement of principle, leaving many questions unanswered, numerous difficulties might arise. It was because she believed that the right to property was important, and required careful definition, that she would abstain from voting on the United States proposal.

Mr. YU (China) said that the right to own property had long been generally recognized, and should be included among the other basic rights enunciated in the draft Covenant. Any failure to insert a clause on the subject might be open

to misinterpretation. He would therefore support the United States proposal as amended by the Uruguayan proposal, subject to a minor editorial amendment, namely, the substitution of the words "individually or collectively" for the words "alone as well as in association with others".

Mr. SANTA CRUZ (Chile) moved that the meeting be adjourned.

The Chilean proposal was unanimously adopted.

The meeting rose at 6.50 p.m.