

GENERAL ASSEMBLY

THIRTEENTH SESSION

Official Records


**THIRD COMMITTEE 854th
MEETING**

 Thursday, 16 October 1958,
at 10.45 a.m.

NEW YORK

CONTENTS

	Page
Agenda item 32:	
Draft International Covenants on Human Rights (continued)	
Article 7 of the draft Covenant on Civil and Political Rights (continued)	97

Chairman: Mrs. Lina P. TSALDARIS (Greece).

AGENDA ITEM 32

Draft International Covenants on Human Rights (E/2573, annexes I, II and III, A/2907 and Add.1-2, A/2910 and Add.1-6, A/2929, A/3077, A/3525, A/3764 and Add.1, A/3824, A/C.3/L.673-674, A/C.3/L.676-679, A/C.3/L.679/Rev.1, A/C.3/L.680) (continued)

ARTICLE 7 OF THE DRAFT COVENANT ON CIVIL AND POLITICAL RIGHTS (E/2573, ANNEX I B) (continued)

1. Mr. CALDERON PUIG (Mexico) recalled that his delegation, noting that the revised text of the Greek-Italian amendment (A/C.3/L.679/Rev.1) to article 7 of the draft Covenant on Civil and Political Rights (E/2573, annex I B) had less support than the original version of the amendment, had considered that representatives could reach a decision more easily if it put forward the original version (A/C.3/L.679) as an amendment to the revised text. It was now a question of the procedure to be adopted, delegations having already taken up positions on the substance. Undoubtedly the Mexican text was the furthest removed from the article in its original form; it could therefore be voted on first. Whatever the result, it would at all events help to clarify the situation. By voting separately on its various parts, the Committee could reach a decision on each and could thus adopt without difficulty the wording acceptable to the majority.

2. Mr. MOROZOV (Union of Soviet Socialist Republics) was strongly opposed to the Mexican delegation's proposal. Under rule 123 of the rules of procedure, the text which had been withdrawn by Greece and Italy (A/C.3/L.679) could be reintroduced by another delegation, but only in the form of an amendment to article 7. It was unacceptable as a sub-amendment. It could, of course, be argued that the time limit for the submission of amendments had expired and it was doubtless for that reason that the Mexican delegation had resorted to a roundabout procedure. If the Committee wished to be generous and make an exception in favour of Mexico, he would not object to the submission of the text in question as an independent amendment; he hoped that the Mexican representative would forge procedural devices and would endeavour to carry his point by methods which would not be open to objection and would not complicate an already confused situation.

3. Mr. MONACO (Italy) considered that rule 123 had no bearing on the question as the delegations of Greece and Italy had not withdrawn the amendment contained in document A/C.3/L.679. The Greek representative had merely made some verbal changes which had been incorporated in a revised text. There was nothing in that which was contrary to the rules of procedure. It was for the Chairman to take a decision on the exact form of the Mexican proposal. It should be borne in mind that the Mexican delegation was pursuing a very laudable aim: it was seeking to enable the Committee to bring the discussion to a conclusion as soon as possible. Representatives should not therefore raise procedural difficulties where, strictly speaking, there were none.

4. Mr. CALDERON PUIG (Mexico) did not think the interpretation of the USSR representative was wholly in keeping with the letter and spirit of rule 123 of the rules of procedure. For his part he did not think that the action taken by his delegation had been in the least reprehensible. It would, however, be undesirable to become involved in a long discussion on procedure and he was therefore prepared to accept any ruling the Chairman might make.

5. Miss MacENTEE (Ireland) considered that because of the serious implications of the provisions of article 7, the Committee should know exactly what it was doing before adopting the final text. In the Irish delegation's view, the article should not contain anything relating to legitimate medical and scientific practices. The Australian amendment (A/C.3/L.678) met that view: it did not exclude the element of free consent in so far as the amendment was not, by its very nature, applicable to legitimate experimentation undertaken with the subject's free consent. The Committee was preparing neither a universal penal code nor a code of medical ethics, but was seeking to establish, in the field of human rights and fundamental freedoms, certain minimum guarantees which would be acceptable to all. The article was concerned with practices to which no human being could freely consent without loss of dignity. In certain instances, the consent of the person concerned had the effect of making acceptable and even admirable acts which would otherwise be cruel, inhuman or degrading, but such acts did not come within the scope of article 7. As amended by Australia, the article would be perfectly adequate to cover all cases which were degrading precisely because there was no consent; the Committee should seriously consider that fact before rejecting a wording which had the advantage of constituting a clear and absolute guarantee and of not leaving any loop-hole.

6. Nevertheless, a large number of delegations wanted the phrase "without his free consent" to be included in the article. The best way of complying with their wish without weakening the text was that proposed in the Netherlands amendment (A/C.3/L.673), which the

Irish delegation would support if the Australian amendment was rejected. If the Committee should prefer to take out the words "In particular", the Greek-Italian amendment (A/C.3/L.679/Rev.1), as further amended by Canada (A/C.3/L.680), might be satisfactory. She pointed out that, if it were desired to link closely the two parts of the article, the second should include all the concepts contained in the first; to that end, the words, "any form of torture or cruel treatment" in the Canadian sub-amendment should be replaced by: "any form of torture or cruel, inhuman or degrading treatment".

7. Mr. MORIN (Canada) stressed that the most important part of his delegation's text was that relating to torture; he regarded the part relating to free consent as being of minor importance.

8. He was pleased to accept the amendment just proposed by the Irish representative.

9. Mr. BAROODY (Saudi Arabia) thought that it should be ascertained forthwith whether the Committee had before it two Greek-Italian amendments (A/C.3/L.679 and A/C.3/L.679/Rev.1) or whether the first version had been withdrawn in favour of the second. The fate of the Mexican sub-amendment depended on the answer to that question.

10. Mr. ROSSIDES (Greece) stated that the second version of the Greek-Italian amendment (A/C.3/L.679/Rev.1) was the one which stood, although the first version (A/C.3/L.679) had not been explicitly withdrawn. He left it to the Committee to decide what should be done about the sub-amendments.

11. Referring to the Irish representative's remarks, he emphasized that, in his view, the Australian amendment (A/C.3/L.678) had the serious defect of leaving out all reference to the idea of free consent. Such an omission would be permissible only if it were desired to prohibit only those forms of medical and scientific experimentation which were actually a disguised form of torture. But as he had recalled at the 852nd meeting, there existed other categories of experimentation the object of which was in principle legitimate, such as those which were genuinely designed to further scientific progress. Such experiments could, however, impair the physical integrity or the health of the individual on whom they were performed or inflict suffering on him; his free consent should therefore be obtained beforehand. The Australian text did not take such a case into consideration; its wording was too general and ran the risk of prohibiting only those scientific experiments which took the form of intentional torture or, if interpreted more freely, of standing in the way of legitimate experiments, to which the persons concerned were ready to give their consent. The danger of such an interpretation could be avoided only by retaining the idea of free consent, as did the Greek-Italian amendment.

12. In reply to the Indian representative's remarks (853rd meeting), he said that the omission of the words "In particular" would not in his view have the effect of detracting from the importance of the second sentence of the article. The mere fact that scientific and medical experimentation was mentioned should be enough to focus attention on it.

13. Mr. BAROODY (Saudi Arabia) thought it desirable to close the debate on substance. To avoid a protracted procedural discussion, the amendments could

be put to the vote in the order in which they had been submitted. The Committee would then first decide on the Netherlands amendment (A/C.3/L.673). Before it did so, however, the representatives of Greece and Italy would have to make it clear whether their new amendment (A/C.3/L.679/Rev.1) replaced their original text (A/C.3/L.679).

14. Mr. RYAN (Australia) thought the Committee should reach a decision on the procedural question and then take a vote in accordance with rule 131 of the rules of procedure. He would therefore be grateful if the Chairman would state whether all the amendments were receivable. As the USSR representative had remarked, it was not clear whether the Mexican delegation could submit the original text of the Greek-Italian amendment in the form of a sub-amendment to the revised text.

15. Mr. ROSSIDES (Greece) pointed out that the Committee had before it only one Greek-Italian amendment, that contained in document A/C.3/L.679/Rev.1. The Canadian and Mexican delegations had proposed changes in that text, and it was for the Committee to accept or reject those changes.

16. Mr. CALAMARI (Panama) agreed with the USSR representative that a decision was needed on whether the Mexican proposal should be treated as a sub-amendment to the revised version of the amendment presented by Greece and Italy, or as a new amendment to article 7. If the Mexican proposal was put to the vote, the Panamanian delegation would ask for a separate vote on the words "without his free consent", which could not be retained in a text in which the medical and scientific experiments referred to were obviously regarded as a form of torture. The presence of those words was entirely justified in the new Greek-Italian text, for the experiments referred to were not criminal in intent and only became so in fact if the subject had not freely consented to undergo them.

17. The Saudi Arabian representative had asked for the Netherlands amendment (A/C.3/L.673) to be put to the vote first. He pointed out that Ecuador had presented a sub-amendment (A/C.3/L.676) to that text, which should have priority in the voting.

18. Mr. MOROZOV (Union of Soviet Socialist Republics) said that the original version of the Greek-Italian amendment had been withdrawn when its sponsors had laid the revised text (A/C.3/L.679/Rev.1) before the Committee. It was therefore perfectly clear that, under rule 123 of the rules of procedure, the Mexican delegation could only resubmit the original text as an amendment to article 7. If the Committee decided to disregard the provisions of rule 123 it would set a dangerous precedent and, moreover, run the risk of a deadlock. If the Mexican delegation were allowed to present the original text of the Greek-Italian proposal as a sub-amendment to the revised text of that proposal, there was no reason why other delegations should not propose changes in the Mexican sub-amendment, so that the Committee would have to vote on a text substantially identical with that submitted by the Commission on Human Rights. He therefore asked the Mexican representative to reconsider the matter. If the Mexican delegation maintained its position he would insist that the Chairman or the Committee should give a clear ruling on the subject.

19. The Saudi Arabian representative had suggested a wholly satisfactory voting procedure.

20. Mr. CALDERON PUIG (Mexico) expressed regret that his delegation's intentions had been misunderstood. It had wanted to facilitate the Committee's work, not to engage in a procedural debate. It insisted that its proposal should be treated as a sub-amendment to the new Greek-Italian amendment, for it was convinced that the text it was reintroducing had the support of most delegations.

21. The representative of the Soviet Union had not merely raised a point of order; he had also touched on a question of substance, for he had made it clear that he opposed the Mexican proposal. He asked that representative and the Saudi Arabian representative not to draw the Committee into a pointless debate on purely procedural issues.

22. Mr. KASLIWAL (India) wished to know how far the sponsors of an amendment were free to embody in it changes so drastic that the revised text bore scarcely any resemblance to the original. If that was permissible he did not see why another delegation could not present amendments to the new text.

23. The voting procedure suggested by the Saudi Arabian representative seemed wholly acceptable to the Indian delegation.

24. The CHAIRMAN said that before ruling on the procedural questions she would call on all those who had expressed the wish to speak on the substance of the issue.

25. Sir Samuel HOARE (United Kingdom), replying to certain arguments advanced by the USSR representative at the 853rd meeting, explained that the reason why his delegation had abstained from voting on article 7 in the Commission on Human Rights had been that, at that time, it would have preferred the article to consist only of the first sentence. It had seemed to his delegation too difficult to arrive at a wholly satisfactory version of the second sentence. Three other delegations and the representative of the World Health Organization had felt the same. The United Kingdom delegation considered itself under no obligation to maintain a position which had been prompted by doubt, and not by a refusal to accept the actual content of the second part of article 7. It was now prepared to support that article in its original form, albeit recognizing that it was not perfect.

26. The main issue in the Commission on Human Rights had been to decide whether the second part of the article should be retained. The presentation of the Netherlands, Australian and Greek-Italian amendments had now made it possible for the Third Committee to approach article 7 from another point of view which seemed much more satisfactory. In contrast with certain other articles of the draft Covenant, article 7 had no political connotations; it was based on strictly humanitarian considerations and all members of the Committee were agreed that it should be drafted in the most precise and categorical language possible. It was necessary to condemn all forms of torture and all criminal experiments without, however, encroaching on purely medical matters.

27. The first sentence of the article was particularly important since, while it might be hoped that the atrocities committed by the Nazis would not recur for a long time to come, it was necessary to face facts and to realize that many forms of torture or inhuman treatment were still in daily use. The representatives

of the Soviet Union and Romania had asserted that the deletion of the words "without his free consent" would eliminate from the second part of the article the only criterion which made it possible to determine whether medical or scientific experiments were legitimate. The first sentence categorically prohibited torture and cruel, inhuman or degrading treatment, without laying down any criterion for their definition. In that respect it was like other important articles of the Covenant. There would be no point in further definition for such atrocities could be described only in general terms. The very words "torture" and "cruel, inhuman or degrading treatment" implied lack of consent; they indicated that acts contrary to human dignity were involved. The Australian amendment (A/C.3/L.678) defined the experiments in question as those that involved torture or some form of inhuman and reprehensible treatment. As thus amended, therefore, article 7 would formally prohibit any experiment which for any reason might be regarded as cruel, inhuman or degrading, and it stood to reason that experiments made on an individual without his consent fell into that category, and that legitimate medical treatment fell outside it.

28. Moreover, it should not be forgotten that article 27 of the draft Covenant provided for the establishment of a Human Rights Committee, composed of nine members, which would be able to define the precise meaning of the various articles. That Committee would, in fact, be a form of international tribunal authorized to examine complaints of any violation of the provisions of the Covenant. It seemed that each State would so interpret article 7 as to avoid being accused of violation before such a tribunal.

29. In brief, the use of the words "without his free consent" was in his view justified only in a text similar to that prepared by the Commission on Human Rights. The Australian amendment was entirely satisfactory: it unequivocally condemned hateful acts, and left it to each State to regulate all matters relating to the professional conduct of physicians.

30. The course of action suggested by the Mexican representative, namely that each part of the original Greek-Italian text (A/C.3/L.679) should be put to the vote separately, would enable the Committee to make a decision on every controversial expression. In view, however, of the complexity of article 7 he feared that, if the Committee were to follow such a procedure, it might adopt a disjointed text which would reflect its intentions inadequately.

31. Mr. BEAUFORT (Netherlands) recalled that at the preceding meeting the Philippine representative had remarked that there was no basic difference between the Netherlands amendment (A/C.3/L.673) and the revised amendment submitted by Greece and Italy (A/C.3/L.679/Rev.1). Although at first glance the two texts appeared to be reasonably close, the Netherlands amendment maintained the words "In particular", which firmly attached the second sentence to the first, making it entirely clear that the medical and scientific experimentation in question was such as to constitute torture or cruel, inhuman or degrading treatment. Thus worded, the second sentence merely placed the accent on a particular kind of torture; although that was not required by strict logic, it appeared to be useful for psychological reasons, in view of the general desire to condemn atrocities of a certain kind.

32. In the Greek-Italian text, there was no such link between the two sentences. Consequently the second sentence seemed to be a separate prohibition, not necessarily related to the idea of torture, and it therefore reintroduced the entire question of legitimate medical practices which the Netherlands amendment sought to eliminate. The two texts were therefore different in substance; the Greek-Italian text might have dangerous effects and it would radically alter the spirit of the article.

33. Turning to the question of "free consent" and the United Kingdom representative's remarks on the subject, he repeated that consent given under pressure could never be regarded as free consent. On the other hand, however—and that was the crux of the matter—certain kinds of treatment became cruel, inhuman or degrading only in so far as they were administered without the victim's consent. The notion of free consent was therefore an independent and positive element and it could not be abandoned without reducing the scope of the article.

34. The Committee could not possibly arrive at a perfect text which would prevent all criminal activities—in particular on the part of Governments. None the less his delegation was sincerely convinced that, all things considered, the text it had proposed was the most satisfactory, the best drafted, and also the most logical.

35. Mr. ELMANDJRA (Morocco) said that the debate to which article 7 had given rise had been extremely useful. It could be seen from the summary records that there was a very large measure of agreement on the substance of the provisions to be inserted. The various amendments also pursued constructive aims, but they appeared to be directed to the letter rather than to the spirit of the article. As the Netherlands representative had justly emphasized, it was impossible to produce a perfect text without a single loop-hole. What mattered was to come to a unanimous agreement on the intent of the article and to embody it in a text drafted as carefully as possible. In that respect, he noted with satisfaction that the United Kingdom delegation was now prepared to support the text of the Commission on Human Rights, although it still had certain reservations regarding the wording. He appealed to authors of amendments to show the same spirit of compromise and to follow the example of the Philippine and Guatemalan representatives and withdraw their proposals. If the Committee were to vote on the original text in parts, it would in any event be able to decide on most of the questions raised. He hoped that the draft adopted by the Committee would be as close as possible to that of the Commission on Human Rights.

36. Mr. YAPOU (Israel) wished to add some remarks to his preceding statement (849th meeting). The first sentence of article 7, which contained as broad a prohibition as possible, enjoyed the unanimous support of the Committee. It was also to be supposed that all representatives wished to prohibit medical and scientific experimentation which constituted torture or cruel, inhuman or degrading treatment or punishment. The question remained how those prohibitions were to be worded.

37. It had been said that a medical or scientific experiment was legitimate subject to two conditions: that it was not carried out without the free consent of the person concerned, and that it was rendered necessary by his state of health. A third condition might be set, as in fact it was in the text drafted by the Commission on Human Rights, namely, that such an experiment should not involve risk to the person experimented upon. The majority, however, seemed prepared to omit that last condition.

38. It was clear that no one could be subjected to a legitimate medical or scientific experiment without his free consent. The rules by which the medical profession was governed stressed the individual's freedom of choice rather than the requirements of his health. At the same time, as the United Kingdom representative had clearly shown, it was unnecessary to introduce the idea of free consent into a text the purpose of which was to prohibit criminal experimentation.

39. The condition relating to the state of the patient's health obviously raised the question of the relations between the patient and his doctor—in other words, the rules of conduct of the medical profession, which were of course outside the scope of article 7 or, for that matter, of the draft Covenant.

40. Another important question was how the two sentences were to be connected. His delegation had felt some doubt concerning the phrase "In particular"; but it was not convinced that the phrase "inter alia" supplied an ideal solution.

41. Taking those considerations into account, his delegation would support the Australian amendment (A/C.3/L.678); if that amendment was rejected, it would support the Netherlands amendment (A/C.3/L.673). The Committee owed a debt of gratitude to the authors of the other amendments, which had made it possible for a good many misunderstandings to be dispelled.

42. Mr. DEHLAVI (Pakistan) stated that the purpose of the Pakistan amendment (A/C.3/L.674) had been to bring out the structural unity of the article under discussion. His delegation had felt that, in the text of the Commission on Human Rights, the emphasis seemed to be on the second sentence, so that the general prohibition contained in the first sentence was weakened. Since, however, the majority did not appear to share that view, and in order to facilitate the Committee's work, his delegation had decided to withdraw its amendment. It would vote for the Australian amendment (A/C.3/L.678), which maintained the organic unity of the article while eliminating some of the defects of the original text. It would be unable to support the Canadian proposal (A/C.3/L.680) because it retained the idea of free consent—an idea unnecessary in a text dealing with torture. Lastly, if the original article was put to the vote in parts, his delegation would vote against the entire passage following the word "experimentation" in the second sentence.

The meeting rose at 1 p.m.