

GENERAL ASSEMBLY

THIRTEENTH SESSION

Official Records


 Wednesday, 15 October 1958,
at 10.50 a.m.

NEW YORK

CONTENTS

Agenda item 32:	Page
Draft International Covenants on Human Rights (continued)	
Article 7 of the draft Covenant on Civil and Political Rights (continued)	91

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.673-678, A/C.3/L.679/Rev.1) (continued)

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

1. Mr. ROSSIDES (Greece) said that in his opinion there were three possible types of scientific and medical experiments, as he had indicated at the preceding meeting. Article 7 of the draft Covenant on Civil and Political Rights should deal only with the first type, namely criminal experiments, which were merely one of the many forms of torture or cruel, inhuman or degrading treatment. But the second sentence of the article related to all three types of experiment. The use of the words "In particular" showed that some scientific and medical experiments were regarded as examples of torture. The introduction of the idea of free consent extended the scope of the article to experiments undertaken solely with a view to scientific progress. Lastly, the reference to the "state of physical or mental health" was an allusion to medical operations. Accordingly, the article as it stood was confusing. In order to remove all ambiguity it would be necessary either to delete the second part of the article or separate it completely from the first part, or else to replace the phrase "In particular" by some other expression. That phrase made the second sentence so closely dependent on the first that it seemed to be intended merely to make a general principle more specific. Criminal experiments were only one form of torture, and a reference to them must not be allowed to exclude from the scope of the article the various other forms of torture and cruel, inhuman or degrading treatment. For that reason the Greek and Italian delegations had presented a revised version of their amendment (A/C.3/L.679/Rev.1).

2. Mr. CALAMARI (Panama) said that the original text of article 7 (E/2573, annex I B) seemed on the whole acceptable to his delegation. It was, of course, possible to improve it both in form and in substance.

3. The Philippine amendment (A/C.3/L.675) introduced a new feature into the first sentence. It was true that there were forms of treatment which, although not

intentionally cruel, inhuman or degrading, nevertheless affected the physical or moral integrity of the human person. That applied, for example, to certain ritual practices which could be classed as "unusual" treatment. As several representatives had pointed out, what was "unusual" in one country might very well be normal in another; none the less all practices manifestly contrary to the dignity of the human person must be condemned. If no objection had ever been raised to "unusual" customs, slavery would still be tolerated today. The Philippine proposal was most laudable in intention and would be supported by the Panamanian delegation.

4. The Netherlands amendment (A/C.3/L.673) included the Ecuadorian amendment (A/C.3/L.676), and he would examine the two together. The words "involving risk" were extremely dangerous. In reality the subject of an experiment was rarely in a position to determine whether or not he was exposed to a risk. The physician or research worker, as the case might be, was the sole judge; it was regrettable, therefore, that the Commission on Human Rights had not accepted a Yugoslav amendment under which only an official medical institution would be empowered to decide whether an experiment should be undertaken or not. ^{1/}

5. The second sentence of article 7 introduced a new feature, but it was not unconnected with the first. The first condemned torture and cruel, inhuman or degrading treatment. The second part of the article related to scientific or medical experiments which, in so far as man was treated as a mere guinea-pig, were in fact cruel, inhuman or degrading. Some delegations had indicated that the only purpose of the second sentence was to prevent a repetition of the crimes committed by the Nazis during the Second World War and it was not concerned with legitimate scientific and medical experiments on the sick. The Netherlands amendment appeared to be designed to make that clear. Thus the retention of the words "without his free consent" would appear to legitimize criminal experiments to which their subjects had consented. It could be asked if the Committee imagined that a victim would really consent to undergo such treatment. It seemed plain enough in reality that, if the authors of the original text had had only criminal experiments in mind, they would not have introduced the idea of free consent into the text. Nor would they have laid down a second condition—"where such is not required by his state of physical or mental health"—which was warranted only in the case of legitimate medical and scientific experiments. The Panamanian delegation considered that the second part of the article should apply to scientific and medical experiments which were not in themselves criminal but which might become so if those undertaking them treated their subjects as guinea-pigs and flouted the

^{1/} See Official Records of the Economic and Social Council, Fourteenth Session, Supplement No. 4, para. 177.

dignity of the human person. His delegation was therefore unable to support the Netherlands amendment and would be grateful if the Ecuadorian representative would ask for the vote on his amendment to be taken first. If the Netherlands amendment was rejected, the first part of the text, namely the Ecuadorian proposal, would automatically be rejected too. However the Panamanian delegation, like many others, desired the deletion of the words "involving risk". If the Ecuadorian amendment was not put to the vote before the Netherlands amendment he would ask for a separate vote on that expression.

6. For reasons similar to those which prompted its opposition to the Netherlands amendment, the Panamanian delegation could support neither the Australian (A/C.3/L.678) nor the Pakistan (A/C.3/L.674) proposal. On the other hand the original Greek-Italian amendment (A/C.3/L.679) was wholly in accordance with its views. It was regrettable that, in their eagerness to compromise, the sponsors had altered the wording and deleted the last phrase, the only indication that the article applied to legitimate medical and scientific experiments. It would be dangerous to delete that stipulation while retaining the idea of free consent. He hoped that the Greek and Italian delegations would ask for a vote on their first proposal, which might perhaps be strengthened by the stipulation that, in the absence of the patient's consent, the consent of a person legally authorized to speak on his behalf must be obtained. Article 7 should never, of course, be taken to imply that consent was needed in very urgent cases where any delay would be fatal to the patient.

7. Mr. MORIN (Canada) considered that, taking into account the objections raised to various wordings, the points at issue could be reduced to two. The Committee had to decide, first, whether the second sentence should refer explicitly to torture and other cruel, inhuman or degrading treatment, and secondly whether it should embody the idea of free consent. On the first point, the Canadian delegation considered that the condemnation of certain experiments should be explicitly linked to the general ban laid down in the first sentence, without trying to legislate on the general question of medical or scientific experiments, which did not necessarily affect human rights. On the second point, opinions appeared to differ mainly on the point whether an express reference to the idea of free consent would or would not help to prevent certain criminal experiments.

8. In the Canadian delegation's opinion there was a close connexion between the two questions: the question of torture and the question of consent. If the second sentence was so phrased as to show clearly that the intention was to ban practices involving torture or cruel, inhuman or degrading treatment, there was no need to mention the consent of the person concerned. The USSR representative apparently took a different view. He regarded the words "without his free consent" as an indispensable safeguard. The Canadian delegation, on the contrary, thought that all too many examples of consent obtained by force showed that it did not necessarily constitute a safeguard.

9. The two most acceptable amendments appeared to be those of Australia (A/C.3/L.678) and the first text proposed by Greece and Italy (A/C.3/L.679). As to the revised version (A/C.3/L.679/Rev.1), the use of the expression "inter alia" was acceptable, but it was a

pity that an explicit reference to the terms in the first sentence had been eliminated. He hoped Greece and Italy would accept the following formula:

"Inter alia, no person shall be made to undergo any form of torture or cruel treatment by being subjected to medical or scientific experimentation".^{2/}

The words "without his free consent" were left out of that version for the reasons already stated; the Canadian delegation, however, did not attach as much importance as certain other delegations to the deletion of the phrase, and would not make that a condition of Canadian support.

10. The text proposed by Australia would be equally acceptable. It had been said that that text emphasized the idea of cruel, inhuman or degrading treatment rather than that of free consent. The Canadian delegation considered that to be the better course for the reasons already stated.

11. Lastly, if agreement on another text appeared out of the question, the Canadian delegation would support that of the Commission on Human Rights, which also linked the ban on certain experiments to that on torture and inhuman treatment, although in a manner perhaps not sufficiently clear.

12. Mr. MEZINCESCU (Romania) said that he was still prepared to vote on the original text of article 7. He recognized, however, the usefulness of the amendments which had been submitted and of the exchange of views to which they had given rise. The discussion had clearly shown that the Committee was unanimous in wishing to condemn medical and scientific experiments such as those which had been practised by the Nazis during the Second World War. The majority also appeared to be of the opinion that article 7 did not refer to normal medical and scientific experiments. The Romanian delegation shared that view. It believed, moreover, that the differences of opinion were related less to the substance than to the legal form of the article. It was impossible to prepare a text that would be perfect in all its elements; the best that could be hoped was that the meaning would be as clear and as categorical as possible.

13. Only the second part of the article had given rise to any real controversy, as some delegations held that the text imposed restrictions on normal medical and scientific experiments. Even assuming that the article did refer to experiments of that type, it imposed only one condition, the free consent of the party concerned. That limitation was accepted almost unanimously and was even provided for in the legislation of many countries. The introduction of the notion of free consent would not in any way hamper scientific progress. Moreover, it was frequently the only criterion by which it could be determined whether an experiment was legitimate or whether it amounted to torture or to cruel, inhuman or degrading treatment.

14. The Romanian delegation was prepared to accept the revised text of the amendment submitted by Greece and Italy (A/C.3/L.679/Rev.1), which condemned scientific and medical experiments of a criminal nature and placed them in the category of torture and inhuman treatment. The expression "inter alia" appeared to be more satisfactory than the words "in particular". It

^{2/} Text subsequently circulated as document A/C.3/L.680.

also had no objection to the Netherlands amendment (A/C.3/L.673) and even thought that the authors of those two texts might reach agreement in order to facilitate the work of the Committee. The proposal of Pakistan (A/C.3/L.674) did not change appreciably the original text of article 7, but weakened it by not laying sufficient emphasis on the relationship between scientific and medical experiments of a criminal nature and torture. Therefore he could not support it. Nor could he support the Australian amendment (A/C.3/L.678), which eliminated from the article the only criterion which made it possible, without dispute, to place certain experiments in the category of the treatment referred to in the first part. The Guatemalan amendment (A/C.3/L.677) went even further; it eliminated all reference to criminal experiments and transformed the second part of the article into a separate article which was out of place in a covenant on civil and political rights as its sole purpose appeared to be to regulate certain aspects of medical and scientific research. The Romanian delegation would therefore oppose that text and would also oppose the Philippine amendment (A/C.3/L.675), which could neither extend the scope nor strengthen the meaning of the first part of the original text.

15. Mr. COX (Peru) said that he had followed with interest the exchange of views on article 7, which had served to clarify the position of the various representatives. It might perhaps be appropriate to introduce into the second sentence an extremely useful safeguard, by requiring that the decision to have recourse to surgery or to medical treatment of an exceptional or dangerous nature should be taken by several competent persons and not by a single practitioner. Such a further precaution would render more difficult the abuses which the second sentence of article 7 was intended to prevent.

16. Mr. MORIN (Canada) said that several representatives had indicated their intention to support the suggestion which he had made. He therefore read out the text which his delegation was submitting as an amendment to the revised amendment presented by Greece and Italy.

17. Mr. KASLIWAL (India) said that he had commented at the 851st meeting on the amendments then before the Committee. Since then further proposals had been made, and he wished to indicate his delegation's position on those proposals.

18. He had found the initial text proposed by Greece and Italy (A/C.3/L.679) fairly satisfactory because, in addition to stating that only medical and scientific experiments which constituted torture or cruel treatment were prohibited, it retained the idea of free consent and thus was not subject to the reservations to which the Australian amendment (A/C.3/L.678) had given rise. On the other hand, the revised version (A/C.3/L.679/Rev.1) did not appear satisfactory to him as it substituted a weaker expression for the words "In particular". The explanation given earlier in the meeting by the representative of Greece was unconvincing. If the first sentence prohibited all forms of torture, it was difficult to see why it would be necessary to state that medical or scientific experiments carried out without the consent of the individual concerned were, "inter alia", prohibited. What was needed was to particularize a certain category of cruel, inhuman or degrading treatments. That was actually what the Com-

mission on Human Rights had wanted since, in order to make its intention clear, it had considered it necessary to begin the second sentence with the words "In particular". Retention of that expression was therefore essential. Apart from that point, there did not appear to be any very substantial difference between the new amendment presented by Greece and Italy and that submitted by the Netherlands (A/C.3/L.673). He hoped therefore that the authors of those two texts would succeed in agreeing on a final wording.

19. Mr. MOROZOV (Union of Soviet Socialist Republics) said that the representative of Canada appeared to credit him with having seen in "free consent" the only criterion which permitted a distinction between experiments which were legitimate and other types. The credit should actually have gone to the large majority in the Commission on Human Rights which had supported that view and had voted in favour of the words "without his free consent". He noted, incidentally, that even at that time the United Kingdom and Australia had been among those opposing those words.

20. The representative of Canada had feared that with that criterion, those guilty of the criminal practices the Committee sought to prevent might find some justification in the consent which they might have extorted from their victims. That was a somewhat strange argument since, as had rightly been emphasized, consent obtained by fraudulent means or through constraint could never be considered as free. That was so obvious that it would not have been necessary to state it had the matter not been raised artificially by certain representatives. The discussion should be restricted to the definition of the crime and not go into the question of the evidence to show that an infraction had been committed. It should be emphasized that the effect of the Canadian proposal would actually be to transform the amendment presented by Greece and Italy (A/C.3/L.679/Rev.1) into a text similar to the Australian amendment (A/C.3/L.678). It amounted therefore to a device resorted to in order to give priority to the vote on that amendment. Delegations would not fall into that trap and would be guided accordingly.

21. At the preceding meeting he had drawn attention to the fact that the Australian amendment had the serious drawback of leaving it to the authors of the experiments to determine whether or not they had the right to attempt them. He wished, after further reflection, to point out that the text proposed by Australia prohibited medical and scientific experiments only in so far as they constituted, in characteristic fashion, cruel, inhuman or degrading treatment and that, in other cases, they might legitimately be resorted to even if the person concerned was in no way aware of the fact. It was unnecessary to stress the danger and inhumanity of such a provision. Under the pretext of eliminating the loop-holes which it was claimed the notion of free consent would allow, criminals would thus be granted a latitude which they would not have under the text proposed by the Commission on Human Rights.

22. At that stage in its debate the Committee should have been able to weigh the arguments presented by either side. It was clear that the only satisfactory criterion suggested for determining whether medical or scientific experimentation was legitimate or not was the criterion of free consent. That criterion should therefore be maintained in order to prevent the recurrence of the atrocities committed during the last

war, but it should not be given such a meaning as to allow it to serve as an excuse for the most dreadful acts. The amendments presented by Australia and Canada would lead the Committee down a dangerous path. The Soviet delegation was convinced that the representatives would reject those amendments and would agree on a text which would not have the effect of facilitating the work of future criminals.

23. Mr. MANTILLA ORTEGA (Ecuador) said that his delegation had at first been prepared to approve the text of article 7 without change. In order to meet certain objections, however, it had presented a very short amendment (A/C.3/L.676), which in the Netherlands delegation's view might be more appropriate as an amendment to the Netherlands' own proposal (A/C.3/L.673) than to the text of the article itself. That was an interesting suggestion; he was ready to accept it and that meant that his amendment would be put to the vote before that of the Netherlands. He would, however, withdraw his proposal if the Netherlands amendment could be put to the vote in two parts, with the first vote on the deletion of the words "involving risk" and the second on the words "where such is not required by his state of physical or mental health".

24. Mr. TUAN (China) said that his delegation had also been ready to vote for the text prepared by the Commission on Human Rights (E/2573, annex I B). After listening with interest to the various arguments, he agreed that many of them were justified, although it was obviously impossible to arrive at a perfect formula. Several amendments, especially that of Ecuador (A/C.3/L.676) and that of the Netherlands (A/C.3/L.673), which contained it, the Australian text (A/C.3/L.678) and the text submitted by Greece and Italy (A/C.3/L.679/Rev.1), as modified by the Canadian proposal (A/C.3/L.680), undoubtedly improved the original text. In the circumstances, it was very difficult to make a considered choice and the sponsors of the amendments might find it equally hard to agree on a joint text during the meeting. He suggested, therefore, that the Chairman should appoint a small working group, composed of the representatives of the countries he had mentioned. The Committee would be informed of the outcome of their efforts at its next meeting, and would undoubtedly be able to reach a speedy decision.

25. Mr. BRILLANTES (Philippines) explained that his delegation's intention in presenting an amendment to article 7 (A/C.3/L.675) had been to make good an omission. But being anxious to facilitate the voting and aware of the fact that, in the opinion of several representatives, the notion of unusual treatment—as he understood it—was already covered by inhuman or degrading treatment, he had decided to withdraw the amendment.

26. The Committee was now left with three principal amendments: that of the Netherlands (A/C.3/L.673), that of Greece and Italy (A/C.3/L.679/Rev.1) and that of Australia (A/C.3/L.678). The first two did not differ in substance, as both stipulated that no medical or scientific experiment could be undertaken without the free consent of the person concerned. The Australian amendment, on the other hand, prohibited all medical or scientific experimentation which was a form of torture. Several representatives, including those of Poland and the USSR, had pointed out that the phrase concerning free consent obviously did not apply to experiments of that nature. The United Kingdom and

Australian representatives, for their part, had warned the Committee against the danger of such a clause. The real question which arose was whether the article envisaged solely criminal experiments. If the answer was in the affirmative, the Australian amendment was the desirable one; otherwise, the Netherlands proposal would be more appropriate. The Philippine delegation thought that the answer should be in the affirmative, on the following grounds: first, the authors of article 5 of the Universal Declaration of Human Rights had had in mind the crimes committed under the guise of medical and scientific experiments by the Nazis, and had wished to prevent the recurrence of such atrocities; secondly, at the sixth session of the Commission on Human Rights, the Philippine delegation had stated^{3/} that in its opinion article 7 referred only to criminal experimentation; thirdly, the World Health Organization had pointed out that the second part of the article might hinder the progress of medical science, by preventing certain useful but dangerous experiments. The two categories of lawful experiments mentioned by the Greek representative raised the question of the relationship between patients and doctors; if any provision was necessary, it should be inserted in the Covenant on Economic, Social and Cultural Rights, either in article 13, or in article 16, or in both.

27. He pointed out that of the three categories of acts mentioned in the first sentence of article 7, namely, torture in the strict sense, cruel, inhuman or degrading punishment and cruel, inhuman or degrading treatment, only the third was referred to in the Australian amendment. Future difficulties could perhaps be avoided if the text proposed in the Australian amendment was changed to read as follows: "nor shall such torture, treatment or punishment be permitted in the form of medical or scientific experimentation".

28. Mrs. DE ARENAS (Guatemala) said that her delegation condemned unreservedly all cruel experiments carried out without the consent of the persons concerned. Article 7, however, should be divided into two parts, and she was opposed to the words "in particular", as all torture without exception should be denounced in identical and absolute terms. That attitude was perhaps explained to some extent by her country's painful experience a few years back, when the torture and inhuman treatment of unfortunate victims had been a daily occurrence. Acts of torture committed for the simple pleasure of torturing were as reprehensible as the experiments referred to in article 7, and the Guatemalan delegation consequently regretted that special emphasis had been placed on the latter. She was inclined to support the amendment submitted by Greece and Italy (A/C.3/L.679/Rev.1), although she regretted the absence, so far as consent to medical and scientific experimentation was concerned, of a safeguard similar to that mentioned in the Guatemalan amendment. In order to avoid loss of time, however, the Guatemalan delegation would withdraw its amendment (A/C.3/L.677), to which the representatives of Venezuela and Spain had kindly given their support.

29. Mr. RYAN (Australia) thanked the Philippine representative for his suggestion. The proposed text was similar in substance to that of the Australian amendment, but the terms of the latter seemed more precise and the Australian delegation would therefore prefer to maintain it unchanged.

^{3/} See E/CN.4/SR.182.

30. The CHAIRMAN asked whether the sponsors of amendments were prepared to meet in a working group as the representative of China had suggested.

31. Mr. MOROZOV (Union of Soviet Socialist Republics) thought that such a procedure would not be desirable. The members of the Committee had divided themselves into two groups, each supporting different points of view, and the matter should now be resolved by a vote.

32. Mr. KASLIWAL (India) supported the USSR representative, believing that a compromise was improbable.

33. Mr. BAROODY (Saudi Arabia) shared that view and stressed that informal consultations might be a better means of arriving at a satisfactory solution.

34. Mr. CALDERON PUIG (Mexico) reintroduced the original amendment of Greece and Italy (A/C.3/L.679), submitting it as an amendment to the revised text (A/C.3/L.679/Rev.1). The Committee would thus vote first on the text of the Mexican amendment (A/C.3/L.679); by asking for separate votes on the various parts of that amendment, they would easily be able to indicate the formula they preferred.

The meeting rose at 1.10 p.m.