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COMMISSION ON HUMAN RIGHTS

Eighth Session

SUMMARY RECORD OF THE THREE HUNDRED AND SECOND MEETING

Held at Headquarters, New York,
on Tuesday, 20 May 1952, at 2.30 p.m.

CONTENTS:

Chairman:	Mr. MALIK	(Lebanon)
Rapporteur:	Mr. WHITLAM	Australia
Members:	Mr. NISOT	Belgium
	Mr. SANTA CRUZ) Mrs. FIGUEROA)	Chile
	Mr. CHENG PAONAN	China
	AZMI Bey	Egypt
	Mr. JUVIGNY	France
	Mr. KYROU	Greece
	Mrs. MEHTA	India
	Mr. AZKOUL	Lebanon
	Mr. WAHEED	Pakistan
	Mr. BORATYNSKI	Poland
	Mrs. RÖSSEL	Sweden

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Members: (Cont'd)	Mr. KOVALENKO	Ukrainian Soviet Socialist Republic
	Mr. MOROZOV	Union of Soviet Socialist Republics
	Mr. HOARE	United Kingdom of Great Britain and Northern Ireland
	Mrs. ROOSEVELT	United States of America
	Mr. BRACCO	Uruguay
	Mr. JEVREMOVIC	Yugoslavia
Also Present:	Miss MANAS	Commission on the Status of Women

Representatives of a specialized agency:

Mr. MORELLET) Mr. PICKFORD)	International Labour Organisation (ILO)

Representatives of non-governmental organizations:

Category A:	Mr. LEARY	International Confederation of Free Trade Unions (ICFTU)
Category B and Register:	Mrs. AIETA	Catholic International Union for Social Service
	Mr. HALPERIN	Co-ordinating Board of Jewish Organizations for Consultation with the Economic and Social Council
	Mr. NOLDE	Commission of the Churches on International Affairs
	Mr. MANUILA	International Association of Penal Law
	Mrs. PARSONS	International Council of Women
	Mrs. EXMER	International Federation of Business and Professional Women
	Mrs. ROBB	International Federation of University Women

/Mr. BEER

Category B and Register (Cont'd):	Mr. BEER	International League for the Rights of Man
	Miss SCHAEFER	International Union of Catholic Women's Leagues
	Miss PHILLIPS	Liaison Committee of Women's International Organizations
	Mr. JACOBY	World Jewish Congress
	Mrs. POLSTEIN	World Union for Progressive Judaism
Secretariat:		
	Mr. HUMPHREY	Director, Division of Human Rights
	Mr. DAS Miss KITCHEN	Secretaries of the Commission

DRAFT INTERNATIONAL COVENANTS ON HUMAN RIGHTS AND MEASURES OF IMPLEMENTATION (E/1992; E/CN.4/L.66, E/CN.4/L.77/Rev.1)(continued)

The CHAIRMAN invited the Commission to resume discussion of article 31 of the draft covenant.

Mr. JEVREMOVIC (Yugoslavia) associated himself with the representatives who had spoken in favour of retaining article 31.

/Mr. AZKOUL

Mr. AZKOUL (Lebanon) said that the USSR representative's interpretation of article 31 was wishful thinking. The article must be considered in relation to paragraphs 1 and 2 of article 1. Article 31 set forth a specific right -- the equal right of men and women to the enjoyment of all economic, social and cultural rights. Consequently, that right was necessarily subject to the limitations laid down in paragraph 1 of article 1. Paragraph 2 of that article contained a formal and immediate undertaking on the part of States not to make any discrimination whatever at any stage in the implementation of the rights set forth in the covenant. He personally would have preferred to have seen the non-discrimination clause repeated in article 31. In its present form, the article simply recognized the right of equality and thereby weakened the formal obligation provided for in paragraph 2 of article 1 by seeming to make an exception for the realization of that particular right. The right could be ensured only progressively in accordance with the capacity of each individual State. It would therefore be better, even if it meant introducing a repetition, to accept the verbal amendment put forward by the Chilean delegation at the 301st meeting proposing that the word "recognize" should be replaced by the words "undertake to guarantee".

Mrs. ROOSEVELT (United States of America) proposed that the word "guarantee" in the Chilean verbal amendment should be replaced by the word "ensure". She reminded members, and particularly the representatives of Chile and Poland, that article 1 had not existed when the Commission had originally decided on the text of article 31. Consequently, it was not in the least inconsistent to wish to delete article 31 now, as being a repetition of article 1.

With regard to the remarks made by the USSR representative at the 301st meeting, she emphasized that it was not enough for women to have access to elected public office in each country but they should also be able to hold the highest public posts.

/Mr. KOVALENKO

Mr. KOVALENKO (Ukrainian Soviet Socialist Republic) said that the delegations which objected to article 31 were indirectly attacking the very principle of equal rights for men and women. Furthermore, those who referred to paragraph 2 of article 1 in order to justify the deletion of article 31 were the very same representatives who had voted against paragraph 2 and would still like to delete it from the covenant if possible. If they were to succeed in their efforts and if the Commission decided to delete article 31, the covenant would not contain any provisions at all on the right to equality.

Some delegations had asserted that article 31 was useless and that it would not have any effect on the existing inequality between the sexes. In all logic that deplorable situation should lead the Commission to take measures to do away with such inequality and that was precisely the purpose of article 31. Accordingly, with the delegations of the USSR, Poland and Chile, he would vote in favour of the retention of article 31.

Other delegations had objected to the drafting of article 31. Only the United Kingdom representative, who should be congratulated on his frankness, had expressed his real reason for his objection to the article by stating that equal rights for men and women could not yet be granted in his country. The United States representative for her part had also shown that there was no true equality between the sexes in her country. He went on to cite various discriminatory provisions in the legislations of certain American States.

The Commission should take that factual situation into account as well as the comments made by the Commission on the Status of Women and should conclude that it was essential to include article 31 in the covenant.

Mr. WHITLAM (Australia) remarked that members could not expect to reach the same conclusions if they started from different premises. The Ukrainian representative seemed to think that certain delegations wished to delete the non-discrimination clause from article 1. However, it was hardly logical to base a whole line of argument on the assumption that the non-discrimination clause would ultimately be deleted. The real question at issue was whether or not the Commission wished to take into account the fact that equal rights for men and women could be granted only progressively. The Swedish representative had taken the existence of the non-discrimination clause for granted when she had asked whether or not it applied to equal rights for

/men and

men and women. On the basis of the same assumption, it would be quite illogical not to reply in the affirmative.

In the view of his delegation, the main difficulty was that the Commission had been acting on instructions from the General Assembly in inserting article 31 in the covenant. At the time, his delegation had doubted the wisdom of the decision but the majority of the Commission had felt that it should follow the Assembly's instructions while reserving the possibility of re-examining it later. Consequently, his delegation felt that it should adopt the same position it had adopted at Geneva. On grounds of logic the Swedish representative was right but the article should remain out of respect for the Assembly's instructions. If those instructions were to be reviewed that should be done by an organ of the General Assembly. His delegation would therefore abstain.

He emphasized that, in his country, the principle of equal pay for men and women had been accepted but had not yet been fully applied. It was being applied progressively, particularly by means of arbitration tribunals. The people of Australia were becoming more and more socially conscious of the principle of equality and, furthermore, Australia had not forgotten that it was a signatory of the Charter which already embodied the principle of equal rights for men and women.

Mrs. MEHTA (India) supported the principle of equality. It was not the principle that was being contested but whether article 31 should be retained in the covenant. In view of the fact that article 1 dealt with the principle of non-discrimination the question did not arise in the same form as in the previous year, when the Commission had not yet decided whether there should be one or two covenants. The repetition of the non-discrimination clause might lead to confusion as article 1 governed all the articles of the covenant on economic, social and cultural rights. Furthermore, as it was improbable that article 31 could help to improve the present situation, the Indian delegation would abstain from voting on it.

Mr. BRACCO (Uruguay) supported the retention of article 31, and recalled the way in which his country's legislation on the equality of men and women as regards civil and political rights had developed. The aim of Uruguayan law was to grant women completely equivalent rights rather than to achieve strict equality.

/Referring

Referring to the remarks of the Swedish representative, he said that he greatly admired Sweden's advanced state of social legislation and was therefore surprised that its delegation wished to delete article 31.

He feared that some delegations were using considerations of pure form to conceal their basic opposition to the principle of equality. For his part, he felt that the principle of non-discrimination should be repeated and would therefore vote in favour of retaining article 31.

Mr. KYROU (Greece) noted that article 31 expressly recognized equal rights of men and women, as distinctions on grounds of sex might exist even in a State with a homogeneous population in which none of the other distinctions listed in article 1, paragraph 2 were made. Article 31 therefore was not superfluous or repetitious. Furthermore, deletion of that article might have an unfortunate psychological effect by giving the impression that certain countries were opposed to the principle of equal rights for men and women.

Mr. MOROZOV (Union of Soviet Socialist Republics) thought that article 31 was wider in scope than article 1, since it covered all the economic, social and cultural rights, and not only those contained in the covenant. The article was not, therefore, a mere repetition of article 1.

In the United States, despite what that country's representative had affirmed, inequality between men and women was not confined to important posts alone. The United States Congress had refused ever since 1923 to adopt a bill to ensure equality between men and women, though it was similar to the provisions of article 31. From that he inferred that the United States representative's hostility to that article reflected the general hostility of the United States legislative bodies to the principle in question.

He cited figures showing that in the USSR many important posts, particularly judicial ones, were held by women who also served as representatives of the people, held the highest decorations and had distinguished themselves in agronomy, science, literature and the arts. Contrary to the United Kingdom representative's statement, the recognition of the principle as set out in article 31 could have positive results; the fact

/that the

that the number of women in the USSR with a higher education had tripled since 1940 was a case in point. It was only in 1921 that Lenin had finally stated that the Bolshevik Revolution had abolished the basis for discrimination between men and women. The Soviet people was endeavouring to improve the position of women, something the United Kingdom representative could not say of his people.

Mrs. ROSSEL (Sweden) thought that the Commission would vote in favour of maintaining article 31; the discussion had, however, served a purpose by bringing out each delegation's position on the problem of equality between men and women. The fact that it had adopted the principle of non-discrimination in article 1 showed that the Commission considered such mention in the covenant to be useful.

In reply to the USSR representative's reference to a Swedish law of 1866, she noted that her country had undergone many changes since that time, though fortunately, it had preserved its democratic system. She wished to make clear, for the benefit of the Uruguayan representative, that she was stating the views of her Government, and for that of the USSR representative, that she was not afraid to assume responsibility for the proposal to delete article 31 (E/CN.4/L.77/Rev.1) which weakened the provisions of article 1 while adding nothing to the covenant.

Mr. HOARE (United Kingdom) explained that, contrary to what the Ukrainian representative had asserted, he had never proposed the deletion of article 1, paragraph 2, and his criticism of that paragraph arose solely out of the fact that it placed States under an obligation to act at once. As the Lebanese representative had stressed, article 31 was subject to the clause of progressive realization in article 1, paragraph 1. His objection, therefore, did not relate to the substance of article 31, but merely to the fact that the article was unnecessarily repetitious. He would vote against the Chilean amendment because it reproduced in article 31 the formula he objected to in article 1, paragraph 2. There was no need to answer the remarks of the USSR representative; he could easily mention a number of fields in which women had distinguished themselves in the United Kingdom.

/Mr. BRACCO

Mr. BRACCO (Uruguay), in reply to the Swedish representative, said that he had never doubted the fact that she was following her Government's instructions. That was why he was unable to understand her attitude to article 31.

The CHAIRMAN said that before voting on article 31, the Commission must vote on a verbal Chilean amendment to replace the word "recognize" by "undertake to guarantee", to which the United States representative had submitted a verbal sub-amendment to replace the word "guarantee" by "ensure", and also on a verbal amendment by Greece, to replace "recognize" by "reaffirm". Although those amendments had been submitted after the set time limit, he suggested that the Commission should consider them receivable in accordance with its previous decisions.

It was so decided.

The CHAIRMAN proposed that a vote should be taken in the following order: (1) the United States sub-amendment to the Chilean amendment; (2) the Chilean amendment; (3) the Greek amendment in case the Chilean amendment was rejected; (4) article 31 which, on the United States representative's request, would be voted on in two parts; and (5) the text as a whole with any amendments that might be adopted.

It was so decided.

The CHAIRMAN put to the vote the United States verbal amendment to replace, in the Chilean verbal amendment, the word "guarantee" by the word "ensure".

The United States amendment to the Chilean amendment was adopted by 8 votes to 3, with 6 abstentions.

The CHAIRMAN put to the vote the Chilean amendment as modified by the United States amendment, to replace the word "recognize" by the words "undertake to ensure".

The Chilean amendment as amended was adopted by 10 votes to 3, with 5 abstentions.

/The CHAIRMAN

The CHAIRMAN announced that, in compliance with the United States representative's request, he would put to the vote the second part of article 31; namely, the words "and particularly of those set forth in the present covenant".

Mr. MOROZOV (Union of Soviet Socialist Republics) asked that a vote should be taken first on the opening words of article 31, as far as the word "rights", and then on the second part, beginning with the words "and particularly". Further, he would like a vote by roll-call to be taken on the two parts of the text.

The CHAIRMAN said that, in accordance with the respective requests of the United States and USSR representatives, article 31 would be put to the vote in parts as follows: (1) the first part to the word "rights"; (2) the words "and particularly of those"; (3) the words "set forth in this covenant".

A vote was taken by roll-call on the first part of article 31.

In favour: Egypt, Greece, India, Lebanon, Pakistan, Poland, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Uruguay, Yugoslavia, Chile, China.

Against: France, Sweden, United Kingdom of Great Britain and Northern Ireland, United States of America.

Abstaining: Australia, Belgium.

The first part of article 31 was adopted by 12 votes to 4, with 2 abstentions.

Mr. BORATYNSKI (Poland) asked for a roll-call vote on the words "and particularly of those".

A vote was taken by roll-call.

In favour: Lebanon, Pakistan, Poland, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Uruguay, Yugoslavia, Chile.

Against: India, Sweden, United Kingdom of Great Britain and Northern Ireland, United States of America, Australia, China, Egypt, France, Greece.

Abstaining: Belgium.

The words "and particularly of those" were rejected by 9 votes to 8, with 1 abstention.

/The CHAIRMAN

The CHAIRMAN put to the vote the words "set forth in this Covenant".

The words were adopted by 8 votes to 2, with 8 abstentions.

Mrs. FIGUEROA (Chile) asked for a roll-call vote on article 31 as a whole as amended.

A vote was taken by roll-call.

In favour:	Yugoslavia, Chile, Egypt, Greece, Lebanon, Pakistan, Poland Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Uruguay.
Against:	Sweden, United Kingdom of Great Britain and Northern Ireland, United States of America.
Abstaining:	Australia, Belgium, China, France, India.

Article 31 as a whole as amended was adopted by 10 votes to 3, with 5 abstentions.

AZMI Bey (Egypt) explained that although the Swedish proposal (E/CN.4/L.77/Rev.1) was logical, he had been afraid that, the vote being only provisional, the idea of equality between the sexes might disappear from the covenant if article 1, paragraph 2 were revised and its scope reduced. He had therefore voted for article 31, which would safeguard that principle until the final revision of article 1, paragraph 2.

Mr. NISOT (Belgium) had abstained because in the light of article 1 he thought article 31 superfluous; for the same reason he had taken no part in the debate on the latter article.

Mr. MOROZOV (Union of Soviet Socialist Republics) had voted to retain article 31 despite the fact that it had been weakened by the deletion of certain important words.

On the other hand, the substitution of the words "undertake to ensure" for the word "recognize" was an improvement. He reserved the right at some later time to propose a revision to the text adopted.

/The CHAIRMAN

The CHAIRMAN announced that the debate on article 31 was closed and that the Commission would take up the examination of a new article proposed by the French representative (E/CN.4/L.66/Rev.1).

Mr. JUVIGNY (France) observed that a draft article on the right to own property (E/CN.4/L.66) had been submitted at the Commission's seventh session, subject to later alteration.

The right mentioned in the draft article was dealt with in article 17 of the Universal Declaration of Human Rights. The notion of property embodied in the draft article was not absolute; it was not considered as a sacred right, and there was full recognition of the fact that individual ownership of property must be conditioned by the needs of society. In all countries the effective extent of collective ownership was increasing, according to differing conceptions of public utility. The need for compensation in the event of expropriation was recognized in the text, but there was no insistence on a preliminary compensation, as the text was intended to be of international application and the details of implementation were matters for the domestic legislation of each country.

Mrs. ROOSEVELT (United States of America) said that her delegation was in favour of the insertion of the article on the right to own property in the covenant. The first paragraph of the French proposal (E/CN.4/L.66) reproduced the text of article 17 of the Declaration of Human Rights, and the United States delegation would vote for it. Her delegation saw no objection to the second paragraph of the proposal, although it seemed to have no purpose, and the third paragraph appeared to enter into superfluous details.

AZMI Bey (Egypt) supported the French proposal (E/CN.4/L.66) as a whole. He pointed out that the first paragraph set out the principle, the second indicated clearly that that principle was to be subject to domestic legislation, and the third referred to a fundamental problem which had caused many disputes. In that connexion, the proposed text avoided abuse by stressing the need for legislation on expropriation, for the application of which the courts would be responsible.

/Mr. KYROU

Mr. KYROU (Greece) announced that, like the representative of Egypt, he would vote in favour of the French proposal (E/CN.4/L.66) as a whole.

Mr. AZKOUL (Lebanon) approved the proposal under discussion (E/CN.4/L.66), but wanted to ask the French representative whether or not it was to be subject to the limitations of article 1. If so, he would propose that the words "recognize the right of every person to own property" in the first paragraph should be replaced by the words "undertake to respect the right of every person to own property". In the second paragraph, he proposed that the words "The exercise of" should be added before the words "this right". The Lebanese delegation would vote in favour of the French proposal if it were thus amended.

Mr. NISOT (Belgium) said he would not vote either in support of the second paragraph of the French proposal (E/CN.4/L.66) as he thought that its terms were too absolute and hardly compatible with the rules of private international law nor would he support the third paragraph; though it stipulated that compensation for expropriation on grounds of public ability should be equitable, it failed to make it clear that the compensation should be preliminary.

Mr. JEVREMOVIC (Yugoslavia) wished to make a reservation with regard to the French proposal (E/CN.4/L.66), which embodied the principle of the right to own property. The term "property" had a very general sense and might include ill-gotten gains and it was inadmissible that the right to own property should be protected unconditionally.

/Mr. HOARE

Mr. HOARE (United Kingdom) said that he had not had time thoroughly to study the French proposal. The principle it laid down seemed valid, but he was not sure that it had been correctly drafted. The first paragraph provided that the State should recognize the right of every person to own property and it might be asked whether that also meant that a State would have to undertake that every person should become a property owner. Certain difficulties of interpretation might arise as regards the second paragraph. Lastly, it was very difficult to lay down clearly in one sentence principles relating to such a delicate question as expropriation. That term referred to cases where public authorities deprived an individual of his property or of a part of his property. There were however certain types of expropriation for which no compensation was given, as in the case of confiscations made following criminal conviction. He could not regard the terms of the third paragraph as satisfactory.

The CHAIRMAN read out the list of speakers and declared it closed.

Mr. KYROU (Greece) explained to the United Kingdom representative that the first paragraph referred to the right to own property and not to the goods possessed by individuals. It merely laid down that the State should guarantee to every person the right to own property.

Mr. WAHEED (Pakistan) thought that the covenant should recognize the right to own property and was therefore ready to support the French proposal.

Mrs. MEHTA (India) said she would vote for the first two paragraphs but thought the third was unnecessary.

Mr. MOROZOV (Union of Soviet Socialist Republics) said that his delegation had no objection to most of the provisions in the French proposal. He asked, however, for a separate vote on the words "and subject to fair compensation" in the third paragraph, as he intended to vote against them.

The question of the amount of compensation to be paid in the case of expropriation came exclusively within the domestic jurisdiction of States.

/The third

The third paragraph also provided that expropriation might take place only in circumstances defined by law. Arbitrary expropriation was therefore ruled out and there was no need for a special provision on the question of compensation. Furthermore, that phrasing was vague because the idea of "fair compensation" could be interpreted in various ways according to the cases considered. There was also the danger that it might be used by Colonial Powers or countries which economically dominated under-developed countries as a legal pretext to retain the privileges which they held illegally. The Commission had adopted an article providing that the right of peoples to self-determination included the right to permanent sovereignty over their natural wealth and resources and that any right held by other States could in no way justify a people being deprived of its own means of subsistence. The value of that article should not be impaired by including in the covenant a provision which might give rise to tendentious interpretations and enable certain Powers to continue to exploit under-developed countries. Such a provision might complicate international relations and might give rise to situations which were a threat to peace and international security. He then referred to the controversy over the expropriation of the property of the Anglo-Iranian Oil Company, and quoted the statements of the Prime Minister or Iran. He also referred to the case of Bolivia which was exploited by United States monopolies.

Mr. HOARE (United Kingdom) was sorry that the USSR representative had seen fit to introduce into the debate considerations which were of purely propaganda value. He objected to the fact that the USSR representative had quoted the mere statements of one of the parties to the Anglo-Iranian dispute to the Commission as irrefutable proofs.

As regards the second paragraph of the French proposal (E/CN.4/L.66), he thought it might be dangerous to give States an opportunity to adopt laws which might restrict the right to own property. In view of the reservations he had made previously on the other two paragraphs, it was difficult for him to support the proposal.

/Mrs. ROOSEVELT

Mrs. ROOSEVELT (United States of America) wished to know whether the second paragraph referred solely to rights to real property. She did not think that the paragraph could validly apply to rights to movable property and in view of the doubt which might arise in that connexion would support the first and third paragraphs only.

Mr. BORATYNSKI (Poland) recalled that the question of fair compensation had been raised at the time of the adoption of paragraph 3 of the article on the right of peoples to self-determination (E/CN.4/663). History clearly showed that under cover of the need for such compensation people might be deprived of their means of subsistence. He hoped, therefore, that the Commission would bear that fact in mind when a vote was taken on the words "subject to fair compensation".

Mr. WHITLAM (Australia) supported the first paragraph only of the French proposal as amended by the Lebanese amendment. The second paragraph should cover immovables only but it might be asked whether it did not apply also to movables. As regards the third paragraph, it was a question of knowing the meaning of the phrase "public utility". In Australia that question was covered by a constitutional provision, and the Australian Government could not agree that it should come under the jurisdiction of an international court. It might also be asked what effect a provision of that type would have on the principles of international law relating to alien property at present in force.

Mr. MOROZOV (Union of Soviet Socialist Republics) wished to study the Russian text of the Lebanese amendment before voting on the French proposal (E/CN.4/L.66) and therefore moved the adjournment of the meeting.

The proposal was adopted by 7 votes to 3, with 8 abstentions.

The CHAIRMAN said that before declaring the meeting closed he wished to make some remarks on procedural questions, and asked whether the French representative accepted the Lebanese amendment.

Mr. JUVIGNY (France) replied in the affirmative.

/The CHAIRMAN

The CHAIRMAN suggested that when it had completed the discussion of the new article proposed by France (E/CN.4/L.66) the Commission should study recommendations I and II in annex 2 of the report of the fourth session of the Sub-Commission on Prevention of Discrimination and the Protection of Minorities (E/CN.4/641) and should then go on to consider the new article suggested by France (E/CN.4/L.67) and article 32 in that order. It might then examine the preamble of the covenant on economic, social and cultural rights, and the United States proposal (E/CN.4/L.164). Lastly, it would deal with articles 1 to 18 of the draft covenant.

He suggested that the time limit for the submission of proposals and amendments for a preamble to the covenant on economic, social and cultural rights should be 5.30 p.m. on 21 May 1952.

It was so decided.

Mr. MOROZOV (Union of Soviet Socialist Republics) wished to know whether all the amendments and proposals regarding articles 1 to 18 of the covenant appearing in annex III of the report of the Commission's seventh session were before the Commission.

The CHAIRMAN said that the Secretariat would distribute a document giving all necessary information on that point at an appropriate time.

The meeting rose at 5.50 p.m.

4/6 p.m.