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COMMISSION ON HUMAN RIGHTS

Eighth Session

SUMMARY RECORD OF THE THREE HUNDRED AND ELEVENTH MEETING

Held at Headquarters, New York,
on Tuesday, 27 May 1952, at 10.55 a.m.

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Chairman:	Mr. CASSIN	(France)
later	Mr. MALIK	(Lebanon)
Rapporteur:	Mr. WHITLAM	Australia
Members:	Mr. NISOT	Belgium
	Mr. SANTA CRUZ Mr. VALENZUELA	Chile
	Mr. CHENG PAONAN	China
	AZMI Bey Mr. GHORBAL	Egypt
	Mr. KYROU	Greece

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Members (continued):

Mrs. MEHTA	India
Mr. WAHEED	Pakistan
Mr. BORATYNSKI	Poland
Mrs. RÖSSEL	Sweden
Mr. KOVALENKO	Ukrainian Soviet Socialist Republic
Mr. MOROZOV	Union of Soviet Socialist Republics
Mr. HOARE	United Kingdom of Great Britain and Northern Ireland
Mr. SIMSARIAN	United States of America
Mr. FORTEZA) Mr. BRACCO)	Uruguay
Mr. JEVREMOVIC	Yugoslavia

Representatives of specialized agencies:

Mr. PICKFORD	International Labour Organisation (ILO)
Mr. HILL	World Health Organization (WHO)

Representatives of non-governmental organizations:

Category B and Register:

Mr. de BROECK	Catholic International Union for Social Service
Mr. NOLDE	Commission of the Churches on International Affairs
Mr. MOSKOWITZ	Consultative Council of Jewish Organizations
Mrs. PARSONS) Mrs CARTER)	International Council of Women
Mrs. SOLOAN	International Federation of Professional and Business Women
Mrs. ROBB	International Federation of University Women
Mrs. CARTER	Liaison Committee of Women's International Organizations
Mr. JACOBY	World Jewish Congress
Mr. RONALDS) Mrs. POLSTEIN) Mrs. FARBER)	World Union for Progressive Judaism
Mrs. CARMICHAEL) Miss SCHAEFER)	World Union of Catholic Women's Organizations

/Secretariat:

Secretariat: Mr. HUMPHREY — Director, Division of Human Rights
Mr. DAS, Miss KETCHEN — Secretaries of the Commission

DRAFT INTERNATIONAL COVENANTS ON HUMAN RIGHTS AND MEASURES OF IMPLEMENTATION (E/1992; E/CN.4/528, E/CN.4/528/Add.1, E/CN.4/643, E/CN.4/L.68, E/CN.4/L.122, E/CN.4/L.130, E/CN.4/L.140, E/CN.4/L.159, E/CN.4/L.160, E/CN.4/L.176, E/CN.4/L.177, E/CN.4/L.178, E/CN.4/L.179, E/CN.4/L.180, E/CN.4/L.181, E/CN.4/L.182) (continued)

Article 3 (continued)

Mrs. RÖSSEL (Sweden) felt, like the Uruguayan representative, that respect for human life required that a covenant on human rights should, as one of its main principles, provide for the abolition of capital punishment. As it stood, article 3 of the draft covenant approved the maintenance of that penalty in countries where it already existed. Contrary to what had been said, article 3 of the Universal Declaration of Human Rights did not justify such recognition, and there should therefore be a mention of that article in paragraph 1 of the article the Commission would adopt. She thought that the words "in the execution of a sentence of a court, or" in paragraph 2 of article 3, as well as paragraphs 3 and 4, should be deleted. Sweden had abolished the death penalty by law in 1921, although it had then not been applied for a long time.

Her delegation was in favour of a mention of the Convention on Genocide, as article 3 was not in contradiction with it.

Mr. WHITLAM (Australia) accepted paragraph 1 of the USSR amendment (E/CN.4/L.122) in substitution for article 3, paragraph 1, but opposed the word "arbitrarily" in point 1 of the joint Chilean and United States amendment (E/CN.4/L.176). In reply to those who held that the use of the word "arbitrary" in article 6 justified that of "arbitrarily" in article 3, he recalled that "arbitrary" had been included in article 6 only after a long debate, and on the understanding that it would be given new consideration. As Mr. Lauterpacht

/had emphasized,

had emphasized, article 3 was basic, and the word "arbitrarily" was too ambiguous to be included in it. While "arbitrary" could conceivably be used to qualify detention or arrest, it could not be applied to deprivation of life. The compromise solution in point 1 of the joint amendment was anything but an improvement on the existing text, and the Australian delegation could not vote for it.

Mr. Malik (Lebanon) took the Chair.

The CHAIRMAN asked whether the Commission would receive the Belgian amendment (E/CN.4/L.182) which had been submitted after the time limit for submitting amendments to the draft covenant had elapsed.

The Commission decided to receive the amendment.

Mr. MOROZOV (Union of Soviet Socialist Republics) said that his delegation was not opposed either to the mention of the Convention on Genocide or to points 2 and 3 of the joint amendment (E/CN.4/L.176).

Mrs. MEHTA (India) withdrew her amendment (E/1992, annex III, section A), and would vote in favour of the United States amendment (E/CN.4/L.130).

Mr. HOARE (United Kingdom) associated himself with the Australian representative's remarks on the word "arbitrarily". The adoption of that word was very dangerous, as it might permit States to complain to the proposed Committee on Human Rights at any time in respect of almost any deprivation of life which occurred in another State.

Mr. CASSIN (France) criticized the text of point 1 of the joint amendment (E/CN.4/L.176) which, instead of proclaiming the right to life, stated: "No one shall be arbitrarily deprived of his life" and consequently dealt only with relations between the State and individuals, disregarding the question of protection of life as among individuals.

The United States amendment (E/CN.4/L.130) should satisfy the Indian delegation, as it provided an equivalent for self-defence for the benefit of countries which did not recognize that concept.

/He would

He would support the Yugoslav amendments (E/CN.4/L.178,E/CN.4/L.179, E/CN.4/L.180) inserting a mention of the Convention on Genocide. Even if they were rejected, article 18 of the original text covered that Convention,which France had already ratified. As the existing text of article 3 had been adopted after a long discussion, it should not be altered without good cause.

Mr. SANTA CRUZ (Chile) said that the word "arbitrarily" was intended to limit the cases of deprivation of life. He agreed that the word was vague, but drew the Australian representative's attention to the fact that it appeared not only in article 6 of the covenant, but also in articles 12 and 15 of the Declaration, where it was used in a positive sense.

The CHAIRMAN suggested that the United Kingdom amendment (E/CN.4/L.140) should be put to the vote first, as it was further removed from the text of article 3 than the USSR amendment (E/CN.4/L.122).

Mr. MOROZOV (Union of Soviet Socialist Republics) remarked that the USSR amendment not only had been submitted earlier than the United Kingdom amendment, but was further removed from the substance of article 3. That article contained an enumeration of exceptional cases, which the United Kingdom amendment would amplify, whereas the USSR amendment was based on the text adopted by the Commission at its fifth session. He therefore moved that the Commission should first vote on the USSR amendment.

It was decided, by 7 votes to 2, with 8 abstentions, to vote first on the USSR amendment (E/CN.4/L.122).

The CHAIRMAN put to the vote the Yugoslav amendment (E/CN.4/L.179) to the USSR amendment (E/CN.4/L.122).

That amendment was adopted by 13 votes to 2, with 3 abstentions.

The CHAIRMAN put to the vote point 1 of the joint amendment (E/CN.4/L.176) to the USSR amendment.

Point 1 of the joint amendment was adopted by 10 votes to 5, with 3 abstentions.

/The CHAIRMAN

The CHAIRMAN put to the vote paragraph 1 of the USSR amendment (E/CN.4/L.122) as amended.

Paragraph 1 of the USSR amendment, as amended, was adopted by 12 votes to 4, with 2 abstentions.

Mr. MOROZOV (Union of Soviet Socialist Republics) accepted points 2 and 3 of the joint amendment (E/CN.4/L.176).

The CHAIRMAN put to the vote paragraphs 2 and 3 of the USSR amendment, thus amended.

Those paragraphs were adopted by 14 votes to 1, with 3 abstentions.

Mr. CASSIN (France) requested that his amendment (E/CN.4/L.160), proposing the deletion of the word "amnesty" in the first sentence of paragraph 4, might be regarded as applying to paragraph 4 of the USSR amendment which was identical with paragraph 4 of article 3 of the draft covenant.

The French amendment was adopted by 11 votes to 4, with 3 abstentions.

Mr. MOROZOV (Union of Soviet Socialist Republics) explained that he had realized only after the vote that the French amendment applied to the word "amnesty" in the first sentence of paragraph 4. He had voted against it under the mistaken impression that the word was to be deleted in the second sentence as well.

The CHAIRMAN put to the vote paragraph 4 of the USSR amendment, as amended.

Paragraph 4, as amended, was adopted by 13 votes to 1, with 4 abstentions.

Mr. JEVREMOVIC (Yugoslavia) requested that his amendment (E/1992, annex III, section A) should be put to the vote as an amendment to the USSR text.

AZMI Bey (Egypt) asked the Yugoslav representative to revise his amendment to read: "Sentence of death shall not be put into effect where the sentence concerns a pregnant woman".

Mr. JEVREMOVIC (Yugoslavia) accepted that change.

Mr. NISOT (Belgium) pointed out that the amendment could be taken either literally or as applying solely to the period preceding child-birth.

Mr. HOARE (United Kingdom) felt that the sentence should read: "Sentence of death shall not be carried out on a pregnant woman".

Mr. JEVREMOVIC (Yugoslavia) accepted that drafting change.

The Yugoslav amendment was adopted by 12 votes to 1, with 5 abstentions.

The new article 3, as a whole, was adopted by 11 votes to 4, with 3 abstentions.

Mr. KYROU (Greece) explained that he had voted for most paragraphs in the article, but that, for reasons he had given earlier, he had voted against the text as a whole. He preferred the old text of article 3 with a few amendments

Mr. CASSIN (France) had been regretfully compelled to vote against the new article 3, feeling that the text, while appearing to safeguard the right to life, in fact permitted violations of that right. He hoped that the article would be changed subsequently.

Mr. FORTEZA (Uruguay) had voted against the article and all the amendments to it, in spite of the fact that his delegation was not opposed to some of them, because by that text the Commission had sanctioned the reprehensible principle that the death penalty was permissible.

Mr. JEVREMOVIC (Yugoslavia) had voted for the article as a whole, but retained certain doubts as regards the word "arbitrarily" and reserved the right to come back to it.

Mrs. MEHTA (India) had voted against article 3 because she preferred the original text, which had been carefully drawn up by the Commission after a thorough debate.

Mr. HOARE (United Kingdom) had voted against the inclusion of the word "arbitrarily" for reasons stated previously. He had abstained in the vote on the Yugoslav sub-amendment (E/CN.4/L.179) as he had some doubt concerning the legal consequences of mentioning the Convention on the Prevention and Punishment of the Crime of Genocide in the text of the article. He had also abstained on the last two paragraphs which he thought were unnecessary. Lastly, he had felt some doubt whether he should not have voted against the article as a whole, since he fully shared the French representative's view but he had not gone beyond abstaining on the article as a whole.

Mr. WHITLAM (Australia) had not voted against the text as a whole because he had not wished to oppose certain provisions of the article completely; he had therefore merely abstained, though he fully associated himself with the French representative's remarks.

Mrs. ROSSEL (Sweden) said that she supported only the first part of the article which read: "Everyone's right to life shall be protected by law". She had abstained on the rest of the article which dealt with capital punishment, to which her Government was absolutely opposed.

Article 4

The CHAIRMAN invited the Commission to examine article 4 of the draft covenant. He read out paragraphs 99 and 100 of document E/CN.4/528.

Mr. HOARE (United Kingdom) explained the reasons for his proposal to delete the second sentence in article 4 (E/1992, annex III, section A). The sentence was based on the desire to prevent any repetition of the horrible experiments carried out in the Nazi concentration camps. He understood and shared the feeling of abhorrence which had caused the provision to be included; he did not think, however, that its drafting was satisfactory, and felt that the first sentence of article 4, couched in general terms, sufficiently covered the special aspect of the question dealt with in the second part of the article.

The World Health Organization had given its opinion that the phrase involved no legal obligation which was not already contained in the first part

of the article, and had emphasized the difficulty of drafting the provision in such a way as to preclude any possibility of misuse. The United Kingdom delegation shared that view. Indeed, on the one hand, the proposed prohibition was likely to stand in the way of certain perfectly legitimate scientific experiments involving only slight danger to the individuals concerned, and could therefore delay progress of medical science. On the other, it might give rise either to excessive limitations or new abuses. Thus, a surgeon, faced with a new situation while operating on an unconscious patient might be precluded from attempting a new technique; and on the other hand the text implied that medical experimentation which was positively required by a patient's state of health could be undertaken without his consent. That was why the United Kingdom delegation asked for the deletion of the sentence.

Mr. JEVREMOVIC (Yugoslavia) stated that the first sentence of his amendment (E/1992, annex III, section A) was designed to prevent the inducement of persons to undergo surgical operations for financial gain at the risk of serious mutilation. The second sentence of the amendment would make it possible to perform certain general experiments in special cases.

Mr. CASSIN (France) noted that there were two kinds of amendments before the Commission; those which weakened the original text of article 4, and those which strengthened it. The United Kingdom amendment (E/1992, annex III, page 30) which deleted the second sentence of article 4 was among the former. In justification of his amendment, the United Kingdom representative had pointed out that the second sentence added nothing to the first sentence of the article which was sufficiently general in scope. The United Kingdom representative's remarks in that connexion had been irrelevant. The latter had spoken only about persons whose health was in danger. The medical experiments referred to in the second sentence of article 4 did not, however, apply to sick persons who were to be cared for; its purpose was to protect the healthy. If the covenant recognized the right to life, it must certainly protect healthy persons from being subjected against their will to medical or scientific experiments dangerous to their health.

Article 4 as drafted by the Commission had been highly praised, particularly by the Committee on the Public Health of the five countries. One of the articles of its terms of reference required that medical experiments on sick persons should be of real medical importance; that they should not only be in the patient's interest, but also not involve any risk of injuring his health and lastly, that they should be carried out with his consent. Those conditions were even more essential in the case of healthy persons.

/He emphasized

He emphasized that the question was extremely important from the moral point of view. There were still a great many people in France whose health had been irreparably damaged as a result of experiments to which they had been subjected in concentration camps. It was essential to prevent any recurrence of such criminal experimentation. The French delegation was therefore opposed to the United Kingdom amendment.

The Yugoslav and French amendments, (E/1992, annex III, page 30, E/CN.4/L.159) on the other hand, strengthened article 4. The French delegation realized that to act against a person's will, or to act without his consent, were two different matters. The obtaining of consent was a positive condition. If it was required in the case of sick persons, there was even more reason to require it in the case of healthy ones.

Mr. HILL (World Health Organization) said that WHO had shown a deep interest at the sixth session of the Commission in the provisions of articles 5 and 7 of the original draft covenant. In the course of its consultations with the World Medical Association and the International Council of Nurses the difficulties of article 7 had become apparent. The Director-General of WHO had pointed out at the time that the provisions of article 5 were adequate. Since then, articles 5 and 7 had been merged into what was now article 4. WHO continued to feel that the first sentence of article 4 adequately settled all general problems connected with medical and scientific experiments on human beings. The second sentence might only complicate matters and hold up the progress of medical science. WHO understood and shared the feeling of horror at the experimentation carried out in the concentration camps but it believed that certain experiments, if performed in the proper conditions, were necessary to scientific development.

Mr. NISOT (Belgium), addressing in particular the French representative, said he feared that article 4 would have to be interpreted, a contrario, as permitting the subjection of a patient against his will to medical or scientific experimentation involving risk.

/Mr. HOARE

Mr. HOARE (United Kingdom) agreed with the French representative on the need to prevent any recurrence of the monstrous experiments carried on by the Nazis, but he thought that the first sentence of article 4 achieved that purpose. He denied that his remarks had been irrelevant. There was nothing to show that the provisions of article 4 did not apply to sick persons, as the article did not commit itself in one way or another concerning the state of health of the persons in question; consequently the second sentence applied to the sick and healthy alike.

AZMI Bey(Egypt) did not agree with the representatives of the United Kingdom and WHO who were too much concerned with sick persons. Article 4 gave full latitude for experiments on sick persons; if a person's state of health made an operation necessary, it had to be performed. He added that the United Kingdom amendment also omitted the word "cruel", which unduly limited the scope of the first sentence.

His delegation would therefore vote against the United Kingdom amendment (E/1992, annex III, page 30).

Mr. CASSIN (France) pointed out to the Belgian representative that the answer to his question was contained in article 4 itself. Cases of sick persons to be cared for would be governed by the laws on and the practices of the medical profession in the different States.

He added that some time ago the Commission had asked WHO for recommendations on how to improve the text of article 4, and the representative of that organization had merely emphasized existing differences of opinion in medical circles. The Commission should therefore retain the text as it stood unless a better one was submitted to it.

Mr. HOARE (United Kingdom) had deleted the word "cruel" in the first part of article 4 because he thought it superfluous, the word "inhuman" being already in the text. He was, however, prepared to restore it. The Egyptian representative was right in saying that operations must be performed if necessary for the patient's health, even if the patient was unconscious and unable to give his consent. But the second sentence would preclude any experimental use of a new technique in the course of such operations in any case where it was not positively required to save life.

Mr. SIMSARIAN (United States of America) thought that the French and Yugoslav amendments (E/CN.4/L.150, E/1992, annex III, page 30) weakened the protection afforded to individuals by article 4. Indeed, a person's consent might be obtained by illegal means and even by violence. The expression "against his will" went further than the words "without his consent". The Yugoslav amendment might imply that a medical institution could authorize an experiment against a person's will.

He asked that a separate vote should be taken on the phrase "where such is not required by his state of physical or mental health".

Mr. VALENZUELA (Chile) felt that sentiment should not enter into the discussion of legal texts. The analysis of the provisions of article 4 had shown that the second sentence applied to only a special case of the treatment referred to in the first sentence. The discussion should not be allowed to extend into the field of medical and scientific experiments, and the Commission should avoid introducing legal elements in the covenant which had nothing to do with medicine. As a legal text, the United Kingdom amendment (E/1992, annex III, page 30) would suffice in the covenant.

The CHAIRMAN, speaking as the representative of Lebanon, said that his delegation would vote in favour of the first sentence of article 4 which reproduced the text of the Universal Declaration of Human Rights. He agreed with the United States representative that the last part of the second sentence was not necessary and might even be dangerous. The French amendment (E/CN.4/L.159 improved the text of the article, however, and the United States representative's objections might be met by adding the word "free" before the word "consent", if the French representative agreed to that change.

The meeting rose at 1 p.m.