



UNITED NATIONS
ECONOMIC
AND
SOCIAL COUNCIL



GENERAL

E/CN.4/SR.182
17 May 1950

ORIGINAL: ENGLISH

COMMISSION ON HUMAN RIGHTS

Sixth Session

SUMMARY RECORD OF THE HUNDRED AND EIGHTY-SECOND MEETING

Held at Lake Success, New York,
on Monday, 8 May 1950, at 3 p.m.

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<u>Chairman:</u>	Mr. CHANG	China
<u>Members:</u>	Mr. WHITLAM	Australia
	Mr. NISOT	Belgium
	Mr. VALENZUELA	Chile
	Mr. SORENSEN	Denmark
	Mr. RAMADAN	Egypt
	Mr. CASSIN	France
	Mr. THEODOROPOULOS	Greece
	Mrs. MEHTA	India

Members (continued):

Mr. MALIK	Lebanon
Mr. MENDEZ	Philippines
Miss BOWIE	United Kingdom of Great Britain and Northern Ireland
Mr. SIMSARIAN	United States of America
Mr. ORIBE	Uruguay
Mr. JEVREMOVIC	Yugoslavia

Representatives of specialized agencies:

Mr. EVANS	International Labour Organisation (ILO)
Mr. ARNALDO	United Nations Educational, Scientific and Cultural Organization (UNESCO)
Mr. KAUL	World Health Organization (WHO)

Representatives of non-governmental organizations:

Category A:

Miss SENDER	International Confederation of Free Trade Unions (ICFTU)
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Category B:

Mrs. ALETA	Catholic International Union for Social Service
Mrs. HOLDEN	Commission of the Churches on International Affairs
Mr. HALPERIN	Co-ordinating Board of Jewish Organizations
Miss ROBB	International Federation of University Women
Mr. BEER	International League for the Rights of Man
Mr. HEPLING	
Mrs. SCHAFFER	International Union of Catholic Women's Leagues
Mr. FEINLEWIG	World Jewish Congress

Secretariat:

Mr. SCHWELB	Assistant Director, Division of Human Rights
Mr. DAS	Secretary of the Commission

DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS: ARTICLE 7 (E/1371, E/CN.4/353/Add.10, E/CN.4/353/Add.11, E/CN.4/359, E/CN.4/365, E/CN.4/372, E/CN.4/389, E/CN.4/468, E/CN.4/471, E/CN.4/472) (continued)

1. The CHAIRMAN asked the Commission to continue its discussion of draft article 7. He drew attention in particular to statements concerning that article which had been submitted by the World Health Organization (E/CN.4/359, E/CN.4/389).

2. Mrs. MEHTA (India) proposed that the Commission should accept the World Health Organization's view that article 7 should be deleted, as its contents were included in article 6.

3. Miss BOWIE (United Kingdom) supported the Indian proposal firstly, because the matter was too complex to be compressed in a short article, and secondly, because the basic human right in question was fully covered by article 6.

4. Mr. SIMSARIAN (United States of America) also endorsed the Indian proposal. As the World Health Organization pointed out, it was difficult to present an article which, while preventing improper medical intervention and experimentation, would not also act to the prejudice of legitimate medical and social needs. Moreover, article 6 was broad enough to cover the purpose the Commission was trying to achieve.

5. Mr. RAMADAN (Egypt) also favoured the deletion of article 7 for the reasons already mentioned by the representative of India.

6. Mr. JEVREMOVIC (Yugoslavia) thought article 7 served a very useful purpose. The covenant should include such an article specifically to prohibit the perpetration of crimes such as the Nazis had committed in Germany in the name of scientific experimentation. Article 6 would not be sufficient, because it only covered such cases by implication, and article 7 should therefore be retained.

7. He pointed

7. He pointed out that a distinction must be made between curative medicine and improper medical intervention. Article 7 was not intended to prevent physicians and surgeons from exercising their profession for the benefit of their patients, but rather to prevent unnecessary mutilations and experimentation.

8. Mr. KAUL (World Health Organization) said that his Organization after consultation with the World Medical Association, and the International Council of Nurses had come to the conclusion that article 7 was unnecessary. The WHO felt that article 6 sufficiently covered the case in point and therefore, in view of the difficulties involved in drafting a satisfactory text, article 7 should be deleted.

9. The World Medical Association and the International Council of Nurses had both suggested drafts for article 7, neither of which was satisfactory. The original draft article was also inadequate because it might be interpreted to prevent certain activities, such as the administration of inoculations when the person refused his consent, medical experimentation on the insane, and tests at high altitudes. For those reasons the WHO had recommended that article 7 should not be included in the covenant.

10. Mr. CASSIN (France) said his delegation had helped to draft the original text of article 7. It represented an attempt to reconcile the legitimate interests of society and of the sick with the right of every human being to dispose of his own person.

11. The World Health Organization's views on article 7 seemed to be dictated by the fact that it had been unable to achieve a text satisfactory to its own Organization and to the World Medical Association and the International Council of Nurses as well. He regretted that the WHO had been unable to arrive at a more positive conclusion but felt that the Commission should not desist from attempting to reach a solution because of the difficulties involved.

12. Turning to the aspect of consent in the article, he pointed out that in many countries, an individual could not make a valid contract involving his own person, even though the contract had been signed of his own free will.

13. He fully endorsed the Yugoslav representative's view that medical experimentation on healthy people such as the Nazis had carried out should be prohibited. He cited the case of a healthy Polish woman, who with many others had been subjected to experiments which had left her in a pitiful condition. In the existing state of international law, no one was required to assume the responsibility for what had been done. The law should provide adequate protection against such abuses and clearly establish responsibilities as well as the right of the victim to compensation.

14. The French delegation thought therefore that article 7 was necessary. It could agree to delete the article, if the Commission formally stated that article 7 was covered by article 6, as that statement would represent a significant step forward. If that fact was not made clear, however, the French delegation would re-introduce the question at a later date because it felt there should be no possibility for the world to interpret the deletion of article 7 as a legal and moral validation of the crimes committed during the Second World War.

15. Mr. MALIK (Lebanon) agreed with the representatives of France and Yugoslavia on the importance of article 7.

16. The statement from the WHO had been very helpful in that it had made clear the enormous difficulties involved in drafting a suitable text. He thought, however, that the deletion of article 7 would be too easy a solution to the problem. He understood the WHO's point of view, but bearing in mind the atrocious crimes committed during the last war, he thought it would be better to say specifically that no one should be subjected to any form of physical mutilation or inhuman medical experimentation against his will and leave it to the good common sense of scientists to decide when experimentation would be justified. Inhuman movements which might arise in the future should not be left free to follow their evil impulses with impunity.

17. There was no difference of principle in the Commission on the matter. The only question was whether article 6 was sufficient to cover the provisions of article 7. It was true that in a general way, the words "degrading treatment" in article 6 did encompass article 7. He feared, however, that such a generalization would not prevent abuses and might provide a loophole for fanatics who could claim they had not violated the covenant because they did not consider the acts in question to be degrading.

18. In his opinion, it would be better to include a broad statement of principle in the covenant, although it might give rise to certain difficulties
/of interpretation,

of interpretation, rather than trust that the basic human right in question would be adequately safeguarded by the vague text of article 6.

19. Mr. SIMSARIAN (United States of America) said his Government was vitally concerned with the matter and had only decided to recommend the deletion of article 7 after consultation with many of its foremost medical experts. He did not feel it would be wise to adopt that article in the face of the objections raised by the WHO, the World Medical Association and the International Council of Nurses. The covenant should not include a provision which would act to the prejudice of legitimate medical and social needs.

20. The WHO, after studying the original text and the proposals put forward by the World Medical Association and the International Council of Nurses, had been unable to formulate an adequate proposal. Other suggestions from the WHO drafting group had been transmitted with the comment that they were to be considered merely as expressions of opinion.

21. He agreed that the Commission was united in attempting to do away with the type of atrocity committed by the Nazis but the matter was properly within the scope of medical bodies and the United States delegation believed it would be better to act cautiously, bearing the recommendations of those experts in mind. It might be better therefore to postpone the drafting of such a clause and to delete article 7 from the covenant.

22. Miss BONIE (United Kingdom) had no doubt that the phrase "cruel, inhuman or degrading treatment" in article 6 adequately covered the types of experimentation which the Commission had in mind.

23. Moreover, it should not be forgotten that the covenant would only be accepted by decent people who had respect for human beings and that it would be interpreted in law.

24. The CHAIRMAN asked the Commission whether it wished to state that it thought the atrocities contemplated under article 7 were definitely and categorically covered by article 6.

25. Mr. JEVREMOVIC

25. Mr. JEVREMOVIC (Yugoslavia) could not agree with the view that the draft covenant was intended only for decent human beings. If that were true, there would be no need to prepare a draft covenant at all.

26. It had been claimed that the substance of article 7 was covered by article 6. In that case, however, the scientific objections to article 7 would seem to be just as applicable to article 6. With the concrete example of past atrocities before them, the Commission members could not dispose of the matter in as cavalier a fashion as simply omitting the point from the draft covenant altogether. He agreed with the views of the French and Lebanese representatives.

27. Mr. MENDEZ (Philippines) also considered that article 7 did not cover the subject matter of article 6. The latter implicitly and explicitly referred to cruel, inhuman or degrading treatment primarily in connexion with punishment, whereas article 7 was not concerned with that aspect of the question. If the draft covenant were indeed intended only for decent people, article 6 would suffice. Decent persons, however, would not misconstrue article 7 as some seemed to fear. If article 7 were to be deleted, the deletion should be construed as having been decided upon on the ground that the article might interfere with scientific progress and not on the assumption that its subject matter was covered by article 6.

28. Mrs. MEHTA (India) still felt that the substance of article 7 was covered by article 6. Physical mutilation against the will of the person concerned certainly constituted cruel, inhuman or degrading treatment. Scientific experimentation of human beings, unless it were for the advancement of science and the benefit of mankind, would be banned. As for the Nazi experiments, to which reference had been made, they constituted a form of punishment and would therefore be outlawed by article 6.

29. She thought that the assurance requested by the French representative could be met by a formal statement along the lines suggested by the Chairman.

30. Mr. MALIK (Lebanon) would take issue with the United Kingdom representative's statement that the text of the draft covenant was intended for decent

/human beings.

human beings. It was easy to show that, from a formal point of view, the statement was unfounded, since nothing to that effect appeared in the Commission's terms of reference or in the instructions from the General Assembly and the Economic and Social Council; nor had the Commission on Human Rights itself ever adopted a formal interpretation of its assignment in that sense.

31. The statement was also unacceptable to him from a substantive point of view. International covenants were not prepared because decent human beings would or would not sign them. The point was that decent human beings also had indecent leanings from time to time. They should be induced to sign such a covenant while in a mood of decency in order to prevent future indecency. The draft covenant helped to mobilize world public opinion and, with the aid of the requisite enforcement machinery, would, at the very least, hold violators of human rights up to world-wide shame.

32. In view of those considerations, he respectfully took exception to the United Kingdom representative's statement, both from a formal and a substantive point of view.

33. He would like to see the Chairman's statement concerning the Commission's stand on the substance of article 7 in written form. It might then prove possible to re-cast that statement in a more binding and specific form. He could accept formal Commission action along such lines if an unequivocal text could be found.

34. Mr. VALENZUELA (Chile) thought that several conclusions could be drawn from the current debate. In the first place it was clear that everyone around the table agreed that the aims of article 7 must be supported. He still hoped that a draft acceptable to all might be found.

35. The article touched upon two different matters, namely, human rights -- which must be protected -- and the progress of medical science with which there must be no interference. It was very difficult at times to bring the requirements of scientific progress and of jurisprudence into consonance, as the Commission's discussion of the concept of race had clearly shown. The present problem was even more difficult. The statement of the Director General of WHO had not made it clear to Mr. Valenzuela just what were the specific scientific objections to article 7. He agreed with the Lebanese representative that the subject was so

/delicate

delicate and significant that it would be better to risk giving the impression not of actually hampering scientific progress, but of imposing certain limitations to scientific experimentation on human beings, than to open the door to the possibility of abuse.

36. He would cite some examples to indicate the great importance of article 7. It had frequently happened that a person in economic straits had offered himself for mutilation in order to obtain money to solve pressing financial problems. There was also the experience with social legislation calling for indemnities in the case of workmen mutilated in the course of their work: more than once workers had been known deliberately to inflict upon themselves such mutilation in order to obtain the financial compensation prescribed by law. The draft covenant should include a defence against man himself in order to prevent such cases. The legitimate rights of man should not be permitted to include the right to self-mutilation or mutilation by others for financial gains. Consequently, he proposed the deletion of the words "against his will" in article 7.

37. With that amendment, and aware that all the alternatives before the Commission, including article 7, suffered from certain imperfections, he favoured article 7 and did not consider that its subject matter was covered by article 6.

38. Mr. WHITIAM (Australia) had originally felt that article 7 was satisfactory. He had listened with the keenest attention to the arguments advanced during the current debate for and against that article and had concluded that much was to be said for both points of view. He could have accepted the deletion of the article if such a course had proven generally acceptable. While it would be most agreeable if article 6 did indeed cover the substance of article 7, he did not consider that to be the case and had not been convinced by the statement read by the Chairman in connexion with the French representative's suggestion. During the recent past, medical experiments had been performed on unwilling victims and it could not be said that, criminal as those experiments had been, all of them would fall into the category of cruel, inhuman or

/degrading

degrading treatment referred to in article 6. It could therefore not be asserted that article 6 covered the subject matter of article 7, and he could not agree to the deletion of the latter on such a ground.

39. Very forceful arguments had been advanced for the retention of article 7. That article would not be needed if a settled order of society and a fixed settlement characterized the entire world today. Indeed, it was axiomatic that no order could be said to exist in a world in which the kind of activity outlawed in article 7 were legally permitted: order would either have collapsed or be well on the way to collapse in such a society. Safeguards in an institutional form were clearly needed. The order of society was frequently under attack, often in the guise of legality. The establishment of institutions would be an assistance to society in order to meet those attacks, and it was the task of the Commission to help society toward that end. Some article like article 7 was worthy of support and should be included in the draft covenant. Article 7 itself as currently drafted was, however, not adequate and he had been impressed with the weight of the arguments against it.

40. From that analysis two alternatives emerged: deletion of article 7 or its retention in spite of its admitted imperfection. There was, however, a third possible course. The United States representative had referred to the possibility of a postponement. While he could not accept that idea if it meant an indefinite deferment, he could support the suggestion that consideration of article 7 should be deferred for a specific period of time, e.g. until the next session of the Commission on Human Rights. If such a suggestion did not find favour, he would support article 7 at the present stage in the hope that it could be considered further before the end of the current session. He realized that the position of his delegation was not very satisfactory but it appeared to be the only one that it could adopt in the circumstances.

41. The CHAIRMAN wished to make it clear that in proposing a statement placing the Commission on record as believing that the substance of article 7 was covered by article 6, he had merely acted on the French representative's suggestion. He could therefore not claim credit for the suggestion itself.

42. The Lebanese representative had indicated that the Commission should formally and categorically declare that article 6 was intended to cover the substance of article 7, if it were decided to delete the latter. The Chairman assumed that the Lebanese representative had in mind the adoption of a resolution in that sense by the Commission. If so, he would request the Lebanese representative to submit a suitable draft.

43. Mr. SIMSARIAN (United States of America) said that much of the debate had unfortunately revolved around abstract considerations of good and evil in the world. Naturally all the members favoured the good and, consequently, the concepts embodied in article 7. But that entire approach failed to deal with the real problem which was technical in nature and consisted in finding a draft that would meet the weighty objections of the WHO.

44. Medical opinion had stated unequivocally that the present text of article 7 was thoroughly inadequate and prejudicial to medical progress. He invited attention to document E/CN.4/389. The World Medical Association had indicated that the removal of a tumour might in certain circumstances be regarded as mutilation within the meaning of article 7, although plainly indicated for the preservation of the patient's life. The International Council of Nurses had stated that article 7 might be interpreted as precluding the possibility of inoculation against plague, cholera and other epidemic diseases without the voluntary consent of the individuals concerned. The same organization had pointed out the difficulty of dealing with dangerous sexual offenders on the basis of article 7.

45. Those examples showed that not only the individual but also the safety of the community must be considered. The problem was one of finding an adequate text that would do justice to both. That problem must be and would be studied. In view of all the problems referred to by medical authorities it was not possible for the Commission to approve article 7 in its present form and at the present stage.

46. Mr. JEVREMOVIC (Yugoslavia) stated that the amendment (E/CN.4/372) submitted by his delegation reflected the same concern as that of the Chilean

/delegation

delegation with the possibility that a person in economic straits might consent to mutilating experimentation on his body. The cases mentioned by the Chilean representative were not very rare. The illustrated the importance of retaining article 7 with the additional paragraph proposed by the Yugoslav delegation. That paragraph specified that even if the person concerned consented to such experimentation, it could not be undertaken without the approval of a board of a higher medical institution designated by law, such as a medical faculty, institute or higher council.

47. He recalled that when he had originally submitted the Yugoslav amendment, he had mentioned the case of a poor young man who had sold his body for money and had been mutilated for life. The matter eventually had reached the courts where the doctor who had performed the mutilation in question had sought to defend himself by saying that the experiment had been in the interest of science, whereas the real reason for the unfortunate transaction had been the desire to make money.

48. He would reply to the United States representative that article 7 was not concerned with the exercise of curative medicine and that it would not interfere with the removal of a tumour, mass inoculations or dealing with dangerous sexual offenders. Article 7 was intended to prevent ruthless experiments, as distinct from therapeutic operations, on human beings for dubious purposes. The objections of the United States representative were therefore not well founded.

49. Mr. SORJENSEN (Denmark) observed that the Chilean amendment had raised a new point. The Commission had hitherto been dealing with the protection of the individual against action by the State, but not against actions undertaken by himself. That question required far fuller consideration. He agreed that contracts such as those to which the Chilean representative had referred could not be regarded as legitimate or binding, but to prohibit a doctor to act at the express request of an individual would be to go too far. He therefore opposed the Chilean amendment.

50. He could, on the other hand, accept the Yugoslav amendment. It was obviously desirable that the operation should be genuinely necessary; the Yugoslav amendment provided the requisite safeguards.

51. Article 7 raised in perhaps its acutest form a problem which had often arisen with regard to other articles of the draft covenant, namely, the question of striking the balance between the legitimate interests of society and those of the individual. Reference had been made to the legitimate interests of medical science and to the protection of society. Such references echoed the comments of the Danish (E/CN.4/365) and Norwegian Governments (E/CN.4/353/Add.11) and were reflected in the observations of the International Council of Nurses (E/CN.4/389). The Danish Government had reconsidered its legislation on the subject, as expressed in document E/CN.4/365, page 27, and was prepared to amend it in some respects, but not with regard to that on sterilization or castration, without the party's consent, of the feeble-minded. Many years' experience had taught Danish experts that it was not always necessary to confine the feeble-minded in institutions in the interest of the community; they could be permitted to remain at liberty provided that they were sterilized or castrated. To amend that legislation would be a retrograde step. He acknowledged that a question of moral evaluation was involved. Such legislation differed in many countries; the Danish Government had no desire to impose its own views on others, but simply wished to continue a system the value of which had been fully demonstrated in that country.

52. The wording of the original text of article 7 was not, therefore, satisfactory; if it were retained, the Danish Government could sign the covenant only if it were permitted to make a specific reservation with regard to that article. Deletion of that article might be a method of solving the difficulty, provided that it was understood that the substance of article 7 was covered fully by article 6, as the French representative and the Chairman had suggested. If, however, the Commission felt that article 7 should be retained, he proposed that the text suggested by the International Council of Nurses (E/CN.4/389) should be substituted for the existing text. That text had been derived from a proposal originally made by the French delegation. The World Health Organization had not made it entirely clear why it had found it unsatisfactory. In his opinion, it met the legitimate requirements of medical science and satisfied the moral judgments involved.

53. Mr. CASSIN (France) observed that the debate had clearly shown that the original text of article 7 was unsatisfactory. The criticisms advanced by the United States representative, in particular, had shown that it was too broad. The text suggested by the International Council of Nurses and sponsored by the Danish representative was, however, equally unsatisfactory because it placed physical mutilation and medical experimentation on the same footing. The question had become a moral one. If mutilation was the result of sadism, it must be outlawed; that was covered by article 6. Article 6 should, therefore, be regarded as the pivot on which the entire question revolved. In its existing form, article 6 was not sufficient; it should be completed by the addition of a new paragraph (E/CN.4/471) stating a particular example of degrading treatment. That would meet the requirements of the World Health Organization and at the same time prevent the activities of doctors who regarded human beings as guinea-pigs.

54. Mr. MENDEZ (Philippines) said that the main objection to the existing text of article 7 was that it included both the concept of criminal practices and the idea of medical experiment. If the phrase "including criminal scientific experimentation" (E/CN.4/472) was added to article 6, the medical aspect could be left for future consideration and article 7 could be deleted.

55. Miss BOWIE (United Kingdom) said that she would not contest the Lebanese representative's views on the purposes of the draft covenant in detail, but it must be observed that if it was impossible to rely upon good faith in the implementation of article 6, it was even more impossible to do so in connexion with article 7 and therefore to list all the requisite exceptions to that article.

56. Furthermore, although it was possible to conceive of persons so far degenerating as to permit experimentation not in accordance with human rights, such degeneration was not the only danger. Persons might become obsessed with scientific experimentation, in total disregard for human life. In that connexion, the World Health Organization or some other appropriate body might be formally requested to make a study of the reasonable limits for scientific experimentation with human beings. The Commission on Human Rights itself could not go further than the study of the moral aspects of that question.

57. Mr. VALENZUELA (Chile) explained that the purpose of his amendment had simply been to remove the medical aspect, which was entirely irrelevant to the draft covenant. The legal aspect was the only one with which the Commission could be rightly concerned. On the other hand, it would be undesirable for the Commission to jettison all reference to experimentation with human beings; that was a matter with which public opinion was deeply concerned. His amendment was very similar to that of the French representative, but he had omitted the word "medical", because normal medical practice was not the concern of the Commission.

58. Mr. JEVREMOVIC (Yugoslavia) supported the Danish and French proposals, but would not withdraw his own. The additional sentence proposed was required to prevent abuses in the case of persons so poor that they entered into immoral contracts.

59. Mr. CASSIN (France) explained that he had not referred to physical mutilation in his amendment because that might have been construed to mean plastic surgery, with regard to which legislation had become increasingly liberal. The French amendment was not inconsistent with the Yugoslav, but the latter might advantageously be narrowed by the stipulation that a voluntary experiment must not only receive the approval of the competent authority but also must involve risk, since risk was the main consideration involved.

60. Mr. MALIK (Lebanon), assuming that the vote would be taken first on the proposal for the deletion of article 7, appealed to the Commission to bear in mind the fact that the new texts submitted had improved the situation so greatly that they ought to be fully considered before any vote was taken for deletion. He himself would vote for either the Danish or the French amendment.

61. The CHAIRMAN assured the Lebanese representative that ample time would be given for consideration of the new texts.

/62. Miss BOWLE

62. Miss BOWIE (United Kingdom) deprecated prolonged discussion. The Commission was nearing the end of its session and much work remained to be done. The Commission should set itself a definite goal to be reached before 20 May 1950.

63. Mr. SIMSARIAN (United States of America) maintained his proposal for the deletion of that article and pointed out that a vote for deletion was usually taken first.

64. Mr. ORIBE (Uruguay) agreed with the United Kingdom representative on the need for speed. The vote for the deletion of article 7 should be taken immediately; if that proposal was adopted, no further discussion would be required.

65. Mr. MENDEZ (Philippines) said that he had no objection to the deletion of article 7, provided that his amendment to article 6 was adopted.

66. Mr. JEVREMOVIC (Yugoslavia) opposed the United States proposal for the deletion of the article, because it was incompatible with the French and Philippine amendments. Moreover, the Commission could not vote on proposals which the members of the Commission had not yet had the opportunity to study. The Australian representative, for example, had said that he would vote for an improved text of the article. The vote for deletion should therefore be taken after the votes on the new texts.

67. Mr. CASSIN (France) moved the adjournment, as the informal group drafting proposals for the measures of implementation wished to complete its work.

The meeting rose at 5.30 p.m.