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COMMISSION ON HUMAN RIGHTS

Sixth Session

SUMMARY RECORD OF THE HUNDRED AND EIGHTY-THIRD MEETING

Held at Lake Success, New York,
on Tuesday, 9 May 1950, at 11.20 a.m.

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E/CN.4/356, E/CN.4/372, E/CN.4/386)(continued);

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(continued).

Chairman:

Mr. CHANG China

Members:

Mr. WHITLAM Australia

Mr. NISOT Belgium

Mr. VALENZUELA Chile

Mr. SØRENSEN Denmark

Mr. RAMADAN Egypt

Mr. CASSIN France

Mr. KYROU Greece

Mrs. MEHRA 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. LEMOINE	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:

<u>Category A:</u>	Miss SENDEL	International Confederation of Free Trade Unions (ICFTU)
<u>Category B:</u>	Mrs. AIBEA	Catholic International Union for Social Service
	Mr. NOLDE	Commission of the Churches on International Affairs
	Mr. MOSKOWITZ	Consultative Council of Jewish Organizations
	Mr. HALPERIN	Co-ordinating Board of Jewish Organizations for consultation with the Economic and Social Council of the United Nations
	Mr. CRUICKSHANK	Inter-American Council of Commerce and Production
	Mr. BEIER	International League for the Rights of Man
	Miss SCHAFFER	International Union of Catholic Women's Leagues
	Mr. FERLZWEIG	World Jewish Congress
<u>Secretariat:</u>	Mr. SCHLEB	Assistant Director of the Division of Human Rights
	Mr. DAS	Secretary of the Commission

/s. Miss BOWIE

1. Miss BOWIE (United Kingdom) asked that the second paragraph of document E/CN.4/SR.159, referring to the first speech she made at the hundred and fifty-ninth meeting of the Commission, should be amended as follows:-

"She hoped she had thus given satisfaction to the representative of Lebanon who frequently exhorted the members of the Commission to act according to their highest ideals. The members of the Commission had, however, to remember that they were representatives of their Governments and they had to work for a text which their Governments were likely to accept and sign. The fact that there were considerable differences between the various legal systems throughout the world should also be borne in mind. However apparently idealistic some of the proposals were, representatives were sometimes unable to accept them, not because they were against human rights but because those proposals would involve drastic changes in legal systems built up over centuries which offered equal protection to human rights."

2. The CHAIRMAN noted the request of the United Kingdom representative.

DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS (ANNEXES I AND II OF THE REPORT OF THE FIFTH SESSION OF THE COMMISSION ON HUMAN RIGHTS (E/1371)) (continued)

Article 7 (E/CN.4/365, E/CN.4/353/Add.10, E/CN.4/353/Add.11, E/CN.4/359, E/CN.4/372, E/CN.4/389)(continued)

Article 6 (E/CN.4/365, E/CN.4/471, E/CN.4/472)(continued)

3. The CHAIRMAN invited the Commission to continue the study of article 7. He recalled that several proposals had been submitted to the Commission -- the French delegation's proposal that article 7 should be deleted and the substance of that article incorporated in article 6 (E/CN.4/471), the Yugoslav delegation's proposal that article 7 should be amended (E/CN.4/372), and the amendment to article 6 submitted by the Philippine delegation (E/CN.4/472).

4. Mr. KYROU (Greece) moved the closure of the debate on article 7 in view of the fact that the article had already been discussed at great length and that the Commission had very little time at its disposal in which to finish its work.

5. Mr. MENDEZ (Philippines) opposed the motion for closure as he wished to make certain remarks regarding the French amendment.
6. Mr. MALIK (Lebanon), although he shared the Greek representative's wish that the Commission should finish its work in time, pointed out that the members of the Commission had not had time to discuss the amendments of France and the Philippines, the texts of which had been communicated to them only that morning.
7. The CHAIRMAN put the Greek delegation's motion for closure to the vote.
The motion was adopted by 9 votes to 2.
8. The CHAIRMAN said he would put the various proposals to the vote in the following order: he would first put to the vote the proposal that article 7 should be deleted, and if that were rejected, he would put the Yugoslav amendment to the vote. If the proposal for deletion were adopted, he would put the French amendment to article 6 (E/CN.4/471) to the vote, and then the Philippine amendment to the same article (E/CN.4/472).
9. Mr. MENDEZ (Philippines) pointed out that the French amendment merely suggested that the substance of article 7 should be included in article 6. If that amendment were adopted, article 7 would not really be deleted.
10. Mr. MALIK (Lebanon) recalled that all the members of the Commission were agreed that article 7 as drafted should be deleted. The Lebanese delegation would vote for the deletion of article 7, provided the Commission immediately discussed the French amendment.
11. The CHAIRMAN put to the vote the French proposal that article 7 should be deleted from the draft covenant.
The proposal was adopted by 11 votes to none, with 2 abstentions.
12. The CHAIRMAN said that in view of the Commission's decision it was unnecessary to put the Yugoslav amendment to article 7 to the vote. He then

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invited the members of the Commission to study the amendments submitted by France and the Philippines (E/CN.4/471 and E/CN.4/472), confining their remarks to the text of these amendments and not to the substance.

13. Mr. KYROU (Greece) pointed out that his motion for closure referred only to article 7. The members of the Commission should be free to discuss the two amendments referring to article 6 which were before them.

14. Mr. MENDEZ (Philippines) said that the French amendment had the same faults as article 7, which the Commission had just rejected. As the World Health Organization and the International Council of Nurses had pointed out, the words "involving risk" were liable to cause a serious hindrance to doctors in the exercise of their profession. It would therefore be preferable to make no mention of risk but simply to say "No one shall be subjected to any form of medical treatment not required by his state of health and for the preservation of his life".

15. Replying to a question from the CHAIRMAN, he explained that his suggestion affected the French amendment and was not a substitute text for his delegation's original amendment (E/CN.4/472).

16. Mr. GASSIN (France) felt that the word "treatment" had an infinitely wider meaning than "experimentation". WHO and the International Council of Nurses had not, he recalled, made any objection to the words "medical or scientific experimentation".

17. Regarding the original amendment of the Philippines, he said it was not enough to say "criminal experimentation"; the meaning of the word "criminal" must first be defined.

18. Mr. SIMSARIAN (United States of America) stated that the proposed additions to article 6 raised the same difficulties as article 7. His delegation would therefore vote against any change of article 6 which might prejudice the social and medical future of the world. The United States delegation's main objection to the French proposal was that it did not provide for cases where a person might have to be subjected to medical treatment in the interest of the community. Thus, in cases of serious epidemics, inoculations might have to be

made in order to protect the other members of society. Similarly, it might prove necessary to subject recognized sex offenders to treatment in the interest of other members of the community.

19. While it would have to vote against any addition to article 6, the United States delegation nevertheless proposed that the French amendment should be changed to read as follows, in order to take into account the above considerations:

"In particular, medical or scientific experimentation, without consent, which is not in the interest of individual or community health, shall prima facie be deemed cruel or inhuman treatment." (E/CN.4/473)

20. The words "prima facie" had been introduced into the text in order that the rule stated in the paragraph should not be too rigidly interpreted.

21. Mrs. MEHTA (India) thought that before coming to a decision on the proposals before it the Commission should hear the representative of WHO. Furthermore, it would be preferable to examine article 6 and the proposed additions thereto at the second reading of the draft covenant and not immediately after the rejection of article 7.

22. As regards the United States proposal, she remarked that any experiment not in the interest of individual or community health could not be considered as an experiment.

23. Mr. NISOF (Belgium) proposed that the words "medical or scientific experimentation" in the French proposal should be replaced by "medical treatment or scientific experimentation". Experimentation, rather than experiments, was the point at issue.

24. Mr. CASSIN (France) said that the French delegation's text was the only one to take into account the views expressed by WHO and the International Council of Nurses: it could not, therefore, be an impediment to scientific progress. By adding that text to article 6, the Commission would emphasize that the subjection of a person to unwarranted medical or scientific experimentation constituted an inhuman and degrading act. It covered only a specific case.

25. As regards the United States amendment, he said that the words "in the interest of community health" could give rise to great abuses. He recalled that at the Nurnberg trial, the defence had maintained that it was precisely in the

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interests of the community that hundreds of persons had been subjected to inhuman medical experiments. No one whatsoever should be subjected to inhuman treatment, even in the interest of the community.

26. Mr. KYROU (Greece) stated that he would vote for the French amendment. As regards the United States proposal, the French text did not prohibit the punishment of sex offenders or the taking of preventive measures against them.

27. Mr. KAUL (World Health Organization) stressed that the French amendment was almost identical with the proposal made by the International Council of Nurses except that the words "physical mutilation" had been deleted and the words "involving risk" had been added. WHO had not found the text of the International Council of Nurses satisfactory. The French amendment raised one very difficult problem, since it was sometimes necessary to subject a person to medical or scientific experimentation involving a risk to that person, and it was not always possible to obtain his consent before doing so. The same objection applied to the United States amendment.

28. Regarding the Philippine amendment, it was essential to define the circumstances in which a scientific experiment could be described as criminal.

29. Mr. MENDEZ (Philippines) explained that his amendment did not concern medical experiments properly speaking but abusive experiments of a criminal nature falling into the category of cruel and inhuman treatment referred to in article 6.

30. Mr. MALIK (Lebanon) suggested that in the French amendment to article 6, the words "without his consent" should be replaced by the words "against his will". He considered that such wording would meet the objections raised by the representative of the World Health Organization. The latter had further pointed out that in certain cases medical or surgical action involving risk was necessary; such action was not prohibited in the French text which in fact contained the following phrase: "where such is not required by his state of physical or mental health". On the contrary, when the state of health of a patient made a particular treatment or action necessary, the doctors should be free to come to what they considered the wisest decision.

31. Mrs. MEHTA (India) found it difficult to accept any text for the time being; she therefore moved that the discussion on the various proposals should be suspended until the second reading of the draft covenant.

32. Mr. NISOT (Belgium) was opposed to the Indian representative's motion. It would be more useful to complete the discussion on that subject at the current meeting as if the Commission re-opened the consideration of the question at the second reading of the covenant a much longer debate would be necessary.

33. Mr. SIMSIARIAN (United States of America) supported the Indian motion. The different delegations had not had the time to study the proposals relating to article 6 and it would therefore be preferable to re-examine the question in the course of the second reading of the draft covenant.

The Indian motion was rejected by 9 votes to 5.

34. Mr. MALIK (Lebanon) stated that he had voted against the Indian motion for the reasons stated earlier by the Belgian representative.

35. Mr. KYROU (Greece) had also voted against the Indian motion for the same reasons as the Belgian and Lebanese representatives; he would not however, like that vote to create a precedent in any sense.

36. Mr. SIMSIARIAN (United States of America) considered well-advised the Lebanese representative's suggestion to replace the words "without his consent" by the words "against his will". He added that the French text seemed too rigid; it was for that reason that the United States delegation had included the words "prima facie" in its amendment to the French proposal.

37. Mr. ORIBE (Uruguay) would oppose any proposal relating to article 6; the present debate showed that the Commission had not reached a point where it could agree on a text that was entirely satisfactory. Furthermore, one of the specialized agencies had objected to the various proposals before the

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Commission; and finally, many countries had no legislation on the matter. The Commission had not as yet sufficient data at its disposal to come to a decision on the matter.

38. Mr. KAUL (World Health Organization) remarked that the wording of the proposals for the addition of a second paragraph to article 6 was very similar to that of article 7 which the Commission had just decided to delete. The World Health Organization had tried, without success, to draft a text for article 6. He expressed concern lest the Commission's efforts lead to undesirable results. Any paragraph which was added must not interfere with medical and social needs.

39. The result of the provisions of the United States amendment might be that all experimentation and treatment in mental homes might be prevented, since in such cases it would not be possible to obtain the consent of the person concerned.

40. Mr. SIMSARIAN (United States of America) stated that he would withdraw his amendment after hearing the remarks made by the WHO representative and would vote against all proposals regarding article 6.

41. Mr. MENDEZ (Philippines) maintained his proposal for article 6, but withdrew his amendment to the French amendment.

42. Mr. MALIK (Lebanon) remarked that the Commission had taken up the consideration of the draft convention only after consulting WHO, whose statement it had heard with great interest. Nevertheless, the Commission must be mindful of its duty, and the opinion of WHO must not prevent it from taking the decision it would consider advisable. That decision should be taken at once, and WHO could subsequently put forward its arguments to the Economic and Social Council and to the General Assembly.

43. Mrs. MEHTA (India) would vote against any proposal concerning article 6. She did not want the Commission to adopt any text which was not entirely satisfactory.

44. The CHAIRMAN invited the representatives of the Catholic International Union for Social Service and the International Union of Catholic Women's Leagues to state their views.

45. Mrs. MEHTA (Catholic International Union for Social Service) wished to make a few remarks concerning the text presented by the International Council of Nurses concerning article 7. In view of the Commission's decision to delete article 7, however, she had no comments to make.

46. Miss SCHAEFFER (International Union of Catholic Women's Leagues) read out a communication sent in January 1950 by the International Council of Nurses to the World Health Organization.

47. Mr. CASSIN (France) said that if the Commission were voting on a final text of the draft covenant, he would be the first to recognize that his proposal should be thoroughly discussed. The Commission was, however, ^{only} clearing the way for subsequent work. By adopting the French delegation's text it would signify its intention of taking into consideration the observations and comments submitted by various international bodies.

48. The French text, besides being covered by the present wording of article 6, was more restrictive than that of the International Council of Nurses because it did not speak of disabling injuries and condemned experiments entailing a risk. He agreed with the Lebanese representative that international organizations should give positive advice in the matter; those organizations must not say, however, that nothing should be done because due allowance had to be made for divergent interests.

49. The Commission should, without any further delay, introduce into the covenant provisions prohibiting medical or scientific experimentation on persons against their will, even though those provisions might have to be referred to WHO at a later stage.

50. Any observations made by WHO on that subject would naturally be carefully taken into consideration by the Commission. But it was essential to do something, even if what was done were to be criticized.
51. He would therefore request the Commission to take a decision on the French proposal and was ready to accept any reasonable amendments to his text.
52. The CHAIRMAN closed the list of speakers which still included the representatives of the United Kingdom, the Philippines, Australia and Yugoslavia.
53. Miss BOWIE (United Kingdom) said that her delegation would vote against all the proposals submitted because it believed that they might prejudice human rights as well as protect them. If all proposals were rejected, the United Kingdom reserved its right to submit a draft resolution on medical and scientific experimentation on human beings.
54. Mr. MENDEZ (Philippines) said that although he had listened carefully to the explanations given by the French representative he could not understand why France proposed on the one hand the deletion of article 7 and on the other the inclusion of its provisions in article 6. The aim of the Philippine delegation was to stress the difference between legitimate and unjustified scientific experimentation.
55. Mr. WHITLAM (Australia) said that both articles 6 and 7 of the draft covenant drew their inspiration from article 5 of the Universal Declaration of Human Rights. Medical experimentation was but one aspect of the general problem of cruel treatment. Together with the representatives of the Philippines and Chile, he believed that all the aspects of the problem should be considered together. He was opposed to the French proposal because it referred only to scientific and medical experimentation.
56. The text of the Philippines came nearer the aim which was to prohibit unjustified experimentation, and he would vote in its favour.

57. Mr. JEVREMOVIC (Yugoslavia) fully endorsed the French representative's opinion. The problem was not new and had already been raised by events themselves. Whether the Commission liked it or not, it had to bear in mind, study and solve that problem.

58. Contrary to what had been alleged, the Commission had had ample time to do so. The report of the fifth session of the Commission had already included a draft article 7 and over a year had elapsed since the publication of that report. Furthermore, the Commission had been meeting for over a month and its members had had ample time to examine the problem anew.

59. He did not approve of the attitude of WHO which merely gave advice of a negative nature; it should, on the contrary, submit cogent and constructive proposals and observations to the Commission. There was a fundamental difference between medical and scientific treatment for purely experimental purposes and therapeutical treatment. All the proposals submitted to the Commission referred only to experimentation for which there was no justification on grounds of health. He referred to the example cited by the representative of WHO, namely, of experimentation on the insane. The French text would be no obstacle to such treatment because it would not be applied against the will of the person involved. The Commission should not give up hope of solving the problem and should, first of all, have the courage of facing it squarely. In view of those considerations, the Yugoslav delegation would vote in favour of the French text.

60. Mr. NISOT (Belgium) said that although he thought that the French text was defective he would vote in its favour, since it was essential that the covenant should contain a provision bringing the problem to the notice of the organs which would have to give their opinion on it after the Commission had done so.

61. The CHAIRMAN read out and put to the vote paragraph 2 of the French proposal (E/CN.4/471).

Paragraph 2 of the French proposal was adopted by 8 votes to 4, with 3 abstentions.

62. The CHAIRMAN called for a vote on the proposal of the Philippines (E/CN.4/472).

The proposal of the Philippines was rejected by 5 votes to 4, with 5 abstentions.

63. The CHAIRMAN said that the Commission would have to vote on the whole of article 6 during the second reading.

64. Mr. THEOTOKOPOULOS (Greece) said that the text adopted for the new paragraph 2 of article 6 was not final. It had been included in the draft covenant only to afford international organizations the opportunity to submit observations and proposals.

65. Mr. MENDEZ (Philippines) said that he had voted against the French proposal because he felt that the appropriate position for that text was not article 6 which dealt only with cruel, inhuman and degrading treatment. The Commission had assumed a very heavy responsibility by including the French proposal in that article.

66. The CHAIRMAN called upon the representative of the World Health Organization to make a statement.

67. Mr. KAUL (World Health Organization) pointed out that the suggestions of WHO were not, as had been alleged, of a purely negative character. Indeed, the Director-General of WHO had proposed in his communication (E/CN.4/SR.359) that article 6 should be omitted and had outlined the reasons for that proposal. In particular, paragraph (2) (page 2) stated that it was extremely difficult to present an article which would prevent improper medical intervention and experimentation; furthermore, the question was already covered in article 5 of the Universal Declaration of Human Rights.

The meeting rose at 1.5 p.m.

17/5 p.m.