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COMMISSION ON HUMAN RIGHTS

Eighth Session

SUMMARY RECORD OF THE THREE HUNDRED AND THIRD MEETING

Held at Headquarters, New York,
on Wednesday, 21 May 1952, at 10.30 a.m.

CONTENTS:

Chairman:	Mrs. MEHTA	India
Rapporteur:	Mr. WHITLAM	Australia

Members:	Mr. HOSTE	Belgium
	Mr. GARCIA CRUZ	Chile
	Mr. CHENG PAOHAN	China
	AZMI Bey	Egypt
	Mr. JUVIGNY	France
	Mr. KAPSAMELIS Mr. KYROU	Greece
	Mr. AZKOUL	Lebanon
	Mr. AHMED	Pakistan
	Mr. BORATYNSKI	Poland
	Mrs. KÖSEL	Sweden
	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. PONCIZA	Uruguay
	Mr. JEVREMOVIC	Yugoslavia

Representative of a specialized agency:

	Mr. PICTON	International Labour Organisation (ILO)

Representatives of non-governmental organizations:

Category B:	Mr. HOROWITZ	Consultative Council of Jewish Organizations
	Mrs. EDER Mrs. SOUTO	International Federation of Business and Professional Women
	Miss DIETRICH	International Union for Child Welfare
	Miss GARTLAN	International Union of Catholic Women's Leagues
	Mr. HAYES Mr. JACOBY Mr. PERLZWEIG	World Jewish Congress

/Secretariat:

Secretariat:

Mr. LIN — Division of Human Rights

Mr. LAZ)
Miss KITCHEN) — Secretaries of the Commission

DRAFT INTERNATIONAL COVENANTS ON HUMAN RIGHTS AND MEASURES OF IMPLEMENTATION: PROPOSALS FOR ADDITIONAL ARTICLES ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (E/1992, E/CN.4/635/Add.5, E/CN.4/L.66/Rev.1, E/CN.4/L.165, E/CN.4/641, E/CN.4/L.67, E/CN.4/L.67/Corr.2, E/CN.4/L.114/Rev.2) (continued)

New article proposed by France (E/CN.4/L.66/Rev.1, E/CN.4/L.165) (continued)

Mr. ZAMIR CRUZ (Chile) referred to the lengthy discussion of an article on the right to own property at the seventh session of the Commission, and noted that at that time the Commission had decided not to include an article on the subject in the covenant. The Chilean delegation remained opposed to such an article. The French revised text (E/CN.4/L.66/Rev.1) contained an undertaking by States to respect the right to own property without limitations of any kind relating to the type of property or its situation. The Chilean delegation was unable to accept the principle that the right to own real or personal property anywhere without limitation should be recognized as a fundamental right of the individual to be safeguarded in an international covenant. It was not, however, opposed to the national legislation of countries recognizing such unlimited right to own property. It seemed out of place for a covenant that was designed to protect the rights of the individual and to promote his well-being and personal development to protect property rights, including the rights of monopolistic or foreign enterprises which controlled the natural resources of a country and thereby impeded the attainment of the objectives of the covenant.

The Chilean delegation was prepared to accept a provision limiting the right of the individual to own property to the property needed for a livelihood and for development of the individual in society. No further extension of the right to property could be regarded as a fundamental right of the individual. He stressed the fact that it was the prerogative of each State to accept or reject the principle of unlimited property rights and that in many cases the position of various governments in the matter was undergoing change.

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The last paragraph of the French proposal was a necessary corollary of the principle of unlimited property rights set forth in the first paragraph It was noteworthy that article 17 of the Declaration of the Rights of Man of 1789 contained a similar provision restricting expropriation to cases of public necessity, and granting just compensation with, however, a provision for compensation in advance. The Constitution of the Fourth Republic, of 27 October 1946, provided that all property and all enterprises having the character of a national public service or a monopoly must become the property of the community. No reference to compensation was made. In fact, the Fourth Republic had expropriated property not only because of monopolistic character but also as punishment for collaboration with the enemy. The principle of the predominance of the interests of society over the interest of the individual was set forth in many national constitutions without provision for compensation in cases where some restriction of the right to own property was deemed appropriate. The Commission should not insert in the covenant a principle which did not correspond to a fundamental right and which merely reflected a system prevailing in some countries.

It was also essential to note that the final paragraph of the French proposal ran counter to the provision of the article which the Commission had adopted on the right of self-determination of peoples relating to sovereignty over natural resources (E/CN.4/663). It would be extremely undesirable, in cases of expropriation without compensation to undertakings exploiting a country's resources contrary to the provisions of that article, for any State to have the opportunity of invoking an international covenant on the rights of the individual in addition to the provisions of a law, bilateral treaty or convention.

The Chilean delegation would vote against all three paragraphs of the French proposal for an article on the right to own property and, if that article was approved, would vote against the covenant as a whole.

Mr. JUVIGNY (France) said in explanation of the revised French proposal (E/CN.4/L.66/Rev.1) that, while in the past, the right to own property had been considered an individual right, its social aspects had

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assumed increasing importance in many countries in recent years. It therefore should be included among the articles of the covenant on economic, social and cultural rights. The right to own property should not be subject to progressive implementation but should instead be implemented immediately. The revised text therefore adopted the Lebanese wording in that regard.

In reply to a statement by the United States representative that the third paragraph of the French proposal applied to a particular case, he would point out that expropriation was an extremely broad concept in France but that expropriation, a legal act depriving an individual or individuals of property in the general interest, must not be confused with taxes to which everyone was subject or with confiscation of property as a sanction. The provision for expropriation was essential in the French proposal to call attention to the important social aspects of the question.

In reply to a question raised by the Yugoslav representative, he said that limitations of the right to property in the public interest in the same way as other rights would be covered by the general restrictive clause of the covenant. Moreover the second paragraph of the French proposal made the right to own property subject to the laws of the country in which the property was situated. In general, national legislations made provisions for the cases cited by the representative of Yugoslavia.

He explained that the second paragraph of his proposal was intended to make it clear that in all questions relating to property and all aspects of property rights, the laws of the country in which the property was situated prevailed.

The French proposal, particularly its last two paragraphs, must be considered as an integral whole. Expropriation should occur in accordance with the law and the owners of the expropriated property should receive compensation. That principle prevailed in France and in many other countries and governed the relevant international decisions.

He wished to point out that the provision of the French Constitution cited by the representative of Chile was contained in the preamble and not the body of that document. Moreover, it did not abridge the principle of compensation which had consistently been respected in cases of expropriation.

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In the nationalization of all key industries compensation had been written into the law and the stockholders, whether French or foreign, had been indemnified. The only exception was a single industry which had been seized as a penal sanction and had been nationalized.

The French proposal was logical and protective. The notions of public utility and compensation safeguarded the interests of society and the rights of individuals. The French delegation was however prepared to consider redrafts of its proposal.

The Belgian amendment providing for fair compensation "in advance" was in line with principles long applied in many countries. But cases might arise in which urgent reasons made compensation prior to expropriation impossible. Settlement of fair compensation might occur before, during or after expropriation but it was essential to safeguard both the rights of society and the rights of individuals.

In reply to the USSR representative's objection that "fair compensation" was a vague concept, he pointed out that that practice was traditional and that the third paragraph of the French proposal provided a number of safeguards by prohibiting arbitrary expropriation and requiring a definition by law. It was a court that determined the amount of compensation and that judicial determination provided an additional safeguard in cases of expropriation. In the opinion of the French delegation a reference to compensation was most essential in the interest of achieving a sufficiently broad article.

The CHAIRMAN stated that, since all the speakers on the list had been heard, the debate on the article was closed.

Mr. SANTA CRUZ (Chile) and Mr. AKROLOV (Union of Soviet Socialist Republics) pointed out that the article dealt with a most important subject and asked to be permitted to reply to the new arguments of the representative of France and others; if necessary, the debate could be reopened.

Mr. Morozov added that the Commission had not yet decided whether it would receive the Belgian amendment (E/CN.4/L.165) to the article proposed by France. While he would vote against such a course, if the amendment was received it would have to be discussed.

/Mr. AZKOUL

Mr. AZKOUL (Lebanon) and Mrs. ROOSEVELT (United States of America) were opposed to reopening the debate on the proposed article.

Mr. NISOT (Belgium) remarked that the article had aroused so much controversy that it seemed unlikely that the Commission could reach a satisfactory agreement. He therefore wondered whether the French representative would not withdraw his text.

Mr. JUVIGNY (France) was inclined to agree with the Belgian representative's understanding of the situation, but thought that it would be better to adjourn the debate.

Mr. JUNTA CRUZ (Chile) and Mr. NISOT (Belgium) supported the motion.

Mrs. ROOSEVELT (United States of America) opposed it; the Commission's sense of responsibility should prompt it to finish the task it had begun.

The motion for the adjournment of the debate of the item under rule 45 was adopted by 12 votes to 4, with 2 abstentions.

Recommendations of the Sub-Commission on Prevention of Discrimination and Protection of Minorities (E/CN.4/641)

AZMI Bey (Egypt) remarked that the Sub-Commission's report (E/CN.4/641) contained, in Annex II, two recommendations to the Commission which called for consideration at the present stage. Recommendation I, relating to non-discrimination, had already been carried out by the Commission when it had adopted article 1, paragraph 2.

It could be said that recommendation II, which dealt with the question of minorities, had been generally covered in the various articles already discussed insofar as it could be dealt with at all in the covenant on economic, social and cultural rights. In any event that recommendation should more appropriately be considered during the discussion on the first covenant dealing with civil and political rights.

Mrs. ROOSEVELT (United States of America) associated herself with the Egyptian representative's remarks.

/Mr. JEVREMOVIC

Mr. JEVREMOVIC (Yugoslavia) did not think that the subject of ethnic, religious or linguistic minorities, with which recommendation II was concerned, had been adequately debated by the Commission, but felt that such a debate should take place during the consideration of the covenant on civil and political rights.

Mr. MOROZOV (Union of Soviet Socialist Republics) agreed that recommendation I had been dealt with in the non-discrimination clause in article 1, but was unable to agree that the subject of minorities had been adequately covered in the articles on economic, social and cultural rights adopted by the Commission, since the clause dealing with minorities had been excluded from the article on the right of peoples to self-determination.

At a later stage in its work, when it had approved all the articles of both covenants, the Commission would have to decide which of those articles should be included in the two covenants, in order to comply with General Assembly resolution 543 (VI), which stated that the two covenants should contain as many similar provisions as possible. At that time the Commission could decide whether an article on minorities, as recommended by the Sub-Commission should be included in the covenant on civil and political rights alone or in both covenants.

Mr. AZKOUL (Lebanon) also agreed that the recommendation on non-discrimination was adequately covered in article 1. Recommendation II, however, was dealt with neither in the article on the right of self-determination nor in the non-discrimination clause in article 1, as the latter prohibited discrimination on the grounds of race, language and religion only with regard to the rights enunciated in the covenant, and those rights did not include the right of minorities to enjoy their own culture, or to profess and practise their own religion, or to use their own language. The question, therefore, remained to be discussed, and he agreed with the USSR representative that when the Commission knew the contents of both covenants it could decide where an article of that nature should be placed.

The CHAIRMAN suggested that the Commission should agree to take no action on recommendation I in Annex II of the Sub-Commission's report (E/CN.4/641) as it considered that the question was covered by article 1 of the covenant on economic, social and cultural rights drawn up by the Commission, and that, as regards recommendation II, the Commission should agree to leave it open for consideration in connexion with the covenant on civil and political rights.

It was so agreed.

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New article proposed by France (E/CN.4/L.67/Corr.2, E/CN.4/L.114/Rev.2)

Mr. JUVIGNY (France) said in introducing the new article proposed by his delegation (E/CN.4/L.67/Corr.2) that the text was very simple. Paragraph 1 was based on article 30 of the Universal Declaration of Human Rights, and was intended to apply to all the preceding articles of the covenant on economic, social and cultural rights. Its purpose was to ensure that States, when adopting general policies designed to guarantee the enjoyment of those rights, did not use methods or achieve results contrary to the aims of the covenant, and that groups and individuals did not exercise any of their rights at the expense of the rights of others in such a way that the rights of some were reduced or even annulled.

Paragraph 2, which was of paramount importance, was based on a provision in the covenant on civil and political rights. Its purpose was to prevent States, which had more progressive legislation or had signed more liberal conventions than the corresponding provisions in the covenant, from repealing such laws or violating such conventions on the grounds that their obligations under the covenant were less than those deriving from conventions or law. Paragraph 2 was designed to counter-balance the tendency in the covenant to state the various rights in very general terms. Such general statements gave the covenant considerable flexibility and while the French delegation favoured such flexibility, paragraph 2 of the French proposal would ensure that it was not abused.

Whereas article 32 permitted certain limitations of the rights set forth in the covenant, the French proposal would prohibit limitation of the rights and freedoms already enjoyed on the grounds that they were enjoyed to a greater extent than provided for in the covenant. Consequently, the French proposal would increase the obligations of the States parties to that instrument.

The revised text of the proposal contained in document E/CN.4/L.67/Corr.2 differed from the original only on two minor points; the changes had been introduced in order to bring out more clearly the ideas he had explained.

Mrs. ROOSEVELT (United States of America) said that the mention of a proposal to delete paragraph 1 of the French amendment, to be found in the revised United States amendment (E/CN.4/L.114/Rev.2), was an error; she in fact supported that paragraph, as it merely reproduced the original draft article 18 (E/1992). The United States amendments to paragraph 2 of the French proposal

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were intended to broaden it. The word "exercised" added nothing, whereas "recognized" did broaden the scope of applicable law. In English at least, the word "law" was broader than "laws" because it had a more general connotation and included both the constitution and the statutory laws. The United States amendments introduced no change of substance.

AZMI Bey (Egypt) could support the substitution of the word "law" for "laws", but not that of the word "recognized" for "exercised". The former might be taken to imply that there could be a long delay after ratification in putting into effect the legislation required forthe exercise of rights which had merely been recognized.

Mr. MOROZOV (Union of Soviet Socialist Republics) warned the Commission that a trap was concealed in the French proposal (E/CN.4/L.67/Corr.2). The French representative had explained that all his delegation had had in mind was a means of preventing the State from using the covenant as a pretext for abridging any of the rights or freedoms exercised or guaranteed under its existing law. It was, however, ridiculous to assume that any State honest enough to sign and ratify the covenant with the desire to guarantee to its nationals the exercise of economic, social and cultural rights would ever use it as a pretext for abridging them. Either a State would not wish to assume the obligations in the covenant and therefore would not sign it or it would sign it and do everything possible to promote the enjoyment of the rights stated in it.

In the French proposal under consideration (E/CN.4/L.67/Corr.2) the real aim of paragraph 2 was in fact yet another attempt to nullify the paragraph in the draft article on the right to self-determination affirming the permanent sovereignty of the peoples over their own natural wealth and resources. The real and wholly objectionable aim was to use the existing unfair treaties and

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legal instruments to which the State concerned was a party to justify the perpetuation of dominion over non-self-governing peoples. The intention had been to some extent masked, firstly, by the perfectly false and absurd assumption produced by the French representative and, secondly, by paragraph 1, which might on the whole be acceptable with a few minor alterations to be suggested later. At the previous meeting he had illustrated with facts the way in which treaties and agreements containing one-sided benefits had been imposed by strong countries on weaker peoples for the purpose of exploiting them. Taken out of the historical context of their imposition, such conventions often looked like fair bilateral agreements or at least seemed to give a quasi-legal justification for their continuance. That was the real purpose of paragraph 2 of the French proposal; it was not genuinely concerned with some hypothetical abridgment of existing rights and freedoms. Countries wishing to maintain or extend their power over weaker peoples, originally obtained by force or fraud, always sought a purported legal justification. Those delegations, therefore, which had voted for the adoption of paragraph 3 of the resolution on the self-determination of peoples (E/CN.4/663) should scrutinize the French proposals with a very wary eye.

A somewhat similar trap had been avoided when the French representative had been compelled to propose the adjournment of the consideration of his proposal on the right to property (E/CN.4/166/Rev.1). There again the trap had been rather cleverly concealed, as the final phrase, which had been shown to be in direct conflict with paragraph 3 of the draft article (E/CN.4/663) on the self-determination of peoples, had been embodied in a proposal otherwise not unacceptable.

Mr. AZKOUL (Lebanon) agreed with the USSR representative that the French proposal required very careful consideration, particularly in view of the interpretation given. He himself had thought that the intention had been similar to that of article 30 of the Universal Declaration of Human Rights and draft article 18 of the draft covenant, namely to prevent States from abridging the rights of individuals. He suggested tentatively that the insertion of the words "to everyone" (à toute personne) after the word "guaranteed" might overcome the difficulty; but he was not yet sure that that amendment would remove all danger of an interpretation such as that given by the USSR representative, since he had

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not yet fully thought out how it would affect the right of peoples. The French proposal thus amended would be valuable, because, although it was certainly not very likely that a State would use the covenant as a pretext to abridge rights and freedoms already exercised or guaranteed, such a possibility did exist. The modern State was fluid; a conservative government succeeding a progressive one, which had accorded rights in excess of those it had undertaken to ensure under the covenant, might use the covenant as a pretext for repealing its predecessor's legislation. A further, and more important, consideration was that the French proposal broadened the covenant's scope by making States responsible to other Contracting States and to any body which might be set up under the measures of implementation for fulfilling the undertaking not to abridge or derogate from rights and freedoms other than those stated in the covenant, namely those guaranteed under the law or under existing conventions.

The formula "permettent soit de réduire...soit d'y porter atteinte" might be clearer and more accurate than the present one or than the one the Belgian representative had suggested.

Mr. SANTA CRUZ (Chile) did not believe that the French proposal could be fairly described as a trap; the intention had surely been to safeguard the rights already guaranteed by law and existing conventions besides the rights enunciated in the covenant. He agreed with the USSR representative that it was unlikely that any State would use the covenant as a pretext to abridge those rights, particularly in view of article 23, in which States recognized the right to the continuous improvement of living standards, but the possibility mentioned by the Lebanese representative should not be ignored. The French representative should revise his delegation's text so that his real intention was more accurately reflected and any suspicion that it had been aimed at nullifying the provision for the self-determination of peoples was dispelled, either by incorporating the Lebanese representative's suggestion or by an explicit statement that the proposal referred solely to the rights of individuals.

The meeting rose at 1.15 p.m.

4/6 p.m.