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COMMISSION ON HUMAN RIGHTS

Eighth session

SUMMARY RECORD OF THE THIRTY-FIFTH MEETING

Held at Headquarters, New York,
on Thursday, 29 May 1952, at 10.30 a.m.

CONTENTS:

Chairman:	Mrs. MEHTA	India
Rapporteur:	Mr. WHITLAM	Australia
Members:	Mr. RIVOT	Belgium
	Mrs. FIGUEROA	Chile
	Mr. CHENG PAOCHAN	China
	AZMI Bey	Egypt
	Mr. JUVIGNY	France

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Members: (continued)

Mr. KARSAMBELIS	Greece
Mr. AZKOUL	Lebanon
Mr. WAHEED	Pakistan
Mr. DOROTYNSKI	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
Mrs. ROOSEVELT	United States of America
Mr. BRACCO	Uruguay
Mr. JEVREMOVIC	Yugoslavia

Representative of a specialized agency:

Mr. PICKFORD	International Labour Organisation(IL

Representatives of non-governmental organizations:

Category B:

Mrs. AIETA	Catholic International Union for Social Service
Mrs. PARSONS	International Council of Women
Mrs. SOUDAN	International Federation of Business and Professional Women
Miss ROBB	International Federation of University Women
Miss SCHAEFER	International Union of Catholic Women's Leagues
Mrs. PHILIPPS	Liaison Committee of Women's International Organizations
Mr. JACOBY) Mr. HAYES)	World Jewish Congress
Mr. RONALDS) Mrs. POLSTEIN)	World Union for Progressive Judaism
Mr. PENCE	World's Alliance of Young Men's Christian Association

Secretariat:

Mr. HUMPHREY	Director, Division of Human Rights
Mr. DAS) Miss KITCHEN)	Secretaries of the Commission

/DRAFT

DRAFT INTERNATIONAL COVENANTS ON HUMAN RIGHTS AND MEASURES OF IMPLEMENTATION: PART III OF THE DRAFT COVENANT DRAWN UP BY THE COMMISSION AT ITS SEVENTH SESSION (E/1992, E/CN.4/635/Add.5, E/CN.4/L.67/Rev.1, E/CN.4/L.114/Rev.2, E/CN.4/L.168/Rev.1, E/CN.4/L.169, E/CN.4/L.170, E/CN.4/L.172, E/CN.4/L.173, E/CN.4/L.174) (continued)

Additional draft article proposed by the delegation of France (E/CN.4/L.67/Rev.1) (continued)

Mrs. ROOSEVELT (United States of America) said that although the revised Polish amendment (E/CN.4/L.168/Rev.1) was better worded, it still did not express what was intended as well as the revised French proposal (E/CN.4/L.67/Rev.1). The Chilean amendment (E/CN.4/L.169) was more restrictive and the final part was repetitious. If the French representative was prepared to accept the singular "law" for "laws" in the English text of his proposal, retaining "lois" in the French, she could support it, pressing only the United States amendment (E/CN.4/L.114/Rev.2) substituting the word "recognized" for "exercised".

Mr. JUVIGNY (France) accepted the singular "law" in the English text; "law" and "lois" had the broadest connotation. The Commission should decide between the words "recognized' and "exercised". The word "permitting", to which some objections had been raised, was not essential; it should be put to the vote separately. The Chilean amendment (E/CN.4/L.169) was an attempt to dispel fears that were wholly illusory, and it was therefore unnecessary. The French proposal reproduced the wording of article 18 very closely and thus complied with the General Assembly's request that the two covenants should contain as many similar provisions as possible. That was particularly important with such a key article. The Chilean amendment was, moreover, more restrictive than the French proposal, as it referred only to the economic, social and cultural rights.

Mr. HOARE (United Kingdom) corrected some errors in the text of his amendment (E/CN.4/L.170), substituting the word "law" for "laws" and placing commas after the words "guarantee" and "party". In substance the United Kingdom amendment and the French proposal were both intended to provide that when a specific obligation deriving from domestic law or from a convention was held to be of a higher standard than that prescribed by the covenant the

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latter would not be interpreted as permitting a State to derogate from that obligation. The French proposal as amended, however, was unsatisfactory in referring not to such specific obligations but to the rights in the most general terms. The Commission was trying to convey that the specific aspects of an ILO convention, for example, would continue to retain their validity regardless of any relevant provision in the covenant and his amendment gave precise expression to that intention. He would be prepared, if the Commission thought it necessary, to delete the word "permitting", changing"derogation" to "derogating", and would accept the insertion of the word "fundamental" before "human rights"; but he still felt that the word "any" was broader. The United Kingdom text would ensure that specific obligations were fully preserved so far as the covenant was concerned. A State could denounce a convention but it would not be able to rely on the covenant in doing so. The phrase "any human rights and freedoms" would apply to both covenants.

Mr. JEVREMOVIC (Yugoslavia) said that his suspicions of the French proposal had not been allayed by its revision. He still could see no reason for the inclusion of the word "abridging" as well as "derogation" "abridging" was adequate, "derogation" was too wide. He preferred the Chilean amendment (E/CN.4/L.169), at any rate in the Russian version. The French version of that amendment contained the phrase "porte atteinte" (derogation) to which he took exception. He could vote for the Chilean amendment as it appeared in Russian but not for the version in French. The discrepancy should be removed.

Mr. WAHEED (Pakistan) was in favour of the inclusion of an article ensuring that in any conflict between domestic law and the covenant the higher standard should prevail. The revised French text was still ambiguous. The Polish text did not convey its author's professed intention. He would have supported the suggestion for the amendment of the French proposal made but not pressed by the Greek representative at the previous meeting. The Chilean amendment was worded more precisely and expressed without ambiguity the intention of maintaining the validity of domestic law but enlarging its scope: he would support it.

Mr. AZKOUL

Mr. AZKOUL (Lebanon) would support the revised French proposal (E/CN.4/L.67/Rev.1) but could also support the Chilean amendment (E/CN.4/L.169) if the Chilean representative accepted the deletion of the words "economic, social and cultural". That deletion was necessary, because a State might use them to justify the curtailment of civil and political rights in order to promote economic, social and cultural rights. That was not a mere hypothesis in some countries civil rights were actually sacrificed to economic rights. A State might enforce the right to adequate housing simply by violating the civil rights of the owners of all large houses. Both the Chilean and the Polish amendments were open to that kind of interpretation. Furthermore, the deletion of those words would be a practical method of proving that the Commission really believed that all human rights were parts of a single whole. The Lebanese delegation had strongly advocated the separation of the covenants but maintained that the rights incorporated in them were complementary. The Polish representative had stated his preference for a single covenant; he was being given the opportunity to show that he regarded the economic, social and cultural rights as indissolubly linked with the civil and political rights.

Mrs. FIGUEROA (Chile) observed that the words "a pretexto" had been used in the original Spanish version of the Chilean amendment (E/CN.4/L.169); the word "pretext" should be substituted for "grounds" in the English text.

Mr. HOARE (United Kingdom) said that the Chilean amendment (E/CN.4/L.169) was objectionable because it was far more limited than the French proposal or his own. In effect it said that the pretext that the present covenant failed to recognize or recognized to a lesser extent any human rights should not be allowed to justify restriction of the rights in question. The assumption that the covenant on economic, social and cultural rights would not recognize a given right in the economic, social and cultural fields was quite unfounded. With regard to the question of recognition of a right to a lesser extent in the covenant, a State could simply claim, without going into the question of greater or less, that there was a conflict between the terms of the covenant and the provisions of one of its laws or a convention to which it was a party and take the position that it was obliged to follow the provisions of the covenant. From the practical point of view, the Chilean text was

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inadequate and inferior in formulation to the French or United Kingdom amendments. Moreover the point raised by the Lebanese representative in connexion with the Chilean amendment was covered by the broad and general language of the United Kingdom proposal, and by the French proposal.

Mr. NISOT (Belgium) said that the original wording of article 18., paragraph 2, satisfied him but he would vote against the French proposal (E/CN.4/L.67/Rev.1) and the United Kingdom proposal (E/CN.4/L.170) because they used the verb "permit". In stating that the covenant could not be interpreted as authorizing derogation from laws which had more favourable effects than the minimum laid down in the covenant, the drafts implied conversely that the covenant would not derogate from those laws. He accepted the Chilean proposal (E/CN.4/L.169) since he saw nothing incompatible in prohibing a contracting State from using the pretext of the covenant's existence to justify the exercise of its right to derogate from laws of the kind envisaged.

Mr. BORATYNSKI (Poland) submitted amendments (E/CN.4/L.172, E/CN.4/L.173 and E/CN.4/L.174) to the Chilean, French and United Kingdom proposals respectively adding a provision to the effect that each text applied if the laws and conventions in question were not contradictory to the provisions and spirit of the present covenant and the Charter of the United Nations.

Mrs. FIGUEROA (Chile) said, in reply to the criticism of the restrictive character of the Chilean text, that the intention had been to prohibit derogation from human rights and individual freedoms guaranteed in the covenant or in other instruments. The basic idea was that the provisions of the covenant should not serve as a pretext for restricting rights which were more fully guaranteed under national legislation or international conventions. The concepts of restriction and derogation were complementary and should both be included.

She could not agree with the representative of Lebanon that the reference to "economic, social and cultural human rights" in the Chilean text could endanger civil and political rights. That specific reference was appropriate in a covenant on economic, social and cultural rights. Moreover, a parallel reference could be inserted in the covenant on civil and political rights. To meet the objections raised she would, however agree to the deletion of the words "economic, social and cultural" provided that the text would then be amended to read "any of the fundamental human rights".

/The Chilean

The Chilean delegation had no objection to accepting the Polish amendment (E/CN.4/L.172) although in its opinion that amendment did not greatly improve or clarify the text.

Mr. HOARE (United Kingdom) was unable to accept the Polish amendment (E/CN.4/L.174) which made nonsense of the United Kingdom text by presupposing that any recognition or guarantee contained in the law of a State or a convention to which it was a party could be contradictory to the spirit of the covenant and the United Nations Charter. It would be extremely undesirable for a United Nations body to admit the possibility that national laws or international conventions recognizing or guaranteeing human rights could be inconsistent with the terms of the covenant or of the Charter.

Mr. JUVIGNY (France) agreed with the position of the United Kingdom representative and said that the Polish amendment (E/CN.4/L.173) to the French text was unacceptable to him.

The premise of the French proposal was that in case of a conflict between the covenant and a previous law or convention, the text affording a greater extent of human rights should prevail. The Polish amendment would create a vicious circle and would destroy the meaning of the French proposal.

Mr. MORozOW (Union of Soviet Socialist Republics) said that no objection was possible to the Polish amendments on the grounds of inconsistency with the provisions of the covenant and of the Charter. He noted with pleasure that the Chilean delegation had accepted the Polish amendment to its proposal.

Referring to the Lebanese representative's suggestion for the deletion of the words "economic, social and cultural" from the Chilean text, he was unable to understand the anxiety expressed regarding the possible implementation of economic, social and cultural rights at the cost of civil and political rights. Economic rights were the key to all other rights and there was no question and no possibility of cancelling civil and political rights in return for economic rights.

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If the fears of the representative of Lebanon were not allayed, he could request a separate vote on the words to which he had objected. The USSR delegation would vote for the retention of those words which it considered appropriate and would vote for the Chilean proposal as a whole with the Polish amendment. Even if the deletion suggested by the Lebanese representative was accepted, the USSR delegation would support the Chilean text with the Polish amendment.

The USSR delegation could not agree that the Polish amendment made nonsense of the United Kingdom proposal; it was clear that with the Polish amendment, the United Kingdom proposal would mean that colonial laws inconsistent with the covenant and the Charter would be inadmissible. Without the Polish amendment restrictive colonial laws would remain intact.

He could not agree with the United Kingdom representative that the Commission could not admit the possibility of inconsistency between laws or conventions on human rights and the covenant or the Charter. It was significant that in the view of the United Kingdom representative the concept of human rights encompassed the right of millionaires and monopolists to exploit the resources of colonial territories. The United Kingdom proposal must be considered in the light of paragraph 3 of the article adopted by the Commission on self-determination of peoples. The United Kingdom text was designed to evade the provisions of that paragraph which was unfavourable to colonial Powers and thereby to perpetuate the unfairness and the injustice of quasi-legal conventions and regulations governing economically under-developed areas. The United Kingdom proposal constituted a threat which would not affect the USSR directly but which, as a responsible Member of the United Nations, it felt impelled to stress.

The USSR delegation still felt that the original French proposal was based upon an imaginary danger and was therefore pointless except as a manoeuvre to gain support of the position of colonial Powers. It was inconceivable that a State would restrict rights within its own country because a covenant imposed lesser obligations in that sphere. Nevertheless, the USSR delegation considered that of the proposals before the Commission, the most satisfactory was the Chilean text with the Polish amendment.

Mr. BORATYNSKI

Mr. KOMATINSKI (Poland) observed that the United Kingdom representative had said that there could be no human rights guaranteed by law which were contradictory to the provisions and spirit of the covenant or of the Charter, as though stating a truism. The Polish delegation considered that statement entirely inaccurate. What was meant by economic, social and cultural rights was government regulations applying to those fields. Literally thousands of examples could be cited of such regulations which were in complete contradiction with the conception of human rights as laid down in the Charter and in the covenant. It would be particularly easy to find such examples in laws applying to colonial territories, but they also abounded in advanced countries, in at least one of which a law on the equality of education was interpreted as permitting segregation.

The purpose of the Polish amendment -- which had been accepted by the Chilean representative but rejected by the United Kingdom and French representatives -- was to state clearly and unequivocally that the covenant did not recognize the validity of such laws and conventions in the field of human rights as were contradictory to the provisions either of the Charter or of the covenant itself. If either the French or the United Kingdom texts were adopted without the Polish amendment, the Commission would thereby recognize that existing laws and conventions took precedence over the provisions of the covenant, and thus at a single stroke prevent the covenant from achieving any progress towards greater enjoyment of human rights.

Mr. HOARE (United Kingdom) said that the USSR and Polish representatives had entirely misunderstood his amendment (E/CN.4/L.170) and misconstrued his motives. When drafting that text, he had not for a moment had in mind the colonial territories. Colonial administration had become a favourite whipping boy with some delegations; but he repudiated the suggestion that he had been guided by the desire of preventing any changes from being made in that administration in consequence of the covenant.

On the contrary, in drawing up the amendment he had endeavoured to take into account some of the difficulties raised in the debate, including the point made by the USSR representative, even though he did not recognize its validity. An objection had been made to the French proposal (E/CN.4/L.67/Rev.1)

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because, like the text of article 18 adopted at the seventh session, it spoke of derogation from rights and freedom and could therefore be interpreted as protecting the right of exploiters to exploit. To meet that objection, the United Kingdom amendment spoke of the recognition or guarantee of those rights under the law or under an existing convention, thus making it clear that the entire article applied only to rights which had a legal basis. He drew attention to the fact that his amendment spoke of recognition of rights and freedoms under the law, and not of their limitation or suppression by law; the meaning was that, if that recognition was greater than in the covenant, the covenant could not be invoked as an excuse for lowering the prevailing standards of human rights or for failing to raise them. He had used the words "of any human rights and freedoms" as the most general terms possible; but if the Commission preferred the reference to be to "fundamental rights and freedoms", as in the French proposal, he would be prepared to accept that wording.

He was surprised that the Chilean representative had accepted the Polish amendment, because it made nonsense of her text, precisely as it would of his own. To admit the possibility that the legal recognition of any human right or freedom could be contradictory to the Charter or the covenant was a contradiction in terms. That was his main objection to the Polish amendment; a secondary objection was that, assuming for a moment that a valid human right could be found the recognition of which was in contradiction with the Charter or the covenant, it would be precisely from that right -- presumably representing progress over those two documents -- that derogation would be permitted under the Polish amendment. He could only regard such a situation as nonsensical.

Mr. JUVIGNY (France) was in general agreement with the United Kingdom representative with regard to the Polish amendment. Any law or convention which gave a greater guarantee of a right or freedom than the covenant could not possibly be in contradiction with either the covenant or the Charter; if it was in contradiction with those instruments, it must fall below the provisions of the covenant, and the proposed article would, by definition,

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not be applicable to it. The delegations which had attacked the French proposal had either misread or misinterpreted it.

The CHAIRMAN stated that the debate on the new article proposed by France (E/CN.4/L.67/Rev.1) was closed.

Mr. AZKOUL (Lebanon) proposed that representatives should be permitted to speak on the Polish amendments, on which they had not had an opportunity to state their views.

That proposal was adopted by 13 votes to none, with 5 abstentions.

The meeting rose at 1 p.m.