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COMMISSION ON HUMAN RIGHTS

Eighth Session

SUMMARY RECORD OF THE THREE HUNDRED AND EIGHTH MEETING

Held at Headquarters, New York,
on Friday, 23 May 1952, at 2.45 p.m.

CONTENTS: Draft international covenants on human rights and measures of implementation (E/1992, E/CN.4/L.54/Rev.3, E/CN.4/L.76, E/CN.4/L.115, E/CN.4/L.167, E/CN.4/L.171, E/CN.4/L.175)(continued):
article 32 (continued)

<u>Chairmen:</u>	Mr. MALIK	(Lebanon)
<u>Rapporteurs:</u>	Mr. WHITLAM	Australia
<u>Members:</u>	Mr. FISOT	Belgium
	Mr. SANTA CRUZ	Chile
	Mr. CHENG PAONAN	China
	Mr. GEORHAL	Egypt
	Mr. JUVIGNY	France
	Mr. KIROU	Greece
	Mrs. MEHTA	India
	Mr. WAHEED	Pakistan

Members: (continued)

Mr. BORATYNSKI	Poland
Mrs. ROSSEL) Mr. WESTERBERG)	Sweden
Mr. EDVALZNEO	Ukrainian Soviet Socialist Republic
Mr. MEROZOV	Union of Soviet Socialist Republics
Mr. HOARE	United Kingdom of Great Britain and Northern Ireland
Mrs. ROOSEVELT	United States of America
Mr. FORTEZA	Uruguay
Mr. JEVREMOVIC	Yugoslavia

Representative of a specialized agency:

Mr. PICKFORD	International Labour Organisation (ILO)
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Representatives of non-governmental organizations:

Category B and Register:

Mr. LEVIN	Aquas Israel World Organization
Mrs. VENGARA	Catholic International Union for Social Service
Mr. ERMSTEIN	Co-ordinating Board of Jewish Organizations for Consultation with the Economic and Social Council of the United Nations
Mr. MANUILA) Mr. AVRAM)	International Association of Penal Law
Mrs. SOUDAN	International Federation of Professional and Business Women
Mr. HAYES	World Jewish Congress
Mr. BONALIS) Mrs. POLSTEIN)	World Union for Progressive Judaism
Mrs. CANCHAIT	World Union of Catholic Women's Organizations
Mr. FENCE	World's Alliance of Young Men's Christian Associations

Secretariat:

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

/DRAFT INTERNATIONAL

DRAFT INTERNATIONAL COVENANTS ON HUMAN RIGHTS AND MEASURES OF IMPLEMENTATION
(E/1992, E/CN.4/L.54/Rev.3, E/CN.4/L.76, E/CN.4/L.115, E/CN.4/L.167, E/CN.4/L.171,
E/CN.4/L.177) (continued)

Article 32 (continued)

Mr. SANTA CRUZ (Chile) stated that if the Commission decided to include a general limitation clause in the covenant he would submit an amendment^y exempting certain rights, in particular the right of peoples to self-determination, from all limitations.

Mr. JUVIGNY (France) remarked that some parts of his amendment (E/CN.4/L.76), in particular the words "requirements of morality" and "public order", had given rise to different interpretations. The Yugoslav delegation had stressed certain difficulties of interpretation with regard to the term "public order". He thought he had clearly explained its meaning by stating that the decisions of the executive power were subject to the control of the judiciary, which was in the final analysis the guardian of rights guaranteed by legislation. The notion of public order might, however, be given a broader interpretation in countries which did not have the same judiciary guarantees of human rights; furthermore, the work of the Secretariat had brought to light some delicate problems connected with that notion. Consequently, to allay the fears of certain delegations and to eliminate the possibility of ambiguity, he would delete in his amendment the phrase "and meeting the legitimate requirements of morality, public order".

Mrs. ROOSEVELT (United States of America) said that as those words were being deleted in the French amendment, there was no longer any need for the United States amendment (E/CN.4/L.115).

Mrs. ROSSEL (Sweden) recalled that, from the time article 27 had been discussed at the Commission's seventh session, her delegation had always considered that the regulations relating to trade unions belonged to article 16 of the draft covenant. Should the Commission decide, however, to include such an article in the covenant on economic, social and cultural rights without the limitations set forth in article 16, it would be necessary to retain article 32. She would therefore vote in favour of article 32 as amended by France.

/Mr. MOROZOV

^y The Chilean amendment was circulated in the course of the meeting as document E/CN.4/L.175.

Mr. MOROZOV (Union of Soviet Socialist Republics) said that, in view of the Chilean amendment (E/CH.4/L.175) to the French amendment (E/CH.4/L.76), he had nothing to add. Nevertheless, if the Commission rejected the first USSR proposal to the effect that there should be no general limitation clause in the covenant, it would have to vote on the second proposal, to the effect that the Commission should for the present take no decision on the substance of article 32.

Mr. KYROU (Greece) was in favour of maintaining article 32 for psychological reasons, as such an action would show a spirit of general co-operation. If the Commission decided to include a general limitation clause in the covenant, he would ask the French representative to go a step further and to withdraw his amendment. The Commission could then follow the Indian representative's advice and wait until the whole covenant had been drafted before adopting article 32. It could then re-examine article 32 and decide on its contents. He would prefer to have a general limitation clause applying to all the various rights.

Mr. MOROZOV (Union of Soviet Socialist Republics) moved the closure of the debate on article 32.

That motion was adopted by 6 votes to 4, with 8 abstentions.

The CHAIRMAN stated that, when he had assured the USSR representative that he would entertain his proposals to the effect that there should be no general limitation clause and that decision on the substance of article 32 should be deferred, the USSR representative had said that he was withdrawing his proposals. Consequently, the Commission was not seized of the previous question of principle that no general limitation clause should be included in the covenant -- and unless the Commission itself decided to consider that motion, he could not put it to the vote.

Mr. MOROZOV (Union of Soviet Socialist Republics) remarked that he had clearly said in Russian that he wished to maintain his proposal with regard to the previous question of principle, but that if it was rejected he would have nothing to add, in view of the Chilean amendment. He had further proposed that

/the Commission

the Commission should take no decision on the substance of article 32. If the Commission was under the impression that the USSR proposals had been withdrawn, that must have been due to an error in the interpretation. The vote on the closure of the debate should therefore be regarded as invalid, and he would withdraw his motion for the closure.

The CHAIRMAN stated that, in the absence of objection, the debate was re-opened and that the Commission had before it the two USSR proposals.

Mr. WHITLAM (Australia) said that his delegation was strongly in favour of maintaining the general limitation clause. The difficulty was to determine the scope of the limitations. If the question of limitation of trade union rights was deferred, as the Indian representative had suggested, he would support the French amendment (E/CN.4/L.76). With regard to the idea of progressive realization provided for in article 1, he did not think it limited the rights to which it applied; it merely took into account the existing situation and ensured that the realization of those rights did not stop at a given level. Economic, social and cultural rights could not, here and now, be recognized or any commitment made concerning them, without any limitation whatsoever; that would be putting too much trust in human wisdom and prescience. The purpose of article 32 was not to limit the rights set forth in the covenant, but, as the French representative had justly pointed out, to limit arbitrary action on the part of States:

Mr. EGARE (United Kingdom) agreed with the Australian representative. If it did not contain a general limitation clause, the covenant could be interpreted in two ways. The first interpretation would be that, no limitation being specified, States were free to limit any or all of those rights as they chose. The second would be that States could limit them only so far as article 1 constituted a limitation.

In a text which would have so wide an application account had to be taken of practical problems connected with the exercise of the rights and of the advantages which some individuals or groups might demand. The question therefore arose whether, under the second interpretation, States would be entitled to limit in any way the rights they recognized at the particular level allowed by article 1. If States were asked to assume such extensive obligations without any limitations, they might well refuse to ratify the covenant.

It would seem therefore, that article 32 solved the problem of limitation which was not solved by article 1. It recognized that at all levels of
/realization

realization of the rights set forth in the covenant, the State must, in implementing those rights, take into account concrete situations and exceptional cases. It defined the aims and limits of State action. It was a mistake to suppose that these were matters which could be left to the courts. Even when courts settled questions relating to methods of application of laws and regulations, their decisions were governed by and had to be in conformity with the laws. Article 32 defined the aims of those laws, which must be compatible with the covenant. Obviously, therefore, a provision in the nature of article 32 was needed to obviate any uncertainty with respect to the obligations of States. The Chilean representative had said that some of the rights in the covenant could not be limited; the United Kingdom representative felt, on the contrary, that all of them gave rise to very complex problems of detailed application and therefore required some limitation. The difficulty was to draft a limitation clause which was neither too broad nor too narrow. Article 32, as amended by France, avoided both extremes, and indicated what elements had to be taken into account in implementing any one of the rights.

Mr. SANTA CRUZ (Chile) agreed that in theory the Australian and United Kingdom representatives were right in affirming that the limitations in article 32 were different from those in article 1. In practice, however, both articles would permit a State to refuse to apply all the rights set out in the covenant on the grounds that it did not guarantee them. No demands could be made under the covenant, even on the basis of article 1. Consequently the limitations of article 32 were superfluous.

The French delegation had deleted the words "requirements of public morality and order". He would have preferred it to omit the words "respect for the rights and freedoms of others" as a conflict, arising between the right of peoples to self-determination and the rights of individuals or groups exploiting a people might, in accordance with article 32, be settled in favour of those individuals or groups.

Referring to the Polish representative's remarks concerning the words "as formulated" in the Chilean amendment (E/CH.4/L.175), he explained that they had been introduced in recognition of the fact that certain rights could by their very nature not be subject to any limitation.

/Mr. JUVICHY

Mr. JUVIGNY (France), speaking on a point of order, said that, in a spirit of conciliation and to end the debate, he would accept the Greek representative's request and withdraw his delegation's amendment (E/CN.4/L.76) if the Chilean representative agreed to withdraw his sub-amendment (E/CN.4/L.175).

Mr. SANTA CRUZ (Chile) observed that the text proposed by his delegation was a sub-amendment to the French amendment and would become pointless if the latter was withdrawn.

Mr. JUVIGNY (France) withdrew his delegation's amendment.

Mr. BOCATYSKI (Poland) re-introduced the text of the Chilean sub-amendment as a Polish amendment to article 32 (E/CN.4/L.175).

He explained to the Chilean representative that the words "in so far as this may be compatible with the nature of these rights" did not, in his view, imply any limitation, since those rights, by their very nature, could not be limited if the general welfare was to be promoted.

The CHAIRMAN noted that the time limit set for the submission of amendments had expired. The Commission must therefore decide whether it would receive the Polish amendment.

The Commission refused to receive the Polish amendment by 8 votes to 3, with 6 abstentions.

The CHAIRMAN invited the Commission to decide on the USSR representative's proposal not to include a general limitation clause in the covenant. That was a question of principle which was not covered by the rules of procedure; a similar question had, however, arisen previously and the decision had been taken that it should be put to the vote as a previous question if no objection was made.

Mr. SANTA CRUZ (Chile) recalled that he had submitted an amendment to that proposal, to the effect that if the USSR proposal was adopted, the Commission should consider the question of including a special limitation clause in article 27.

/The CHAIRMAN

The CHAIRMAN noted that if he accepted that amendment, the USSR proposal could no longer be regarded as a question of principle.

Mr. SANTA CRUZ (Chile) withdrew his amendment, and proposed that the Commission should agree to discuss the question of including a special limitation clause in article 27 if the USSR proposal was adopted.

Mr. BOARE (United Kingdom) thought that the stipulation was not necessary since the Commission could in any case reopen the discussion on any article of the covenant.

Mr. GEORGEAL (Egypt) shared that point of view.

The CHAIRMAN put to the vote the USSR proposal formulated as follows: did the Commission wish to include a general limitation clause in the covenant, along the lines of that of article 32?

A vote was taken by roll-call.

In favour: Australia, Belgium, China, France, Greece, India, Sweden, United Kingdom of Great Britain and Northern Ireland, United States of America.

Against: Chile, Egypt, Lebanon, Pakistan, Poland, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Yugoslavia.

Abstaining: Uruguay.

The Commission decided by 9 votes to 8, with 1 abstention, to include a general limitation clause in the covenant.

Mrs. MEHTA (India) stated that she had voted in favour of maintaining a general limitation clause as she felt it was necessary until some limitation clause was introduced in article 27. If such a limitation clause was introduced into article 27 in the future, she reserved her Government's right to reconsider the position.

The CHAIRMAN asked the USSR representative to state whether his proposal that the Commission should not examine article 32 was based on rule 45 or rule 61 of the rules of procedure.

/Mr. MIROZOV

Mr. MOROZOV (Union of Soviet Socialist Republics) replied that he was making his proposal under rule 61, reserving the right to ask for adjournment of the debate under rule 45 if that proposal was rejected.

The CHAIRMAN put to the vote the USSR proposal that the Commission should take no decision on the substance of article 32.

A vote was taken by roll-call.

<u>In favour:</u>	Chile, Egypt, Poland, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Uruguay, Yugoslavia.
<u>Against:</u>	Australia, Belgium, China, France, Greece, Sweden, United Kingdom of Great Britain and Northern Ireland, United States of America.
<u>Abstaining:</u>	India, Lebanon, Pakistan

The Commission decided by 8 votes to 7, with 3 abstentions to deal with the substance of article 32.

Mr. MOROZOV (Union of Soviet Socialist Republics) formally moved adjournment of the debate in accordance with rule 45 of the rules of procedure.

Mr. SANTA CRUZ (Chile) submitted an amendment to that motion, to the effect that the debate should be adjourned until 28 May, 10.30 a.m.

The amendment was rejected by 6 votes to 7, with 3 abstentions.

The motion for adjournment was rejected by 9 votes to 7, with 2 abstentions.

The CHAIRMAN invited the Commission to consider article 32 to which there were no further amendments.

Speaking as the representative of Lebanon, he asked that a vote should be taken in parts.

Mr. KOVALENKO (Ukrainian Soviet Socialist Republic) thought that in view of rule 53 of the rules of procedure, the French representative had had no right to withdraw his amendment (E/CN.4/L.76) since a sub-amendment had been submitted to it by the Chilean representative (E/CN.4/L.175).

/Mr. SANTA CRUZ

Mr. SANTA CRUZ (Chile) noted that the word "amended" as used in rule 53, had always been taken as referring to an amendment already adopted by a vote, and that consequently the rule did not apply.

Mr. MOROZOV (Union of Soviet Socialist Republics) said that the Chilean representative had not made it clear that he was withdrawing his sub-amendment (E/CN.4/L.175), and that the French representative could not invoke rule 53 of the rules of procedure to withdraw his amendment (E/CN.4/L.76).

The CHAIRMAN confirmed the Chilean representative's statement that rule 53 of the rules of procedure applied only to amendments which had been adopted.

Mr. HANKE (United Kingdom) said that in article 32, the words "in conformity with this Part of the Covenant" should read "in conformity with this Covenant".

Mr. BYVALENKO (Ukrainian Soviet Socialist Republic) pointed out that the question of procedure was extremely complicated and moved the adjournment of the meeting in accordance with rule 49 of the rules of procedure.

The motion was rejected by 11 votes to 3, with 4 abstentions.

Mr. BORATYNSKI (Poland) asked that article 32 should be put to the vote by roll-call.

A vote was taken by roll-call on the first part of article 32 ending with the words "determined by law".

<u>In favour:</u>	China, France, Greece, India, Sweden, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Australia, Belgium.
<u>Against:</u>	Chile, Egypt, Lebanon, Pakistan, Poland, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Yugoslavia.

The first part of article 32 was adopted by 10 votes to 8.

Mr. SANTA CRUZ

Mr. SANTA CRUZ (Chile) said that he had voted against the first part of the sentence because the legislative limitation implied in it might be dangerous if the following two parts of the sentence were rejected. Since the first part of the sentence had been adopted, his delegation would vote in favour of the two remaining parts.

Mr. KEROU (Greece) said that he had voted in favour of the first part of article 32 and that he would also vote in favour of the two remaining parts.

A vote was taken by roll-call on the second part of article 32, i.e. on the words "only in so far as this may be compatible with the nature of these rights".

In favour: Yugoslavia, Australia, Belgium, Chile, China, Egypt, France, Greece, India, Lebanon, Pakistan, Poland, Sweden, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay.

The second part of article 32 was adopted unanimously.

A vote was taken by roll-call on the third part of article 32, beginning with the words "and solely".

In favour: Chile, China, Egypt, France, Greece, India, Lebanon, Pakistan, Poland, Sweden, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Yugoslavia, Australia, Belgium.

The third part of article 32 was adopted unanimously.

A vote was taken by roll-call on article 32 as a whole.

In favour: India, Sweden, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Australia, Belgium, China, France, Greece

Against: Lebanon, Poland, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Yugoslavia, Chile,

Abstaining: Pakistan, Egypt

Article 32 was adopted by 10 votes to 6, with 2 abstentions.

/Mr. HOARE

Mr. HOARE (United Kingdom) said that he had voted in favour of article 32 although he thought that the French amendment (E/CH.4/L.76) was necessary and that the words "in a democratic society" should have been deleted.

Mr. KOVALENKO (Ukrainian Soviet Socialist Republic) asked when it would be possible to raise the question of revising article 32.

The CHAIRMAN replied that there was nothing in the rules of procedure to prevent that question being raised at any moment.

He announced that consideration of article 32 had been completed.

Preamble to the draft covenant

Mrs. ROOSEVELT (United States of America) said that she preferred the amendment submitted by Chile and Yugoslavia (E/CH.4/L.167) to her own delegation's amendment (E/CH.4/L.54, rev.3). Her delegation would therefore vote in favour of the former and would ask for a vote on its own amendment only if the joint amendment were rejected.

She asked the representatives of Chile and Yugoslavia to agree to replace the word "individual" in the second considerandum of their amendment by the word "civil".

Mr. SANTA CRUZ (Chile) thanked the United States representative for supporting the joint amendment; speaking for himself and the Yugoslav representative, he accepted the modification she had suggested.

Mr. NISOT (Belgium) asked the authors of the joint amendment whether they would agree to replace the words "of the human family" in the first considerandum by the words "of the human race".

Mr. JEVRENOVIC (Yugoslavia) replied that the first considerandum of the joint amendment was couched in the same terms as the first paragraph of the preamble to the Universal Declaration of Human Rights; it would therefore be preferable not to change it in any way.

/Mr. WEITLAN

Mr. WHITLAM (Australia), speaking also on behalf of the Swedish delegation said that the Australian-Swedish amendment (E/CH.4/L.171) to the United States amendment should now also be considered as an amendment to the Chilean and Yugoslav amendment (E/CH.4/L.167).

Paragraph 1 of article 29 of the Universal Declaration of Human Rights recognized the individual's duties to the community. The draft covenant before the Commission was concerned with the obligations of States; nevertheless, States being the sum of individuals, the latter must co-operate if the covenant was to be implemented. The Australian-Swedish amendment brought that point out very clearly.

Mr. SANTA CRUZ (Chile), speaking also on behalf of the Yugoslav delegation, accepted the Australian-Swedish amendment recognizing that the individual must strive with the community for the observance of the covenant.

Mr. CHENG FAOMAN (China) proposed that the words "and cultural" should be added after the word "social" in the second considerandum of the joint Chilean-Yugoslav amendment.

Mr. WHITLAM (Australia) pointed out that the Australian-Swedish amendment having been accepted by the Chilean and Yugoslav delegations, the word "also" should be deleted from that amendment.

Mr. HOARE (United Kingdom) thought that it would be better to replace the words "his individual and political rights, together with his economic and social rights" at the end of the second considerandum of the joint Chilean-Yugoslav amendment by the words "these rights", the rights listed being those covered by the words "equal and inalienable rights" in the first considerandum.

Mr. SANTA CRUZ (Chile) thought that civil and political rights should be mentioned in the preamble to the covenant on economic, social and cultural rights to show that although two separate covenants had been drafted that did not mean that there was no link between them.

/Mr. JUVIGNY

Mr. JUVIGNY (France) supported that point of view and reminded the Commission that the General Assembly had recommended that the two covenants should contain as many provisions in common as possible. He therefore asked the United Kingdom representative to withdraw his proposal.

Mr. HOARE (United Kingdom) withdrew his proposal, which had merely been made to improve the wording of the second paragraph of the preamble but suggested that at least the rights concerned should be listed in the reverse order since the Commission was discussing the preamble to the covenant on economic, social and cultural rights.

Mr. KYROU (Greece) supported that proposal.

The CHAIRMAN proposed that the word "exercise" in the second considerandum of the English text of the Chilean-Yugoslav amendment should be replaced by the word "enjoy" and the word "together" by the words "as well as", which was in conformity with the original French text.

Mr. JUVIGNY (France) thought that the United Kingdom suggestion would meet the point raised by the Chilean representative.

Mr. WHITLAM (Australia) supported that point of view.

Mr. SANTA CRUZ (Chile) and Mr. JEVREMOVIC (Yugoslavia) agreed that the words "economic, social and cultural rights" should be placed before the words "civil and political rights".

Mr. NISOT (Belgium) proposed that the last paragraph of the Chilean-Yugoslav amendment should be replaced by the words "Have agreed on the following articles".

Mr. SANTA CRUZ (Chile) and Mr. JEVREMOVIC (Yugoslavia) agreed.

The CHAIRMAN put to the vote the joint Chilean-Yugoslav amendment to the preamble to the draft covenant (E/CN.4/L.167) together with the addition proposed in the joint Australian-Swedish amendment (E/CN.4/L.171).

The amendment was adopted unanimously.

/Programme

Programme of Work

The CHAIRMAN announced that at the following meeting the Commission would begin to consider the first eighteen articles of the draft covenant, beginning with article 3.

Mr. NISOT (Belgium) asked whether the Commission would take any decision on the order of the articles in the covenant on economic, social and cultural rights.

The CHAIRMAN replied that the Commission could decide to do so but that he would prefer to begin by discussing article 3.

Mr. KYROU (Greece) pointed out that the United States proposal on the order of the articles did not refer to the article on the right of peoples to self-determination.

Mrs. MEHTA (India) would like to know as soon as possible whether or not it was proposed to extend the Commission's session.

The CHAIRMAN announced that he intended to submit to the Commission a draft resolution requesting the Economic and Social Council to authorize the Commission to extend its session by two weeks, up to 20 June 1952.

Mr. MOROZOV (Union of Soviet Socialist Republics) requested that that draft resolution should not be submitted to the Commission until 28 May 1952.

It was so decided.

Mr. MOROZOV (Union of Soviet Socialist Republics) pointed out that the United States proposal on the order of the articles in the covenant (E/CH.4/L.164) not only omitted the article on self-determination but also the new articles and those on the colonial and federal clauses. In his opinion consideration of that question should be postponed.

/Mrs. ROOSEVELT

Mrs. ROOSEVELT (United States of America) pointed out that her delegation's proposal referred only to the articles the order of which it had been possible to establish at the time the proposal had been submitted; she was ready to begin by considering the articles on civil and political rights.

It was so decided.

The meeting rose at 5.50 p.m.