

Document Symbol:

E/CN.4/SR.312

Best copy available

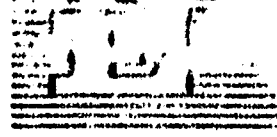
COPY

AVAILABLE

FOR FILMING

WAS

— of poor quality



COMMISSION ON HUMAN RIGHTS

Eighth Session

SUMMARY RECORD OF THE THREE HUNDRED AND TWELFTH MEETING

Held at Headquarters, New York,
on Tuesday, 27 May 1952, at 2.30 p.m.

CONTENTS:

Draft international covenants on human rights and measures of implementation: part II of the draft covenant contained in the report of the seventh session of the Commission (E/1992, annex I and annex III, section A, E/CN.4/528, E/CN.4/528/Add.1, E/CN.4/L.159, E/CN.4/L.158) (continued); article 4 (concluded), article 5.

Chairman:

Mr. MALIK

Lebanon

Rapporteur:

Mr. WHITLAM

Australia

Members:

Mr. NISOT

Belgium

Mr. VALENZUELA

Chile

Mr. CHENG HAONAN

China

AZMI Bey

Egypt

Mr. CASSIN

France

Mr. KYROU

Greece

Mrs. MEHTA

India

Members:
(cont'd)

Mr. WAHEED	Pakistan
Mr. BORATYNSKI	Poland
Mrs. ROSSEL) Mr. WESTERBERG)	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

Representatives of specialized agencies:

Mr. PICKFORD	International Labour Organisation (ILO)
Dr. HILL	World Health Organization (WHO)

Representatives of non-governmental organizations:Category B:

Mrs. de BROECK	Catholic International Union for Social Service
Mr. MOSKOWITZ	Consultative Council of Jewish Organizations
Mrs. SOUDAN	International Federation of Business and Professional Women
Miss SCHAEFER) Miss CARMICHAEL)	International Union of Catholic Women's Leagues
Miss ROBB	Liaison Committee of Women's International Organizations
Mr. JACOBY) Mr. HAYES)	World Jewish Congress
Mrs. POLSTEIN) Mrs. FARBER)	World Union for Progressive Judaism
Mr. PENCE	World's Alliance of Young Men's Christian Associations

Secretariat:

Mr. LIN	Division of Human Rights
Mr. DAS) Miss KITCHEN)	Secretaries of the Commission

DRAFT INTERNATIONAL COVENANTS ON HUMAN RIGHTS AND MEASURES OF IMPLEMENTATION:
PART II OF THE DRAFT COVENANT CONTAINED IN THE REPORT OF THE SEVENTH SESSION
OF THE COMMISSION (E/1992, annex I and annex III, section A; E/CN.4/528,
E/CN.4/528/Add.1, E/CN.4/L.159, E/CN.4/L.158) (continued)

Article 4 (concluded)

Mr. KORATYNSKI (Poland) said that his Government and the Polish people felt that article 4 was of the utmost importance because of their own terrible experiences at the hands of the Nazis. Article 4 was an indispensable complement to article 3. The prohibition of the abuse of medical and scientific experimentation should, however, not be qualified in any manner whatever; the final phrase in the original text might well be deleted. At the same time, the specific reference to experimentation against an individual's will or without his free consent should be retained, since the first sentence did not adequately express the whole intention.

Mr. CASSIN (France) urged the Commission to decide once and for all whether science should be the servant of man or man the slave of science. It was not a political but a moral decision, not merely an emotional but a scientific and legal question. Four qualifications had been embodied, after exhaustive discussion, in the second sentence, precisely because the Commission had wished to obviate any possibility of an interpretation which might paralyze the development of scientific research undertaken for the benefit of mankind. Any curtailment would broaden the article's scope and permit such an interpretation. The article obviously referred only to experimentation on healthy individuals or cases where the sickness bore no relation to the purpose of the experiments; it was not an attempt to define the relations between doctor and patient. Thus, the Commission should view with great caution the Polish representative's suggestion for the deletion of three of the qualifications.

Mr. BRACCO

Mr. BRACCO (Uruguay) said that his delegation was anxious to strengthen the article and would therefore accept the French amendment (E/CN.4/L.159), as amended orally by the Lebanese delegation by the insertion of the word "free" before "consent". The Yugoslav amendment (E/1992, annex III, section A) was the logical complement of the text as amended, if the Yugoslav representative would accept the consequential insertion of the word "free" before "consent" in his text, because the individual must be given an assurance that he was more important than any scientific experiment. The designation of a higher medical council by domestic law would cause no difficulties. The argument that the article thus worded would prevent medical experimentation as a whole without the free consent of the patient was groundless; no such intention could be attributed to the article.

Mr. MCROZOV (Union of Soviet Socialist Republics) said that the confessions of German and Japanese war criminals had clearly shown the need to brand as a heinous crime the abuse of scientific and medical experimentation and to prevent its repetition. Provisions similar to those in article 4 had been adopted by the Conference on the revision of the Geneva and Hague Conventions relating to the treatment of the wounded, prisoners of war and others held at Geneva in 1949, in particular the prohibition of biological experiments on prisoners of war and the wounded. The United Kingdom delegation to that Conference had vainly sought to show that such experimentation was embraced by the concept of torture and should not therefore be mentioned. The United Kingdom delegation in the Commission on Human Rights was still, with a stubbornness worthy of a better cause, adducing arguments which had been rejected by that Conference, but most delegations again favoured the retention of the explicit reference to experimentation. In order to avoid the difficulties which had been raised, it might be wiser to delete the words following "experimentation". The French amendment (E/CN.4/L.159) as amended orally by the Lebanese delegation might perhaps improve the original text, although the change did not seem to be of any great importance. The expression "involving risk" was rather too elastic in meaning, but the classic examples of experiments on groups without their knowledge that had been cited were not relevant and were in any case exceptional. Article 4, moreover, could not be construed as affecting the relations between doctor and patient and would in no

way prevent reasonable medical experiment. The second sentence was closely linked with the first, so that the structure showed that the reference in the second sentence was to the abuse of experimentation for the purposes of torture or degradation. The final phrase, "where such is not required by his state of physical or mental health", dealt with a totally different matter; if the Commission wished for some provision governing the right to experiment on lunatics for their own good, it should be placed in a separate paragraph or article. The text as it stood was fairly satisfactory, but if it was open to such criticism as that adduced by the United Kingdom representative, the Commission might consider the wisdom of deleting the latter part of the second sentence.

Mr. JEVREMOVIC (Yugoslavia) said that facts, not sentiment, demanded the inclusion of article 4. He could not accept the argument that the article would create obstacles to the development of medical and scientific research, and could not, therefore, agree with the views of the WHO. Neither could he agree with the United States delegation's argument that the Yugoslav amendment (E/1992, annex III, section A) would weaken the safeguards embodied in the article. On the contrary, it would provide safeguards for individuals in difficult circumstances who might be tempted for financial considerations to accept harmful experiments on themselves. Experience had shown that such instances were not rare. He would accept the French amendment (E/CN.4/L.159) as amended orally by the Lebanese delegation and the Uruguayan oral amendment to the Yugoslav proposal (E/1992, annex III, section A).

Mr. KYROU (Greece) supported the original text with the French amendment as amended. In general he agreed with the French representative that any further additions or any deletions would handicap the development of science and medicine. If the final phrase starting with the word "where" was deleted, a surgeon might not be able to experiment with the curing of lunatics.

/Mr. HOARE

Mr. HOARE (United Kingdom) failed to see why the views of the United Kingdom delegations to the 1949 Geneva Conference and to the Commission should not be consistent. All members agreed that an article dealing with the subject should be included in the draft convention. The United Kingdom delegation would not have proposed the deletion of the second sentence unless it had been firmly convinced that its substance was fully covered by the first sentence, as was clearly shown by the use of the introductory words "in particular". Thus, the real question at issue was whether the second sentence might have a serious effect on the development of science and medicine, which were already controlled by codes of professional ethics and by stringent regulations. He could not agree that the article did not deal with the treatment of the sick; the prohibition was a general one. In contemporary medicine it had become impossible to draw the line between treatment and experimentation. Sooner or later, someone had to take the responsibility for applying a new drug or treatment; indeed, only by such methods had the tremendous advances in modern medicine been achieved. Biological experiments on the wounded, as experience had shown, was one of the ways in which they were most effectively helped. It could not be argued that the article dealt only with the healthy, because that was nowhere specifically stated. The case might arise at any level of health, since there was actually no such thing as perfect health. Thus, the effect, although not the intention, of the article as it stood was to require the free consent of the patient if the treatment given him could be regarded as experimental, and thus to rule out the possibility of such treatment in all the various circumstances where it would be impracticable to obtain that free consent. That raised the whole subject of medical ethics at a time when the greatest latitude was needed to make still further progress in medicine. The Commission should therefore accept the Chilean representative's contention that the approach to the subject should be as generalized as possible, particularly since it was not qualified to make technical judgments and since the WHO, which was so qualified, had stated that the second sentence was undesirable. The deletion of the latter part of the second sentence only would merely make the position worse, since an absolute prohibition of experimentation would remain and would preclude any possible scientific progress and even the saving of life by treatment experimental in character in cases in which the patient could not give his free consent. If new techniques were required to cure a state of physical or mental disease, they should be left for

the time being to the judgment and responsibility of the doctor or surgeon and to his sense of professional ethics; a special convention dealing with the problems of the medical profession might perhaps be drafted later.

Mr. SIMSARIAN (United States of America) approved of the Lebanese suggestion for the addition of the word "free" before "consent" in the French amendment (E/CN.4/L.159).

The United States delegation felt that in the second sentence of article 4 the phrase "where such is not required by his state of physical or mental health" was not necessary. In its opinion, however, the words "involving risk" in that sentence should be retained because, if they were deleted, community programmes such as chlorination of water, spraying of food with DDT and prevention of tooth decay by adding fluorine to drinking water would be precluded. Prior to the adoption of such programmes, the absence of risk or impossibility of harmful effects were carefully ascertained and the general consent of the community rather than of individuals was given. To safeguard such programmes, the words "involving risk" should therefore be retained in the second sentence.

Mr. WHITLAM (Australia) said that the Commission's difficulties with article 4 were not lessened by the fact that it was a combination of two separate articles. The text was intended to prohibit the horrors which had occurred during the Second World War. Juridical science must, however, be applied.

The Australian delegation had no objection to the first sentence of the article and assumed that the United Kingdom delegation had withdrawn its objection to the word "cruel" which, despite some overlapping, seemed preferable. If the second sentence of the article dealt with scientific experimentation in the broad sense it should be eliminated. Consideration must however be given to the strong feeling in the Commission that serious evils connected with experimentation should be prohibited. The Australian delegation would support the proposal of Poland and the USSR that the second sentence should end with the word "experimentation" although it fully recognized the

difficulty and juridical objections to which that proposal was open. Further examination of the clause seemed essential. In the context, however, there was some ground for the contention that the words "in particular" related to the first sentence and provided a limitation preventing broad application.

Subject to those reservations, the Australian delegation would support the part of the clause ending with "experimentation", taking into account the French objection and the necessity for further consideration with a view to arriving at a more satisfactory text.

The CHAIRMAN, speaking as the representative of Lebanon, understood the United States representative's difficulty regarding the deletion of the words "involving risk", but pointed out that risk was a vague concept which was difficult to define. He would, however, have no objection to the retention of that phrase. If it were deleted, the cogent examples given by the United States representative would be excluded. Nevertheless all his examples involved community consent and a degree of tacit individual consent. The difficulties he considered so important seemed to be covered by the element of indirect individual consent inasmuch as such programmes were impossible without community consent implying in a democracy the consent of citizens in general. The Lebanese delegation would not vote for the retention of the concept of risk which was unnecessary and vague although it saw no harm in the inclusion of the phrase.

The arguments of the United Kingdom representative were important, particularly in the light of the support of WHO. There was, however, an important distinction between treatment and experimentation. The text of article 4 related only to healthy people. In the case of the new drugs to which the United Kingdom representative had referred, treatment would be covered by the second part of the second sentence and would not constitute experimentation. In his opinion no doctor had the right to experiment on a healthy person without the free consent of that person.

All borderline cases such as complications in the course of an operation when a patient could not be consulted must be left to professional ethics and the laws of the country concerned. Moreover, it might rightly be held that in consenting to an operation, a patient gave prior approval to any course which a doctor might at any stage deem necessary.

To cover the horrors of the Nazi regime, the article might well end after the words "medical or scientific experimentation", not covering treatment but retaining the element of free consent. He did not believe that the covenant would halt the advance of science and added that a liberal interpretation of the article would certainly be found to allow medical development. The first sentence of the article could also be attacked because it contained some vague words such as "torture" but allowance must be made for latitude in interpretation within reasonable limits.

The Lebanese delegation therefore agreed with the Australian representative that the text could well end with the word "experimentation" although it would not object to the retention of the concept of risk if approved by the majority.

If the question of treatment was introduced in the last part of the second sentence, some formulation along the lines of the Yugoslav amendment would be necessary to set medical standards. He hoped that the concept of treatment in the second sentence would be avoided and thus the need for the Yugoslav amendment eliminated. If the Commission accepted the idea of treatment, the Lebanese delegation would reconsider its position on the Yugoslav text.

Mrs. MEHTA (India) recalled that at an earlier session she had asked whether the second sentence of article 4 should be retained in view of the advice of WHO against that text. No new argument had been presented in favour of that sentence at the present session and WHO maintained its opposition on the ground that the first sentence covered the point adequately. Because laymen could not judge the possible implications of the text, the Indian delegation would not vote in favour of the second sentence at all.

/Mr. VALENZUELA

Mr. VALENZUELA (Chile) could understand the insistence of some delegations on retaining the second sentence. The Chilean delegation continued to feel, however, that if the same conditions should again arise, article 4 would not prevent a repetition of the Nazi crimes which it sought to prohibit. In the case of totalitarian countries, it was difficult to ascertain what was going on, especially in concentration camps. In adopting article 4, the Commission would, however, be entering the field of science and medicine in which it was difficult to set standards without expert knowledge. It was regrettable that the representative of WHO had failed to cite concrete cases of restrictions on the basis of the present text. One such recent case involved the use of terramycin in food for poultry to increase egg production. The consumption of eggs, especially by children was said in these circumstances to create antibodies resulting in immunity to the beneficial effects of terramycin. That example gave some idea of the excesses and exaggerations resulting from insistence on the retention of the second sentence. For that reason and because of the Commission's lack of background in the judgment of technical questions, the Chilean delegation endorsed the United Kingdom position in favour of the deletion of the second sentence.

Mr. MOROZOV (Union of Soviet Socialist Republics) said that the debate was becoming unduly complicated. It was his opinion that while improvement of article 4 might be desirable, at the stage now reached it might be best to retain it in its present form because of the difficulty of arriving at a better text. Any new positive element could be considered at a future level of discussion. The Commission should retain the prohibition on biological experimentation and view such experimentation without the consent of the individual as tantamount to torture. There was no uncertainty in the Commission about what kind of scientific experimentation was prohibited under the present text. That text should therefore be retained without alteration except for the French amendment and the Lebanese suggestion for the addition of the word "free".

In the opinion of the USSR delegation the covenant was not the proper place for detailed regulations. That responsibility might well be left to individual States.

Mr. CASSIN (France) said that some misunderstanding still persisted about article 4. Some members maintained that there was no necessity to say explicitly that experimentation was tantamount to torture. While it had to be recognized that some types of experiments were with the consent or agreement of the party concerned, carried out for noble purposes, others were degrading to the individual. The Commission must try to make that distinction quite clear.

The French delegation felt that each of the terms in the second sentence filled a distinct need. In that connexion he accepted the Lebanese suggestion for the addition of the word "free" in the French amendment. Experimentation was different from treatment. The limitation contained in the concept of risk was essential. A suitable criterion in judging the nature of experimentation was whether the experimentation was designed to maintain or improve health. The Geneva Convention prohibited only experimentation which was not curative in effect. Deletion of the last phrase would therefore open the door to unlimited experimentation or preclude experimentation in the interest of effecting cures. The French delegation was therefore unable to vote for the deletion of any part of the second sentence.

He felt that although the substance of the Yugoslav amendment was interesting, it really involved provisions for implementation and might more appropriately constitute a separate recommendation to governments or WHO calling attention to the subject.

In deciding on article 4, the Commission must be governed by good sense and moderation and make it clear that respect for the dignity of the individual must transcend all other considerations. Article 4 should be retained without change.

The CHAIRMAN put to the vote the United Kingdom amendment (E/1992, annex III, section A) to the original article.

The United Kingdom amendment was rejected by 9 votes to 5, with 4 abstentions.

The CHAIRMAN put to the vote the French amendment (E/CN.4/L.159), as amended verbally by the Lebanese delegation.

The French amendment, as amended, was adopted by 14 votes to none, with 4 abstentions.

The CHAIRMAN put to the vote the first phrase of the second sentence of the original article 4, which read "in particular, no one shall be subjected without his free consent to medical or scientific experimentation..."

The phrase was adopted by 13 votes to 1, with 4 abstentions.

The CHAIRMAN put to the vote the words "involving risk" in the second sentence of the original article.

The words "involving risk" were adopted by 10 votes to none, with 8 abstentions.

The CHAIRMAN put to the vote the third phrase of the second sentence of the original article, which read "where such is not required by his state of physical or mental health".

The phrase was adopted by 9 votes to 3, with 5 abstentions.

The CHAIRMAN put to the vote the second sentence of the original article as a whole as amended.

The sentence as amended was adopted by 12 votes to 2, with 4 abstentions.

Mr. MOROZOV (Union of Soviet Socialist Republics) asked for a vote by division on the Yugoslav amendment (E/1992, annex III, section A) to the original article.

/The CHAIRMAN

The CHAIRMAN put to the vote the first sentence of the Yugoslav amendment, with the addition of the word "free" before the word "consent".
The sentence was rejected by 5 votes to 2, with 11 abstentions.

The CHAIRMAN put to the vote article 4 as a whole as amended.
Article 4 as amended was adopted by 14 votes to none, with 4 abstentions.

Mr. CHENG PAONAN (China) said that he had voted for the deletion of the second sentence and had abstained from voting on the article as a whole because the second sentence merely elaborated the notion of condemning and preventing the aspect of man's inhumanity to man which was dealt with in article 4. Such elaboration was unnecessary and might serve to restrict experimentation which was directed towards promoting the welfare of mankind. His vote had also been guided by the expert opinion of the World Health Organization.

Mrs. MEHTA (India) explained that she had voted for the deletion of the second sentence, but had voted for the article as a whole because she considered its inclusion in the covenant to be essential.

Mr. WAHED (Pakistan) said that his views had been fully expressed in the Lebanese representative's statement.

Mr. HOARE (United Kingdom) explained why he had voted against the Yugoslav amendment. The effect of the amendment seems to be to licence the kind of experimentation which the Commission sought to avoid; if, however, the amendment was concerned with legitimate kinds of experimentation it laid down a code of medical ethics on an international level, whereas such a professional code fell within the scope of domestic legislation and national medical and scientific associations.

Article 5

The CHAIRMAN recalled that many of the Commission's meetings had been devoted to article 5 and that a fairly satisfactory text seemed to have been drawn up, since there was only one amendment to the draft. He drew attention to the re-wording of paragraph 3(b) suggested by the Secretariat in its memorandum (E/CN.4/528, page 37, paragraph 104).

Mr. CASSIN (France) moved his amendment (E/CN.4/L.158) to paragraph 3(c) (i) and (ii). The purpose of his amendment to sub-paragraph (i) was in particular to ensure that the French text of paragraph 3(a) (i) properly reflected the Commission's intentions. Work performed by prisoners should serve the purposes of social re-education and should not be regarded as forced labour. The reference to persons who had been released conditionally also seemed to be desirable in order to specify that any work which such persons were asked to do during the trial period would not constitute forced labour.

The French amendment to sub-paragraph (ii) had also been moved in order to clarify the original text. Military service in countries where such service was compulsory could not be regarded as forced labour; in countries where conscientious objection was taken into consideration, the legislation concerned imposed civil obligations on the objectors as a substitute for military service. The concept of the obligations of conscientious objectors had to be stated as clearly as possible.

Mr. ERACCO (Uruguay) moved the adjournment of the meeting.

The Uruguayan motion for adjournment was rejected by 7 votes to 2, with 8 abstentions.

Mr. NISOT (Belgium) asked whether the French amendment to sub-paragraph (i) covered all cases of detention, or if it related only to detention after sentence.

Mr. LOARE (United Kingdom) thought that the French representative's difficulties arose out of the discrepancy between the French and English texts
/of the original

of the original article. The English text of sub-paragraph 1 was perfectly clear, since it referred to any work or service required to be done in consequence of a lawful order of a court; that provision would meet the Belgian representative's objection. In the French text, however, the idea of the court sentence was attached to hard labour, and not to the wider question of detention as a whole. His delegation could not accept the French amendment as it stood, but would be prepared to consider it if it was adapted to the existing English text.

The original English text of sub-paragraph (ii) had been phrased carefully so as to prevent States from enacting legislation to regiment conscientious objectors into various forms of national service to which no other persons would be liable. The notion in the French amendment was quite different and he suggested that the French text should be brought in line with the English text of the original sub-paragraph.

Mr. PICKFORD (International Labour Organisation) agreed with the United Kingdom representative that the difficulty lay in the discrepancy between the English and French texts. It was desirable to maintain the connexion between work or service other than hard labour and the lawful order of a court. That idea was not implicit in the French text.

Mr. MOROZOV (Union of Soviet Socialist Republics), supported by Mr. BORATYNSKI (Poland), pointed out that conditional release in many countries did not involve any obligation to work. He would therefore be unable to vote for the article if the French amendment was adopted and asked the French representative to withdraw the reference to conditional release.

The CHAIRMAN, speaking as representative of Lebanon, agreed with the United Kingdom and ILO representatives that the wording of the French amendment to sub-paragraph (i) was too vague, since it did not render the determination of the kind of work to be done by prisoners dependent on a court decision. It was clear in the English text that the phrase "in consequence of a lawful order of a court" could apply only to work or service required to be done; the French

wording seemed to be more equivocal. It was therefore preferable to bring the French text into line with the satisfactory English text than to substitute a new sub-paragraph at that stage. The same arguments applied to the drafting of sub-paragraph (11).

Mr. CASSIN (France) agreed to withdraw the reference to conditional release in his amendment to sub-paragraph (1). He would revise his French text to correspond more closely to the existing English text of the article.

The CHAIRMAN stated that in the meantime the Secretariat would also try to bring the French text of the original article into line with the English.

The meeting rose at 5.30 p.m.