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COMMISSION ON HUMAN RIGHTS

Eighth Session

SUMMARY RECORD OF THE THREE HUNDRED AND NINETEENTH MEETING

Held at Headquarters, New York,
on Tuesday, 3 June 1952, at 10 a.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.143, E/CN.4/L.155, E/CN.4/L.187)(continued): article 13

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| Chairman: | Mr. MALIK | (Lebanon) |
| Rapporteur: | Mr. WHITLAM | Australia |
| Members: | Mr. NISOT | Belgium |
| | Mr. VALENZUELA | Chile |
| | Mr. CHENG PAONAN | China |
| | AZMI Bey | Egypt |
| | Mr. CASSIN | France |
| | Mr. KAPSAMBELIS | Greece |
| | Mrs. MEHTA | India |
| | Mr. AZKOUL | Lebanon |

Members (continued):

| | | |
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| | Mr. MAHMUD | Pakistan |
| | Mr. LORATYNSKI | Poland |
| | Mrs. NOSSEL | 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 |

Also present:

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| | Miss NAMAS | Commission on the Status of Women |

Representatives of non-governmental organizations:

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| Category A: | Mr. THORNAND | International Federation of Christian Trade Unions (IFCTU) |
| Category B: | Mrs. de BROUCK | Catholic International Union for Social Service |
| | Mr. MOLDE | Commission of the Churches on International Affairs |
| | Mr. BALTERIN | Co-ordinating Board of Jewish Organizations for Consultation with the Economic and Social Council of the United Nations |
| | Mr. CRUICKSHANK | Inter-American Council of Commerce and Production |
| | Mrs. PARSONS | International Council of Women |
| | Mrs. MOED | International Federation of University Women |
| | Miss SCHAFFER | International Union of Catholic Women's Leagues |
| | Miss PHILLIPS | Liaison Committee of Women's International Organizations |
| | Mr. JACOBY | World Jewish Congress |
| | Mr. PENCE | World's Alliance of Young Men's Christian Association |
| | Mr. RONALDS )<br>Mrs. POLSTEIN) | World Union for Progressive Judaism |

/Secretariat:

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.4/526, E/CN.4/526/Add.1, E/CN.4/L.143, E/CN.4/L.155, E/CN.4/L.157) (continued)

Article 13

AZMI Bey (Egypt) wished to make some changes in the amendment he was introducing (E/CN.4/L.157), in order to meet objections which had been raised in the course of informal conversations with other members of the Commission and with representatives of non-governmental organizations. The French text for the new paragraph should be altered to read: "Nul ne subira de contrainte pouvant porter atteinte à sa liberté..."; in the English text the words "any form of" should be deleted. The purpose of the amendment was mainly psychological. The text of the article as it stood (E/1992) might give the impression that a person was free only to change his religion, whereas full freedom of conscience implied that he was free both to change his religion or convictions and to maintain those he already held. The widest possible tolerance must be guaranteed; a person must be free to profess any religion that commended itself to him or none at all. In article 12 of the Egyptian Constitution freedom of conscience was proclaimed as absolute. In Egypt a person could not be discriminated against for changing his religion, but he could change it only after three conversations with a minister of the religion he wished to renounce. The new paragraph proposed in the Egyptian amendment was a corollary of the other amendment. Real and absolute tolerance required safeguards against coercion; unless that was specifically stated, it might be thought that the Commission condoned coercion.

Mr. HOARE (United Kingdom) said that the amendments he was introducing to paragraph 2 (E/CN.4/L.143) might be regarded as drafting amendments, though they were of some substantive importance as well. The words "prescribed by law" were narrower than "pursuant to law". Furthermore, they already appeared or might appear in that form in other articles following article 13, and uniformity was

/desirable.

desirable. He was proposing that the words "reasonable and" should be deleted because they added nothing to the word "necessary" and might even seem to set up some kind of contradiction between the reasonable and the necessary. The substitution of the words "for the prevention of disorder" for "order" had necessitated the consequential substitution of "in the interests of" in place of "for the protection of". He had explained his reasons for advocating the phrase "for the prevention of disorder" on several previous occasions. He had omitted the word "fundamental" because, in his opinion, the intention was to refer rather to personal rights and freedoms, but he would not press that deletion if the Commission decided that it wished the word "fundamental" to remain in the text.

Mr. CASSIN (France), introducing his amendments to paragraph 1 (E/CN.4/L.155), said that in French at least the phrase "individuellement ou collectivement" was more correct than the phrase "seule ou en commun". The order of the words at the end of the sentence had been changed to make it more logical.

He would support the Egyptian amendments (E/CN.4/L.187), particularly since their adoption might allay the doubts expressed by representatives of the Islamic countries during the third session of the General Assembly. Of the United Kingdom amendments (E/CN.4/L.149) he could not support the proposed alteration of the phrase "prévues par la loi", because in French that phrase embraced both the mandatory and permissive aspects of law. He could support the deletion of the words "reasonable and", since they were unnecessary. He could not accept the phrase "for the prevention of disorder", which, in French at any rate, was much more restrictive than "public order", as it implied little more than police action to prevent street riots. "Ordre public" had both material and moral connotations and embraced the whole of the principles on which the State was built. He could accept the United Kingdom representative's phrase in English, and consequently the use of "in the interests of", only if it was regarded as a correct translation of the French "ordre public" and if the latter was retained in the French text.

Mrs. ROOSEVELT (United States of America) would support the Egyptian proposal (E/CN.4/L.187) but wished first to be quite certain that the word "coercion" would be retained in the English text. She could support the United Kingdom amendments (E/CN.4/L.143), with the exception of the proposed substitution for "pursuant to law." The first of the French amendments (E/CN.4/L.155) might be regarded as an attempt to render the English in better French; she could accept it in the French text, but thought that the English should be retained as it stood. She could not see why the French delegation wished to change the order of the last part of paragraph 1 and so depart from that adopted in article 18 of the Universal Declaration of Human Rights.

AZMI Bey (Egypt) said that his amendment had been drafted originally in both English and French, so that both texts were equally authentic. It had been found that "coercion" was the best possible equivalent of the French "contrainte". The statement on the title-page of the French text of document E/CN.4/L.187 that the original was French only was due to an oversight.

The CHAIRMAN, with the concurrence of the Commission, invited the representative of the Commission of the Churches on International Affairs, a non-governmental organization in category B consultative status, to address the Commission.

Mr. HOLDE (Commission of the Churches on International Affairs) said that the organization he represented had been taking a great interest in article 15 because, if an individual was not free to change his religion, he would have to remain until death in the religious community of his birth and because the peaceful change of belief must be made possible in a world of warring ideologies. The substance of the proposals embodied in the Egyptian amendment had been generally accepted by his organization. It was essential that man should be free to seek the truth and that he should never be persecuted if he espoused it. Equally it was essential that man should be free to speak the truth as he understood it, to teach it and to practice it by individual and corporate action. The first Egyptian amendment must be construed solely as an attempt to make explicit something that was implicit in the original text; if it were given any

/meaning

meaning beyond that, it would become restrictive. The second amendment must be understood as designed solely for protection against coercion, not as intending to place any limitation upon a person who sought to exercise his freedom to change his religion nor to restrict the manifestation of religion or belief except with such necessary limitations as were already provided. The provisions for limitation must thus be accepted as a check upon any capricious interpretation of coercion that might jeopardize freedom of teaching, worship, practice and observance. The Commission should make it abundantly clear that the Egyptian amendments could not be construed as in any way limiting the person who sought to maintain or change his religion or belief, but were designed solely to safeguard him against coercion by any other party and that any limitations upon the manifestation of religion must be only those set forth in the article itself.

AZMI Bey (Egypt) assured the representative of the Commission of the Churches on International Affairs that his amendment meant only what it said and nothing more. He was bound by articles 12, 13 and 16 of the Egyptian Constitution which permitted no further limitation on the freedom of belief.

Mr. WAHEED (Pakistan) observed that the Islamic countries could boast of a long tradition of the tolerance of religious minorities under Moslem rule and that only when Moslems had fallen away from Islam had there been instances of religious persecution. The Koran laid down that there was no compulsion in religion. The Pakistani draft constitution reaffirmed the principle of the broadest possible tolerance. His delegation would therefore support the Egyptian amendment (E/CN.4/L.187). It would support the French amendments (E/CN.4/L.155), but of the United Kingdom amendments (E/CN.4/L.145) it could support only the first; the remainder were unduly limitative.

The CHAIRMAN, with the concurrence of the Commission, invited the representative of the World Union for Progressive Judaism, a non-governmental organization in category B consultative status, to address the Commission.

/Mr. RONALDS

Mr. ROWLDS (World Union for Progressive Judaism) said that his organization was firmly convinced that paragraph 1 of the original text (E/1992) was weakened by the phrases "pursuant to law" and "reasonable and necessary" in paragraph 2. Those phrases might be used to limit religious observance rather than to protect it. The difficulty of defining the latter phrase might lead to confusion and restriction. Furthermore, the broad phrases "public safety" and "fundamental rights and freedoms of others" fully covered the protection of order, health and morals. Paragraph 2 would be greatly strengthened by the deletion of the phrases which he had criticized.

Mr. WHITLAM (Australia) expressed appreciation of the Egyptian representative's contribution and commended both Pakistan and India for their belief in and practice of religious tolerance under difficult conditions.

The Australian delegation was satisfied with the Egyptian amendment which was generous and liberal in concept. It should be clearly understood, however, that the expression "coercion" would not include persuasion or appeals to conscience and that it did not refer to the internal spiritual authority of religious bodies.

The French amendment which arranged the provisions of the end of paragraph 1 in appropriate order commended itself to his delegation.

While it could agree entirely with the United Kingdom amendments, consideration of other views was desirable in the interest of reaching agreement.

Mrs. MEHTA (India) said that India was the mother of many religions and/ proud of its long tradition of religious tolerance. Clashes had occurred in the past because of fanaticism and coercion in some quarters. The Indian delegation would support the Egyptian amendment to article 15 which the unfortunate events of the past showed to be essential.

The Indian delegation would also support the French amendment although in its opinion the change was not strictly necessary.

She agreed to the United Kingdom amendment for the deletion of the word "reasonable", which was unnecessary, but she was unable to support the other changes proposed in the United Kingdom amendment.

/Mr. AZKOUL

Mr. AZKOUL (Lebanon) said that freedom of conscience and religion was the most fundamental right of the individual and that article 13 proclaiming that right must be drafted with the utmost care because of its special link with the inherent dignity of the individual. The article stressed two aspects: the right of the individual to freedom of religion which significantly was not subject to any external authority or limitation and the freedom to manifest a religion or belief subject to essential limitations only.

In his opinion the first Egyptian amendment was already covered in the present text of article 13 but there was no objection to making the point explicit. Similarly the second Egyptian amendment prohibiting coercion was already implied in the text of article 13 and involved no change in the importance, scope or interpretation of the article. The Lebanese delegation would therefore not oppose the Egyptian amendment because it confirmed the freedom of the individual to maintain or change his religion and the right of others to preach and seek to influence him either to maintain or to change his religion.

The Lebanese delegation supported the United Kingdom amendment for the deletion of the word "reasonable". In its opinion the use of the expression "public order" might be dangerous in view of the frequent abuses which had occurred in the past. He therefore agreed with the United Kingdom representative that the words "prevention of disorder" were preferable.

The Lebanese delegation felt that the French amendment involved matters of form which could be accepted.

Mr. MOROZOV (Union of Soviet Socialist Republics) said that the Constitution of the USSR provided for separation of Church and State and guaranteed complete freedom of religion. In general article 13 of the Covenant set forth the essential components of that freedom.

He agreed with the representative of Lebanon that the Egyptian amendment to paragraph 1 did not introduce any new element but merely stated what was implicit in the existing text. The second Egyptian amendment embodied a negative statement of the positive affirmation contained in paragraph 1. The USSR delegation had no objection to the Egyptian amendment although in its opinion the present text of article 13 was satisfactory.

/The first

The first United Kingdom amendment was purely a matter of drafting but the second again introducing the expression "prevention of disorder" was unacceptable because it tended to emphasize a single aspect of the limitations. As the present text of article 13 was broader and more far-reaching, the USSR delegation would vote against the second United Kingdom amendment.

Mr. HOARE (United Kingdom) explained that the first United Kingdom amendment had been submitted for two reasons: because of the general position of the United Kingdom delegation that necessary limitations should be stated as strictly as possible, and also because of the lack of uniformity in the statement of restrictions in article 13 and subsequent articles. Referring to document E/CN.4/528 setting forth all the variants in those articles, he urged consideration of a uniform formulation of limitations which could be used consistently. He was, however, prepared to consider amendment to his proposal and to take into account the difficulties of other delegations.

In reply to the representative of Pakistan who had found the latter part of the United Kingdom amendment unacceptable because it was too restrictive, he explained that the United Kingdom proposal was no more restrictive than the present text of article 13 and that in one important respect it was less restrictive. The notion of "ordre public" was unknown in Anglo-Saxon countries, but the words "public order" in English would roughly correspond to the prevention of disorder. In manifestations of religion, the prevention of disorder constitute the only appropriate limitation. Public policy, which seemed to be the translation of "ordre public", would be much broader.

He agreed with the representative of Lebanon that the text of article 13 covered the right to maintain one's religion and freedom from coercion. If however the Egyptian amendments were considered important and essential by certain countries, the United Kingdom delegation was willing to accept them provided that they could not be interpreted as imposing limitations or restrictions on argument and discussion. It seemed however, that the use of the word "coercion" excluded that possibility. The United Kingdom delegation was therefore prepared to support the Egyptian amendments which seemed to be formulated as satisfactorily as possible and which merely explicitly stated what had been implied in the earlier text.

/Referring

Referring to the French amendment, it was his understanding that no change was suggested in the English version of paragraph 1 which corresponded to the wording of the Universal Declaration of Human Rights. He had no objection to a change in the French text if the representative of France deemed it necessary.

In the case of the second French amendment, he noted that the present text of article 15 followed the order of the Universal Declaration. In general the Universal Declaration should serve as a model, but he was prepared to consider a modification if cogent arguments were presented to that effect.

Mrs. ROOSEVELT (United States of America) said that if the French representative agreed that his first amendment involved a change in the French version only, no vote would be necessary. In the case of his second amendment, however, a vote would be required. While rearrangement and departure from the wording of the Universal Declaration was not strictly necessary, the United States delegation would be prepared to vote for the second French amendment.

The United States delegation would also support the United Kingdom amendment.

Recalling the action of the Commission in changing the word "shall" in article 9 to "may", she said that in paragraph 2 of article 15 it would be desirable to make the same change to show that the provision was permissive rather than mandatory. That change would not apply to the French text.

Mr. JEVREMOVIC (Yugoslavia) recalled that his country, in which a number of different religions were practised, had learned from bitter experience that religious hatred led to bloodshed and had established the equality of all religions on the basis of mutual tolerance. He was therefore prepared to support the Egyptian amendments, which stated more clearly the praiseworthy ideas implicit in article 15.

/He would

He would support the first French amendment, which improved the text, but not the second French amendment, as the French representative had not advanced any valid reason for changing the wording, which was that of the Declaration.

With regard to the first United Kingdom amendment, he preferred the phrase which appeared in the French text of the original article, "prévues par la loi". The second United Kingdom amendment did not appear to improve the existing paragraph 2, and while he was not entirely pleased with that text, he would prefer to maintain it. In particular, the deletion of the word "reasonable" was unjustified: it was all too easy to think of restrictive measures which might be necessary without being reasonable.

Mr. CHENG PAONAN (China) remarked that in his country religious tolerance was practised to a very high degree. In its long recorded history, China had never engaged in crusades or holy wars to impose religion on other peoples. Having produced no religions itself, it was the very opposite of fanatical, and was anxious that the freedom of religion of others should be respected. His delegation was prepared to support any amendments which would strengthen article 13, and would therefore vote in favour of the Egyptian amendments.

Mr. KAPSAMBELIS (Greece) said that the right to maintain or change religion was fully recognized in his country. He would therefore vote for the Egyptian amendments, although he agreed with the Lebanese representative that the right to change one's religion implied the right to maintain it. He would also vote for the French amendments, but would abstain on the United Kingdom amendments. He did not agree with the critics of the phrase "only to such limitations as are pursuant to law" in article 13, paragraph 2: the closing paragraph of the paragraph in question explained to some extent what those limitations were.

Mr. KOVALENKO (Ukrainian Soviet Socialist Republic) said that he was prepared to vote for article 13 and for the Egyptian amendments to it, since in his own country everyone's freedom to maintain or change his religion, or to profess none, was fully recognized. The United Kingdom wanted the word "order" to be replaced by the words "prevention of disorder" but he would vote against all such proposals.

/Mr. CASSIN

Mr. CASSIN (France) said with reference to his amendments, that he still felt that "individuellement ou collectivement" was better than the corresponding French wording in the Declaration, which had been drafted largely in English, and that the order he proposed for the final words in paragraph 1 was more logical.

He was ready to accept some of the United Kingdom amendments, such as the deletion of the words "reasonable" and "fundamental", and to agree that, in the English text, "prévues par la loi" might be better rendered by "prescribed by law" than "pursuant to law"; but "ordre public" was far better in French than "prevention of disorder", since it referred not merely to the prevention of street rioting but to the general principles governing society. It was a much broader conception, extending, for example, to the protection of freedom of religion by the courts, and he strongly urged its retention.

Mr. HOARE (United Kingdom) agreed with the French representative that the adoption of the words "prescribed by law" need not cause any change in the French text. The main point in his second amendment was the replacement of the word "order" by "prevention of disorder"; he had re-arranged the rest of the sentence to allow for that change, and requested that a separate vote should be taken on those words. While "ordre public" was a conception recognized in many countries, its English equivalent, was from the point of view of Anglo-Saxon law tantamount to public policy, and if public policy could be invoked to restrict freedom of religion, the restrictions could be stringent indeed.

He would also be prepared to have a separate vote on the word "fundamental", which he had omitted from his amendment, but to which he had no strong objection.

He asked the Ukrainian representative to consider that the words "prevention of disorder" would permit smaller limitations to be placed on freedom of religion than would the existing text.

The CHAIRMAN stated that the English translation of the words in the first French amendment (E/CN.4/L.155), "individuellement ou collectivement", should be "individually or collectively" and that if the words in the first United Kingdom amendment (E/CN.4/L.145), "prescribed by law" were adopted, the French equivalent would still read "prévues par la loi".

/Mr. ALKOUL

Mr. AZKOUL (Lebanon) said, in explanation of his vote, that he would vote for the first French amendment because it clarified the existing text, and for the United Kingdom amendment to replace "order" by "prevention of disorder" precisely because of the explanation of "ordre public" given by the French representative. If the maintenance of order included action by the courts and enforcement of respect for the general principles governing a society, it was far too broad a basis for limitations of freedom of religion, since those principles might, in some cases be contrary to freedom of religion. The United Kingdom amendment, on the other hand, would permit restrictions only for the purpose of preventing public disturbances, and was therefore entirely reasonable.

The CHAIRMAN invited the Commission to vote on the various amendments to article 13.

The first Egyptian amendment to paragraph 1 (E/CN.4/L.187) point 1 was adopted unanimously.

The first French amendment, to replace the words "either alone or in community with others" by the words "individually or collectively", was adopted by 8 votes to 5, with 5 abstentions.

The second French amendment (E/CN.4/L.155), re-arranging the final words of article 13, paragraph 1, was adopted by 8 votes to none, with 10 abstentions.

Paragraph 1 as a whole, as amended, was adopted unanimously.

The second Egyptian amendment (E/CN.4/L.187) point 2 verbally amended during the discussion beginning with the words "No one shall be subject to coercion", was adopted unanimously, becoming a new paragraph 2.

The CHAIRMAN noted that paragraph 2 of the existing text consequently became paragraph 3.

The United States verbal amendment to replace "shall" by "may" in the English text in paragraph 3 was adopted by 12 votes to none, with 6 abstentions.

/The United Kingdom

The United Kingdom amendment (E/CN.4/L.142) to replace the words "pursuant to law" in the English text by "prescribed by law" was adopted by 12 votes to none, with 6 abstentions.

The second United Kingdom amendment (E/CN.4/L.143) to delete the words "reasonable and" was adopted by 12 votes to 2, with 4 abstentions.

The third United Kingdom amendment (E/CN.4/L.143) to replace the word "order" by the words "prevention of disorder" was rejected by 8 votes to 7, with 3 abstentions.

Mr. MOORE (United Kingdom) thereupon withdrew the reste of his amendment, which was consequential upon the adoption of the words "prevention of disorder."

It was decided, by 8 votes to 4, with 7 abstentions, to retain the word "fundamental" in paragraph 3.

Paragraph 3 as a whole, as amended, was adopted by 15 votes to none, with 3 abstentions.

Article 13 as a whole, as amended, was adopted unanimously.

Mr. AZKOUL (Lebanon) and Mr. MOORE (United Kingdom) explained that they had abstained in the vote on paragraph 3 because the word "order" made it possible to impose undue restrictions on freedom of religion.

Mr. KARGAMBELIS (Greece) stated that he had been able to vote for the first United Kingdom amendment because it affected only the English text.

Mr. WHITLAM (Australia) said that the explicit statements contained in the Egyptian amendments were useful for purposes of emphasis in article 13, but that such elaboration would not be necessary in other articles.

He had abstained in the vote on paragraph 3 because it was closely linked with limitations in other articles, all of which might require reconsideration.

The meeting rose at 1 p.m.

17/6 p.m.