UNITED NATIONS

ECONOMIC
AND
SOCIAL COUNCIL

GENERAL

E/CN.4/SR.328
24 June 1952

ORIGINAL: ENGLISH

COMMISSION ON HUMAN RIGHTS

Eighth Session

SUMMARY RECORD OF THE THREE HUNDRED AND TWENTY-EIGHTH MEETING

Held at Headquarters, New York,
on Monday, 9 June 1952, at 2.30 p.m.

CONTENTS:

Chairman:	Mr. CASSIN	(France)
Rapporteur:	Mr. WHITLAM	Australia
Members:	Mr. KISLT	Belgium
	Mr. VALENZUELA	Chile

52-46755

Members (continued):

Mr. CHENG PAONAN	China
Mr. GHORAL	Egypt
Mr. JUVIGNY	France
Mr. MYROU	Greece
Mrs. MEHTA	India
Mr. AZKOUL	Lebanon
Mr. WAHEED	Pakistan
Mr. BORATYNSKI	Poland
Mrs. RÖSSEL	Sweden
Mr. KOVALENKO	Ukrainian Soviet Socialist Republic
Mr. MOROZOV	Union of Soviet Socialist Republics
Mr. EGARE	United Kingdom of Great Britain and Northern Ireland
Mrs. ROOSEVELT) Mr. SIMGARIAN)	United States of America
Mr. MRACCO	Uruguay
Mr. JEVREMOVIC	Yugoslavia

Also present:

Miss MANAS	Commission on the Status of Women

Representatives of non-governmental organizations:

Category B:

Mrs. de BROECK	Catholic International Union for Social Service
Mr. BERNSTEIN	Co-ordinating Board of Jewish Organizations for Consultation with the Economic and Social Council
Mrs. PARSONS) Mrs. CARTER)	International Council of Women
Mrs. SOUDAN	International Federation of Business and Professional Women
Mrs. ROBB	International Federation of University Women
Miss DINGMAN	International Union for Child Welfare
Miss SCHAEFER	International Union of Catholic Women's Leagues

/Mrs. WALSER

Category B (continued):

Mrs. WALSER	Women's International League for Peace and Freedom
Mr. JACOBY	World Jewish Congress
Mr. PENCE	World's Alliance of Young Men's Christian Association
Mr. RONALDS) Mrs. POLSTEIN)	World Union for Progressive Judaism

Secretariat:

Mr. LIN	Division of Human Rights
Miss KITCHEN) Mr. DAS)	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.166, E/CN.4/L.127, E/CN.4/L.147, E/CN.4/L.157, E/CN.4/L.204, E/CN.4/L.205, E/CN.4/L.134, E/CN.4/L.198, E/CN.4/L.198/Rev.1, E/CN.4/L.206, E/CN.4/L.207, E/CN.4/L.129, E/CN.4/L.138, E/CN.4/L.161) (continued)

Article 17 (continued)

The CHAIRMAN invited the Commission to vote on article 17 and the various amendments to it, beginning with the United States amendment (E/CN.4/L.204) to the Yugoslav amendment, followed by the USSR amendment (E/CN.4/L.127), which, if adopted, would be used as an addition to whatever text the Commission decided on for article 17.

The United States amendment was rejected by 9 votes to 7, with 1 abstention.

Mr. KOVALENKO (Ukrainian Soviet Socialist Republic) asked for a separate vote on the words "of fascist or nazi views or".

These words were rejected by 14 votes to 3 with 1 abstention.

/Mr. KOVALENKO

Mr. KOVALENKO (Ukrainian Soviet Socialist Republic) asked for a roll-call vote on the remainder of the USSR amendment.

A vote was taken by roll-call.

Egypt, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Poland, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Uruguay, Yugoslavia.

Against: France, Greece, India, Lebanon, Sweden, United Kingdom of Great Britian and Northern Ireland, United States of America, Australia, Belgium, Chile, China.

Abstaining: Egypt, Pakistan.

The USSR amendment (E/CN.4/L.127) was rejected by 11 votes to 5, with 2 abstentions.

The Yugoslav amendment (E/1992, annex III, section A) was adopted by 8 votes to 7, with 3 abstentions.

The CHAIRMAN stated that, as the Yugoslav amendment had been a total substitution for article 17, it had become a new article 17, and the other amendments to the original article were no longer before the Commission.

The new article 17, as a whole, was adopted by 11 votes to 6, with 1 abstention.

Article 18

Mr. JEVREMOVIC (Yugoslavia) said, in introducing his amendment (E/1992, annex III, section A), that the purpose of article 18, paragraph 1, was to prevent abuses of civil and political rights at the expense of the rights and freedoms of others. The closing words of that paragraph, however, failed to achieve that purpose because the limitations contained in the covenant were already so broad as to permit the virtual annulment of the rights set forth in it. The Yugoslav amendment would ensure that States could use the limitative powers granted them in the various articles only to the extent that such action was compatible with the purposes of the Charter and the principles of the Universal Declaration of Human Rights. Unless that amendment was adopted,

/a fascist

a fascist State could, under the covenant, legally suppress civil and political rights in the name of public order. To avert such a danger, it must be made clear that the order in question must not be contrary to the purposes of the Charter and the principles of the Declaration; and article 18 presented the last opportunity to improve the covenant in that respect.

Mrs. ROOSEVELT (United States of America) remarked that the United States amendment (E/CN.4/L.134) introduced the two changes proposed by her delegation for the corresponding article in the covenant on economic, social and cultural rights; both were intended to broaden the scope of the text.

She was prepared to support the Chilean amendment (E/CN.4/L.198), with a few drafting changes which would improve the English text.

The Yugoslav amendment was unacceptable because it contained a limitation which would apply to all the articles in the covenant on civil and political rights, whereas the Commission had decided against a general limitation clause in that covenant, some articles of which should not be subject to any limitations. By referring to the Declaration, the Yugoslav amendment would make the limitations contained in article 29 of that document apply to all the articles of the covenant. Furthermore, at the Commission's fifth session the Yugoslav delegation had introduced an amendment to article 18 which would make the entire covenant subject to the provisions of article 2, paragraph 7 of the Charter, and the reference to the Charter in the present Yugoslav amendment was no doubt intended to have the same effect. To enable States accused of violating civil and political rights to say that the matter was one which fell within their domestic jurisdiction would seriously weaken such international implementation machinery as might be set up for the enforcement of the covenant. The Yugoslav amendment was therefore a far more sweeping limitation than any contained in the covenant, and she would vote against it.

Mr. VALENZUELA (Chile) accepted the drafting changes of the United States representative, which did not apply to the original Spanish text, and would issue a revised text of his amendment embodying them.

/Mr. DORATYNSKI

Mr. BORATYNSKI (Poland) moved an amendment to the revised Chilean text, inserting the following: "if they are not contradictory to the provisions and spirit of the present Covenant and the Charter of the United Nations" after the words "or custom". As he had moved a similar amendment to the corresponding article in the other covenant, he would not enlarge upon its purpose beyond remarking that no derogation from the covenant should be permitted pursuant to law, conventions, regulations or custom which were in contradiction with either the Charter or the covenant.

Mr. KYROU (Greece) drew attention to the fact that the original Chilean amendment had followed the text adopted by the Commission for the corresponding article in the other covenant; while he had no objection to the text as amended by the United States, he thought the same language should be used in both articles.

Mr. NISOT (Belgium) observed that the Commission should not discuss an article which it had already adopted in connexion with the covenant on economic, social and cultural rights, but should simply decide whether or not to include that article in the present covenant in the same form.

Mr. JUVIGNY (France) said that, while he did not object to the Chilean amendment, he preferred the original text of article 18, as contained in document E/1992, with a minor French amendment, for reasons expounded at length during the earlier discussion of the article. As settled during that discussion, the United States amendment to change "laws" to "law" did not affect the French text, which should remain "aux lois". The Polish amendment was still unacceptable to his delegation as it would still result in a vicious circle.

Mr. JEVREMOVIC (Yugoslavia) introduced a revised text of his amendment which eliminated all ambiguity and made it clear that its purpose was not to limit the free exercise of human rights, but to restrict the limitations which the covenant would permit States to impose on those rights.

Mr. SIMSARIAN (United States of America) remarked that the new Yugoslav text was open to precisely the same objections as the old, and he was therefore unable to accept it.

/Mr. MOROZOV

Mr. MOROZOV (Union of Soviet Socialist Republics) said that, whatever efforts it made, the United States delegation would never succeed in altering any of the provisions in the Charter save by the regular procedure of amending the Charter provided for in that instrument. Thus, the provisions of article 2, paragraph 7 could not be circumvented merely by failing to mention them in the covenant.

The CHAIRMAN stated that he proposed to suspend the meeting until the revised Chilean and Yugoslav amendments (E/CN.4/L.198/Rev.2 and E/CN.4/L.206) and the Polish amendment (E/CN.4/L.207) had been circulated.

The meeting was suspended at 3.42 p.m. and was resumed at 4.25 p.m.

Mr. NISOT (Belgium) opposed the revised Yugoslav amendment (E/CN.4/L.206). The covenant should be self-contained, whereas that amendment brought in two instruments, the Declaration and the Charter, from outside. Furthermore, the reference to the Charter might deter non-Member States from adhering to the covenant. The Polish amendment (E/CN.4/L.207) to the revised Chilean amendment (E/CN.4/L.198/Rev.2) was open to the same objection. He could accept the revised Chilean amendment if the word "signataire" in the French text was corrected to read "contractant".

Mr. MOROZOV (Union of Soviet Socialist Republics) said that paragraph 1 of the original text was acceptable, but paragraph 2 was not, because it would nullify the article on the right of peoples and nations to self-determination (E/CN.4/663) by permitting inequitable unilateral treaties to be used as a justification to deprive a people of its own means of subsistence. He could accept the revised Chilean amendment only if it was amended as proposed by the Polish delegation.

Mr. HOARE (United Kingdom) opposed the revised Yugoslav amendment (E/CN.4/L.206) because it omitted an important provision, already accepted by the Commission, that the covenant could not be invoked in favour of any activity aimed at restricting fundamental human rights or freedoms to a greater extent than was authorised by the covenant. He agreed with previous speakers' objections to the reference to the Charter, in which the statement

/of the purposes

of the purposes and principles of the United Nations was far more general than were the particular stipulations in the draft covenant. Furthermore, the reference to the Charter was inconsistent with the reference earlier in paragraph 1 to groups and persons, since the Charter dealt only with the obligations of States. The revised Chilean amendment to paragraph 2 (E/CN.4/L.195/Rev.1) was not in itself open to objection, but it did not seem to be covering quite the same ground as the original text -- the situation in which a particular provision of law or existing conventions might be regarded as conflicting in some way with the terms of the covenant. The revised Chilean amendment introduced the subjective notion of the lesser or greater extent, whereas the existing text dealt simply with apparent non-conformity between existing law and the covenant. The Polish amendment (E/CN.4/L.207) assumed a proposition that the Commission could not possibly entertain, that any guarantee of a fundamental human right could be contrary to the Charter. It merely confused the Chilean text, which was clear enough, although inadequate.

Mr. BORATYNSKI (Poland) maintained that inequitable law, conventions, regulations and custom contradictory to the provisions and spirit of the Charter certainly did exist and must not be used to restrict or derogate from any fundamental human right. He asked whether the Chilean representative would accept the Polish amendment and incorporate it in his text, as he had on the previous occasion in connexion with the other draft covenant.

Mr. VALENZUELA (Chile) replied that he would accept the Polish amendment, but that it should be put to the vote separately.

Mrs. ROOSEVELT (United States of America) said that the inclusion of the Polish amendment in the Chilean text would confuse it. She would support the Chilean proposal unamended. Under the Polish amendment a lower standard might prevail if there was a conflict between existing law and the terms of the covenant.

/Mr. JEVREMOVIC

Mr. JEVREMOVIC (Yugoslavia) said that his revised amendment did not restrict human rights but only limited the State's right to restrict them. The limitations in the body of the draft covenant were so broad that they might be interpreted arbitrarily. He could not agree with the objections raised against his reference to the Charter. The principle had been stated in Article 103 of the Charter itself and could properly be repeated in the draft covenant. He asked that the vote on the revised Yugoslav amendment (E/CN.4/L.206) should be taken by roll-call.

A vote was taken by roll-call.

Chile, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Uruguay, Yugoslavia.

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

Abstaining: Egypt, Pakistan, Poland, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics.

The revised Yugoslav amendment (E/CN.4/L.206) to paragraph 1 of article 18 was rejected by 11 votes to 2, with 5 abstentions.

The original text of paragraph 1 (E/1992, annex I) was adopted unanimously.

The phrase in the revised and amended Chilean amendment (E/CN.4/L.198/Rev.1) to paragraph 2, which had originally appeared in the Polish amendment (E/CN.4/L.207), was rejected by 10 votes to 7, with 1 abstention.

The remainder of the revised Chilean amendment (E/CN.4/L.198/Rev.1) to paragraph 2 was adopted by 15 votes to none, with 3 abstentions.

Article 18 as a whole, as amended, was adopted by 13 votes to none, with 5 abstentions.

/The CHAIRMAN

The CHAIRMAN asked the Commission to decide whether it wished to take up the numerous proposals for additional articles (E/CN.4/L.166 and E/CN.4/L.120) or to complete articles 1 and 2 and the preamble, and when it wished to turn to the remainder of its agenda (E/CN.4/642).

After a procedural discussion, Mr. KOVALENKO (Ukrainian Soviet Socialist Republics) and Mr. MOROZOV (Union of Soviet Socialist Republics) proposed that the Commission should proceed with the examination of articles 1 and 2 and the preamble and then take up the additional articles proposed for inclusion in the draft covenant on civil and political rights, since the majority of the Commission appeared to be unwilling to take up the additional articles, in particular the USSR proposal (E/CN.4/L.120), first, as Mr. Kovalenko and Mr. Morozov would have preferred.

It was so decided.

The CHAIRMAN thought it would be wiser to decide at a later stage when the remainder of the agenda should be examined.

It was so agreed.

Article 1

The CHAIRMAN noted that three delegations had submitted amendments to article 1: the United States (E/CN.4/L.129), France (E/CN.4/L.161) and the United Kingdom (E/CN.4/L.138).

Mrs. ROOSEVELT (United States of America) said that, in order to facilitate the Commission's work, the United States delegation withdrew its amendment to article 1 (E/CN.4/L.129).

Mr. JUVIGNY (France) introduced the French amendments to article 1 (E/CN.4/L.161) and explained that the first amendment was intended to avoid the possibility of a literal interpretation which would exclude from the application of article 1 individuals who were subject to the jurisdiction of a signatory State when they were not within the territory of that State.

/Under the

Under the present text of paragraph 3 (b), a system of alternative remedies was envisaged by political, administrative or judicial authorities. While judicial remedy was preferable, in the present state of affairs it would be impossible to impose upon States the immediate obligation to provide such remedy. Accordingly, the French amendment stressed the need to develop judicial remedies which included administrative as well as judicial tribunals -- without, however, obliging States to set up appeals machinery at once to cover all cases.

The other French amendments to article 1 related to matters of drafting only.

Mr. BOARE (United Kingdom) said that the United Kingdom delegation wished to facilitate the Commission's work, but pointed out that one of its amendments to article 1 (E/CN.4/L.138) raised a fundamental point which might involve lengthy discussion. The United Kingdom proposed the deletion of paragraph 2 and the addition of an article on reservations, a question which was bound up with the provision of paragraph 2 whereby States undertook "to adopt within a reasonable time such legislative or other measures as may be necessary to give effect to the rights recognized in this Covenant." The question of whether to make provision for reservations must be decided before paragraph 2 was accepted. He therefore suggested that the Commission should reserve its decision on article 1, paragraph 2, until it had considered the matter of reservations.

He explained that each paragraph of article 1 was self-sufficient and could be discussed separately. In the third paragraph, the United Kingdom proposed deletion of the reference to political authorities as competent to determine remedies. It was obviously objectionable to leave quasi judicial decisions to political authorities. In the light of the system prevailing in a number of countries, the United Kingdom proposed that that function should be performed by competent administrative as well as judicial authorities.

Mr. MOROZOV (Union of Soviet Socialist Republics) said that at the present stage the Commission should limit its discussion to amendments to article 1. The United Kingdom proposal for the deletion of paragraph 2 and the addition of a new article on reservations was unprecedented and would unduly complicate the Commission's work. He pointed out that under

resolution 546 (VI) of the General Assembly, the Commission was required to include a separate clause on reservations in the covenant, but suggested that the United Kingdom delegation should withdraw its proposal on reservations and present it at a later stage when the Commission considered new articles.

Mr. VALENZUELA (Chile) said that the Chilean delegation supported the French amendments to article 1 and the United Kingdom amendment to paragraph 3 (b).

He noted that resolution 546 (VI) of the General Assembly, which had been supported by a majority of the members of the Commission, called for the preparation of "one or more clauses relating to the admissibility or non-admissibility of reservations and to the effect to be attributed to them." A decision of principle was therefore essential but in view of the legal complexities of the matter and the relatively short time remaining before the close of the session, it would be difficult to enter into the substance of the question, particularly in connexion with a part of article 1.

In his opinion it would be advisable to separate the question of reservations from the discussion of article 1 and to agree to discuss the substance of the question of reservations at a later stage.

Mr. HOARE (United Kingdom) said that he was in substantial agreement with the representatives of the USSR and Chile in that he did not wish to enter into the complex question of reservations at that stage.

He pointed out, however, that a prior decision of principle on the admissibility of reservations was involved in the discussion of article 1, paragraph 2 because in the opinion of the United Kingdom delegation the provision in that paragraph, "within a reasonable time" allowed States almost the equivalent of a reservation. In order to obviate the necessity of discussing reservations at that stage, he had suggested that the Commission should reserve the entire question of paragraph 2 until it decided at a later stage on the general question of whether or not to admit reservations. If there was any objection to the procedure he had proposed, he would be obliged to enter into the substance of the matter because the question of reservations greatly affected the propriety of paragraph 2.

/Mr. MOROZOV

Mr. MOROZOV (Union of Soviet Socialist Republics), supported by Mr. KOVALENKO (Ukrainian Soviet Socialist Republics), agreed with the representative of Chile that there should be no discussion of any aspect of the question of reservations in connexion with any part of article 1. The Commission should confine itself to the discussion of amendments to article 1 and deal with the United Kingdom proposal on reservations as a new article at a later stage. In his opinion there was no connexion between article 1, paragraph 2 and the question of reservations.

Mr. HOARE (United Kingdom) maintained that there was a very close connexion between article 1, paragraph 2 and the question of reservations.

The meeting rose at 5.55 p.m.