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Sixth Session

SUMMARY RECORD OF THE HUNDRED AND SIXTIETH MEETING

Held at Lake Success, New York,
on Wednesday, 19 April 1950, at 11 a. m.

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Article 16

Article 17

Chairman:

Mrs. ROOSEVELT

United States of America

| | | |
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| <u>Members:</u> | Mr. WHITLAM | Australia |
| | Mr. NISOT | } Belgium |
| | Mr. STEYAERT | |
| | Mr. SANTA CRUZ | } Chile |
| | Mr. VALENZUELA | |
| | Mr. CHANG | China |
| | Mr. SORENSON | Denmark |
| | Mr. RAMADAN | Egypt |
| | Mr. ORDONNEAU | France |
| | Mr. KYROU | Greece |
| | Mrs. MEHTA | India |
| | Mr. MALIK | Lebanon |
| | Mr. MENDEZ | Philippines |
| | Miss BOWIE | United Kingdom of Great Britain and Northern Ireland |
| | Mr. SIMSARIAN | United States of America |
| | Mr. ORIBE | Uruguay |
| | Mr. JEVREMOVIC | Yugoslavia |

Representatives of non-governmental organizations on the Register:

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| Mr. LEWIN | Agudas Israel World Organization |
| Mr. EASTMAN | } Commission of the Churches on International Affairs |
| Mr. NOLDE | |
| Mr. BERNSTEIN | Co-ordinating Board of Jewish Organizations |
| Mr. HUNTINGTON | Friends World Committee for Consultation |
| Miss TOMLINSON | International Federation of Business and Professional Women |
| Miss SCHAFFER | International Union of Catholic Women's Leagues |
| Mr. PERLZWEIG | World Jewish Congress |

/Secretariat:

Secretariat:

| | |
|-------------------|---|
| Mr. LIE | Secretary-General |
| Mr. CORDIER | Executive Assistant to the Secretary-General |
| Mr. COHEN | Assistant Secretary-General in charge of the Department of Public Information |
| Mr. LAUGIER | Assistant Secretary-General in charge of the Department of Social Affairs |
| Mr. HUMPHREY | Director, Division of Human Rights |
| Mr. SCHWELB | Assistant Director, Division of Human Rights |
| Mr. LIN MOUSEFENG | Secretary of the Commission |

STATEMENT BY THE PRESIDENT OF CHILE

1. The CHAIRMAN welcomed the President of Chile to the Commission on Human Rights and invited him to address the Commission.

President Gonzalez Videla took a seat at the Council table.

2. President GONZALEZ VIDELA said he was vitally interested in the work of the Commission on Human rights. As a delegate to the San Francisco Conference, he had participated in the drafting of the Preamble and the first part of the Charter, in which the fundamental principles of human rights were set forth. For the Latin American democracies, which were daily struggling to maintain a stable regime against the attacks of those who wished to undermine their freedom, it was particularly gratifying to note that in the Universal Declaration of Human Rights the United Nations had set forth a firm definition of the principles proclaimed by the Charter. Moreover, the statement that the Universal Declaration of Human Rights did not authorize any group or regime to use their rights for the purpose of destroying democratic nations was vital to the preservation of those Governments which were truly representative of their peoples.

3. He congratulated the Chairman and the Commission on their untiring efforts to preserve human freedoms and to guarantee the enjoyment of fundamental human rights to all.

/4. In spite

4. In spite of certain statements which had been made in the Commission, his country had always observed and respected human rights and had faithfully adhered to the principles laid down in the Chilean Constitution, the Universal Declaration of Human Rights and the Resolutions adopted at the Bogota Conference.

5. The Chilean Government and the Chilean people firmly believed that nations could live together in peace, and to that end would continue to observe the principles laid down by the Universal Declaration of Human Rights.

6. The CHAIRMAN thanked President Gonzalez Videla for having come to address the Commission.

President Gonzalez Videla withdrew.

DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS (E/1371, E/CN.4/353/Add.10, E/CN.4/360, E/CN.4/360/Corr.1, E/CN.4/365, E/CN.4/382, E/CN.4/415, E/CN.4/424, E/CN.4/429) (continued)

Article 16

7. The CHAIRMAN said that the representative of the Agudas Israel World Organization had asked to speak to the Commission on article 16. As there were no objections, she invited the representative of that organization to take a seat at the Council table.

Mr. Lewin, representative of the Agudas Israel World Organization took a seat at the Council table.

8. Mr. LEWIN (Agudas Israel World Organization) said that religious freedom was based on the right of men to teach religion. Without that right, religious freedom was meaningless for religion depended essentially on the right to have its precepts taught.

9. The obligation to provide religious teaching for children, which was clearly set forth in the Old Testament, lay with their parents. The draft covenant on human rights had originally provided for explicit protection of the rights of parents to select the proper religious teaching for their children, and at the second session of the Commission on Human Rights the Drafting Committee had proposed that a provision to that effect should be included in the Covenant.

/10. Unfortunately,

10. Unfortunately, that suggestion had not been retained. The word "teaching", however, had remained as part of the entire concept of "manifestation of religion", which was covered by article 18 of the Universal Declaration of Human Rights and which had been taken over into the draft covenant; it should be understood as an implicit safeguard for the right of parents to choose the religious education of their children. Moreover, paragraph 3 of article 26 of the Universal Declaration of Human Rights supported that contention.

11. The main question which the Agudas Israel World Organization raised was: what sort of religious teaching should be given to orphans?

12. The covenant on human rights should not fail to protect the rights of orphans. Moreover, their rights had traditionally been the concern of great minds in the past, who had also stressed the importance of continuing the education of orphans as their parents would have wished.

13. With regard to the religious teaching of orphans, there were three ways of dealing with the problem. First, they could be left entirely without religious teaching. Secondly, all denominations could attempt to convince orphans to adopt their teachings. Thirdly, the presumed wishes of the parents could be taken into consideration and the orphans could be educated in the religion of their parents until they were old enough freely to choose their faith. The third alternative was clearly the best and the most consistent with the principle already adopted in paragraph 3 of article 26 of the Universal Declaration of Human Rights.

14. At the fifth session of the Commission on Human Rights, therefore, his organization had suggested that a second paragraph should be added to article 16 of the draft covenant reading as follows:

"No one shall be denied the right to give and receive any form of religious teaching. In the case of a minor, the parents shall be free to choose the religious instruction he shall receive. Children whose parents were killed in a war or other catastrophe shall be brought up in the religion of their parents."

15. That text stressed the case of war orphans for two reasons. First, the practical problem arose after a war when children often had lost both parents, whereas in peace time one parent usually survived and could care for the child. Secondly, the duty of the State to assume the responsibilities of parents who had died in the war was even more obvious.

/16. The representative

16. The representative of the Philippines, however, had felt that not only war orphans should be protected by the Covenant with regard to religious education and he had proposed a different formula.

17. The Philippine proposal had not been accepted, and article 16 of the draft covenant, as it stood, merely repeated the provisions of article 18 of the Universal Declaration of Human Rights, and added so broad a limitation clause that the provision on religious freedom was practically nullified. The Government of the Philippines in its comment on article 16 had rightly asked for the deletion of the limitation clause since religious persecution or intolerance was and always had been based on pretexts such as "public safety, order, health or morals".

18. The Agudas Israel World Organization wholeheartedly endorsed the Philippine comment and asked for the deletion of the second paragraph of article 16.

19. Mr. Lewin asked the Commission on Human Rights to reconsider the question of orphans and to adopt the provision "children whose parents were killed in a war or other catastrophe shall be brought up in the religion of their parents," which had been proposed by his organization. He pointed out that since the fifth session of the Commission on Human Rights there had been a widespread feeling in many countries that such a provision should be introduced into the covenant.

20. Jews were particularly interested in the clause. There were many Jewish war orphans in Europe who were not being educated in the Jewish faith, and whom the Jews claimed in the name of their murdered parents. While acknowledging the noble action of those Christians who had saved the Jewish children, they asked, nevertheless, that the children should be returned to them.

21. The clause did not mention any specific religion. If adopted, however, it would help to substantiate the Jewish claim and would lend moral support to the Jewish communities in many countries in their efforts to get back the Jewish children.

22. A clause in the Covenant on war orphans furthermore would help to solve many tragedies, and therefore he appealed to the Commission to reconsider the decision it had taken the previous year. The victims of Nazi oppression had the right to expect the Commission to speak in their behalf.

/23. Should no

23. Should no clause on war orphans be inserted in the covenant, however, he asked the Commission to adopt the following resolution:

"The Commission on Human Rights,

"CONSIDERING that during World War II the Nazi oppressors engaged in a systematic extermination of Jews wherever they could be found, thereby murdering six million members of the Jewish faith with unparalleled cruelty; and

"CONSIDERING that in many cases Gentile neighbors or friends of Jewish victims of Nazi persecution concealed and gave refuge to their small children, a noble action displaying great generosity; and

"CONSIDERING that the conclusion of the war and the cessation of the conditions of duress prevailing when such children were placed in friendly homes have not always resulted in the return of such surviving orphans to the religion in which their parents would have brought them up; and

"CONSIDERING the principle that parents have the right to choose the religion of their children and that the closest surviving relatives stand in loco parentis when the parents are dead; and

"CONSIDERING that the aforesaid Nazi persecutions have frequently resulted in the death of all relatives of such Jewish orphans so that it is impossible to locate any relatives;

"RESOLVES that it is desirable that the presumed will of the deceased parents of all children made orphans by Nazi racial and religious persecution be respected and that such children be given the opportunity to continue their original way of life and be educated in the religion of their victimized parents;

"RECOMMENDS TO THE ECONOMIC AND SOCIAL COUNCIL THAT IT REQUEST:

"(1) the Governments of those countries in which the surviving children of the victims of Nazi oppression still exist to enable the Jewish communities in such nations to locate all such children of Jewish extraction;

"(2) such Governments to adopt such measures as would lead to:

"(a) the education in the Jewish religion of the surviving Jewish orphans until such time as they become of sufficient age to make free and independent decisions as to their religion;

"(b) the appointment of guardians of such orphans who are members of the same faith as their murdered parents."

The representative of the Agudas Israel World Organization withdrew.

24. The CHAIRMAN said that the representative of Lebanon could not be present at that meeting and had asked that the discussion of article 16 should be deferred. If there were no objections, therefore, she suggested that further discussion of article 16 should be postponed until the next meeting and that the Commission should begin consideration of article 17.

It was so agreed.

ARTICLE 17

25. The CHAIRMAN called for discussion of article 17, dealing with the important question of freedom of information and drew attention to resolution 313 (IV) of the General Assembly and the resolution adopted on 13 February 1950 by the Economic and Social Council.

26. Miss BOWIE (United Kingdom) noted that resolution 313 (IV) of the General Assembly had requested the inclusion of adequate provisions on freedom of information in the covenant, with due regard to the work of the Conference on Freedom of Information and of the Third Committee of the General Assembly. Replies received from Governments indicated that provisions guaranteeing freedom of information were generally regarded as an essential part of the covenant. It was the hope of the United Kingdom delegation that its proposal for article 17 carried out the intentions of the General Assembly resolution and achieved a satisfactory synthesis of the splendid analytical work accomplished by the Conference on Freedom of Information and the Third Committee. Previous consideration of the subject of freedom of information provided a fine example of the type of preparatory work which might advantageously have been carried out in connexion with a number of other articles of the covenant.

27. The United Kingdom agreed with the United States in favouring limitation of the article on freedom of information to governmental interference only. Interference by individuals with the freedom of information of others could be controlled in other ways. Moreover, extension of control to individuals would require much fuller treatment of the question.

28. While paragraph 1 of the United Kingdom proposal followed the general lines of the corresponding paragraph of the United States text, the United Kingdom delegation attached great importance to the final words of its text " or by

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duly licensed visual or auditory devices". Radio and television in the United Kingdom were operated through a highly commendable system of a public corporation controlled by a board of directors and free from government censorship.

29. Paragraph 2 of the United Kingdom text stressed the fundamental point that rights and privileges necessarily involved duties and responsibilities. Limitations on freedom of expression were necessary in the interest of order and decency. The United Kingdom felt that its formula "prevention of disorder or crime" was preferable to the United States expression "public order" which was too broad. Furthermore, the United Kingdom considered the provision protecting the "reputations or rights of other persons", as extremely important. It should also be noted that the provision for "preventing the disclosure of information received in confidence" involved more than the concept of public security. It was designed to cover information acquired by Government servants in the course of their official duties.

30. Much of the United Kingdom text was based on the work of the Third Committee, and the United Kingdom hoped that its proposal, though more particularized than other proposals, would commend itself to the Commission.

Mr. Chang took the Chair.

31. Mr. SIMSARIAN (United States of America) wished to summarize the intent and scope of the United States proposal for article 17, which had been prepared on the basis of detailed consideration of the history of the question of freedom of information.

32. The United States had been pleased to note the strong support at the fourth session of the General Assembly for inclusion of provisions on freedom of information in the covenant. Actually a covenant of basic freedoms was inconceivable without a provision on freedom of information, one of the most basic of freedoms.

33. Few freedoms were in greater jeopardy in contemporary times than freedom of information, which was less secure than it had been twenty years previously. It was illuminating to note that freedom of information was one of the first freedoms to be stamped out when undemocratic regimes seized power. The systematic indoctrination of entire peoples with party dogma and propaganda, the denial of access to outside sources of information and the deliberate conditioning of peoples by controlled information services to hate and fear the outside world were forces that constituted threats to world peace. The principle of freedom of information must not be compromised by attempts to accommodate it to such forces.

34. Care must be taken to avoid the notion that the article under consideration was concerned primarily with freedom of speech and the press. That freedom was but one aspect of freedom of information; the larger aspect was freedom of expression for everyone. Actually freedom of speech and of the press did not exist apart from freedom of expression for all.

35. Although the United States was devoted to complete and unqualified freedom of speech and of the press, it was equally devoted to freedom of inquiry and teaching, to freedom of artistic expression, to the rights of every person to gain information from any source. Those components of freedom of information were part of the guarantees proposed by the United States in article 17. Some of the other proposals for article 17 tended to be over-concerned with speech and the press and gave too little consideration to the other equally essential components.

36. The United States proposal was deliberately framed to make it clear that the freedom to be guaranteed was against governmental interference. Extension to the field of private infringements on freedom of information would create complications and give rise to many unpredictable situations. Throughout the consideration of the problem, limitation to governmental interference had been recommended and it seemed inadvisable to disregard the recommendations of experts at the current stage.

37. The United States text included general limitations because the United States delegation was convinced that the principle of specific limitations was impractical and unwarranted.

38. The first paragraphs of the proposals of the United States and the United Kingdom were fairly close, but the United States was disturbed by the unfortunate expression "duly licensed visual or auditory devices" in the United Kingdom text particularly since no standard was provided for the issuance of licences. Denial of licences should not be authorized unless adequate reasons were given. Actually, the point was adequately covered by the limitations in the second paragraph.

39. Like the United States proposal, paragraph 2 of the United Kingdom proposal contained general limitations. The United States was, however, concerned because the United Kingdom text listed additional exceptions which might pave the way for excessive limitations on freedom of information. The formula "disorder or crime" was too general. Dictators might enact legislation making crimes of acts not normally considered such and thereby bypass the provisions

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of the covenant. The provision for "maintaining the authority and impartiality of the judiciary" was not clear and might serve to broaden the limitations on freedom of expression even further.

40. The presentation of the United Kingdom text in the General Assembly had led to the submission of a great number of additional limitations. For that reason the question had been referred to the Commission on Human Rights in the hope that its experience with articles 16, 18 and 19 would serve as a useful guide.

Mrs. Roosevelt resumed the Chair.

41. Mr. SORENSON (Denmark) noted that the French amendment (E/CN.4/365, French text) differed in at least one important respect from the proposal made by the French delegation at the Geneva Conference and contained in the report of the fifth session of the Commission.

42. Mr. ORDONNEAU (France) explained that two alterations had been made in the original French text: first, the reference to oral instructions had been deleted because that matter might be more usefully discussed in relation to an article on education; secondly, a sentence had been added to paragraph 2 calling for the removal of obstacles to freedom of information. Otherwise, the French text was identical with that submitted at the Geneva Conference.

43. The work undertaken by various United Nations organs during the three years on the subject of freedom of information had been full of disappointments and remained inconclusive. The Commission must, however, bear in mind that the experts at the Conference on Freedom of Information held in Geneva in 1948 had unanimously adopted three conventions, a total of some sixty articles. Yet the Commission was now being asked, in a brief article, to include in the covenant "adequate provisions" on freedom of information (General Assembly resolution 313 (IV)). Consequently, a single article on the subject must necessarily be inadequate, and the plan to adopt one or more separate detailed conventions to offer full safeguards of the basic freedoms of thought, press and information should in no circumstances be abandoned.

44. The Commission must be guided in its work by the full realization of the fact that the covenant could only contain general statements; it could not be expected to deal in detail with the question of freedom of information and to

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enumerate all limitations and exceptions. The French text was not a precise legal formula; it was merely a general statement of the maximum guarantees which could be included in a necessarily inadequate provision.

45. The French delegation had not considered it essential, or even advisable, to stress either aspect of the problem of freedom of information: the passive aspect, respect of that freedom by the State; or the more dynamic aspect, the obligation incumbent upon the State to make its citizens respect it. In so far as the United States amendment dealt with the first aspect only, it was inadequate. The State was not the only force which might interfere with freedom of information; various groups of its citizens might jeopardize that right unless the Government provided ample safeguards. Both aspects of "interference" could be fully dealt with in a separate convention. The French proposal merely affirmed the right of all citizens to freedom of expression and freedom to receive and impart information. It did not speak of "governmental interference" precisely because it did not wish to limit its definition.

46. Mr. SORENSON (Denmark) felt that the Commission must recognize the urgent need to prevent the infringement of freedom of information by groups outside the Government itself. The importance of such a guarantee had been demonstrated in Denmark when a printers' strike, resulting from a serious labour dispute, had forced the population to rely for news upon two party organs over a two-month period. The event had caused the Danish Parliament to pass a bill urging the settlement of labour disputes by methods which would not interfere with freedom of information. Similar concern had apparently led the French delegation to add a second sentence to paragraph 2 of its text providing that measures should be taken to remove political, economic and technical obstacles likely to interfere with that freedom. It was difficult, however, to envisage how that provision would be applied, particularly in the context of an international agreement. The complexity of the problem forced the Danish delegation to the conclusion that its implementation must be left to the action of individual Governments, taken in the light of the particular conditions prevailing in the country concerned. While he had been prepared to vote in favour of the original French text, as it appeared in the report of the Commission's fifth session, Mr. Sorenson could not accept the second sentence of the revised proposal.

47. The Commission must first decide whether article 17 should merely state that governmental interference should be eliminated as a minimum safeguard of freedom of information, or whether it should include reference to other types of interference and the removal of those further obstacles. It seemed advisable, in order to ensure the widest possible acceptance of the Covenant, to agree in principle on the first point, which formed the common basis of the United States and United Kingdom amendments.

48. There was in fact little difference in the substance of the United States and United Kingdom proposals. The Danish delegation was fully prepared to accept the limitations in the United Kingdom text to which the United States representative had taken exception. It shared the view that radio and television transmission must be duly licensed in order to prevent infringement of free expression over the air. It also agreed that abuse of freedom of expression should be punished in the interests of maintaining the authority and impartiality of the judiciary. Danish law provided, in fact, that during a trial before a jury, and before a verdict had been announced, the press could not comment on the guilt or innocence of the defendant. On the other hand, paragraph 2 of the United States text actually covered those two limitations as well as a third whereby the exercise of freedom of information would be restricted in order to prevent disorder or crime. The phrase "public order" in the United States text was broad enough to encompass all those concepts and might in practice have an even wider application than the specific restrictions listed in the United Kingdom proposal. Accordingly, once the Commission had taken a decision on the scope of article 17, the divergent views on the two texts should be reconciled.

49. Mrs. MEHRA (India) emphasized that freedom of thought and expression, together with freedom of information, were among the most fundamental rights of man. Adequate guarantees of those basic freedoms had been sought assiduously by the Sub-Commission on Freedom of Information, the Geneva Conference and finally the General Assembly itself. The Commission must benefit by the important work accomplished by those bodies.

/50. The Indian delegation

50. The Indian delegation was prepared to support the United Kingdom text of article 17, with one reservation. While it was almost identical with article 2 of the Geneva convention, it omitted the important reference in the latter document to false or distorted reports. To remedy that omission, India was submitting an amendment (E/CN.4/424) to paragraph 2 of the United Kingdom text. If that amendment were included, Mrs. Mehta would vote in favour of the United Kingdom proposal.

51. Mr. MENDEZ (Philippines) and Mr. JEVREMOVIC (Yugoslavia) reserved the right to submit their amendments and make further comments before the Commission voted upon the article.

The meeting rose at 1 p.m.