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Sixth Session

SUMMARY RECORD OF THE ONE HUNDRED AND SIXTY-FOURTH MEETING

Held at Lake Success, New York,  
on Friday, 21 April 1950, at 11 a.m.

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Draft international covenant on human rights (E/1371, E/CN.4/365, E/CN.4/415, E/CN.4/424, E/CN.4/432, E/CN.4/433/Rev.2, E/CN.4/434, E/CN.4/435, E/CN.4/438/Rev.1, E/CN.4/440) (continued)  
Article 17 (continued)

<u>Chairman:</u>	Mrs. F. D. ROOSEVELT	United States of America
<u>Members:</u>	Mr. WHITLAM	Australia
	Mr. NISOT	Belgium
	Mr. VALENZUELA	Chile
	Mr. CHANG	China
	Mr. SORENSON	Denmark
	Mr. RAMADAN	Egypt
	Mr. ORDONNEAU	France
	Mr. KYROU	Greece
	Mrs. MEHTA	India
	Mr. AZKOUL	Lebanon
	Mr. MENDEZ	Philippines
	Miss BOWIE	United Kingdom of Great Britain and Northern Ireland
	Mr. ORIBE	Uruguay
	Mr. JEVREMOVIC	Yugoslavia

Representatives of non-governmental organizations:

<u>Category A:</u>	Miss SENDER	International Confederation of Free Trade Unions (ICFTU)
<u>Category B:</u>	Mr. BERNSTEIN	Co-ordinating Board of Jewish Organizations
	Mr. GROSSMAN	World Jewish Congress
	Mrs. MUDGE	World's Young Women's Christian Association
	Mr. BEER	International League for the Rights of Man
	Mr. NOLDE	Commission of Churches on International Affairs
	Mrs. NOLDE	
	Miss TOMLINSON	International Federation of Business and Professional Women
	Mr. MOSKOWITZ	Consultative Council of Jewish Organizations
<u>Secretariat:</u>	Mr. HUMPHREY	Director, Division of Human Rights
	Mr. SCHWELB	Assistant Director, Division of Human Rights
	Mr. LIN MOUSHENG	Secretary of the Commission

DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS (E/1371, E/CN.4/365, E/CN.4/415, E/CN.4/424, E/CN.4/432, E/CN.4/433/Rev.2, E/CN.4/434, E/CN.4/435, E/CN.4/438/Rev.1, E/CN.4/440) (continued)

Article 17 (continued)

1. The CHAIRMAN placed before the Commission the revised draft of the United States proposal for article 17 (E/CN.4/433/Rev.2) which the Commission had agreed to use as the basic text. She called for the vote on the first French amendment (E/CN.4/438/Rev.1) to the first line of paragraph 1.

That French amendment was not adopted, 5 votes being cast in favour and 5 against, with 3 abstentions.

/2. Mr. ORDONNEAU

2. Mr. ORDONNEAU (France) explained that his second amendment (E/CN.4/438/Rev.1) to the first line of paragraph 1 might be regarded principally as a drafting change. He had already defended its wider implications. A distinction should be drawn between the two aspects of freedom of expression, namely, receiving information and imparting it. The former implied freedom of opinion, the latter freedom of information. These aspects were stated in other parts of the article, so that the reference to it in the first line of paragraph 1 was redundant.

3. Mr. KYROU (Greece) supported the French amendment for the reasons adduced by the French representative.

4. Mr. CHANG (China) stressed the fact that the entire history of article 17 went to show that it had always been regarded as an article dealing with freedom of information rather than with freedom of expression. The repetition of the word "information" in the basic text was fully justified, because the general right was stated first and the specific definitions then followed.

5. Mrs. MEHTA (India) could not agree with the Chinese representative. The fundamental concept was freedom of expression; freedom of information was a narrower concept deriving from that of freedom of expression. She would therefore support the French amendment.

6. The CHAIRMAN, speaking as the representative of the United States of America, explained that she had accepted the insertion of the words "information and" because she had believed that it made the article more precise; the reception of information and ideas was the prerequisite to the ability to express them. Freedom of expression would be incomplete without the freedom to obtain information.

7. Mrs. MEHTA (India) pointed out that the more limited concept, freedom of information, appeared later in the paragraph and should therefore not limit freedom of expression, the broader term, in the first line.

8. Mr. CHANG (China) observed that article 19 of the Universal Declaration of Human Rights covered both the freedom of opinion and the freedom of information -- the prerequisite for forming opinion and expressing it. The Indian delegation itself had originally wished to incorporate the text of that article in the draft covenant. The covenant should not be more restrictive than the Declaration. He would not object to a reproduction of the text of the Declaration, because he agreed with the representative of the United States that the paragraph would be inadequate if the concept of freedom of information was deleted from it.

9. Mr. KYROU (Greece) thought that the addition of the freedom of information restricted the statement of the right to freedom of expression, since information might be regarded only as the passive aspect of expression.

10. Mr. AZKOUL (Lebanon) supported the basic text. Article 17 was the logical continuation of article 16; the two articles together should therefore cover all aspects of the freedom of thought. Article 16 had safeguarded freedom of thought, conscience and religion; the safeguarding of the freedom to express that thought remained to be ensured. The freedom of information was a further aspect of the freedom of expression; the phrase should therefore be retained.

11. Miss BOWLE (United Kingdom) thought that the concepts of both freedom of information and freedom of expression should be retained, because both concepts were covered by the provisions in the remainder of the article, dealing as it did with the seeking and imparting of information and ideas.

12. Mr. CHANG (China) reserved the right to propose that the word "opinion" should be substituted for the word "information" in the third line, should the French amendment be adopted. The substance of article 19 of the Declaration could thus be incorporated in article 17 of the draft covenant, perhaps in a separate paragraph.

13. Mr. WHITLAM (Australia) would support the basic text because the entire history of the article had been bound up with the concept of freedom of information. If, however, the French amendment was accepted, he reserved the  
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right to place before the Commission the question whether the word to be substituted for the word "information" in the third line should not be "thought" rather than "opinion".

14. Mr. ORIBE (Uruguay) observed that two basic freedoms were stated in article 19 of the Declaration, namely, the freedom of opinion and the freedom of expression. The right to freedom of information was also included and defined, but had been clearly differentiated from the other two freedoms. Freedom of opinion was a right which essentially pertained to the individual. He would therefore support any amendment designed to obviate the deletion of the concept of the freedom of opinion from the first line, since the expression "freedom to hold opinions" seemed inadequate. He would suggest that the phrase in the first line should read "the right to freedom of opinion, information and expression."

15. Mr. MENDEZ (Philippines) observed that the expression "freedom of information" in the first line was covered by the words "freedom to receive and impart information" in the third. If the French amendment was rejected, the words "facts and ideas" should be substituted for "information and ideas" in the third line.

16. Mr. ORDONNEAU (France) explained that, in his view, freedom of expression implied freedom of information, which was only one means of expression. To place freedom of information before freedom of expression would be to invert the logical order. He had, however, proposed the deletion of the words "information and" from the first line because their substance was amply covered by the French amendment for the insertion of the words "of all kinds, including facts, critical comment" after the word "information" in the third line (E/CN.4/438/Rev.1).

17. The Belgian representative had suggested at the previous meeting that the right of freedom of opinion should be deleted, as it had already been provided for in article 16. Article 16 had, however, been concerned principally with freedom of conscience and religion. The substance of freedom of opinion would be stated by the reference to "critical comment" which he had proposed for insertion in the third line. The logical order, expressed in the

/French

French amendments (E/CN.4/438/Rev.1), would be the statement of the right to freedom of expression first, and then its extension to ensure freedom of information and opinion. In view of the advantages of that method of exposition, he could not accept the Uruguayan proposal.

18. The CHAIRMAN put to the vote the second French amendment to the first line, proposing the deletion of the words "information and".

That French amendment was adopted by 9 votes to 4, with 1 abstention.

19. Mr. CHANG (China) urged the addition of the words "opinion and" to replace the words "information and" which the Commission had just voted to delete. He pointed out that article 19 of the Universal Declaration of Human Rights referred to "freedom of opinion and expression" and indicated that article 17 of the covenant was intended to supplement article 16 which did not fully cover freedom of opinion.

20. In reply to a question by Mr. WHITLAM (Australia) regarding the repetition which would occur in the rest of the text if the Chinese proposal were adopted, Mr. CHANG (China) noted that similar repetition occurred in article 19 of the Declaration and that therefore the Commission would merely be reinforcing the provisions of the Declaration. If the Commission saw fit, it could add the words "without interference" after the expression "to hold opinions" in lines 2 and 3 of paragraph 1.

21. Mr. VALENZUELA (Chile) admitted that article 19 of the Declaration referred to freedom of opinion but agreed with the statement of the representative of Belgium that it was impossible to interfere with freedom of opinion or to prevent individuals from forming opinions. The goal of the covenant was to implement the Declaration by defending the right to express opinions freely. He therefore was unable to support the proposal to repeat the reference to freedom of opinion.

22. Mr. MENDEZ (Philippines) indicated that he had been compelled to vote in favour of the deletion of "information and" because freedom of information was adequately covered in line 3 of the paragraph. Similarly, he could not support the addition of "opinion and" since line 3 also covered that point.

/23. Mr. ORIBE

23. Mr. ORIBE (Uruguay) pointed out that the Spanish translation of "to hold opinions" in article 19 of the Universal Declaration of Human Rights was "no ser molestado a causa de sus opiniones". The Spanish text thus contained an important element which was absent from the English.

24. Mr. WHITLAM (Australia) agreed that the Spanish and English texts of article 19 of the Universal Declaration were not identical. The Spanish text prohibited molestation for thoughts which were considered as dangerous. He preferred reference to freedom of thought and expression in view of the widespread molestation of individuals for dangerous thoughts in the modern world. Moreover, he favoured the inclusion of "opinion and" in line 1 even at the cost of being redundant.

25. Mr. AZKOUL (Lebanon) recalled that freedom of thought included the right to hold opinions. If, as some delegations claimed, article 16 of the covenant failed to include freedom of opinion, article 17 should contain a suitable reference to it.

26. He suggested that the first paragraph of article 17 might open as follows: "Everyone shall have the right to hold opinions" and that all references to opinion should be deleted from the remainder of the paragraph, which would then be restricted to freedom of expression.

27. Mr. ORDONNEAU (France) agreed with the views of the representatives of Lebanon. Freedom of opinion and freedom of expression were separate concepts which should not be confused. Freedom of opinion was very limited in scope and related only to opinions which were not expressed. While it was true that individuals could not be prevented from forming opinions, it was nevertheless also true that people were often persecuted for opinions which they were presumed to have.

28. Mr. Ordonneau agreed with the representative of Lebanon regarding the distinction between the two concepts but felt that each should be dealt with in a separate article in order to ensure clarity and coherence.

29. Mr. ORIBE (Uruguay) stated that article 16 of the covenant did not apply to freedom of opinion since it merely reproduced article 18 of the Universal Declaration of Human Rights. Freedom of opinion was a fundamental right which must be guaranteed in the covenant.

30. He supported the view of the representative of France that a separate article on freedom of opinion would be helpful in preventing confusion and avoiding complications.

31. Miss BOWIE (United Kingdom) concurred in the statement of the representative of Uruguay that freedom of opinion was a fundamental right which belonged in the covenant. Article 16 related to freedom of religious opinion only.

32. She could not agree with the representative of Belgium that it was impossible to control opinions. In totalitarian countries, opinions were definitely controlled by careful restriction of the sources of information.

33. In her opinion the English, French and Spanish versions of article 19 of the Universal Declaration of Human Rights contained acceptable equivalents.

34. It was also important to bear in mind that molestation might also occur before an opinion was formulated. Without some reference to freedom of thought or opinion as a necessary prerequisite to freedom of expression, there would be a definite gap in the covenant.

35. Mrs. MEHTA (India) recalled her earlier suggestion that article 19 of the text of the Universal Declaration should be placed in article 17 of the covenant. Consequently she would support the addition of "opinion and" as proposed by the representative of China.

36. Noting the fundamental difference between freedom of opinion and freedom of expression, she stated that freedom of opinion must be emphasized.

37. Mr. CHANG (China) agreed with the views of the representatives of the United Kingdom, India and Lebanon and presented a proposal for article 17 which he hoped would also be acceptable to the French delegation. Instead of



two separate articles, he suggested three paragraphs as follows: "1. Everyone has the right to freedom of opinion without interference." The second paragraph would reproduce the text of E/CN.4/433/Rev.2 with the deletion which the Commission had agreed to as well as the deletion of the words "to hold opinions" in lines 2 and 3. Finally a third paragraph would state that the rights referred to in paragraph 2 would be subject to the limitations enumerated.

38. Mr. MENDEZ (Philippines) noted that the discussion indicated general agreement that reference to freedom of opinion was out of context in a draft on freedom of expression. Separation of the two concepts made for smoother language and greater clarity.

39. Mr. ORDONNEAU (France) indicated that there was no real difference between his views and those of the representatives of China and Lebanon. He would not press for two separate articles if the proposed solution made it clear that the limitations referred only to freedom of expression and not to freedom of opinion.

40. Mrs. MEHTA (India) was not in favour of two separate articles or two separate paragraphs. In her opinion the matter was quite simple and separation of the two ideas seemed unnecessary.

41. The CHAIRMAN, speaking as the representative of the United States of America, indicated that the United States would support a separate paragraph 1 as suggested by the representative of China.

42. Miss BOWIE (United Kingdom) thought it inappropriate to insert in the covenant general provisions of the type which had been included in the Universal Declaration of Human Rights. Before accepting the Chinese proposal, she would have to study the proposed text with that consideration in mind.

43. In reply to Mr. NISOT (Belgium), Mr. CHANG (China) said he understood the phrase "without interference" to mean the undesirable type of interference. It should be retained to avoid including a general statement of principle in what should rightly be, as the representative of the United Kingdom had pointed out, a practical legal instrument.

/44. The CHAIRMAN

44. The CHAIRMAN thought the Uruguayan representative's interpretation of the phrase in question was correct.

45. Mr. ORDONNEAU (France) pointed out that the question raised by the representative of Belgium did not affect the French text, which was perfectly clear.

46. Mr. WHITLAM (Australia) preferred the Chinese proposal to the other alternatives which had been suggested. He thought the wording of the last paragraph of the United States text should be retained, however, in order to avoid subjecting freedom of expression to the limitations prescribed.

47. Mr. ORIBE (Uruguay) said that it might be possible to settle the question if his amendment were adopted. The adoption of wording similar to that used in article 19 of the Universal Declaration of Human Rights, would give rise to fewer problems of interpretation and would permit the Commission to get on with its work.

48. Mr. AZKOUL (Lebanon) said he favoured the following text for paragraph 1 of article 17: "Nul ne peut être inquiété pour ses opinions". He would be satisfied with any English draft which reproduced the sense of the French text.

49. Mr. MENDEZ (Philippines) was opposed to the Uruguayan amendment, preferring the Chinese proposal that an additional paragraph on freedom of opinion should be drafted.

50. Mr. KYROU (Greece) agreed with the United Kingdom representative. There was a tendency not to differentiate clearly between the covenant and the Universal Declaration of Human Rights, which he thought could only be harmful to both instruments.

51. Mr. CHANG (China) feared that the Uruguayan amendment would only lead to renewed debate. He thought that both the representative of France, who wished to separate the concept of freedom of expression from that of freedom of opinion, and

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the representative of India, who did not think the two principles should be severed, would be satisfied if those ideas were presented in two separate paragraphs within the same article.

52. He thought it could be left to the Style Committee to prepare a text which would meet the wishes of the Lebanese representative.

It was so decided.

53. Mr. RAMADAN (Egypt) thought the Lebanese text was clear and precise.

54. Mr. WHITLAM (Australia) questioned whether the English text of article 19 of the Universal Declaration of Human Rights was the exact equivalent of the French and Spanish texts. A more accurate translation might be "No one shall be molested because of his opinions." That wording had a more concrete meaning in law and had the further advantage of relating the act of molestation directly to the object of molestation.

55. Mr. ORIBE (Uruguay) pointed out that both freedom of opinion and freedom of expression had been included in one article in the Universal Declaration of Human Rights without prejudice to either concept.

56. Mr. AZKOUL (Lebanon) agreed with the representative of Australia that a better translation of article 19 of the Universal Declaration of Human Rights could be drafted. If the Australian suggestion were adopted, in his opinion the Commission would have done the United Nations a worthy service.

57. Mr. CHANG (China) could accept the Australian text. He wondered, however, whether it would not be better to consider the matter more thoroughly before taking a decision.

58. The CHAIRMAN, speaking as representative of the United States of America, thought that if the Uruguayan amendment were adopted, the limitations set out in the remainder of paragraph 1 of the United States text would refer only to freedom of expression.

59. Miss BOWIE (United Kingdom) could not accept the Australian suggestion. In practice that translation would operate to prevent all types of molestation such as picketing, for example, which would obviously be impractical.
60. Mr. MENDEZ (Philippines) could not accept the Australian suggestion for the same reasons as those expressed by the United Kingdom representative.
61. Mr. AZKOUL (Lebanon) thought, like the Chinese representative, that the Uruguayan amendment would not solve the basic problem confronting the Commission, and he therefore preferred the Chinese proposal.
62. Mr. ORDONNEAU (France) thought further debate was unnecessary as he did not think anyone could fail to support a text which had already been incorporated into the Universal Declaration of Human Rights.
63. Mr. ORIBE (Uruguay) also thought the Commission could proceed to vote on the proposals before it. He considered, however, that if, as a result of the debate, a clause recognizing the principle of freedom of opinion were included in the covenant, members could consider their time had been well spent.
64. The CHAIRMAN, after consultation with the Secretariat, said that, in accordance with rule 60 of the rules of procedure, she would first put to the vote the Chinese proposal to redraft the first paragraph of article 17 as follows:  
"Everyone shall have the right to freedom of opinion without interference."  
That proposal was adopted by 9 votes to 2, with 4 abstentions.
65. In reply to Mr. AZKOUL (Lebanon), the CHAIRMAN said that, as the Chinese proposal had been adopted, the words "to hold opinions" would have to be deleted from the first paragraph of the United States proposal. If the Commission wished, however, she would put that amendment to the vote.

The meeting rose at 1.5 p.m.