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COMMISSION ON HUMAN RIGHTS

Sixth Session

SUMMARY RECORD OF THE ONE HUNDRED AND SEVENTY-SECOND MEETING

Held at Lake Success, New York,
on Thursday, 27 April 1950, at 11 a.m.

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<u>Chairman:</u>	Mrs. ROOSEVELT	United States of America
<u>Members:</u>	Mr. WHITLAM	Australia
	Mr. NISOT	Belgium
	Mr. VALENZUELA	Chile
	Mr. CHANG	China

Members: (continued)

Mr. SORENSON	Denmark
Mr. RAMADAN	Egypt
Mr. CASSIN	France
Mr. THEODOROPoulos	Greece
Mrs. MEHTA	India
Mr. MALIK	Lebanon
Mr. MENDEZ	Philippines
Mr. HOARE	United Kingdom of Great Britain and Northern Ireland
Mr. ORIBE	Uruguay
Mr. JEVREMOVIC	Yugoslavia

Also present:

Mrs. GOLDMAN	Commission on the Status of Women
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Representatives of a specialized agency:

Mr. EVANS Mr. LEMOINE	} International Labour Organisation (ILO)
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Representative of a non-governmental organization in category A:

Miss SENDER	International Confederation of Free Trade Unions (ICFTU)
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Representatives of non-governmental organizations in category B:

Mrs. NOLDE	Commission of the Churches on International Affairs
Mr. HALPERIN	Co-ordinating Committee of Jewish Organizations
Mr. CRUICKSHANK	Inter-American Council for Commerce and Production
Miss TOMLINSON	International Federation of Business and Professional Women
Mr. GROSSMAN	World Jewish Congress

Secretariat:

Mr. SCHWELB	Assistant Director, Division of Human Rights
Mr. LIN MOUSHENG Mr. DAS	} Secretaries of the Commission

DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS (ANNEXES I AND II OF THE REPORT OF THE COMMISSION ON HUMAN RIGHTS ON ITS FIFTH SESSION, DOCUMENT E/1371)(continued)
Article 19 (E/CN.4/365, E/CN.4/453) (continued)

1. The CHAIRMAN recalled that the Commission had already adopted paragraphs 1 and 2 of article 19. Paragraph 3 was the subject of an Uruguayan amendment (E/CN.4/453).
2. She asked the representative of Uruguay whether he would agree to make a slight stylistic change in the English text of his amendment by replacing the words "neither...nor" by the words "either...or".
3. Mr. ORIBE (Uruguay) accepted that amendment. He wished to give the following explanation of his own amendment: the existing text of article 19, paragraph 3, merely established an abstract general principle, while the amendment was aimed at forestalling any possible conflict between the covenant and the conventions referred to in the article.
4. Mr. CASSIN (France) and Mr. NISOT (Belgium) were glad to accept the Uruguayan amendment, which read:
"No provision of this article shall authorize domestic legislation to infringe or to be so applied as to infringe..." (provisional translation).
5. Mr. JEVREMOVIC (Yugoslavia) reiterated his view that the inclusion of paragraph 3 in article 19 would serve no purpose.
6. With regard to the Uruguayan amendment, he did not see how it changed the original text or what conflicts might arise between the covenant and other conventions. If the rights proclaimed in the conventions were the same as those provided under article 19 of the covenant, there was no danger of conflict. On the other hand, if the definitions in the conventions broadened the principle of freedom of association as defined in the covenant, it was obvious that the States signatory to the conventions would be bound to respect them whatever the terms of the covenant. Finally, if the conventions restricted the rights defined in the covenant, it was clear that the provisions of the covenant should prevail.

/ 7. That applied

7. That applied to all conventions, present and future, and involved a principle which should be set forth clearly. Any convention must be able to broaden the rights defined in the covenant; it was only when a convention restricted those rights that its entry into force should be prevented. If conventions of greater authority than the covenant could be concluded, the latter would serve no purpose whatsoever.
8. Before a decision was taken on paragraph 3, that question of principle should be settled through a definition of the relations between the covenant and the various conventions.
9. The CHAIRMAN put the Uruguayan amendment, as amended during the debate, to the vote.
The amendment was adopted by 8 votes to one, with 5 abstentions.
10. The CHAIRMAN put paragraph 3 of article 19, as amended, to the vote.
Paragraph 3 of article 19 was adopted by 9 votes to 2, with 4 abstentions.
11. The CHAIRMAN put to the vote article 19 as a whole, as adopted paragraph by paragraph.
Article 19 as a whole was adopted by 12 votes to none, with 2 abstentions.
12. Mr. HOARE (United Kingdom) wished to explain why he had abstained from voting on article 19.
13. He thought that the new text of paragraph 1 represented a considerable departure from the original text. Moreover, he felt that the English and French versions did not fully correspond.
14. Mr. MALIK (Lebanon) explained that he had voted in favour of article 19 as a whole, although he shared Mr. Hoare's view of paragraph 1.
15. In spite of Mr. Cassin's explanations of the matter, he still believed that the new version weakened paragraph 1; the term "is recognized" was merely an acknowledgment rather than a vigorous expression of a right.

16. He noted with satisfaction that the Commission had adopted the English wording "prescribed by law" in paragraph 2. That was more suitable, both for article 18 and for article 19, than "in conformity with the law". He therefore hoped that in concordancing the various articles of the covenant the Commission would agree to use the term "prescribed by law" for article 18 as well.

17. Mr. JEVREMOVIC (Yugoslavia) repeated his previous statement that in his opinion there was no juridical reason to retain paragraph 3 of article 19. That was why he had abstained from voting.

18. Mr. WHITLAM (Australia) explained that, although he had voted in favour of article 19 as a whole, he wished to express some reservations about it. He agreed with the representatives of Lebanon and the United Kingdom that it was essential that the French and English versions of paragraph 1 should correspond.

19. With respect to paragraph 3, he sympathized with its aims, but he shared the fears expressed by the Yugoslav representative.

20. Mr. CASSIN (France) stated, in reply to Mr. Malik, that the French delegation had agreed to the term "imposées en application de la loi" instead of "prévues par la loi" as the French translation of "prescribed by law". Concordance of the French and English texts should not, therefore, give rise to any difficulty.

Article 20 (E/CN.4/365, E/CN.4/353/Add.10, E/CN.4/353/Add.11, E/CN.4/358, E/CN.4/418, E/CN.4/447, E/CN.4/451, E/CN.4/435)

21. The CHAIRMAN opened the discussion on article 20.

22. Mr. NISOT (Belgium) thought that it would be useful to show that the second clause of paragraph 1 of article 20 explained the first clause, to separate them by a semi-colon. The paragraph should therefore read in French, "Tous sont égaux devant la loi; tous se verront accorder l'égale protection de la loi", and in English, "All are equal before the law; all shall be accorded equal protection/law".

/23. Mr. VALENZUELA

23. Mr. VALENZUELA (Chile) thought that his delegation's amendment would probably modify both the form and the substance of paragraph 2 more than any other. He therefore considered it necessary to explain why he had submitted it.

24. In Article 1, paragraph 3, Article 13, sub-paragraph (b), Article 55, sub-paragraph (c) and Article 76, sub-paragraph (c) of the Charter, the same expression was used -- "without distinction as to race, sex, language or religion."

25. The Supreme Court of California had recently given full legal value to that provision of the Charter.

26. The same expression appeared in article 20, paragraph 2, of the covenant (where, however, the idea of colour was added) and in article 2 of the Universal Declaration of Human Rights. He understood very well that it had been intended to broaden that principle of the Charter in the Declaration, and his delegation had accordingly voted for article 2 of the Declaration.

27. All the members of the Commission had recognized that the covenant should so far as possible be a juridical expression of the provisions of the Declaration. That was why he doubted whether from a strictly juridical point of view it was possible to refer to the ideas of race and colour in such a document.

28. Law was a science which must reflect progress in the other sciences. Even if it were to be admitted that the idea of race was not out of place in the Charter or the Declaration, the fact remained that that idea did not correspond to a scientific reality. It rather tended to evoke a dangerous prejudice likely to perpetuate racial discriminations, for in speaking of races there came to mind the thought of different races and of the distinction between superior and inferior races according to Nazi racial theory.

29. The struggle against racial prejudice must be fought on all fronts. It was too much to expect decisive progress in a short time, but it was the Commission's duty gradually to eradicate the idea that there were different races. It would be more scientific and humane to replace the idea of race by that of ethnic origin. Instead of drawing a distinction between human beings on the basis of their birth or biological heredity, the latter idea presented them both as products of an evolutionary process and as factors in that evolution, which continued without end. In placing the problem before the Commission, he was acting in accordance with formal instructions from his Government.

30. Some members of the Commission might feel that a less rigorously scientific text would nevertheless be acceptable if its effect were to protect "races" which were the victims of discrimination. But such an argument could not apply, at any rate, to the idea of colour, which had no scientific basis, and was dangerous, obnoxious and devoid of legal significance. He did not see how a court could determine the colour of human beings, and felt that the idea of colour, as well as that of race, was adequately covered by the concept of "ethnic origin".

31. As for the other ideas expressed in paragraph 2, he believed that a juridical text could not refer to "property", for it was impossible to establish the boundaries and the idea of property. Moreover, speaking of "birth" immediately conjured up the caste system, which was contrary to the principle of equality of human beings. Only the idea of nationality was recognized by law.

32. The CHAIRMAN thought it would be better to study the various paragraphs of article 20 separately.

33. Speaking as representative of the United States of America, she reminded the Commission that Mrs. Castillo Ledon, the Chairman of the Commission on the Status of Women, had informed it on 11 April 1950 that she considered paragraph 1 of article 20 to be somewhat vague and lacking in strength. She herself concurred in that view.

34. In order to make the meaning of the words "equal protection" more specific, the United States proposed (E/CN.4/451) that paragraphs 1 and 2 should be combined. The new text would make clear the conditions under which equal protection of the law should be accorded.

35. Mrs. MEHTA (India) said that the drafting of article 20 had already caused a great deal of difficulty,

36. Paragraph 1 simply reproduced article 7 of the Declaration of Human Rights. It expressed two different ideas: first, equality before the law and, secondly, equality in the application of the law.

37. Paragraph 2 reproduced article 2 of the Declaration of Human Rights, but the words "defined in this Covenant" in that paragraph restricted the ideas expressed in it to a remarkable extent. The Indian delegation, therefore, wished those words to be deleted.

38. The United States amendment to paragraph 1 would restrict the scope of the text even more because it no longer distinguished between equality before the law and equality in the application of the law. The Indian delegation would, therefore, vote against that amendment and for the existing text of the paragraph.

39. In connexion with the Chilean representative's statement, the CHAIRMAN wished to remind the Commission that the word "birth", which also appeared in article 2 of the Declaration of Human Rights, had been inserted in the text of paragraph 2 of article 20 of the draft covenant after long discussion and at the particular urging of the USSR representative. That representative, however, was not present. She had therefore thought it right to recall how long the discussion had been, although she had not personally understood why so much importance was attached to the matter.

40. Mr. HOARE (United Kingdom) agreed with the representative of Belgium about the two different ideas expressed in paragraph 1 of article 20. He could not, however, see why the two ideas could not be linked by the copulative "and". Paragraph 1 should take account of the permissible legal disabilities to which minors and persons of unsound mind might be subject. The United Kingdom Government had therefore submitted an amendment to that paragraph (E/CN.4/365). Minors and persons of unsound mind could not themselves exercise certain rights and it was essential that the power to impose reasonable legal disabilities on them should be stipulated.

41. He had listened with interest to the Chilean representative's statement about paragraph 2 and agreed with him that the idea of discrimination on grounds of race and colour was bad and obsolete as well. He could not, however, follow him in stating that the factors in such discrimination should be expressed in scientific terms. On the contrary, all the possible and known reasons for discrimination should be enumerated in familiar terms so that they could be exposed and combatted more easily.

42. Paragraph 1 of article 20 bore some relation to article 15. It might perhaps come more appropriately in that article, while paragraphs 2 and 3 might form a separate article, as the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities had proposed in paragraph 51 of its report to the Commission on Human Rights (E/CN.4/358).

43. Mr. MALIK (Lebanon) said that article 20 was probably the most important in the draft covenant. When speaking of human rights, the possible violation of such rights naturally came to mind, and the very thought shocked and revolted the conscience of humanity. The idea of discrimination, which had entailed so many violations of those rights during the war, was particularly abhorrent. Legal procedures must be set up to ward off such instances of human error and prevent their repetition. That was why article 20 which placed stress on the principal reasons for discrimination, was the most important article in the covenant and the provisions referring to that question were rightly emphasized in article 2 of the Universal Declaration of Human Rights. In the covenant, too, it should be given a leading position, at the beginning rather than at the end. In any case, whatever text the Commission agreed upon should not only express the idea of non-discrimination but should also contain the word "discrimination", which was indispensable.

44. Mr. Malik agreed with the United States representative that paragraph 3 of article 20 was particularly unfortunate and should be deleted.

45. He shared the views of the representatives of India and the United Kingdom in regard to paragraph 1. It was not enough to state the right to the protection of the law. It was also necessary to state the idea of equality before the law because the one did not necessarily entail the other, a fact which the representative of India had eloquently pointed out.

46. There were also grounds for drawing a distinction between persons subject to the law and the way in which the law protected them. The distinction might seem fine, but it was real, and Mr. Malik therefore felt that the idea of equality before the law should be retained in the text. The United States amendment only expressed the idea of the right to the protection of the law and did so in the form of a double negative. He was prepared to support it, subject to acceptance of his amendment by the Commission. He would, however, prefer

to see that provision expressed in a positive form.

47. He was entirely in agreement with the Indian representative's suggestion that the reference to "this Covenant" should be deleted from paragraph 2 and would vote for it, if it was submitted as a formal amendment.

48. So far as the Chilean representative's statement was concerned, he agreed with its underlying idea, but pointed out that the list of the causes of discrimination had been drawn up with great care. Although it might add nothing to the principle stated, its inclusion would ensure that a historic document such as the covenant contained an indication of the causes which had given rise to discrimination, and thus to violation of human rights, in the past.

49. As the United States representative had correctly pointed out, the word "birth" had a long history. While the word might have a greater significance in Russian than in English or French, long discussion had failed to produce a more satisfactory equivalent. The Commission had also discussed the appropriate place for the word at considerable length. He therefore hoped that the Chilean representative would not reopen such a thorny debate.

50. In conclusion Mr. Malik said that he would vote for the existing text of paragraphs 1 and 2. He hoped that the Commission would finally decide to delete paragraph 3.

51. Mr. NISOT (Belgium) wished to explain the drafting change he had proposed to paragraph 1. The two clauses in the paragraph expressed not two separate ideas but one and the same idea, which was first stated and then elucidated. If the paragraph was not interpreted in that way, the equality before the law to which the first phrase referred, could only mean equality in fact, as opposed to the legal protection to which the second phrase referred. The article would thus have the absurd effect of precluding all legislation which recognized differences, as, for example, legislation regulating the work of pregnant women or conferring a special legal status on minors.

52. In order to avoid misunderstanding, Mr. Nisot proposed that a colon should be substituted for the semicolon, which he had earlier proposed to insert between the two phrases.

53. The CHAIRMAN, speaking as representative of the United States of America, explained that the purpose of her delegation's amendment was precisely to avoid any confusion between the two parts of paragraph 1 which, in its opinion, set forth two different ideas. In view of the relationship between the first part of paragraph 1 and article 15 of the draft covenant, the United States delegation had amended article 20 so that it should deal only with the idea of the protection of the law.

54. Replying to the Indian representative, she said that the United States delegation could not agree to the deletion of the words "defined in this Covenant" from paragraph 2. The covenant should not necessarily guarantee all the rights and freedoms which might be granted under all the legislative provisions of various countries; indeed, some of them might even be inconsistent with the principles to be upheld by the covenant. The United States delegation therefore preferred the original formula, which had the advantage of guaranteeing well defined rights from both the humanitarian and the juridical points of view.

55. Mr. SORENSON (Denmark) also emphasized the special importance of article 20, and in particular of paragraph 2 dealing with the principle of discrimination. In its comments on the draft covenant the Danish Government had reserved its position regarding this article. It had done so because it was concerned at the fact that association with national minorities was not included among the grounds of discrimination listed in paragraph 2. The Danish delegation had at first wanted to propose an amendment to that paragraph; it had refrained from doing so because it wished to abide by the desire shown by the Commission at its previous session not to depart from the text of article 2 of the Universal Declaration and because it felt that the phrases "without discrimination on any ground" and "or other status" provided sufficient guarantees. It would only like the official summary records to show that the Commission interpreted those provisions as covering non-discrimination on the ground of association with minority groups. Since the Sub-Commission on Prevention of Discrimination and Protection of Minorities had found the paragraph satisfactory, it had obviously interpreted it in the same way.

56. In view of the above considerations, the Danish delegation was not inclined to support the various amendments proposed to article 20. The great disadvantage of the United States amendment was that it did not contain the

/words "without

words "without discrimination on any ground", to which Denmark attached particular importance for the reasons just given. If that amendment were put to the vote, the Danish delegation would propose the inclusion of the words "on the grounds of...".

57. The same remarks applied to the Chilean amendment. Mr. Sorenson believed that the existing text of paragraph 2 contained a more complete list of grounds for discrimination than the Chilean amendment. If the Chilean delegation maintained its amendment, he would propose the addition of the words "or for his association with a national minority group".

58. In connexion with the Chilean representative's criticism of the ideas of race and colour, he recalled that the Sub-Commission on Prevention of Discrimination and Protection of Minorities was in full agreement with the views of the Chilean Government, as appeared from paragraph 31 of Chapter VI of the Sub-Commission's report (E/CN.4/358, page 17). While recognizing the advantages of eliminating the outworn ideas of race and colour from the covenant, he was inclined to share the opinion of those who had stressed on the one hand the need not to depart from the ideas set forth in the Universal Declaration and on the other hand the practical inconveniences there would be in deleting ideas still recognized by all legislations and by current speech.

59. Speaking of the relation between paragraphs 1 and 2 of article 20, he said that the two were completely distinct and should be the subjects of two separate articles. As the Governments of the United Kingdom and of Norway, and the Commission on the Status of Women, had suggested, paragraph 1 should not exclude the possibility of instituting categories of legally incapacitated persons. He was nevertheless in favour of retaining paragraph 1 and of adding a special provision to that effect to article 15. At its preceding session, the Commission had already recognized that the principle of equality before the law was not incompatible with a legitimate classification of persons, such as existed in all organized societies. In view of the usefulness of paragraph 1, he would vote against the United States amendment, which was specifically designed to combine paragraphs 1 and 2 of article 21.

60. Lastly, with regard to the Indian amendment, he recognized that it would be desirable to extend article 20 to all rights and freedoms, whatever they might be, and not simply to those set forth in the covenant. It was quite

/obvious that

obvious that a number of rights, including even rights set forth in the Universal Declaration, did not appear in the covenant. However, the Danish delegation considered that the amendment might give rise to abuses and would therefore not vote in favour of it.

61. Mr. WHITLAM (Australia) recalled that the Australian Government had already emphasized in its comments the connexion that existed, in its opinion, between paragraph 2 of article 20 and article 2 of the draft covenant. The discussion that had just taken place confirmed that view. The relation between paragraph 1 of article 20 and article 15 of the draft covenant had also been brought out. He reserved the right to submit formal proposals on those points, if he thought it necessary to do so at the end of the discussion.

62. In general, he shared most of the views which had been expressed by the representatives of the United States, the United Kingdom, Lebanon and Denmark with regard to paragraph 2. He would return to them in detail when the time came to vote.

63. He then expressed his admiration for the Chilean representative's eloquent statement. Nevertheless, he pointed out that the ideas of race and colour, however lacking in scientific foundation, were not yet outmoded in modern thought and were, unfortunately, still the most frequent source of political dissension. In spite of the embarrassment that might be felt at the use of such expressions in a covenant concluded under the auspices of the United Nations, it nevertheless seemed that it was necessary to use them in order to denounce the prejudices they represented before the conscience of mankind.

64. He agreed with the Lebanese representative that paragraph 2 contained one of the most important provisions of the covenant, and he was therefore anxious to see it placed among the first provisions in the draft, possibly even in article 2.

65. The Australian delegation considered that paragraph 3 should simply be deleted, not only because it was of no use, but because it might even give rise to interpretations which would be dangerous to human freedoms.

The meeting rose at 1 p.m.

4/5 p.m.