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COMMISSION ON HUMAN RIGHTS

Sixth Session

SUMMARY RECORD OF THE HUNDRED AND EIGHTY-FIRST MEETING

Held at Lake Success, New York,
on Friday, 5 May 1950, at 2.30 p.m.

CONTENTS:

Chairman:	Mrs. ROOSEVELT	United States of America
Members:	Mr. WHITLAM	Australia
	Mr. NISOT	Belgium
	Mr. VALENZUELA	Chile
	Mr. TSAO	China
	Mr. SORENSEN	Denmark
	Mr. CASSIN Mr. LEROY-BEAULIEU	France

Members: (continued)

Mr. KYROU	Greece
Mrs. MEHTA	India
Mr. MENDEZ	Philippines
Mr. HOARE	United Kingdom of Great Britain and Northern Ireland
Mr. CRIBE	Uruguay
Mr. JEVREMOVIC	Yugoslavia

Also present:

Mrs. GOLDMAN	Commission on the Status of Women

Representatives of specialized agencies:

Mr. LEMOINE	International Labour Organisation (ILO)
Mr. KAUL	World Health Organization (WHO)

Representatives of non-governmental organizations:

Category A:

Miss SENDER	International Confederation of Free Trade Unions

Category B:

Mrs. AIETA	Catholic International Union for Social Service
Mr. MOSKOWITZ	Consultative Council of Jewish Organizations
Mr. HALPERIN	Co-ordinating Board of Jewish Organizations
Miss TOMLINSON	International Federation of Business and Professional Women
Mr. BEER	International League for the Rights of Man
Mr. GROSSMAN	World Jewish Congress

Secretariat:

Mr. SCHWELB	Acting Director of the Human Rights Division
Mr. LIN MOUSHENG Mr. DAS	Secretaries of the Commission

/PROGRAMME

PROGRAMME OF WORK

1. The CHAIRMAN said that the Drafting Committee set up to consider a draft text concerning measures of implementation, which had met that morning, had made considerable progress. Its members thought that their work would shorten the Commission's discussion on measures of implementation. The drafting was progressing slowly, however, and the Committee had asked for more time. She therefore proposed that the Commission should not meet on Monday, 8 May; it could discuss the Committee's report and any amendments thereto on Thursday, 11 May. Meanwhile the Commission could continue the consideration of the draft Covenant.

It was so decided.

2. Mr. JEVREMOVIC (Yugoslavia) wished to know the order in which the articles of the draft Covenant would be discussed. Parts I and III of the Covenant could not be dealt with until the contents of Part II were known exactly. Before the Commission began to consider Parts I and III, therefore, it should complete the consideration of Part II and should study the new articles proposed to be added to that part of the Covenant.

3. Mr. KYROU (Greece) was under the impression that the Committee had decided, in principle, not to examine the additional articles until after the first reading.

4. The CHAIRMAN agreed that that was so, but thought the Yugoslav representative's proposal was perfectly admissible.

5. Mr. WHITLAM (Australia) appreciated the logic of the Yugoslav representative's reasoning, but pointed out that the Commission had a time limit by which it had to complete its work; it would be better therefore to begin by completing the consideration of the articles already proposed, before beginning the examination of the additional articles. He was thus unable to support the Yugoslav representative's proposal.

6. Mr. JEVREMOVIC (Yugoslavia) was opposed to deferring indefinitely the consideration of the additional articles, which contained fundamental principles

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and to which his Government attached great importance. A Covenant which made no mention of social and economic rights would be meaningless for millions of persons.

7. Mrs. MEHTA (India) said that for more than a month the Commission had been considering articles which had already been studied during preceding sessions. She thought that, in the circumstances, it would be wise to leave the Economic and Social Council or the General Assembly to consider the additional articles if they so desired.

8. Mr. SORENSEN (Denmark) stressed the importance of the additional articles he had proposed and suggested that, in the circumstances, the Commission should devote a day to the discussion of the principle of including them in the Covenant. The Commission could not submit those articles to the Economic and Social Council without expressing an opinion.

9. Mr. WHITLAM (Australia) and Mr. CASSIN (France) supported the Danish representative's suggestion.

10. Mr. VALENZUELA (Chile) was basically in agreement with the Yugoslav representative. The articles concerning the economic and social rights upon which modern democracy was founded must be included in the Covenant. The Commission should consider the principle of including those articles during its current session. It would be dangerous to defer consideration of that question because of lack of time.

11. Mr. JEVREMOVIC (Yugoslavia) thought that the Commission would have time to consider the articles on economic and social rights. The fundamental question was whether the Commission would deal with those articles or whether it would continually defer doing so. His Government regarded those articles as absolutely essential, and he did not think that they could be properly studied in one or two meetings. The Commission should give due consideration to such important rights.

The Yugoslav proposal was adopted by 5 votes to 3, with 5 abstentions.

/12. Mr. WHITLAM

12. Mr. WHITLAM (Australia) said that he had voted for the Yugoslav proposal because there was no other possible alternative. He would have preferred the additional articles to be considered after the examination of Part III of the Covenant.

DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS (ANNEXES I AND II OF THE REPORT OF THE FIFTH SESSION OF THE COMMISSION ON HUMAN RIGHTS, DOCUMENT E/1371) (continued)

Article 22 (E/CN.4/365, E/CN.4/353/Add.10, E/CN.4/353/Add.11, E/CN.4/454, E/CN.4/461, E/CN.4/468) (continued)

13. Mr. CASSIN (France) was in favour of retaining article 22. The article might well have been worded differently, but neither the text proposed by Yugoslavia nor that proposed by the United States would have exactly the same effect. The United States proposal concerned only Governments. According to the Universal Declaration of Human Rights, however, neither persons nor groups were entitled to act in such a way as to destroy rights or freedoms. Consequently, there was good reason for including paragraph 1.

14. He drew the Commission's urgent attention to the very great importance of paragraph 2. In international law, conventions and treaties had pre-eminence over national legislation. The inclusion of paragraph 2 would prevent the Covenant's being used for the opposite purpose from that for which it was intended, and was in consequence of vital importance. In particular, that paragraph would enable States which were parties to several international conventions to sign the Covenant also.

15. Mr. HOARE (United Kingdom) agreed wholeheartedly with the French representative that paragraph 1 was useful and paragraph 2 indispensable. It must not be forgotten that in certain cases national legislation went further than the provisions of the Covenant; moreover, it was essential to take into account the special provisions of other international conventions which had already been ratified. If there was any conflict between two conventions, the one providing for the greater extension of rights should prevail. The provision contained in paragraph 3 of article 19 of the Covenant was an example

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of the application of that principle. Paragraph 2 of article 22 was a clear settlement of a very serious problem.

16. He proposed that the words "to all" in the third line of paragraph 2 should be deleted, in order to improve the wording.

17. The CHAIRMAN, speaking as the representative of the United States of America, explained that her delegation had reconsidered its original proposal for the deletion of paragraph 1 of article 22, and was submitting a new text of that paragraph, which she hoped would be acceptable to the Commission. She had sought to retain the meaning of the original text without using such vague terms as "activity" or "act". With regard to paragraph 2, however, she did not think that the text could be amended so as to remove the fundamental problems which it raised. It would be regrettable if an article of the Covenant were to enable a signatory State to claim that its national legislation guaranteed certain rights and freedoms which could not be impaired by the rights and freedoms provided for in the Covenant. The same was true of conventions: a signatory State should not be given any opportunity to claim that certain rights provided for in a convention which it had also signed remained in force in spite of the provisions of the Covenant.

18. She had voted in favour of paragraph 3 of article 19, which mentioned the Convention on Freedom of Association, because only one convention was concerned. Paragraph 2 of article 22, on the other hand, applied to all possible conventions, present as well as future.

19. In her opinion, there was no point in mentioning other conventions in the Covenant. If nothing was said on that point in the Covenant, the question would be dealt with according to the existing rules of international law and there was thus no need for a special provision in the Covenant. At all events, States signing the Covenant should not be authorized in any way to evade the obligations it contained.

20. Mr. WHITLAM (Australia) recognized that many arguments could be put forward in favour of the amendment proposed for paragraph 1. On the other hand, he was unable to agree with certain of the criticisms expressed with regard to paragraph 2. The Covenant simply represented a minimum, and if it so happened that other international conventions or national legislations

guaranteed some other right or freedom, the Covenant must not be regarded as being capable of limiting them.

21. Mr. ORIBE (Uruguay) said that he was in favour of the original text of paragraph 1, which he regarded as more explicit than the wording proposed by the United States and which had the merit of corresponding to article 30 of the Universal Declaration of Human Rights. He recalled in that connexion that his delegation had always argued in favour of the greatest possible similarity between the Covenant and the Declaration.

22. Paragraph 2, moreover, laid down a very useful principle: it provided that in the case of a conflict between some provision of the Covenant on the one hand and a national law or a provision of some other convention on the other, the Covenant would prevail, if the provision in question was more liberal. If, on the other hand, the provision of the national law or of the other convention was more liberal, it would prevail instead. He recalled that that principle was to be found in all treaties and also in the Charter, and he would vote in favour of inserting it in the Covenant.

23. He regarded the Yugoslav proposal as useful and would vote in favour of it. Lastly, he submitted a proposal by Uruguay for the insertion of a fourth paragraph (E/CN.4/468). The provisions of the Covenant must not be substituted for those of the Charter and there must be no risk of reducing the powers and attributions of organs of the United Nations.

24. Mr. NISOT (Belgium) thought that article 22 had no legal value. Nevertheless, he would have no objection to its retention, for the reasons stated by various delegations.

25. The CHAIRMAN pointed out that as it stood article 22 would give rise to practical difficulties, since the rights and freedoms to which it referred might infringe upon other existing rights.

26. Mr. JEVREMOVIC (Yugoslavia) preferred the original text of paragraph 1 of article 22, since it stated the desired aim more clearly than did the United States amendment. On the other hand, he was unable to accept paragraph 2 in its existing form. Indeed, it was legally inconceivable that any convention could override the draft Covenant, since it formed part of the Bill of Human Rights, which replaced all

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previous instruments on the subject. Further, a contradiction seemed to exist there, since certain instruments might be interpreted as limiting human rights to a greater extent than the draft Covenant.

27. Mr. SORENSEN (Denmark) emphasized that it was essential to realize the differences between the original text of paragraph 1 and the amendment proposed by the United States. Taking advantage of the provisions of the original text, the head of a State could arbitrarily declare that a certain kind of activity was aimed at the destruction of the rights and freedoms defined in the Covenant and could decide, in consequence, simply to forbid such activity, a situation which evidently might give rise to abuses. In the United States amendment, on the other hand, the words "to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms..." had been deleted, thus rendering it impossible for an activity or act aimed at the destruction of rights and freedoms to be declared illegal. The United States amendment would therefore eliminate the possibility of abuse while maintaining the fundamental principle that no right could be exercised with the intention of destroying the rights or freedoms defined in the draft Covenant.

28. For those reasons he preferred the United States amendment and would support it.

29. The CHAIRMAN, speaking as the representative of the United States of America, explained that her delegation's amendment sought to prevent the destruction of rights and freedoms defined in the draft Covenant, but did not mention activities which might tend to that end, since it was difficult to determine what they might be.

30. Mr. VALENZUELA (Chile) was fully conscious of the difficulties entailed by drafting an article which was to define restrictions. His delegation quite understood the point of view of the delegation of Denmark, and shared it in many respects. With regard to paragraph 2, he accepted the United Kingdom amendment deleting the words "to all".

31. He understood the intention of the Yugoslav amendment, and was glad that it contained a reference to the Charter. Nevertheless, he pointed out that that amendment apparently referred to the provisions of the Charter as a whole, for the purposes and principles of that instrument were present, so to

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speak, throughout its text, which included, for example, a provision regarding the right of veto (Article 27 (3)).

32. With regard to the Uruguayan amendment, he wondered to what extent the literal text of the Charter allowed of amendments to the machinery of the organization. If the Charter was to be considered as unalterable, which would imply that its machinery also was unalterable, the delegation of Chile could not vote for the Uruguayan amendment.

33. Mr. HOARE (United Kingdom) agreed with the remarks of the Danish representative as to the difference between paragraph 1 and the relevant United States amendment, but he could not endorse the conclusions Mr. Sorensen had reached. The existing text would make it possible for the State, supposing that a group of persons engaged in activities aimed at the destruction of the rights and freedoms set out in the draft Covenant, to impose restrictions on the exercise by that group of certain of those freedoms. It was true that that might give rise to abuses, but such a provision was none the less necessary. Under the United States amendment, on the other hand, it would be impossible for a State to take any effective action: the amendment was merely declaratory.

34. Mr. JEVREMOVIC (Yugoslavia) explained that care would have to be taken that no right could be exercised abusively for the destruction of other rights. The purposes and principles of the organization as laid down in the Charter must be safeguarded. He recalled that article 5 of the draft Covenant, designed to protect human life, had been the subject of a long debate, at the end of which it had been decided that the life of each individual must be protected by the law. That was the most important human right. In the course of the last five hundred years, however, more human lives had been lost as a result of wars than as a result of judicial decisions, and the fundamental objective to be sought, therefore, was the prevention of war in order to guarantee the right to live.

35. In reply to the representative of Chile, he explained that there was no reason to fear that the Yugoslav amendment implied a reference to the right of veto. His delegation's amendment referred explicitly and exclusively to the purposes and principles of the Charter; the other provisions of the Charter dealt with procedure, and it was not intended to imply that they were unalterable.

36. The rights and freedoms set out in the draft Covenant were somewhat more limited in scope than was provided in the Charter, which was why he had thought it well to introduce a reference to the Charter in article 22.

37. Mr. ORIBE (Uruguay) was grateful to the United States delegation for having withdrawn its request for the deletion of paragraph 1 of article 22. Nevertheless the United States amendment carefully refrained from taking into account activities or acts aimed at the destruction of the rights or freedoms set out in the draft Covenant, and the delegation of Uruguay considered that aspect of the question to be the very core of paragraph 1.

38. He would therefore vote for the original text of paragraph 1 and not for the United States amendment. The latter provided only for the punishment of the act itself and that, as experience had shown, would result in utter failure.

39. Mr. NISOT (Belgium) remarked that the amendments proposed by Uruguay and Yugoslavia sought to defend the provisions of the Charter. Such a precaution was unnecessary where States Members of the United Nations were concerned, in view of the terms of Article 103 of the Charter. On the other hand, the adoption of either of those amendments might prevent non-Member States from acceding to the Covenant, lest there might be an attempt to make the provisions of the Charter obligatory upon them.

40. Mr. ORIBE (Uruguay) thought that there were good grounds for the Belgian representative's observation with respect to Article 103. Nevertheless, the difficulty of amending the Charter had been recognized and consequently a sort of jurisprudence was growing up, so that each provision of the Charter finally acquired a meaning and scope different from those ascribed to it at San Francisco. In those circumstances, misunderstandings were bound to arise. The Uruguayan delegation therefore felt that there was a constant need to recall and state explicitly that the powers and attributions of the United Nations organs could not be lessened. The purpose of the Uruguayan amendment was simply to make it clear that nothing in the draft Covenant should in any way detract from those powers and attributions; but that in no way precluded possible future improvements.

/41. Mrs. MEHTA

41. Mrs. MEHTA (India) stated that she would vote for the original text of paragraph 1.

42. With regard to the Yugoslav amendment, she thought that it might be included in paragraph 1 as an additional provision.

43. She would support the Uruguayan amendment because, in her opinion, it was important to state that the provisions of the Covenant would in no way detract from the rights and attributions of the organs of the United Nations as laid down in the Charter.

44. The CHAIRMAN, speaking as the representative of the United States of America, said that her delegation was opposed to the Yugoslav amendment because it would give any contracting State the opportunity to invoke the provisions of Article 2, paragraph 7 of the Charter. It would, in fact, preclude States from making complaints against each other and would make impossible the effective implementation of the Covenant. She recalled that, when certain States had been accused of violating the provisions of the peace treaties relating to human rights, they had sought to establish that the question of the protection of human rights was solely a matter within their domestic jurisdiction.

45. With regard to the Uruguayan amendment, she considered it superfluous since the powers and attributions of organs of the United Nations were laid down in the Charter itself and the provisions of the Covenant could not therefore detract from them.

46. Mr. CRIBE (Uruguay) was unable to agree with the United States representative's interpretation of Article 2, paragraph 7 of the Charter, the provisions of which could not be invoked in connexion with the implementation of the Covenant. He recalled that in its advisory opinion on the nationality decrees of Tunis, the Permanent Court of International Justice had reaffirmed that questions on which international agreements had been concluded were not within the domestic jurisdiction of States. Consequently, the rights and freedoms defined in the Covenant, which was an international instrument, were not a matter of national jurisdiction and were not covered by Article 2, paragraph 7 of the Charter.

47. Mr. NISOT

47. Mr. NISOT (Belgium) said that the organs of the United Nations must abide by the provisions of the Charter, including those of Article 2, paragraph 7.

48. He recalled that the ruling of the Permanent Court of International Justice cited by the representative of Uruguay in support of his thesis had been based on Article 15, paragraph 8 of the Covenant of the League of Nations, the provisions of which were different from those of Article 2, paragraph 7 of the Charter. When the latter Article had been drawn up, the Belgian delegation had urged that it should be couched in the same terms as Article 15, paragraph 8 of the Covenant of the League, but that proposal had been rejected. The Belgian delegation therefore wished to state categorically that the Covenant on Human Rights could not constitute, directly or indirectly, any derogation from the provisions of Article 2, paragraph 7 of the Charter, which laid down the limits of the competence of the United Nations organs.

49. Mr. HOARE (United Kingdom) said that his delegation would vote against the Yugoslav amendment; either it was superfluous or else it might be interpreted as giving powers which were far too wide.

50. Mr. ORIBE (Uruguay) disagreed with the Belgian representative's view that the opinion of the Permanent Court of International Justice did not apply to Article 2, paragraph 7 of the Charter.

51. Mr. JEVREMOVIC (Yugoslavia) stated that his delegation was not opposed in principle to the Indian proposal that his amendment should be added to paragraph 1 of article 22. That was, however, a secondary matter which might be settled later.

52. He endorsed the Uruguayan representative's remarks concerning Article 103 of the Charter. That Article bore no relation to his amendment, which did not deal with the question of conflicts between obligations under the Charter and those under other international agreements.

53. He would vote for the Uruguayan amendment, which he considered necessary even if it seemed somewhat redundant.

54. Mr. WHITLAM (Australia) stated that his delegation would vote for the original text of paragraph 1, which was designed to prevent any acts aimed at the destruction of the rights and freedoms defined in the Covenant, and against

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the Yugoslav and Uruguayan amendments. The former was of a restrictive nature and the latter was superfluous in view of the fact that under Article 103 the provisions of the Charter must, in any case, prevail over those of any other international instrument.

55. Mr. LEROY-BEAULIEU (France) submitted a proposal to insert the words "for a State to proceed" after the words "in this Covenant" in paragraph 1. The French delegation considered that only a State and not a person or a group of persons would be in a position to limit the rights and freedoms defined in the Covenant.

56. Mr. HOARE (United Kingdom) thought it would be quite possible for a group of persons, or even one person, to attempt to limit the exercise of the rights and freedoms defined in the Covenant.

57. Mr. JEVREMOVIC (Yugoslavia), in reply to the Australian representative, maintained that the Yugoslav amendment would in no way restrict the rights and freedoms defined in the Covenant but, on the contrary, would prevent States from restricting those rights.

58. The CHAIRMAN put to the vote the United States amendment to paragraph 1 of article 22 (E/CN.4/475).

The amendment was rejected by 6 votes to 4, with 1 abstention.

59. The CHAIRMAN put to the vote the French proposal to add the words "for a State to proceed" in paragraph 1, after the words "in this Covenant".

The amendment was rejected by 6 votes to 1, with 4 abstentions.

60. The CHAIRMAN put to the vote the original text of paragraph 1 of article 22.

The paragraph was adopted by 10 votes to 1.

61. The CHAIRMAN put to the vote the United States amendment deleting paragraph 2 of article 22 (E/CN.4/365, page 59).

The amendment was rejected by 8 votes to 2, with 1 abstention.

/62. The CHAIRMAN

62. The CHAIRMAN put to the vote the United Kingdom amendment deleting the words "to all" in paragraph 2 of article 22.

The amendment was adopted by 8 votes to none, with 3 abstentions.

63. The CHAIRMAN put to the vote paragraph 2 as amended.

Paragraph 2 was adopted by 9 votes to 2.

64. The CHAIRMAN put to the vote the Yugoslav amendment (E/CN.4/454).

The amendment was rejected by 7 votes to 2, with 2 abstentions.

65. The CHAIRMAN put to the vote the Uruguayan amendment (E/CN.4/468).

The amendment was rejected by 5 votes to 3, with 3 abstentions.

66. The CHAIRMAN put to the vote article 22 as a whole.

Article 22 as a whole was adopted by 10 votes to 1.

67. Mr. CRIBE (Uruguay) observed that the discussion on his amendment had fully met the purpose he had wished to obtain. He took it that the rejection of his text meant that in the Commission's opinion its meaning was so obvious as to make it superfluous.

68. Mr. JEVREMOVIC (Yugoslavia) explained that he had abstained in the vote on the French amendment because he had not had time to study it.

69. He had voted in favour of article 22 as a whole in view of the importance of paragraph 1.

70. He regretted that the Commission had not adopted his amendment and had not been sufficiently aware of the need to reaffirm that the purposes and principles of the United Nations had precedence over the provisions of any other international instrument.

The meeting rose at 5.40 p.m.