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COMMISSION ON HUMAN RIGHTS

Sixth Session

SUMMARY RECORD OF THE HUNDRED AND NINETY-THIRD MEETING

Held at Lake Success, New York,
on Monday, 15 May 1950, at 2.30 p.m.

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Mr. THEODOROPOULOS Mr. KYROU	Greece
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Mr. ORIBE	Uruguay
Mr. JEVREMOVIC	Yugoslavia

Representatives of non-governmental organizations:

Category A:

Miss SENDER	International Confederation of Free Trade Unions (ICFTU)

Category B:

Mrs. VERGARA	Catholic International Union for Social Service
Mr. NOLDE	Commission of Churches on International Affairs
Mr. MOSKOWITZ	Consultative Council of Jewish Organizations
Mr. BEER	International League for the Rights of Ma
Miss SCHAEFER	International Union of Catholic Women's Leagues
Mr. HALPERIN	Jewish Organizations for Consultation

Secretariat:

Mr. SCHWELB	Assistant Director, Division of Human Rights
Mr. SCHACHTER	Legal Division
Mr. DAS	Secretary of the Commission

MEASURES OF IMPLEMENTATION (E/1371, annex III, E/CN.4/366, E/CN.4/366/Corr.1, E/CN.4/353/Add.10, E/CN.4/353/Add.11) (Continued)

Draft resolution submitted by the Australian delegation (E/CN.4/489, E/CN.4/492)

1. The CHAIRMAN opened the discussion on the Australian draft resolution (E/CN.4/489) to recommend that the Economic and Social Council should refer the proposals for the establishment of an international court of human rights to the International Law Commission for study and report.

/2. Mr. WHITLAM

2. Mr. WHITLAM (Australia) said that among the obligations imposed on Members of the United Nations by the Charter was the legal obligation to promote and encourage respect for human rights and for fundamental freedoms. The natural corollary of that was the recognition of the individual as a subject of international law.

3. Quoting the preamble to the Universal Declaration of Human Rights which proclaimed that it was essential, if man was not to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law, he said that in the final analysis a rule of law was nothing but a legal system.

4. The Australian delegation did not regard the creation of an international court of human rights as particularly urgent, but it felt that the extra-judicial measures of implementation adopted by the Commission were sure to prove insufficient. More appropriate measures, which would enable international organizations and even individuals to appeal to an international court, should, therefore, be considered at once.

5. When the Australian delegation had put forward its proposal in 1946, the idea had been rejected for political reasons, despite the warm reception it had been given by members of the Assembly. There had been new developments since then. In September 1949, the Consultative Assembly of the Council of Europe had prepared a declaration of human rights and had drafted proposals, for the most part identical with those which the Commission had examined. All these activities bore witness to the growing importance which statesmen and jurists attached to the idea of punishing violations of human rights.

6. The Australian delegation did not insist on the actual wording of its draft being retained; it merely wished that the International Law Commission should, in accordance with article 17 of its Statute, be invited to study the question of the creation of an international court of human rights.

7. The CHAIRMAN, speaking as the representative of the United States of America, said that her delegation was ready to study the question raised by the Australian representative at the following session of the Commission, but it was opposed to the proposal to refer it to the International Law Commission. The Commission had decided

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to set up a Human Rights Committee of a non-political nature to examine complaints about violations of the covenant. There was consequently no need to ask the International Law Commission to study the problem of the establishment of an international court of human rights before the Commission had decided whether such a court would be necessary. In any event, the Human Rights Committee should be given time to prove its worth before the question of establishing an international court of human rights was considered.

8. Mr. CASSIN (France) stated that the French delegation had always been of the opinion that a final solution of the problem of implementing the covenant was not possible without the establishment of a competent international authority. It had supported the creation of a Human Rights Committee of a non-judicial nature because it felt that the time had not yet come for the creation of an international court. That, however, should not prevent the immediate consideration of the measures to be taken in the future or the furtherance of such measures by referring the whole question of implementation to the International Law Commission for the necessary study. He did not think that the studies to be carried out by the International Law Commission should be confined to the problem of the establishment of an international court of human rights as the Australian delegation felt they should. The Commission should be asked to study all proposals, discussions and opinions bearing on the problem of implementation of human rights by international bodies, whatever their origin. The French representative was proposing an amendment to the Australian draft resolution (E/CN.4/492) with that end in view.

9. Mr. WHITLAM (Australia) accepted the French amendment.

10. Mr. ORIBE (Uruguay) supported the Australian draft resolution and the French amendment, which seemed to him to meet a need already recognized by the Commission. Faced with numerous proposals which it had not been able to study for lack of time, the members of the Commission had agreed to recognize that the covenant under discussion and the Human Rights Committee which had just been set up constituted but the first stage of its work. Consequently, the Commission must consider even now the subsequent and final measures to be taken for the effective protection of human rights. In that connexion the assistance of such a competent body as the International Law Commission must assuredly be very useful.

/11. Miss BOWIE

11. Miss BOWIE (United Kingdom) thought that it would be somewhat premature to ask the International Law Commission to study the need for an international court of human rights before having given the Human Rights Committee which had just been set up an opportunity to prove its worth. That would imply that the Commission did not believe in the success of the methods which it advocated. The decision had been taken that the Human Rights Committee would remain a non-judicial organ pending definite information on the number and nature of the cases with which it would have to deal, and the number of consultative opinions it would have to request from the International Court of Justice. Consequently the United Kingdom delegation could not support the Australian draft resolution.

12. Mr. THEODOROPOULOS (Greece) said that his delegation was opposed to the Australian draft resolution for the reasons already outlined by the United States and United Kingdom delegations. Having voted for the creation of the Human Rights Committee, the members of the Commission could not now vote in favour of the resolution, for that would amount to stating that the system they had set up was a priori inadequate. He believed that there was no need to refer the question of implementation to the International Law Commission; indeed, the problems it raised were political rather than juridical in nature so that they could be solved only by a political organ of the United Nations. Recalling the fate of the draft declaration on the rights and duties of States as prepared by the International Law Commission, he said that the latter was not the proper body to examine the advisability of setting up an international court of human rights.

13. Mrs. MEHTA (India) supported whole-heartedly the principle underlying the Australian draft resolution. The Indian Government had always believed that the effective protection of human rights required the creation of a competent international authority. The measures of implementation which had just been adopted by the Commission were but a first stage in the system of the protection of human rights and could not be regarded as adequate. They had been adopted merely as an experiment and should not stand in the way of an immediate discussion on the advisability of setting up an effective and final system for the protection of human rights at some later date.

14. Mr. MALIK (Lebanon) said that he could not, at short notice, support so far-reaching a resolution as the Australian draft. The Commission had not completed its work on the protection of human rights; it had postponed until the following year the question of the inclusion into the covenant of articles relating to economic and social rights; it had recognized that measures for a more effective protection of human rights should be taken at a later stage; consequently there was no need to refer to the International Law Commission a question which was fundamentally within the competence of the Commission on Human Rights. He proposed, therefore, that the Commission should merely take note of the problem raised in the Australian draft and that it should postpone the discussion to one of its following sessions.

15. Mr. WHITLAM (Australia) said that the Commission would never achieve any progress if it always decided to postpone discussions of difficult problems to later sessions. What might not seem urgent today might become so tomorrow. The world was changing very rapidly, and it was the Commission's duty to evolve more effective means for the protection of human rights than those which had existed hitherto. Lastly, he repeated that his delegation accepted the French amendment.

16. The CHAIRMAN, speaking as the representative of the United States of America, said that her delegation was opposed to the French amendment because its aim was to entrust the International Law Commission with a task which was fundamentally within the competence of the Commission on Human Rights.

17. Mr. CHANG (China) felt that the French amendment was couched in too general terms. In particular, it should not refer to proposals of an unofficial nature.

18. Mr. THEODOROPOULOS (Greece) asked for a separate vote on the words "and unofficial".

19. Mr. MALIK (Lebanon) found it was somewhat strange for the Commission to ask the International Law Commission to examine a series of proposals concerning human rights before it had examined them itself. The unofficial proposals mentioned

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in the French amendment referred no doubt to the proposals made by non-governmental organizations. Valuable though some of them might be, the Commission could not refer them to the International Law Commission before examining them itself. He was sure that the Economic and Social Council would reprove the Commission if the latter requested it to entrust such a task to the International Law Commission. Furthermore, that task was of a political nature. Without prejudice to his position on the advisability of setting up an international court on human rights, he felt it was, to say the least, premature to entrust that work to the International Law Commission.

20. Mrs. MEHTA (India) said that the draft resolution did not request the International Law Commission to examine the political aspect of the question, but merely the juridical and technical aspects of the problem of the creation of an international court.

21. Mr. CASSIN (France) considered that the Commission on Human Rights should act as a co-ordinator. It should use the organs which the United Nations had placed at its disposal. For that reason it was not out of order to ask the International Law Commission for its opinion on the problem of the implementation of human rights. He recalled that the Commission had recently decided to consult the International Labour Organisation as well as UNESCO on questions of economic, social and cultural rights. It was therefore quite normal for the Commission to consult a legal organ on a legal problem. The members of the Commission had no special competence in that field. They must obtain the advice of all the competent organs before preparing decisions to be taken finally by the Economic and Social Council and the General Assembly.

22. The French amendment to the Australian draft resolution did not [illegible] time limit for the International Law Commission; it provided that the latter should study the official and unofficial proposals regarding the implementation of human rights by international jurisdictions. The International Law Commission could thus study the important questions raised by the various non-governmental organizations.

/23. The CHAIRMAN,

23. The CHAIRMAN, speaking as the United States representative, pointed out that the International Law Commission had been entrusted with a work of codification. The work to be entrusted to it by the Commission on Human Rights under the Australian draft resolution, as amended by the French delegation, would not come within its competence. She stated that there was a certain tendency in the Commission on Human Rights to entrust to other organs an essential part of the Commission's work, namely that of making fundamental decisions.

24. Mr. SORENSEN (Denmark) pointed out that the members of the Commission had not been able to reach agreement on the aim of the Australian draft resolution, which was to set up an international court of human rights. It was clear that the Commission would not obtain a satisfactory reply from the International Law Commission on that question. It was for that reason that he could not vote in favour of the Australian draft resolution as amended by the French delegation.

25. Mr. MENDEZ (Philippines) thought that the appropriate procedure would be first to take a decision on the proposal that an international court of human rights should be set up before transmitting that question to the International Law Commission for study.

26. Mr. ORIBE (Uruguay) felt that by consulting the International Law Commission the Commission on Human Rights would be following the normal procedure adopted in such cases. He recalled that a similar problem had arisen in 1949 at the Bogota Conference.

27. Mr. WHITLAM (Australia) thanked the representatives of France, Uruguay and India for their support. The International Law Commission had been set up to study all proposals of a legal nature and draft conventions. That organ possessed all the necessary qualifications to enable it to reply

competently to the question which the Commission on Human Rights would put to it. He agreed with the French representative who had recalled the circumstances under which the Commission had recently requested the assistance of the International Labour Organisation and of UNESCO. The Commission had not yet solved the problems on which it had asked those two organs for an opinion. That fact fully justified the Australian draft resolution.

28. The CHAIRMAN asked the Uruguayan representative whether the Inter-American Committee of Jurists, which had been asked for an opinion by the Bogota Conference, had not decided that it was premature to set up an international court on human rights.

29. Mr. ORIBE (Uruguay) replied affirmatively, but emphasized that the fact of applying to such an organ would in no way prejudge the final decision.

30. Mr. MALIK (Lebanon) felt that the comparison which had been drawn between the request for assistance addressed to two or three specialized agencies by the Human Rights Commission and the request which would be sent to the International Law Commission was fallacious. When the Commission had sought the opinion of the World Health Organization it had already adopted a preliminary text, which was not the case in the present instance. With regard to the economic and social rights about which the Commission had requested opinion from UNESCO and the ILO, it should be noted that while the provision for inclusion in the pact in connexion with those rights had not thus far been studied by the Commission, the rights themselves had already been proclaimed in the Universal Declaration of Human Rights.

31. Mr. Malik wondered what kind of opinion the International Law Commission would be likely to send to the Commission on Human Rights on the subject of the establishment of an international court of human rights.

/32. The CHAIRMAN

32. The CHAIRMAN put to the vote the proposal to add the words "and unofficial" to the French text.

The proposal was rejected by 4 votes to 2, with 9 abstentions.

The Australian draft resolution, as amended by France, was rejected by 8 votes to 5, with 2 abstentions.

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)

Text of the preamble and article 1; article 2 (E/CN.4/491, E/CN.4/365, E/CN.4/375, E/CN.4/380, E/CN.4/475, E/CN.4/486)

33. The CHAIRMAN invited the Chairman of the drafting group to present the new combined text of the preamble and article 1.

34. Mr. CASSIN (France), Chairman of the drafting group, stated that, after studying all the proposals submitted by delegations, the group had reached unanimous agreement on a text which embodied the preamble and the original text of article 1.

35. Mr. NISOT (Belgium) said that States which were not Members of the United Nations and, therefore, not bound by the Charter, would hesitate to subscribe to a covenant which, in the first paragraph of its preamble, recalled the obligations imposed by the Charter.

36. Mr. VALENZUELA (Chile) did not believe that the problem envisaged by the representative of Belgium would arise. In that connexion, he drew attention to the position of non-member States which were members of the specialized agencies. Although not bound by the provisions of the Charter as a whole, those States had, nevertheless, been regarded as having tacitly accepted the provisions of Article 58 of the Charter by virtue of which the Organization made recommendations for the purpose of co-ordinating the working programmes of the specialized agencies. In the same way, non-member States which subscribed to the covenant would bind themselves, ipso facto, in respect of the provisions of the Charter concerning human rights. That was why care had been taken to refer in the first paragraph of the preamble only to the obligation imposed by the Charter to promote universal respect for, and observance of, human rights.

/37. Mr. ORIBE

37. Mr. ORIBE (Uruguay) pointed out that the first paragraph of the preamble reproduced almost the whole of paragraph (c) of Article 55 of the Charter, which dealt with the obligations of the United Nations as an Organization. It was Article 56 which mentioned the obligations of Member States to co-operate in the achievement of the purposes of the Organization. Mr. Oribe asked whether those who had drafted the preamble had had in mind the obligations imposed by the Charter upon the Organization as such as well as those it imposed upon Member States individually.

38. Mr. CASSIN (France) stated that the drafting group had solved this problem indirectly by substituting for the phrase "the obligation imposed upon them by the Charter of the United Nations" in the original Australian draft, which had served as a basic text, the formula "the obligation under the Charter of the United Nations." The drafting group had done that because it had wished to give the obligation in question an impersonal character.

39. Mr. ORIBE (Uruguay) said that the analogy between the first paragraph of the preamble and Article 55 of the Charter was a mere coincidence, and added that he was satisfied with the explanations given by the Chairman of the drafting group.

40. Mr. NISOT (Belgium) wished "promouvoir" in the French text to be changed to "favoriser" in order that the wording should conform with the terminology of the Charter.

41. Mr. CASSIN (France) replied that the English word "promote" was translated into French in the Charter as "favoriser" in some cases and as "développer et encourager" in others. That being so, the drafting group had felt that nothing prevented their adopting a third term, "promouvoir", which was, moreover, the precise translation of the word "promote". He pointed out, too, that "promouvoir" appeared in many of the resolutions adopted by the General Assembly.

42. Mr. MENDEZ (Philippines) felt that the second paragraph of the preamble lacked vigour. He proposed that it should be replaced by the following:

"Bearing in mind the Universal Declaration of Human Rights, and the obligation of Member States to promote the achievement of its high objectives".

/43. Mr. MALIK

43. Mr. MALIK (Lebanon) stated that the reference to the obligation of Member States to contribute to the achievement of the objectives of the Declaration would be more in place in a resolution voted by the General Assembly, which included all Members of the United Nations, than in the preamble of the covenant which would bind only the contracting parties.

44. Mr. MENDEZ (Philippines), insisting on his proposal, declared that the covenant represented a more advanced step than the Declaration.

45. Mr. THEODOROPOULOS (Greece), reverting to the objections raised by the representative of Belgium against the first paragraph of the preamble, proposed the wording "Considering the provisions of the Charter of the United Nations, etc...".

46. The CHAIRMAN put to the vote the United States amendment proposing the insertion of the words "upon members of the United Nations" after the words "the Charter of the United Nations".

The United States amendment was rejected by 8 votes to 5, with 2 abstentions.

47. Mr. CASSIN (France) explained that in voting against the amendment the French delegation had in no way accepted the contention that States bound by the covenant would be bound, ipso facto, by the Charter.

48. Mr. MALIK (Lebanon) stated that he had voted against the United States amendment because the first paragraph of the preamble should allude not only to the obligations of Member States but also to those of the Organization as such.

49. The CHAIRMAN put to the vote the Philippine amendment proposing the deletion of the second paragraph of the preamble and the insertion in its place of the following text:

"Bearing in mind the Universal Declaration of Human Rights, and the obligation of Member States to promote the achievement of its high objectives,".

The Philippine amendment was rejected by 10 votes to 2, with 3 abstentions.

/50. The CHAIRMAN

50. The CHAIRMAN put to a vote the original text of the preamble and article 1 presented by the drafting group (E/CN.4/491).

The text was adopted by 14 votes to none, with 1 abstention.

51. Mr. NISOT (Belgium) explained that he had voted in favour of the text presented by the drafting group, despite his objections to the first paragraph, because of the explanation by the representative of France that the obligations deriving from the covenant would not be confused with obligations under the Charter.

Article 2

52. The CHAIRMAN, speaking as the representative of the United States, recalled that her delegation had proposed that the first sentence of article 2, paragraph 1 should be amended to read:

"The High Contracting Parties undertake to guarantee to all persons residing on their territory and within their jurisdiction the rights defined in the present covenant."

53. That amendment was designed to make clear that the covenant was applicable only to persons within the territory and jurisdiction of the contracting parties. Otherwise it could be interpreted as obliging a contracting party to adopt legislation applying to persons outside its territory although technically within its jurisdiction for certain questions. That would be the case, for example, in the occupied territories of Germany, Austria and Japan, as persons living in those territories were in certain respects subject to the jurisdiction of the occupying Powers but were in fact outside the legislative sphere of those Powers.

54. Miss BOWIE (United Kingdom) recalled that according to the original text of article 2 a State could ratify the covenant on human rights if it undertook to adopt "within a reasonable time" all the legislative and other measures necessary to give effect to the rights defined in the covenant if such measures had not already been adopted by the State concerned. Miss Bowie thought that the phrase "within a reasonable time" was too vague, and did not provide sufficient guarantees. The representative of Lebanon had presented an amendment inviting the contracting parties to adopt the necessary legislative measures within a period of one year after the ratification of the covenant. However, Miss Bowie did not believe it would be appropriate to adopt such a proposal.

/55. For the

55. For the foregoing reasons, the delegation of the United Kingdom had proposed an amendment according to which a contracting party could formulate a reservation stating that a given legislative measure was not in accordance with the terms of the covenant, at the same time undertaking to adapt it. Reservations would therefore have to be specific; reservations of a general character would be forbidden by the United Kingdom amendment.

56. Mr. NISOT (Belgium) asked whether, by the phrase "reservations of a general character" the United Kingdom delegation meant the colonial clause or the federal clause.

57. Miss BOWIE (United Kingdom) replied in the negative.

58. Mr. MALIK (Lebanon) said his delegation had proposed an amendment to article 2 (E/CN.4/380), according to which the non-discrimination clause would be added to paragraph 1.

59. With reference to the Lebanese amendment to paragraph 2, proposing to establish a period of one year within which a contracting party would be able to adapt its legislation to the provisions of the covenant, he well understood the desire of the United Kingdom delegation to remove all ambiguity and to ensure complete harmony between the legislation of a contracting party and the covenant. He also realized, however, the validity of the point of view which, in the past, had prompted the Commission to adopt the current text containing the phrase "within a reasonable time". Indeed, for legitimate reasons, constitutional or other, a State might find itself unable to adopt appropriate legislation in due time. That was why the Lebanese delegation proposed to compromise by establishing a time-limit of one year. If however, the legislation of a contracting party had not been adapted within that time, the State in question would have to inform the Secretary-General of the United Nations of the reasons for which it had been unable to adopt the appropriate measures.

60. Mr. CASSIN (France) said his delegation had proposed to amend article 2 by dividing it into three paragraphs. He agreed with the representative of Lebanon; it was essential that a State should not only guarantee the enjoyment of human rights to individuals but also respect those rights itself. As to the United Kingdom amendment, it had the advantages of logic and fairness; yet, although it proposed an ideal system, it would not work out satisfactorily in practice.

/61. The French

61. The French representative preferred the formula of "a reasonable time" to the establishment of the time limit proposed in the Lebanese amendment. He agreed, however, with the last clause of that amendment under which any State which had been unable to adapt its legislation to the provisions of the covenant would have to inform the Secretary-General of the United Nations thereof and the reasons therefor.

62. His delegation had also proposed that the word "jurisdiction" in paragraph 1 should be replaced by the word "competence"; the latter was preferable because it applied both to all the people in the territory of a country and to that country's nationals abroad.

63. The provisions of paragraph 3 of the French amendment were less rigid than those of the original text. Indeed, it was necessary to bear in mind that there were many different procedures of appeal. Some countries had a system of administrative appeal which was highly satisfactory to all concerned, and there should be some provision to that effect.

64. Mr. SORENSEN (Denmark) said that the Lebanese amendment seemed to imply that article 2 could not be separated from the additional article proposed by Denmark, the United Kingdom and the Netherlands (E/CN.4/365, page 88). For his part, he was prepared to withdraw that proposal. He would vote for the United Kingdom amendment because on the whole it followed the traditional procedure adopted for the ratification of international covventions.

65. He would vote against the time limit of one year laid down in the Lebanese amendment for the reasons already outlined by the United Kingdom representative. Such a time limit would weaken the compulsory character of international treaties. It was the established procedure that the provisions of an international covenant should come into force as soon as it had been ratified.

66. With reference to the non-discrimination clause, he said that unless the Commission wished to reconsider article 20, it was useless to repeat such a clause in article 2. He felt, however, that it would be better to include such a clause in article 2 even though it might have to be deleted from article 20.

67. He found it impossible to accept the whole of the French amendment but he would support the insertion of the words "political or administrative authorities or" because he felt that an administrative appeal often offered as many guarantees as an appeal before a tribunal.

/68. Mr. NISOT

68. Mr. NISOT (Belgium) said that most legislations in democratic countries contained provisions similar to those set forth in the covenant; in many cases, however, they had not been adopted in the form in which they appeared in the covenant. If the ratification of the covenant entailed a revision of the juridical system of a country, it was to be expected that most countries would not ratify it for some considerable time. To avoid that risk, the Belgian delegation had put forward a resolution contained in document E/CN.4/475. It had also proposed an article which made it possible for States Parties to make reservations; it was contained in document E/CN.4/486.

69. Mrs. MEHTA (India) thought that the non-discrimination clause should be retained both in article 2 and article 20 because they did not deal with the same subject; while article 20 referred to equality before the law and equal protection of the law, article 2 dealt with all the rights defined in the draft covenant.

70. The CHAIRMAN, speaking as the representative of the United States of America, then made a few comments on the United Kingdom proposals. In her opinion, the second sentence of paragraph 1 of article 2 should not be deleted as suggested by the United Kingdom. The sentence was necessary to make it clear that the obligations of the covenant would be carried out by the adoption of legislative or other measures to give effect to the rights defined in the covenant. The United States was not in a position to adopt the requisite legislative and other measures prior to its ratification of the covenant. To a substantial degree, the rights set forth in the draft covenant were already provided for in the United States. However, it was not yet possible to bring the legislation of that country into full conformity with the covenant, for such a work would require some time. In the case of other matters covered by the covenant, the views of the United States Supreme Court would be necessary to determine the nature and extent of the shortcomings of United States laws, and it would not be possible to secure such views prior to the deposit of an instrument of ratification.

/71. Under the

71. Under the Constitution of the United States, unless a sentence similar in character to the second sentence of paragraph 1 of article 2 was retained, the covenant would become the supreme law of the land and enforceable as such in the courts of the country. In most countries, however, including the United Kingdom, the provisions of the covenant as such would not be enforceable in the courts; only the administrative orders adopted to give effect to the provisions of the covenant would be enforceable.

72. She felt that it would be easy to write into the covenant a provision that the law enforcing the covenant and not the covenant itself would be applied. If the United States and other countries were to begin enforcing the covenant as such, instead of the law in conformity therewith, their courts and their legislative bodies would be thrown into utter confusion.

73. She recalled in that connexion the comment by the United Kingdom, given in document E/CN.4/365. The United States delegation wished to make it clear that the practice considered normal in the United Kingdom was certainly not so in international law. She recalled that in 1948, the Drafting Committee of the Commission on Human Rights had put the question to the Legal Department of the United Nations Secretariat, which had given the opinion that even if changes in domestic legislation were required, they need not take place before ratification or accession, unless the treaty itself so provided. The Legal Department had added that as far as international law was concerned, a State could undertake an international obligation and only subsequently take the necessary legislative measures to ensure the fulfilment of the obligation undertaken. Those principles had been acted on by the Permanent Court of International Justice in several cases.

74. She pointed out that there had been numerous instances in which the United States had enacted legislation subsequent to its deposit of an instrument of ratification. That procedure had been followed for example in several instances of treaties to which the United States and the United Kingdom had both been parties.

75. Appropriate organs of the United States Government would presumably promptly recommend the passage of such legislation as was needed to correct gaps in United States law when compared with the obligations undertaken in the covenant.

/76. It was,

76. It was, accordingly, the view of the United States delegation that the second sentence of paragraph 1 of article 2 should be retained.

77. With regard to the French proposals, given in document E/CN.4/365, she thought it was unnecessary to insert the words "respect and" between "undertake to" and "ensure", in the first line of the first paragraph. She felt that if a State ensured all the rights and obligations of the covenant, it must necessarily respect those rights and obligations.

78. On the other hand, she had no objection to the word "jurisdiction" being replaced by the word "competence" in the French text. "Jurisdiction" was the correct word in the English version. The United States delegation was particularly anxious that the words "everyone within its territory and subject to its jurisdiction" should be retained. Her delegation had no objection to making the second sentence of paragraph 1 into a separate paragraph, as suggested by the French delegation.

79. Her delegation could not agree to the French proposal to delete the words "when not already provided by legislative or other measures" which were needed for purposes of clarity in the English text. If legislative or other measures had already been enacted there was no need to re-enact them. If that provision was not included there might be a misunderstanding necessitating a re-enactment of legislation already adopted, which would be most unfortunate.

80. Her delegation considered the Lebanese proposal to include a non-discrimination provision in paragraph 1 of article 2 undesirable, as the Commission had already included such a provision in article 20. If it was decided to improve the provisions of article 20, that article and not article 2 should be amended.

81. She did not agree with the suggestion to insert the words "one year" in paragraph 2. There was no need to provide for a specific period of one year in which to give effect to rights recognized by the covenant. A more general expression seemed preferable because of the difficulty of foreseeing the exact period needed to carry out the provisions of the covenant.

82. The United States delegation felt that the new paragraph proposed by the Lebanese delegation would encourage countries to omit to take measures to give effect to the rights recognized in the covenant.

/83. That

83. That provision was similar to other proposals designed to allow any State to make reservations. Nothing in the covenant should encourage countries to fail to give full effect to its provisions.

84. Mr. MALIK (Lebanon) explained that he had wished to avoid an excessively wide expression. He thought a period of one year very reasonable. In the event of the contracting parties being unable, during that period, to take the measures laid down in article 2, they would notify the Secretary-General of the United Nations thereof, giving their reasons. That provision was a compromise between the United Kingdom proposal and the original text.

85. His delegation supported the arguments advanced by the representative of India in favour of the repetition of the non-discrimination provision of article 20. Article 20 and article 2 were not comparable. Article 20 laid down that all were equal before the law, while article 2 guaranteed to everyone the rights defined in the covenant, which was a higher concept.

86. Mr. JEVREMOVIC (Yugoslavia) preferred and would support the original text, subject to certain amendments.

87. He accepted the French amendments which he considered were drafting amendments, but found it difficult to support the United States amendment to insert in paragraph 1 before the word "subject" the words "within its territory". There was a difference between persons residing in a territory and those subject to the jurisdiction of a State.

88. He wholeheartedly supported the Lebanese delegation's proposal to insert a non-discrimination provision in article 2. Although article 20 already contained such a provision it should be included in article 2 also, so that there should be no doubt as to that article's effect.

89. The Yugoslav delegation strongly opposed the United Kingdom amendment, which, in its opinion, was a solemn declaration. Numerous solemn declarations signed in recent years had not been carried out. The history of the second world war had fully shown that it was not sufficient to sign declarations of that type.

/90. As to the

90. As to the time limit of one year, which had been proposed by the Lebanese delegation, he would prefer the contracting parties to be given a reasonable time to give effect to the rights recognized in the covenant.

91. Mr. KYROU (Greece) strongly supported the United States amendments. He preferred, however, the French text of article 2 as a whole, as he felt it was clearer.

92. Finally, the Greek delegation also thought that it would be preferable to retain in the second sentence of paragraph 1 the phrase "where not already provided by legislative or other measures".

93. Mr. SORENSEN (Denmark) quoted the first paragraph of article 20 which he felt applied to all the provisions of the covenant. It was, moreover, for that reason that he had voted in favour of the article. He would not, however, vote against the addition of the non-discrimination clause to article 2.

94. As regards the time granted to the contracting parties to give effect to the rights recognized in the covenant, he stated that his Government would make every effort to take the necessary measures as quickly as possible. He was inclined to accept the Lebanese proposal.

95. Referring to the provision relating to reservations, the Danish delegation thought that some reservations did in fact exist. If a provision permitting reservations to be made was not added to article 2, many States would not be able to accede to the pact.

96. The CHAIRMAN, speaking as the United States representative, thought that it was absolutely unnecessary to repeat in article 2 the non-discrimination clause which appeared in article 20. She drew the Commission's attention to the meaning of the expression "equal protection of the law" which appeared in the first paragraph of article 20. The mention of the word "law" in that paragraph did not mean that article 20 did not apply to the whole covenant. The United States delegation would, however, agree to study that question again at the time of the second reading of the covenant.

97. Mr. CASSIN (France) reviewed his delegation's position. As regards paragraph 1 of article 2 he would support the Lebanese proposal provided the word "jurisdiction" was replaced by the word "competence". He drew the

Commission's attention to the United States proposal that the words "territory and subject to its" should be added before the word "jurisdiction". He thought that in the French text the word "et" should be replaced by the word "ou". If that was not done many States would lose their jurisdiction over their foreign citizens.

98. The French delegation supported the inclusion of the non-discrimination clause in article 2. It thought that there was a great difference between equality of rights and lack of discrimination.

99. Referring to paragraph 2, he said he could agree to the deletion of the words "where not already provided by legislative or other measures" because of the new paragraph 3 which the Lebanese delegation suggested should be added on the question of appeals.

100. Mrs. MEHTA (India) wished to explain her delegation's position. In its opinion, it was absolutely necessary for the non-discrimination clause to be included in article 2 as well as in article 20.

101. It was possible that some countries might not have economic or social legislation in conformity with article 20. Such countries would unquestionably find it difficult to apply the provisions of that article regarding non-discrimination. It was therefore absolutely essential to include the non-discrimination clause in article 2 which applied to all rights set forth in the covenant.

102. Mr. ORIBE (Uruguay) wished to make some comments on the fundamental problem raised by the United Kingdom proposal. The United Kingdom delegation had stated that the normal practice with regard to the acceptance of international obligations was that accession was only effected after or simultaneously with the taking of the necessary constitutional measures for execution (E/CN.4/365, page 14). In his view, the normal practice was entirely different, and under international law, States signing an international agreement could take the necessary measures for its execution after having adhered to it. Moreover, he wondered how States could make the necessary changes in their national legislations to bring them into conformity with the provisions of the covenant before having acceded to it. It was considerably more difficult to undertake the implementation of provisions before they had been ratified. Consequently it was better to follow the normal practice.

/103. Mr. NISOT

103. Mr. NISOT (Belgium) stated that the non-discrimination clause contained in article 20 had been drafted carefully, and did not provide for de facto equality, as that was not necessary. Were that clause to be embodied in article 2, it might however constitute a recognition of de facto equality. Mr. Nisot therefore urged the Commission to proceed with greatest caution.

104. The CHAIRMAN in reply to the Indian representative's statement, recalled that paragraph 1 of article 20 provided that "all are equal before the law and shall be accorded equal protection of the law". Article 2 called upon the contracting parties to adopt the legislative or other measures necessary to give effect to the rights defined in the covenant. Consequently the principle of equality would apply to the covenant as a whole.

105. Mr. MALIK (Lebanon) thought that the point raised by the Belgian representative was very important. As to the opinion of the United States delegation, if it was merely a question of repetition, it could simply abstain from the vote on the inclusion of the clause.

106. On the other hand, if the inclusion of the non-discrimination clause in article 2 did not mean duplication, the delegations which had voted for article 20 but would not vote for article 2 should explain their reasons. He emphasized, in that connexion, that there had been no proposal for the deletion of the first part of the first paragraph. The delegations which had opposed the addition of the non-discrimination clause in article 2 should, in order to be logical, propose the deletion of the rest of the first paragraph. It was therefore clear that if the first part of the first paragraph of article 2 was accepted, the second part should be adopted as well.

107. Mr. Malik felt, like the Belgian representative, that some distinction must be made between articles 20 and 2. From that assumption he had however drawn different conclusions than the Belgian representative, hence there was clearly a difference of opinion. He was nevertheless grateful to Mr. Nisot for having stressed that there was a difference between the two articles.

/108. The CHAIRMAN

108. The CHAIRMAN pointed out that if there was a difference between the two articles she would vote against article 2, and if article 2 merely repeated the provisions of article 20, she would propose its deletion.

The meeting rose at 6.40 p.m.