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COMMISSION ON HUMAN RIGHTS

Sixth Session

SUMMARY RECORD OF THE HUNDRED-AND NINETY-FOURTH MEETING

Held at Lake Success, New York,
on Tuesday, 16 May 1950, at 11 a.m.

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	Mr. CHANG	China
	Mr. SORENSEN	Denmark
	Mr. RAMADAN	Egypt
	Mr. CASSIN	France
	Mr. KYROU	Greece
	Mrs. MEHTA	India
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	Mr. MENDEZ	Philippines
	Miss BOWIE	United Kingdom of Great Britain and Northern Ireland
	Mr. ORIBE	Uruguay
	Mr. JEVREMOVIC	Yugoslavia
Representative of a specialized agency:		
	Miss CRENSTEIN	World Health Organization (WHO)
Representatives of non-governmental organizations:		
Category A	Miss SENDER	International Confederation of Free Trade Unions (ICFTU)
	Mrs. SPRAGUE	World Federation of United Nations Association (WFUNA)
Category B:	Mr. MOSKOWITZ	Consultative Council of Jewish Organizations
	Mr. BERNSTEIN) Mr. HALPERIN)	Co-ordinating Board of Jewish Organizations
	Mrs. PARSONS	International Council of Women
	Miss ROBB	International Federation of University Women
	Mr. BEER	International League for the Rights of Man
	Miss SCHAEFER	International Union of Catholic Women's Leagues
Secretariat:		
	Mr. SCHWELB	Assistant Director, Division of Human Rights
	Mr. SCHACHTER	Deputy Director, General Legal Division
	Mr. DAS	Secretary of the Commission

DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS

Article 2 (E/CN.4/353/Add.10, E/CN.4/365, E/CN.4/374, E/CN.4/380)(continued)

1. Mr. NISOT (Belgium), referring to the United Kingdom proposal for a new article to follow article 2 (E/CN.4/375), asked what practice was usually followed with regard to reservations in respect of treaties or conventions containing no specific provision for reservations.

/2. Mr. SCHACHTER

2. Mr. SCHACHTER (Secretariat) said that the Secretary-General, as the depositary of instruments of ratification, communicated any reservation made in respect of a given convention to all the States parties thereto. If a single State party to the convention objected to the reservation, the ratification or accession of the State making the reservation was rejected. In other words, the consent of all the parties was required before the State making the reservation could accede to the convention.

3. In reply to a further question by Mr. NISOT (Belgium), he remarked that a reservation was, in substance, an attempt to modify a treaty: that was why the consent of all parties was required. The prevailing theory was that all parties had the right to amend a given treaty by unanimous consent.

4. The CHAIRMAN pointed out that the United Kingdom proposal was for the insertion of a new article; it should not, therefore be considered in conjunction with article 2.

5. Mr. SORENSEN (Denmark) remarked that the subject of reservations dealt with in the United Kingdom proposal was also touched upon in the Lebanese amendment to article 2 (E/CN.4/380). He therefore suggested that discussion of the United Kingdom proposal should be considered in order.

It was so decided.

6. Mr. NISOT (Belgium) wondered whether the adoption of paragraph 3 of the United Kingdom proposal providing that "reservations of a general character shall not be permitted" would mean that the normal practice with regard to reservations, as outlined by the representative of the Secretariat, would not be followed.

7. Miss BOWIE (United Kingdom) said that her delegation was aware that some States might have laws affecting the rights of their citizens which, though not contrary to the principle of human rights, were not entirely in conformity with the provisions of the covenant, and which could not immediately be modified.

Reservations on those grounds could be made at the time of depositing the instrument of ratification, but they should be very precise and specific in character. General reservations regarding whole classes of people or series of provisions should, in her delegation's view, be excluded; however, if paragraph 3 of the proposed article seemed likely to cause difficulties, she was prepared to withdraw it, since the point of paragraph 2 was sufficiently clear.

8. In reply to Mr. SCHACHTER (Secretariat), she said it was not contemplated that the type of reservations referred to in her delegation's proposal would require the approval of all States parties to the covenant.

9. Mr. NISOT (Belgium) remarked that the system suggested in his delegation's proposal for an additional article (E/CN.4/486) would seem preferable to the practice already in use by the Secretariat, as described by the representative of the Legal Department.

10. The CHAIRMAN invited members to proceed to the consideration of article 2 with the amendments thereto.

11. Mr. WHITLAM (Australia), introducing his delegation's amendments to article 2 (E/CN.4/353/Add.10, page 3), stressed that it was preferable to use the term "recognized" instead of "defined": the latter word might carry the implication that the rights set forth in the covenant were being granted for the first time, while the former would make it quite clear that the rights in question were already in existence and were, indeed, inherent in the concept of human dignity. The insertion of the words "to take the necessary steps" was proposed because a federal Government was not in a position to force or direct the States composing the federation to adopt legislative measures, but only to take steps to have such measures adopted.

12. Mr. RAMADAN (Egypt) stated that he would vote for the retention of the words "within a reasonable time" in the second sentence of paragraph 1 and for the deletion of the words "where not already provided for by legislative or other measures" at the beginning of that sentence, as proposed in the French amendment (E/CN.4/365). He also favoured the French proposal to substitute the word "compétence" for "jurisdiction" in the French text.

/13. The CHAIRMAN

13. The CHAIRMAN suggested that that change should be adopted without a vote, since it affected only the French text.

It was so decided.

14. The CHAIRMAN, speaking as the representative of the United States of America, was prepared to accept the Australian amendments. For the reasons stated by her at the preceding meeting, she would continue to press for the adoption of the United States amendment to paragraph 1 (E/CN.4/365), consisting in the insertion of the words "territory and subject to its" immediately prior to the word "jurisdiction" in the first sentence. That would limit the application of the covenant only to persons within its territory and subject to its jurisdiction. By this amendment the United States Government would not, by ratifying the covenant, be assuming an obligation to ensure the rights recognized in it to the citizens of countries under United States occupation.

15. Mr. MENDEZ (Philippines) remarked that a United States citizen abroad would surely be entitled to claim United States jurisdiction if denied the rights recognized in the covenant.

16. The CHAIRMAN, speaking as the representative of the United States of America, said that if such a case occurred within the territory of a State party to the covenant, the United States Government would insist that that State should honour its obligations under the covenant; if, however, the State in question had not acceded to the covenant, the United States Government would be unable to do more than make representations on behalf of its citizens through the normal diplomatic channels. It would certainly not exercise jurisdiction over a person outside its territory

17. Mr. KYROU (Greece) suggested that the first sentence of article 2 should read "....all individuals either within its territory or subject to its jurisdiction".

/18. The CHAIRMAN

18. The CHAIRMAN, speaking as the representative of the United States of America, opposed that suggestion because it seemed to draw a distinction between the two concepts of being within the territory of a State and being subject to its jurisdiction.

19. Mr. CASSIN (France) remarked that he would prefer the sentence to be worded in accordance with the Greek representative's suggestion; however, since the rights recognized in the covenant were of a territorial nature and could not, in practice, be ensured outside the territory of the contracting State, he did not feel that the point warranted prolonged controversy.

20. Mr. VALENZUELA (Chile) felt that the problem was one of translation into French. His delegation supported the position of the United States delegation, which it considered legally sound under international law. The questions of territory and national jurisdiction were separate matters. Citizens living in a given territory were entitled to protection by the State which exercised jurisdiction over that territory; consequently nationals living abroad must be subject to the laws of the country in which they resided. The only way in which a State could retain jurisdiction over its citizens abroad was in matters affecting marriage, the family, rights of succession, etc. The question of Trust Territories and areas occupied by military forces constituted a different case, but did not affect the general principle enunciated by the United States delegation. The Chilean delegation could not support any other position.

21. The CHAIRMAN, speaking as the representative of the United States, wished to make it clear that the phrase "within its territory" signified, in the view of her delegation, the territory actually belonging to a given State.

22. Mr. JEVREMOVIC (Yugoslavia) endorsed the view of the Chilean representative that the questions of national territory and national jurisdiction must be treated as separate matters; it was for that reason that he could not accept the United States amendment. National jurisdiction was defined by national law, and not all persons residing within the territory of a State were subject to the

/jurisdiction

jurisdiction of that State. The reverse was also true; and the inclusion of both the word "territory" and the word "jurisdiction" would in fact reduce the obligations of the States as regards the protection of human rights. As regards the question of military occupation of an area, he pointed out that such a situation was not a normal one, but arose as a result of war, and provision had been made in article 4 for derogation from certain obligations by the States under such conditions. Therefore the sole question of military occupation of an area did not justify inclusion of a reference to "territory" in article 2. He objected to such a reference, considering that the word "jurisdiction" amply covered all cases under article 2.

23. Mr. MALIK (Lebanon) mentioned three possible cases in which the application of the United States amendment was open to doubt. First, he felt that that amendment conflicted with article 11, which affirmed the right of a citizen abroad to return to his own country; it might not be possible for him to return if, while abroad, he were not under the jurisdiction of his own Government. Secondly, if a national of any State, while abroad, were informed of a suit being brought against him in his own country, he might be denied his rightful fair hearing because of his residence abroad. Thirdly, there was the question whether a national of a State, while abroad, could be accorded a fair and public hearing in a legal case in the country in which he was resident.

24. Mr. Malik felt that such cases might be covered by the addition of a phrase such as "in so far as internal laws are applicable", following the United States amendment. It seemed to him necessary that a nation should guarantee fundamental rights to its citizens abroad as well as at home.

25. The CHAIRMAN, speaking as the representative of the United States of America, reiterated that it was not possible for any nation to guarantee such rights under the terms of the draft covenant to its nationals resident abroad. She could however see no conflict between the United States amendment and article 11; the terms of article 11 would naturally apply in all cases, and any citizen desiring to return to his home country would receive a fair and public hearing in any case brought against him.

26. Mr. NISOT (Belgium) suggested the following wording: "...to all individuals who are subject to its jurisdiction, whether within its territory or abroad..."

/27. In reply

27. In reply to a question from Mr. MENDEZ (Philippines), the CHAIRMAN, speaking as the representative of the United States, affirmed that any aliens residing in United States territory would be entitled to protection, as aliens, by the United States Government.

28. Mr. JEVREMOVIC (Yugoslavia) reiterated his objection to the word "territory" and maintained his view that the rights of citizens should be guaranteed by their Governments abroad as well as at home. Otherwise certain dangers would arise; for example, it might be possible for States to exclude their colonies or Trust Territories from the field of application of the covenant, on the ground that such territories were outside their "national territory".

29. The CHAIRMAN, speaking as the representative of the United States of America, replied that a nation could not guarantee a fair trial, under the terms of the covenant, to its nationals in another country. If that country had not ratified the covenant, it would not consider itself bound by it; and the only recourse open to the Government of the citizen in question would be appeal through diplomatic channels.

30. Mr. ORIBE (Uruguay) felt that the position maintained by the United States delegation was the most sound and logical one. The first problem was to decide what persons were subject to the jurisdiction, both personal and territorial, of a State. The jurisdiction of a State applied to its nationals both within its territory and abroad; but it must be determined to which of those persons a State was required to guarantee fundamental human rights. Since no State could provide for judges, police, court machinery, etc. in territories outside its jurisdiction, it was evident that States could effectively guarantee human rights only to those persons residing within their territorial jurisdiction. For that reason the Uruguayan delegation would support the United States amendment.

31. Mr. NISOT (Belgium) raised the question of troops maintained by a State in foreign areas; such troops were obviously under the jurisdiction of that State.

/32. The CHAIRMAN,

32. The CHAIRMAN, speaking as the representative of the United States of America, replied that such troops, although maintained abroad, remained under the jurisdiction of the State. She added that although French citizens were subject to French penal law wherever they might be, United States nationals were subject to such laws only within the territory of the United States.

33. Mr. JEVREMOVIC (Yugoslavia) was not satisfied with the explanations given by the United States delegation. Some States had laws whereby their nationals remained under their jurisdiction even when residing abroad. Although he was not familiar with United States law, he assumed that a United States citizen committing a crime abroad would be liable to prosecution by his Government upon his return to his country. Similarly, a United States citizen committing a crime on board a United States ship at sea would be considered as under United States jurisdiction. He reiterated that the extent of national jurisdiction was defined by national law; in general, most nations preferred to try their nationals in their own courts, even though the crime in question had been committed abroad.

34. Mr. CASSIN (France) pointed out that the Commission's purpose was to ensure protection of human rights, but not to endeavour to change or amend international law as it was practiced. It seemed to him that the United States amendment challenged the various prevailing concepts of national competence and sovereignty, and might therefore give rise to serious difficulties. The article under consideration should deal only with jurisdictional cases under ordinary international law, not with extraordinary cases such as military occupation.

35. In reply to a point raised by the Yugoslav representative, Mr. Cassin pointed out that under French law, colonies were considered as part of the national territory and were protected accordingly.

36. Mr. NISOT (Belgium) suggested that the wording "to all individuals within the limits of its jurisdiction" might meet the case.

/37. Mr. MENDEZ

37. Mr. MENDEZ (Philippines) asked what would be the attitude of the United States Government toward, first, a citizen counterfeiting United States currency abroad and introducing it into the United States, and second, a United States national committing a felony abroad in the capacity of an official.

38. The CHAIRMAN, speaking as the representative of the United States of America, replied that cases of counterfeiting and treason constituted exceptions to the rule; both were punishable if the citizen returned to the United States, but only then.

39. Miss BOWIE (United Kingdom), referring to her delegation's proposed amendment to article 2 (E/CN.4/374), recalled certain comments which had been made at the preceding meeting in the course of the discussion. It had been stated that if each State ratifying the covenant were required to bring its domestic legislation into conformity with the provisions of the covenant, the process of ratification would take far too long. She explained that it was not the purpose of the United Kingdom amendment to force States to rewrite their domestic legislation; the intent was simply to ensure that domestic legislation was in conformity with the terms of the covenant and that such legislation would be fully enforced.

40. Miss Bowie recalled that at the thirty-first session of the International Labour Conference, in 1948, its Committee on the Application of Conventions and Recommendations had reported on the question of bringing legislation into conformity with ratified conventions. The Committee had emphasized the fact that the only acceptable ratification was one to which practical effect was given. Each State which became a party to a convention should ascertain, before ratification took place, that its national legislation ensured in all respects the application of the provisions of the convention in question. It must also be ascertained whether or not ratification in itself automatically incorporated the convention into the national legislation, since a convention could be fully applied only when national legislation and practice were in harmony with the terms of the convention. It was not sufficient to bring national law into formal agreement with a ratified convention; the terms of the convention must be effectively applied.

/41. Miss Bowie

41. Miss Bowie stated that if her delegation's proposal was rejected, she would support the Lebanese amendment, although she would prefer the substitution of the words "three years" for "one year" as proposed in that amendment, since a State might well require more than one year to bring its legislation into conformity with the terms of the convention. It was essential, however, that the States should not be permitted to make written commitments which they did not intend to carry out; for that reason she considered the phrase "within a reasonable time", in the original text of paragraph 1, as dangerous and unacceptable.

42. During the discussion of article 20, the United Kingdom delegation had supported the phrase dealing with discrimination which now appeared in the Lebanese amendment to article 2; but it had been stated at that time that the phrase should properly appear elsewhere in the draft covenant. She therefore urged the adoption of the phrase for inclusion in article 2.

43. Mr. MALIK (Lebanon) accepted the United Kingdom proposal to replace the words "one year" with the words "three years" in his amendment.

44. Mr. KYROU (Greece) moved the closure of the debate.

45. In reply to Mr. ORIBE (Uruguay), the CHAIRMAN said that the debate would be closed on paragraph 1 and that paragraph 2 would be discussed later. She then put to the vote the amendment to insert the words "to respect and" after the words "hereto, undertakes" in paragraph 1, put forward by the French and Lebanese delegations (E/CN.4/365, E/CN.4/380).

That amendment was adopted by 14 votes to none, with abstention.

46. The CHAIRMAN then put to the vote the United States amendment to insert the words "territory and subject to its" in paragraph 1 after the words "all individuals within its" (E/CN.4/365).

That amendment was adopted by 8 votes to 2, with 5 abstentions.

47. The CHAIRMAN put to the vote the Australian and Lebanese amendment to substitute the word "recognized" for the word "defined" in the second line of paragraph 1 (E/CN.4/353/Add.10, E/CN.4/380).

That amendment was adopted by 11 votes to 2, with 2 abstentions.

/48. The CHAIRMAN

48. The CHAIRMAN put to the vote the Lebanese amendment to add the words "without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status" (E/CN.4/380) at the end of the first sentence of paragraph 1.

49. Mr. VALENZUELA (Chile) asked that a separate vote should be taken on the words "without distinction of any kind".

50. The CHAIRMAN put to the vote the Lebanese amendment to add the words "without distinction of any kind" at the end of the first sentence of paragraph 1.

That amendment was adopted by 12 votes to 2, with 1 abstention.

51. Mr. MENDEZ (Philippines) had voted against that amendment because it duplicated the provisions of article 20.

52. Mr. NISOT (Belgium) did not fully understand the exact scope of that amendment. He feared that to repeat the non-discrimination clause at the beginning of the covenant might suggest that the covenant recognized de facto equality. That clause read within the context of article 20, in which it appeared, recognized only de jure equality, the only kind which could exist. Majors and minors, nationals and foreigners, could not be treated alike.

53. The CHAIRMAN put to the vote the rest of the Lebanese amendment to the first sentence of paragraph 1.

That text was adopted by 11 votes to 1, with 3 abstentions.

54. Mr. NISOT (Belgium) had abstained from voting for the reasons he had just set forth. New article 2 was either a mere repetition of article 20, and hence redundant, or it added something to article 20 and should be regarded as dangerous until the addition were known.

55. The CHAIRMAN, speaking as the representative of the United States of America, had voted against the text for the reasons given by the Belgian representative.

/56. Mr. VALENZUELA

56. Mr. VALENZUELA (Chile) had voted against the text because his delegation was firmly opposed to the use of unscientific terms such as "race" and "colour" in a legal instrument. It was for that reason that he had requested the Chairman to put the Lebanese amendment to the vote by parts.

57. Mr. CASSIN (France) had supported the Lebanese amendment because he felt that article 2 was the proper place to include provisions on discrimination. At the second reading, however, he would propose the deletion of certain parts of article 20 which were dangerous and which amounted to mere promises.

58. In reply to Mr. NISOT (Belgium), Miss BOWIE (United Kingdom) explained that her amendment to the second sentence of paragraph 1 (E/CN.4/374) applied only to ratifications by States.

59. The CHAIRMAN put to the vote the United Kingdom suggestion to substitute the words "Every deposit of an instrument of accession shall be accompanied by a solemn declaration made by the Government of the State concerned, that full and complete effect is given by the law of that State to the provisions of the Covenant" (E/CN.4/374) for the second sentence of the original text (E/CN.4/365).

That amendment was rejected by 10 votes to 1, with 3 abstentions.

60. Mr. NISOT (Belgium) had opposed the United Kingdom text because it could be interpreted to prevent a State from ratifying the covenant until its domestic legislation had been brought into agreement with the provisions of the covenant. Furthermore, that text was contradictory to the new article which the United Kingdom representative wished to be inserted after article 2 of the covenant (E/CN.4/375).

61. Mr. SORENSEN (Denmark) had abstained because he felt it would be necessary to reword the amendment in the light of the United Kingdom representative's explanation of the text.

62. The CHAIRMAN put to the vote the French proposal to make the second sentence of paragraph 1 into a separate paragraph (E/CN.4/365).

That proposal was adopted by 12 votes to none, with 3 abstentions.

/63. The CHAIRMAN

63. The CHAIRMAN put to the vote the Lebanese amendment to insert the word "existing" before the words "legislative or other measures" in the first line of the new paragraph 2 (E/CN.4/380).

That amendment was adopted by 10 votes to none, with 4 abstentions.

64. Mr. ORIBE (Uruguay) asked that a separate vote should be taken on the words "Where not already provided by existing legislative or other measures" at the beginning of the new paragraph 2 (E/CN.4/365).

65. The CHAIRMAN put to the vote the Australian amendment to insert the words "to take the necessary steps" after the words "each State undertakes" in the new paragraph 2 (E/CN.4/353/Add.10).

That amendment was adopted by 12 votes to 1, with 2 abstentions.

66. Mr. WHITLAM (Australia) withdrew his amendment to insert the words "or to have adopted" in paragraph 2 (E/CN.4/353/Add.10).

67. Mr. ORIBE (Uruguay) asked why it was necessary to fix a time-limit within which States should adopt legislative or other measures to give effect to the rights recognized in the covenant. Ordinarily, such a restriction implied that failure to comply would entail certain consequences. He wondered, therefore, if the Lebanese representative could elucidate the point.

68. Mr. MALIK (Lebanon) had attempted to achieve a compromise which would satisfy those who had preferred the phrase "within a reasonable time" and those who had thought no time-limit should be fixed. A definite limitation would encourage States to amend their legislation to bring it into line with the covenant.

69. The CHAIRMAN put to the vote the Lebanese amendment to substitute the words "three years" for the words "within a reasonable time" (E/CN.4/380).

That amendment was rejected by 7 votes to 3, with 3 abstentions.

/70. The CHAIRMAN

70. The CHAIRMAN put to the vote the Australian amendment to insert the words "as may be necessary" (E/CN.4/353/Add.10) after the words "such legislative or other measures" in the new paragraph 2 (E/CN.4/365).

That amendment was adopted by 13 votes to none, with 2 abstentions.

71. The CHAIRMAN put to the vote the Australian and Lebanese amendment to substitute the word "recognized" for the word "defined" in the last line of the new paragraph 2 (E/CN.4/353/Add.10, E/CN.4/330).

That amendment was adopted by 13 votes to none, with 1 abstention.

72. The CHAIRMAN put to the vote the whole of paragraph 1 as amended:

"Each State party hereto undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in this Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

That text was adopted unanimously.

73. Mr. MALIK (Lebanon) withdrew the third paragraph of his amendment (E/CN.4/380) as it had depended on the phrase "three years" which had been lost.

74. The CHAIRMAN put to the vote the whole of the new paragraph 2 as amended:

"Where not already provided for by existing legislative or other measures, each State undertakes to take the necessary steps, in accordance with its constitutional processes and in accordance with the provisions of this covenant, to adopt within a reasonable time such legislative or other measures to give effect to the rights recognized in this covenant."

That version of paragraph 2 was adopted by 12 votes to none, with 3 abstentions.

The meeting rose at 1.10 p.m.

25/5 p.m.