

UNITED NATIONS  
ECONOMIC  
AND  
SOCIAL COUNCIL.



GENERAL  
E/CH.4/SR.306  
6 June 1972 71  
ENGLISH  
ORIGINAL: FRENCH

COMMISSION ON HUMAN RIGHTS

Eighth Session

SUMMARY RECORD OF THE THIRTEEN HUNDRED AND SIXTH MEETING

Held at Headquarters, New York,  
on Thursday, 22 May 1972, at 2.30 p.m.

CONTENTS:

Draft international covenants on human rights and measures of implementation: part III of the draft covenant drawn up by the Commission at its seventh session (E/1972, E/CH.4/L.87/Rev.1, E/CH.4/L.106, E/CH.4/L.114/Rev.2, E/CH.4/L.115, E/CH.4/L.168/Rev.1, E/CH.4/L.169, E/CH.4/L.170, E/CH.4/L.172, E/CH.4/L.173, E/CH.4/L.174) (continued)

Draft article proposed by the delegation of France (E/CH.4/L.67/Rev.1) (continued)

<u>Chairman:</u>	Mrs. MENA	India
<u>Interpreter:</u>	Mr. WILLIAMS	Australia
<u>Members:</u>	Mr. HOLLAND	Belgium
	Mr. SANTA CRUZ	Chile
	Mr. CHENG BAOZHAN	China
	Mr. CALMEDAL	Egypt
	Mr. JUTICZY	France

Members (continued):

Mr. I. U	Greece
Mr. AZEOL	Lebanon
Mr. W. ED	Pakistan
Mr. J. M. T. CHY	Poland
Mrs. P. K. EL ) Mr. M. T. L. P. ENO )	Sweden
Mr. K. V. AL. N. Y. E. O	Ukrainian Soviet Socialist Republic
Mr. M. O. I. Z. O. V	Union of Soviet Socialist Republics
Mr. E. O. A. R. E	United Kingdom of Great Britain and Northern Ireland
Mrs. R. O. C. K. W. E. L. D	United States of America
Mr. E. P. O. O	Uruguay
Mr. M. U. R. S. E. V. I. C	Yugoslavia

Representation of specialized agencies:

Mr. T. L. E. F. O. R. T International Labour Organisation (ILO)

Representation of other international organizations:

<u>Category A:</u> Mr. M. B. R. K. A.	International Federation of Christian Labor Unions (IFCWU)
<u>Category B:</u> Mr. L. E. V. I. N	Agencia Israel World Organization
Mrs. C. O. P. L. A.	International Council of Women
Mrs. M. J. L. I. N.	International Federation of Business and Professional Women
Mr. E. H. C.	International League for the Rights of Man
Miss C. O. L. L. I. N.	International Union of Catholic Women's Leagues
Mrs. J. R. O. G. I. S.	Liaison Committee of Women's International Organizations
Mr. B. A. Y. E. S. ) Mr. J. A. C. O. Y. ) Mr. P. E. R. L. E. M. I. E. )	World Jewish Congress
Mr. R. O. J. A. L. I. G.	World Union for Progressive Judaism
<u>Secretariat:</u> Mr. H. M. P. H. E. Y. N.	Director, Division of Human Rights
Mr. L. H. I.	Division of Human Rights
Mr. D. A. S. ) Miss M. J. P. E. R. S. E. N. )	Secretaries of the Commission

/DRAFT

DRAFT INTERNATIONAL COVENANTS ON HUMAN RIGHTS AND MEASURES OF IMPLEMENTATION:  
PART III OF THE DRAFT COVENANT DRAWN UP BY THE COMMISSION AT ITS SEVENTH SESSION  
(E/1992, E/CN.4/L.67/Rev.1, E/CN.4/L.76, E/CN.4/L.114/Rev.2, E/CN.4/L.115,  
E/CN.4/L.163/Rev.1, E/CN.4/L.169, E/CN.4/L.170, E/CN.4/L.172, E/CN.4/L.173,  
E/CN.4/L.174) (continued)

Draft article proposed by the delegation of France (E/CN.4/L.67/Rev.1) (continued)

Mr. ALKHAL (Lebanon) thought that the Polish delegation in submitting an amendment (E/CN.4/L.173) to the draft article proposed by the French delegation (E/CN.4/L.67/Rev.1) and amendments (E/CN.4/L.172, E/CN.4/L.174) to the Chilean amendment (E/CN.4/L.169) and United Kingdom amendment (E/CN.4/L.170) had wished to prevent the words "human rights" from being interpreted in a manner contrary to the provisions and spirit of the covenant and Charter. If such an interpretation was possible, if those rights could be understood as pertaining solely to certain individuals or to certain groups, the Polish amendments should be adopted; if not, they should be rejected. The amendments might well be applied to the French proposal (E/CN.4/L.67/Rev.1) and to the United Kingdom amendment (E/CN.4/L.170); but the Chilean amendment (E/CN.4/L.169) was not open to such an interpretation and the Polish amendment (E/CN.4/L.172) to it should therefore be rejected.

Mr. WHITLAM (Australia) thought that the words "human right or freedom" could not be construed otherwise than as understood in the Charter and that the French proposal (E/CN.4/L.67/Rev.1) as amended by the United Kingdom text (E/CN.4/L.170) in no way limited the covenant's scope. He would therefore vote against the Polish amendments and the Chilean amendment.

Mr. MOROZOV (Union of Soviet Socialist Republics) said that the Lebanese representative had done well to acknowledge the soundness of the Polish amendments to the French proposal and to the United Kingdom amendment. The Polish amendment to the Chilean amendment (E/CN.4/L.169) was also essential, since the basic idea expressed at the beginning of the latter was correct but incomplete and might be distorted by misinterpretation. The words "on the

/pretext"

pretent" might give the impression that the latter part of that text laid down the only ground on which derogation from human rights could not be permitted. The Polish amendment, if adopted, would obviate that danger. The USSR delegation would therefore vote for it and, if it was not adopted, would be able to vote for the Chilean amendment.

Mr. JEVRENGIĆ (Yugoslavia) said that the words "derogation from" in paragraph 2 of the French proposal (E/CN.4/L.67/Rev.1) jeopardized the covenant. For example, article 28, dealing with education, might not be respected by a State, under the pretext that a law or convention gave a different interpretation of that term. He would therefore support the Polish and Chilean amendments. He preferred the word used for "parté atteinte" in the Russian version of the Chilean proposal because it was more exact.

Mr. BRATYNSKI (Poland) thought that the representative of the United Kingdom had accepted the substitution of the word "fundamental" for "any" in his amendment (E/CN.4/L.170). He agreed with the Lebanese representative that it was essential to obviate the risk of a misinterpretation that might subordinate the covenants to domestic law and conventions. The text should be made more specific in the manner provided by the Polish amendments.

Mrs. MCCLELLY (United States of America) suggested that the word "derogating" should be substituted for "permitting derogation" in the English version of paragraph 2 of the French proposal (E/CN.4/L.67/Rev.1). She was unable to support the Polish amendments which merely made for confusion.

Mr. KOVALENKO (Ukrainian Soviet Socialist Republic) would vote for the Polish amendments (E/CN.4/L.172, E/CN.4/L.173, E/CN.4/L.174), because although the French proposal (E/CN.4/L.67/Rev.1) reproduced the wording of article 18 of the covenant on political and civil rights, paragraph 2 might be interpreted in a different way in the covenant on economic, social and cultural rights, in which the State was not committed to the same extent. It had been said that some States granted more rights than others, but that did not mean that such  
/rights,

rights, if they were not included in the covenant, might not be contrary to the spirit and letter of the covenant, since they might have discriminatory clauses attached to them. The Polish amendments were a means to obviate that danger. Article 1, paragraph 2 of the draft covenant laid down that States must adopt their legislation to the provisions of the covenant. It was to be noted that the United Kingdom representative had always tried to have the State's obligation in that respect removed. That position was absolutely consistent with that behind the submission of the United Kingdom amendment (E/CN.4/L.170).

Mr. SANTA CRUZ (Chile), replying to the Yugoslav representative, pointed out that the words "à titre purté atteints" in the French version of the Chilean amendment (E/CN.4/L.169) were not an exact translation of the Spanish word "decrorr", which was stronger.

He would certainly accept the Polish amendment (E/CN.4/L.172) but he did not agree with the USSR representative that its rejection would be a valid reason for refusing to support the Chilean amendment. That amendment was clear enough as it stood and there could be only one possible interpretation of the words "fundamental human rights" in the United Nations, in the Commission on Human Rights and in the covenant on human rights. The only advantage of the Chilean over the United Kingdom amendment was that the former made it clear that the covenant could not be used to restrict those rights if there was a conflict between the covenant and domestic law or other conventions. The Polish amendment (E/CN.4/L.172) made no difference to the Chilean amendment and so the supporters of the former could perfectly well support the latter even if the former was rejected.

Mr. HOARE (United Kingdom), speaking on a point of order, protested against the irrelevance of the arguments to which the Ukrainian representative had had recourse; they were designed only to create confusion. The ulterior motives attributed to the United Kingdom delegation's objection to article 1 of the draft covenant had no basis in fact. That delegation simply thought that the phrase "within a reasonable time" should be deleted as it gave States too much latitude, since the idea of progressive realization should not apply to the covenant on civil and political rights. He had submitted his amendment (E/CN.4/L.170) with no other aim than to meet fully and fairly the objections that had been raised to the existing text.

/The CHAIRMAN

The CHAIRMAN proposed that the proposal and amendments should be put to the vote in the following order: paragraph 1 of the French draft article (E/CN.4/L.67/Rev.1), the Chilean amendment (E/CN.4/L.169) incorporating the Polish amendment to it (E/CN.4/L.172), the Polish amendment (E/CN.4/L.174) to the United Kingdom amendment (E/CN.4/L.170), the United Kingdom amendment (E/CN.4/L.170), the Polish amendment (E/CN.4/L.173) to the French proposal, the Polish amendment (E/CN.4/L.168/Rev.1) to the United States amendment (E/CN.4/L.114/Rev.2), the United States amendment (E/CN.4/L.114/Rev.2) to the French proposal, paragraph 2 of the French draft article (E/CN.4/L.67/Rev.1).

Mr. BORATINSKI (Poland) suggested that one of the Polish amendments (E/CN.4/L.168/Rev.1) was undoubtedly farthest removed in substance from the original proposal and should therefore be put to the vote first.

The CHAIRMAN pointed out that the Polish text was an amendment to the United States amendment (E/CN.4/L.114/Rev.2).

Mr. JUVIGNY (France) noted that the United Kingdom amendment (E/CN.4/L.170) and the Chilean amendment (E/CN.4/L.169) were intended to substitute a new text for paragraph 2 of the article proposed by France on which the debate had centred. He considered that, in accordance with rule 61 of the rules of procedure, those amendments should be put to the vote in the order of their submission.

Mr. GANZA CRUZ (Chile) said that the United Kingdom and Chilean amendments related to only a part of the text of the French proposal and that they were therefore amendments within the meaning of the rules of procedure.

Mr. MORCZY (Union of Soviet Socialist Republics) asked that paragraph 1 of the French draft article should be put to the vote in parts, with a first vote on the entire paragraph with the exception of the phrase "than is provided for in this covenant" and a second vote on that phrase.

Mr. JIVROVIC

Mr. JUREMOVIC (Yugoslavia) requested that the words "or at their limitation to a greater extent" should also be voted upon separately in order to preserve the logical construction of the French sentence.

The first part of paragraph 1 of the article proposed by France to the word "recognized herein" was unanimously adopted.

The words "or at their limitation to a greater extent" were adopted by 17 votes to none, with 1 abstention.

The words "than is provided for in this covenant" were adopted by 13 votes to none, with 5 abstentions.

Paragraph 1 as a whole was adopted by 15 votes to none, with 3 abstentions.

Mr. NISOT (Belgium) asked for a separate vote on the Polish amendment (E/CN.4/L.172) which was a part of the Chilean amendment (E/CN.4/L.169).

Mr. BORAGYNSKI (Poland) requested a roll-call vote.

Mrs. ROBERTS (United States of America) noted that it had been agreed that the word "is" would be used in the singular in the English text.

A vote was taken by roll call on the Polish amendment (E/CN.4/L.172)

In favour: Chile, Poland, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Uruguay, Yugoslavia

Against: Australia, Belgium, China, France, Greece, Lebanon, Sweden, United Kingdom of Great Britain and Northern Ireland, United States of America

Abstaining: Egypt, India, Pakistan

The Polish amendment (E/CN.4/L.172) was rejected by 9 votes to 6, with 3 abstentions.

Mr. VALTA CHUZ (Chile) requested a roll-call vote on the Chilean amendment (E/CN.4/L.169). He noted that the French translation of the Spanish word "delegación" seemed unsatisfactory.

/The CHAIRMAN

The CHAIRMAN said that the Secretariat would take that comment into consideration.

Mr. FENOT (Belgium) said that the English text contained the words "on the ground" while the French text contained the expression "sur prétexte".

Mr. SANTA CRUZ (Chile), supported by Mr. ECARE (United Kingdom), considered that the English text should use the word "pretext".

A vote was taken by roll-call on the Chilean amendment (E/CN.4/L.169)

<u>In favour:</u>	Belgium, Chile, Egypt, Greece, Lebanon, Pakistan, Poland, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United States of America, Uruguay, Yugoslavia.
<u>Against:</u>	Australia, France, India, Sweden, United Kingdom of Great Britain and Northern Ireland.
<u>Abstaining:</u>	China.

The Chilean amendment (E/CN.4/L.169) was adopted by 12 votes to 5, with 1 abstention.

The CHAIRMAN put to the vote the new article as a whole.

The new article was adopted by 13 votes to none, with 5 abstentions.

Mr. WETNAM (Australia) had voted against the Chilean amendment because he would have preferred to support the French text (E/CN.4/L.57/Rev.1) or the United Kingdom text (E/CN.4/L.170). The Chilean text did not completely embody the ideas expressed in those texts and might give rise to difficulties in interpretation.

Mr. FENOT (Belgium) had voted in favour of the Chilean amendment which he considered preferable to the French and United Kingdom proposals containing the word "permitting" to which he objected.

Mr. JUVIGNY



Mr. JUVICKY (France) had voted for the article as a whole which was based on the same considerations as the text proposed by the French delegation. Nevertheless, he thought that from the legal point of view, the French text, which was drafted in more vigorous terms, would impose greater obligations on States.

Mr. BOARE (United Kingdom) had voted against the Chilean amendment (E/CN.4/L.165) which was much less precisely drafted than the French or United Kingdom proposals and would not constitute as effective a guide in the case of conflict of laws.

Mr. MOROZOV (Union of Soviet Socialist Republics) had voted in favour of the first part of paragraph 1 which he considered necessary, but had voted against the last words of the paragraph referring to limitations which were not yet provided for in the Covenant. He had voted for the Chilean amendment but had abstained on the article as a whole which was incomplete because of the rejection of the Polish amendment (E/CN.4/L.172). He considered that that omission would have to be rectified when the article was re-examined by the Economic and Social Council or by the General Assembly.

The CHAIRMAN requested the Commission to consider Article 32 of the draft covenant.

Mr. JUVICKY (France) said that, after adopting a series of economic, social and cultural rights with corresponding obligations for States, the Commission should study the question of harmonizing the rights of the individual on the one hand and the rights of others and the requirements of the life of the community on the other. States would have to regulate the rights enunciated by the Commission and determine their content; limits must be set for each right in the interest of the exercise of that right but the powers of States in that respect must be strictly defined. The problem had been dealt with by the authors of the Universal Declaration of Human Rights, who had included a provision which did not directly limit the right of individuals but which restricted the limitation which the State could impose on those rights to ensure their exercise.

The covenant on civil and political rights did not contain a general limitation clause but special limitations were attached to most of its articles. In the covenant on economic, social and cultural rights, such a general clause was contained in article 32 but, for reasons of symmetry, that article should be identical with article 29, paragraph 2 of the Universal Declaration of Human Rights. Article 32 of the draft covenant was incomplete because it did not refer to respect for the rights and freedoms of others and the just requirements of morality and public order. The enjoyment of certain rights enunciated in the covenant might give rise to differences between individuals. A limitation clause was also necessary in the case of certain social rights which at first glance might not appear to require such limitation. That was the case, for example, of the right to social security. The State must therefore base its regulatory powers on an article of the covenant in defining the rights of individuals in relation to others. Provision must be made for the settlement of disputes which might arise between the Government, groups and individuals with regard to the exercise of certain rights.

Article 30 stated that limitations on the rights of the individual must be solely in the interest of the general welfare. The French amendment (E/CN.4/L.76) added the concept of morality which might arise, if not in connexion with all the social rights, at least in connexion with certain cultural rights, in particular the right to education, and the concept of public order which varied from State to State. In the view of the French delegation that concept more clearly defined the requirements of general welfare and could not give rise to any abuse in democratic States where it was subject to control by judicial or administrative courts. The French delegation would, however, defer comment on the formula proposed by the United States (E/CN.4/L.115) until members of the Commission had expressed their views.

The limitations should not be considered as detrimental to the individual; they provided him with safeguards. Moreover, that clause fitted in very well with that in the article just adopted. If ratified international conventions or domestic law provided stronger safeguards than those deriving from the general limitations clause, the relevant powers of the State would then be still more limited in the field covered by the convention or law.

/Mrs. ROOSEVELT

Mrs. ROOSEVELT (United States of America) said that the United States delegation's amendment (E/CN.4/L.15) was intended only to substitute for the concept of public order, which might be interpreted too broadly, the words "for the prevention of disorder" which seemed to accord perfectly with the intention of the French delegation.

Mr. MERZHOV (Union of Soviet Socialist Republics) thought that the French amendment to article 32 (E/CN.4/L.76) was a further attempt to weaken and destroy the binding force of the provisions on economic, social and cultural rights which the Commission had adopted. Article 32 of the draft covenant already laid down specific limitations for the exercise of these rights. The French delegation wished to add further limitations, in particular limitations based on respect for the rights and freedoms of others. He did not wish to repeat the arguments and examples of so-called acquired rights he had adduced during the discussion on the rights of self-determination of peoples and on the draft article proposed by France (E/CN.4/L.71/Rev.1), and whenever he had thought a proposal to be contrary to the purposes of the covenant. He did not question the French representative's intentions, but he noted that his amendment to article 32 answered the very purpose of those who sought to protect the colonial interests of the French bourgeoisie.

He recalled, moreover, that at the previous session his delegation had opposed the inclusion of article 32 in the covenant. It was the more justified in opposing it now in view of the limitations already provided for in article 1 which the Commission had adopted. The delegations in favour of article 32 claimed that the exercise of the rights established in the covenant might conflict with the general welfare in a democratic society. The provisions of the draft covenant on economic, social and cultural rights were specifically designed to ensure the general welfare of each member of such a society. Since the exercise of these rights was the foundation of such a society. Since the exercise of those rights was the foundation of such welfare it would be inconsistent to seek to limit those rights in the interests of the general welfare.

Article 32 might give rise to the same dangerous interpretations as the French amendment. Both were designed to nullify the commitments established in the covenant and the USSR delegation would therefore vote against them.

Mr. SANTA CRUZ (Chile) remarked that article 18, paragraph 1, of the covenant on civil and political rights contained a limitation on the exercise of those rights identical with that contained in the first paragraph of the French draft article which the Commission had just adopted (E/CN.4/L.67/Rev.1). The Commission was now working on the covenant on economic, social and cultural rights, and the French delegation had considered it necessary to propose an amendment to article 32 (E/CN.4/L.70). The French representative had pointed out that the text corresponded to article 29, paragraph 2 of the Universal Declaration of Human Rights. However, although that article had been drafted to cover civil and political rights, there was no analogous provision in the draft covenant dealing with those rights. The Commission was now working on a separate covenant dealing with economic, social and cultural rights: it had adopted article 1 which contained certain limitations, and a series of other articles on each of those rights. It had even established limitations in the article on the right to education. Notwithstanding all those limitation clauses, some delegations wished to add another general limitation clause, and insisted that it was necessary to retain article 32 in the covenant and to strengthen it by the French amendment. He recalled that when article 32 had been drawn up article 1 had not been drafted and his delegation had opposed a general formula to limit economic, social and cultural rights. It would have preferred to consider the possibility of a special limitation of each right separately in connexion with each article. That view had been shared by the Pakistan, Yugoslav, Lebanese and Danish delegations.

The Commission was now faced with the same problem in a much more acute form because the French delegation wished to include, in addition to article 32, other limitations besides those already provided for in the covenant. The provisions of article 29 of the Declaration of Human Rights concerning civil and political rights might conceivably be necessary, since there was greater possibility of abuse of those rights. In the case of economic, social and cultural

/rights

rights, however, the covenant merely established the minimum necessary for their exercise. There could be no possible conflict between the rights recognized by the covenant and other rights, which would justify a general restrictive clause.

He had already pointed to the dangerous interpretations to which the French amendment might give rise, particularly if States invoked alleged acquired rights in order to thwart the implementation of the right of peoples to self-determination and to control of their natural resources. The Chilean delegation would therefore oppose any general limitation clause. It would continue to maintain that the proper course was to examine each article separately and to decide whether a special limitation was necessary. It would vote against the French amendment (E/CN.4/L.76).

Mrs. ROOSEVELT (United States of America) cited certain examples with regard to the right to health, education and social security, showing that any attempt to provide for all possible exceptional cases in connexion with each of those rights would lead to absurd situations. The purpose of article 32 was to ensure the necessary protection of the rights of all individuals to the extent to which they were compatible with the general interest and respect for the rights of others. Any list of specific limitations was bound to be incomplete. Article 31 as adopted and the French amendment seemed to offer the simplest and most reasonable solution.

Mr. MEROZOV (Union of Soviet Socialist Republics) did not see how article 32 could be claimed to constitute a step forward. An article 2 of the covenant on civil and political rights showed, limitations could be placed on only some of the rights set forth therein, in the case of special danger. In the case of the covenant on economic, social and cultural rights, an unlimited formula was proposed. In the view of his delegation, there was no more reason to limit certain economic, social and cultural rights than civil and political rights. The delegations wishing to limit economic, social and cultural rights did not dare to make an open proposal to that effect, and preferred the more indirect method of the general limitation clause. On the one hand they recognized economic, social and cultural rights and on the other provided for so many limitations as to nullify them.

/If the United States

If the United States representative wished to re-open the debate on the question, his delegation would be prepared to examine all proposals to include special limitation clauses in the covenant. It had already made a concession by accepting the limitations in article 1 and article 18, but refused to adopt a general limitation clause which would undo all the work accomplished by the Commission.

Mrs. ROOSIVITZ (United States of America), referring to article 2 of the covenant on civil and political rights which the USSR representative had cited, emphasized that the article provided for a derogation from the obligations of the covenant in times of exceptional danger and, consequently, was not relevant. She had no intention whatever of re-opening the debate. She simply wished to stress that the subject had been exhausted during the debate on the relative merits of the general clause as against separate clauses, and that it was useless to repeat arguments already presented.

Mr. PROKOROV (Union of Soviet Socialist Republics), in reply to the United States representative's remarks concerning article 2 of the draft covenant, pointed out that the article prohibited the limitation of certain rights, even in a state of emergency; it did not, as the United States representative suggested, provide that those rights could be limited in such cases.

The meeting terminated at 5.15 p.m.