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COMMISSION ON HUMAN RIGHTS  
Eighth Session

SUMMARY RECORD OF THE THREE HUNDRED AND TWENTY-SEVENTH MEETING

Held at Headquarters, New York,  
on Monday, 9 June 1952, at 10.30 a.m.

CONTENTS:

Draft international covenants on human rights and measures of implementation (E/1992, E/CN.4/528, E/CN.4/L.127, E/CN.4/L.147, E/CN.4/L.157, E/CN.4/L.204) (continued) article 17 (continued)

<u>Chairman:</u>	Mr. CASSIN	(France)
<u>Rapporteur:</u>	Mr. WHITLAM	Australia
<u>Members:</u>	Mr. NISOT	Belgium
	Mr. VALENZUELA	Chile
	Mr. CHENG PAONAN	China
	Mr. GHORBAL	Egypt
	Mr. JUVIGNY	France

Members (continued):

Mr. KYROU	Greece
Mrs. MEHTA	India
Mr. AZKOUL	Lebanon
Mr. WAHEED	Pakistan
Mr. BORATYNSKI	Poland
Mrs. RÖSSEL	Sweden
Mr. KOVALENKO	Ukrainian Soviet Socialist Republic
Mr. MOROZOV	Union of Soviet Socialist Republics
Mr. HOARE	United Kingdom of Great Britain and Northern Ireland
Mrs. ROOSEVELT	United States of America
Mr. BRACCO	Uruguay
Mr. JEVREMOVIC	Yugoslavia

Also present: Miss MAÑAS Commission on the Status of Women

Representatives of non-governmental organizations:

<u>Category A:</u>	Miss SENDER	International Confederation of Free Trade Unions (ICFTU)
<u>Category B and Register:</u>	Mr. NEUN ) Mr. NOLLE )	Commission of the Churches on International Affairs
	Mrs. CARTER	International Council of Women
	Mrs. SOUDAN	International Federation of Business and Professional Women
	Miss ROBS	International Federation of University Women
	Miss SCHAEFER	International Union of Catholic Women's Leagues
	Mr. PENCE	World's Alliance of Young Men's Christian Associations
	Mrs. POLSTEIN ) Mr. RONALDS )	World Union for Progressive Judaism
<u>Secretariat:</u>	Mr. SCHWELB	Representative of the Secretary- General
	Miss KITCHEN ) Mr. DAS )	Secretaries of the Commission

/DRAFT

DRAFT INTERNATIONAL COVENANTS ON HUMAN RIGHTS AND MEASURES OF IMPLEMENTATION  
(E/1992, E/CN.4/528, E/CN.4/L.127, E/CN.4/L.147, E/CN.4/L.157, E/CN.4/L.204)  
(continued)

Article 17 (continued)

Mr. MOROZOV (Union of Soviet Socialist Republics) considered the provisions of article 17 extremely important. He would support the original text of the article but, as he considered it incomplete, he proposed an amendment (E/CN.4/L.127) to strengthen it, by providing for the prohibition of the dissemination of certain harmful ideas. In explanation of the purpose of his amendment, he recalled Nazi propaganda in favour of the theory of racial superiority, which had been the first stage in the preparations for a second world war and had served to justify the extermination of thousands of human beings.

Although the Soviet people had saved humanity from the Hitler tyranny, Nazi doctrines, including the theory of racial superiority, had not been destroyed. He quoted British and American authors who proclaimed the superiority of the Anglo-Saxon race. Such racial propaganda was also designed to prepare for another war and was part of the official policy of the Anglo-Saxon countries.

Analysing the racial legislation in force in certain States of the United States, he pointed out that many laws in those States were directed against the citizens of allegedly inferior races. The American authorities thus sanctioned racial discrimination, flouting the Potsdam Agreement, which prescribed the abolition of racial laws. He recalled that his delegation had recently submitted a proposal, which had not been adopted, designed to suppress the activities of organizations such as the Ku Klux Klan, the purpose of which was to foment racial hatred. The main point of the Soviet amendment was to try to make national legislation prohibit all propaganda intended to incite hatred.

/Mr. HOARE

Mr. HOARE (United Kingdom) said his delegation had been satisfied with the original text of article 17, drafted in 1949; but in the following year, at its sixth session, the Commission had decided, by a small majority, to add a non-discrimination clause. That addition was not desirable, either for reasons of form or of substance. In the first place, article 1 of the covenant, which covered all the other articles, already provided that all the rights recognized in the covenant should be put into effect without arbitrary distinctions of any kind. Secondly, the intention of article 17 in its original form was to ensure an impartial administration of justice, in the sense that there should be one uniform standard of justice, and that the protection of the law should be available to anyone whose legal rights, whatever they might be, had been infringed. But the discussion at the time had revealed that with the addition of the non-discrimination clause, article 17 took on a quite different meaning, since it covered at the same time all rights, even those not recognized in the covenant, and all national laws. The article's scope thus became much too wide since it was interpreted as relating not to the administration of justice but to the content of particular laws, and it imposed on States obligations of equality throughout the whole field which they could not respect at the present stage of legislation. Citing the example of the legal situation of owners and tenants, he pointed out that their rights were different and that the law necessarily made distinctions between them. The same was true as regards nationals and foreigners and there was no equality in respect of birth, as between legitimate and illegitimate children, in the matter of succession to property. The provision would relate to a whole series of laws which were not covered by the covenant and in the case of which it was impossible not to make distinctions. Reference in article 17 to all rights and to the field of national legislation was ambiguous and went beyond what the covenant should embrace. Consequently his delegation proposed the deletion of the phrase following the words "accorded equal protection of the law" (E/CN.4/L.147).

Mrs. MEHTA (India) recalled that it was the Sub-Commission on Prevention of Discrimination and Protection of Minorities which had suggested the text of article 17 at the Commission's sixth session. She did not consider that article 17 conflicted with article 1, which concerned only the rights recognized in the covenant, as it extended to all rights.

/Referring

Referring to the case of owners and tenants cited by the United Kingdom representative, she pointed out that that distinction, provided for in law, was not an example of discrimination. If there were one law for owners and another for tenants, there would indeed be two weights and measures but that was not so. The Indian delegation would support the Yugoslav amendment, which was drafted in stronger terms than the text of article 17, but she suggested the addition, after the words "guarantee to all persons" of the words "subject to its jurisdiction".

With regard to the USSR amendment (E/CN.4/L.127), she thought that the provisions of article 14 effectively served the same purpose and consequently she would not support it.

Mrs. ROOSEVELT (United States of America) pointed out that her delegation's amendment (E/CN.4/L.204) to the Yugoslav amendment (E/1992, annex III, section A, page 32) respected the primary intention of that text. The non-discrimination clause in article 17 was a duplication of the clause in article 1, which should apply to all the articles of the covenant.

The USSR text (E/CN.4/L.127) in fact tended to establish a totalitarian type of censorship over the press and media of expression.

Mr. BORATYNSKI (Poland) thought the Commission ought to adopt the USSR amendment, the purpose of which was perfectly clear.

The opponents of the amendment were not discussing the substance of the question, but concentrating on showing up the abuses to which it might give rise, abuses which were as nothing compared with those committed by propaganda designed to foment racial hatred. Poland had been the victim of Nazi and fascist theories and propaganda; it had learned by experience that they involved the most shocking violations of human rights. Such propaganda still existed in the United States at the present time. Reference to the statements of certain American authors and judges or to the programmes of American organizations sufficed to show that they proclaimed the superiority of the white race and the need to maintain other races in a state of servitude. Those doctrines were put into effect, as the incidents in Cicero, Illinois, proved. He also quoted examples of discriminatory measures against religious groups, for instance Catholics, and concluded that the Soviet amendment had never been more timely and more necessary.

Mr. VALENZUELA

Mr. VALENZUELA (Chile) regretted that certain delegations had thought it their duty to bring the debate on to the political plane and engage in partisan propaganda. He also regretted that the criticisms directed by those delegations against certain countries restricted the purpose of article 17 to racial discrimination and failed to mention discriminatory measures against those holding political opinions contrary to State dogmas. He wondered why those delegations had not mentioned ideological deviations, political purges and concentration camps.

Referring to the legal difficulties pointed out by the United Kingdom representative, he thought they should be considered in the light of the abuses to which all positive laws, of any kind, might give rise. It was questionable whether the absence of a provision such as that to be found in article 17 would not present more serious dangers than the improper interpretations to which national legislation on the right of ownership or national status might lend itself. The covenant should guard against those more serious dangers and leave to States the responsibility for safeguarding the private rights of owners and citizens.

He recalled how the non-discrimination clause had evolved from the Treaty of Versailles in 1919 to the seventh session of the Commission on Human Rights and the difficulties that had been encountered at the various stages of its adoption. It would be regrettable if, by refusing to include the full text of article 17 in the covenant, the Commission were to fail to make that clause universal in scope.

His delegation would support the Yugoslav amendment (E/1992, annex III, section A, page 32), which improved the original text, and would vote against the USSR amendment (E/CN.4/L.127).

Mr. JUVIGNY (France) explained that his delegation's amendment (E/CN.4/L.157) had the same purpose as the United Kingdom and United States amendments and that the arguments advanced by the authors of those amendments applied equally to the French proposal. He would therefore merely add that the inclusion of a non-discrimination clause in article 17 might lead to an

/equivocal

equivocal position; contrary to the Yugoslav representative's assertion, the principle of equality before the law could not be said to differ from the principle of non-discrimination. The principle was stated in three different ways in article 17, and that repetition was regrettable. Moreover, it must be borne in mind that article 17 laid down a right which had the same place in the covenant as the other rights and to which the provisions of article 1 were therefore applicable; in that combination, articles 1 and 17 guaranteed that the right to equality before the law would be exercised without discrimination. If a wider meaning was given to article 17, difficulties of interpretation would arise. After all the various types of discrimination had been listed, the article contained the words "or other status", which would prevent, for example, any legal distinction between adults and minors or between aliens and the nationals of a State. The purpose of that article, however, should be to prohibit any arbitrary application of law in identical juridical circumstances.

The author of the USSR amendment seemed to want to introduce into the covenant the provisions of article 7 of the Universal Declaration of Human Rights; nevertheless, the wording was not satisfactory. The text suggested by the Sub-Commission on Prevention of Discrimination and Protection of Minorities was preferable; he therefore proposed the inclusion of a provision to prohibit any propaganda for national, racial or religious hostility which might constitute incitement to violence.

Mr. JEVREMOVIC (Yugoslavia) asked the Indian representative to reconsider her suggestion to insert the words "subject to its jurisdiction". That clarification did not seem to be necessary, since it was already included in article 1; moreover, it seemed inadvisable to include it in article 17, since, although it applied perfectly well to States, it was not appropriate in matters of law.

He associated himself with the remarks made by the Chilean and Indian representatives concerning the maintenance of the non-discrimination clause in article 17 and reminded the French and United States representatives that the provisions of article 1, which related only to the rights stated in the covenant, should not be confused with those of article 17, which related

/to all

to all individual rights, irrespective of whether they were mentioned in the covenant or not. He considered that the words "all are equal before the law" only partially covered the question of non-discrimination; it was essential to specify, as was done in article 17, and even more clearly in his delegation's amendment, that the law should prohibit all discrimination and should guarantee everyone equal and effective protection in that connexion.

Mrs. ROOSEVELT (United States of America) pointed out that legislative measures could not be sufficient to achieve the results which the Polish representative desired; individuals must be convinced and educated and their co-operation must be won. She had not been aware of most of the facts quoted by that representative, but was sure that their repercussions were not as great as he would have the Commission believe. In connexion with the events that had taken place at Cicero, Illinois, she said that that State had a law prohibiting all racial discrimination; the events showed that legal provisions were not enough. She regretted that all the examples quoted dealt exclusively with the racial prejudices that existed in the United States and wondered whether certain delegations could not refer to other types of discrimination, examples of which they would probably find in their own countries.

Mr. KOVALENKO (Ukrainian Soviet Socialist Republic) supported the existing text of article 17 and opposed the United States, United Kingdom and French amendments, which would delete the non-discrimination clause. The formal arguments advanced by certain delegations could not dispel the real need which was met by that clause; the Indian representative had shown that it was the logical complement of article 1. Even if the question was considered solely from the formal point of view, the argument was not valid, since the Commission had not yet adopted article 1. He thought that if the non-discrimination clause was deleted, article 17 would be open to a dangerous interpretation, whereby the protection guaranteed by law would not be granted on an equal footing to different races unless they had equal juridical status.

/The Ukrainian



The Ukrainian delegation, which was hostile to fascist ideas and to theories intended to foster hatred and contempt, would support the USSR amendment (E/CH.4/L.127). The need for the provision proposed by that delegation was obvious, in spite of the United States representative's remarks; he recalled certain statements that had been made publicly in the United States with a view to encouraging racial hatred and murder. Under the pretext of protecting freedom of opinion and of the press, such violent ideas were in effect being defended. The United States representative's argument that the law had no power in such cases was unconvincing; although an effort to educate people was essential, it was inadmissible that discrimination should still be legal in some States of the United States.

Mr. BRATYNSKI (Poland) agreed with the United States representative that education was an important factor in combating discrimination; nevertheless, it was essential to take into account the legislative aspect of the question when drafting a convention, and the USSR amendment was therefore indispensable. He explained that he had been obliged to seek examples of discrimination outside his country, because the problem did not arise in Poland. In quoting certain reprehensible facts, his delegation had not wished to attack any country in particular, but had merely tried to prove that the adoption of the provision proposed by the USSR was necessary.

Mr. AZKUL (Lebanon) said that there were some important differences between article 17 and article 1. Article 1 referred to the question from the point of view of obligations undertaken by States and provided that States of their own free will agreed to guarantee the rights recognized in the covenant without establishing any distinction among individuals; article 17, on the contrary, dealt with the matter on the level of the rights of the individual by stating the right of everyone not to be subjected to discriminatory measures. In addition, article 1 limited the obligation of States with regard to non-discrimination to the rights recognized in the covenant, whereas article 17 extended that obligation to all cases governed by law.

/The problem

The problem before the Commission was to decide whether States should recognize the right of everyone, without any distinction, to equality before the law. According to the Lebanese delegation, that was at the existing stage of social development, a fundamental right which must be protected against any form of discrimination. The delegation would support the Yugoslav amendment (E/1992, annex IV, section A) and the oral suggestion made by the Indian representative.

The wording of the USSR amendment was imprecise and he considered that the facts mentioned would be dangerous only if the State was entitled to control scientific research, as the USSR delegation had proposed, since the pseudo-scientific theories concerned might then be applied if the persons who had formulated them came into power. Nevertheless, that danger did not exist in a democratic society; it was essential to count on the healthy and normal reaction of sensible people to such theories and to trust in truth and in real science, which would always prevail in the end. He would therefore vote against the USSR amendment (E/CN.4/L.127).

Mr. WHITLAM (Australia) associated himself with the Chilean representative's protests against the tendencies shown in the USSR proposal (E/CN.4/L.127). In a free country, it was difficult to define fascist or nazi views, since that was not a matter which could be regulated by law. There was a difference between the moral conscience of individuals and the social morality which might be imposed on them; a free country could not allow for authoritarian methods in such a connexion. The idea of non-discrimination was spreading fast and real progress should result from education and the training of public opinion. For example, the Supreme Court of the United States, the authority of which exceeded the territorial limits of its jurisdiction, played an important part in that connexion by building up a jurisprudence that was more effective than abstract laws.

/He considered

He considered that the motives of the Yugoslav proposal (E/1992, annex III, section A) and the Indian oral amendment were praiseworthy but, since article 1 contained provisions on non-discrimination, the result of repeating those provisions in article 17 would be to weaken the scope of article 1. The Australian delegation's objections were in no way based on a desire for symmetry, as the Chilean representative had alleged. He agreed with the United Kingdom representative that the Yugoslav proposal was too far-reaching, since it applied even to rights which were not stated in the covenant; it might disturb the legislation of States and would be difficult to apply, since it would impose unduly vague and unlimited obligations on them. The Australian delegation would therefore vote for the United Kingdom amendment (E/CN.4/L.147) and the United States amendment (E/CN.4/L.204).

Mr. BRACCO (Uruguay) thought it essential to maintain the non-discrimination clause in article 17, despite the fact that it already figured in article 1, because the most harmful aspects of discrimination were to be found in the relation between the individual and the law. The Uruguayan delegation would vote in favour of the Yugoslav proposal and against the proposals of France (E/CN.4/L.157), the United Kingdom and the United States. He thought that the USSR amendment went into too much detail and that the Yugoslav proposal was sufficient.

Mr. MOROZOV (Union of Soviet Socialist Republics) remarked that no delegation had dared to defend the flagrant violations of human rights which had been mentioned; they had contented themselves with appealing to sentiment, as if that were sufficient to prevent crimes against humanity. The United Kingdom, United States and French proposals were a defence of discrimination and were designed to eliminate the principle of the protection of the law. He reminded the Australian representative that, in Queensland, the indigenous people were being exterminated, and the United States representative that the propaganda of racial hatred by the Ku Klux Klan and others was not prohibited in the United States, on the pretext that that would be an infringement of freedom of expression.

/Mr. JUVIGNY

Mr. JUVIGNY (France) paid tribute to the Australian representative's statement. He pointed out that the law was not everything and that a text could not serve to change the human conscience, but that the action of legislators could make a useful contribution to the evolution of ideas. Such legislative action must have a repressive aspect, for a democratic society could not remain powerless and unarmed in the presence of hatred propaganda inciting to murder. The mere existence of penal provisions often succeeded in preventing incitement to violence fomented by racial groups. That was the French delegation's reason for submitting an amendment based on a proposal of the Sub-Commission on Minorities (E/CN.4/L.205) which, by stating that national legislation should prohibit any hatred propaganda which constituted incitement to violence, was designed to serve the cause of non-discrimination.

Mrs. MEHTA (India) said that in spite of the wording "All are equal before the law", discrimination was practiced in several ways. For instance, a law which said that persons of 21 years of age and over should have the right to vote discriminated in favour of persons of 21 years and over. Similarly, asking for old age pensions meant discrimination in favour of the aged. Such discrimination was reasonable. In article 17, however, the Commission wished to lay down a definite principle that there should be no discrimination on grounds of race, colour, sex, etc.

Article 17 was thus distinct from article 1, which only said that there must be no discrimination in the application of the rights in the covenant.

In deference to the objections of the Yugoslav representative, she would withdraw her delegation's oral amendment.

Mr. WAHED (Pakistan) was in favour of the text of article 17 as worded in the Yugoslav amendment and thought the article should contain a non-discrimination clause.

He would vote against the USSR amendment, which was out of place in article 17, and against the amendments for the deletion of the non-discrimination clause.

/Mr. KYRCU

Mr. KIROU (Greece) recognized that article 17 in no way contradicted article 1, but considered that the first two phrases were sufficient to recall the principle of non-discrimination without weakening the text. The Greek delegation would vote against the USSR amendment, which was of a most reprehensible totalitarian nature.

Mr. HOARE (United Kingdom), replying to the Indian representative, thought that the phrase "All are equal before the law" gave to those who had a right the assurance that it would be recognized in their case in the same way as in the case of others, but not the assurance that all rights would be identical. If a non-discrimination clause were added it would prohibit the possibility of any difference in rights for any reason whatsoever.

The Chilean representative had tacitly admitted the justice of that criticism, but claimed that the importance of the article justified the inclusion of a non-discrimination clause; that was no justification, however, for the covenant imposed obligations upon States. The Yugoslav proposal was a much clearer assertion of what was stated in an ambiguous form in the non-discrimination addition to the existing text, and it was to be noted that it provided for rights that were not included in the covenant. Small social discriminations, often the most irritating, escaped the law, yet the present text and the Yugoslav amendment would impose a very definite obligation upon States to abolish them.

Freedom of expression was the very basis of democracy. Better for the opposition to be allowed to express its opinion than to be stifled till it reached bursting-point. For that reason the United Kingdom delegation was absolutely opposed to the USSR amendment.

Mr. WHITLAM (Australia), in reply to the USSR representative, indicated that, far from disappearing, the indigenous population of Australia was on the increase.

Mr. AZKUL (Lebanon) proposed that the debate be adjourned until the afternoon.

Mr. VALENZUELA (Chile) asked for a ruling that the general debate on article 17 was closed and that there could be discussion only on the French amendment (E/CN.4/L.205).

/Mr. MEROZOV

Mr. MROZOV (Union of Soviet Socialist Republics) proposed that the debate on the French amendment and the vote on article 17 be adjourned until Wednesday, 11 June 1952, at 10 a.m.

Mr. NISOT (Belgium) thought that the ideas in the French amendment were sound, but that they were out of place in the covenant, because of the abuses to which that amendment could give rise.

Mrs. ROOSEVELT (United States of America) thought it would be regrettable, at the present stage of the Commission's work, not to complete the examination of article 17 during the afternoon meeting.

Mr. HOARE (United Kingdom) suggested that the Commission might discuss the French amendment without voting upon it immediately.

Mr. MROZOV (Union of Soviet Socialist Republics), in that case, would confine himself to requesting the adjournment of the discussion and the vote until Tuesday, 10 June 1952, at 2.30 p.m.

Mr. JUVIGNY (France) announced that, as it did not wish to delay the Commission, which had much to do in a short time, and in view of the opinions expressed concerning its amendment, the French delegation would withdraw its text (E/CN.4/L.205) for the present.

The meeting rose at 1 p.m.