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COMMISSION ON HUMAN RIGHTS

Eighth Session

SUMMARY RECORD OF THE THREE HUNDRED AND THIRTIETH MEETING

Held at Headquarters, New York,
on Tuesday, 10 June 1952, at 2.30 p.m.

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Mr. KAPSAMBELIS	Greece
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Mr. HOARE	United Kingdom of Great Britain and Northern Ireland
Mrs. ROOSEVELT	United States of America
Mr. BRACCO	Uruguay
Mr. JEVREMOVIC	Yugoslavia

Representatives of non-governmental organizations:

Category B and Register:	Mr. NOLDE	Commission of the Churches on International Affairs
	Mr. MOSKOWITZ	Consultative Council of Jewish Organizations
	Mrs. SOUDAN	International Federation of Business and Professional Women
	Miss DINGMAN	International Union for Child Welfare
	Mrs. WAISER	Women's International League of Peace and Freedom
	Mr. RONALDS Mrs. POLSTEIN	World Union for Progressive Judaism
	Mr. PENCE	World Alliance of Young Men's Christian Associations
Secretariat:	Mr. HUMPHREY	Representative of the Secretary-General
	Miss KITCHEN Mr. DAS	Secretaries of the Commission

/DRAFT

DRAFT INTERNATIONAL COVENANTS ON HUMAN RIGHTS AND MEASURES OF IMPLEMENTATION: DRAFT COVENANT CONTAINED IN THE REPORT OF THE SEVENTH SESSION OF THE COMMISSION (E/1992, annex I, annex III, section A; E/CN.4/528, E/CN.4/528/Add.1, E/CN.4/641, annex II; E/CN.4/L.166, E/CN.4/L.121, E/CN.4/L.136, E/CN.4/L.139) (continued)

Article 2

Mrs. MEHTA (India) said that, in view of earlier discussion in the Commission, she withdrew the first Indian amendment for the replacement of the word "immediately" in paragraph 3 by the words "as soon as may be". She wished, however, to maintain the second Indian amendment by which the Secretary-General would notify the General Assembly rather than the other States Parties of derogations.

Mr. JEVREMOVIC (Yugoslavia) said that it was unnecessary to explain in detail the Yugoslav amendment to paragraph 2 calling for the insertion of a reference to the principles of the Charter and the Universal Declaration of Human Rights. In his opinion that addition was essential to avoid any possible misinterpretation of the words "international law".

In paragraph 3, the Yugoslav delegation proposed an addition requiring States to explain the reasons which had led them to derogate from any of the provisions of the covenant. If international control was to be achieved, States must not only be required to give official notification of derogation but also to justify their action.

In view of the Commission's decision to have a separate article on reservations, he withdrew the Yugoslav amendment for an additional paragraph in article 2 in that connexion (E/CN.4/L.136).

Mr. HOARE (United Kingdom) said in introducing the United Kingdom amendments (E/CN.4/L.139) that in paragraph 1 the first change was intended to limit derogations to cases of grave emergency threatening the life of the nation. The existing text under which public authorities could officially proclaim an emergency and seek derogations was open to abuse. He noted that the same idea was embodied in the USSR proposal, but the United Kingdom delegation considered its own formulation preferable.

/The second

The second change in paragraph 1 was purely a drafting amendment while the third transposed the content of the second sentence of paragraph 2 of the existing text. The final change in the first paragraph had been submitted because the United Kingdom delegation believed that the right of derogation should not be so absolute as to permit discrimination solely on the grounds of race, colour, sex, language or religion. In time of war or public emergency, discrimination on the ground of national status might be essential, but even in time of crisis discrimination for the reasons set forth in the United Kingdom text should not be permitted.

The United Kingdom amendment to paragraph 2 had been drafted in relation to the United Kingdom amendment to article 3, which the Commission had rejected. In view of the text of article 3 which the Commission had approved, it might be felt that the reference to "except in respect of deaths resulting from lawful acts of war" in the United Kingdom amendment was unnecessary and he therefore was prepared to withdraw that part of his text. He would reserve to a later intervention the explanation of the omission in his amendment to paragraph 2 of the reference to article 13.

Mr. VALENZUELA (Chile) noted that the original text of article 2, paragraph 1 referred only to a state of emergency while the United Kingdom amendment introduced a reference to "in time of war". In his opinion it would be inappropriate in an international covenant to include a reference to war. Moreover, from a strictly legal point of view such a reference was unnecessary because public emergency would be deemed to cover a time of war.

While he understood the intention of the United Kingdom in referring to a public emergency "threatening the life of a nation", it was difficult to give a precise legal definition of the life of a nation. It was significant that the text did not relate to the life of the government or of the state.

The other United Kingdom amendment to paragraph 1 was an improvement, but the final clause should be completed by the insertion of social origin and birth as two additional grounds on which discrimination should be prohibited even in time of emergency.

The United Kingdom amendment to paragraph 2 involved a very specialized and exceptional case which was covered by the reference to public emergency. Moreover such cases, if they arose, would involve self-defence rather than aggression. The amendment was therefore unnecessary and might be exploited for propaganda purposes.

Mr. BRACCO (Uruguay) said that subject to certain reservations he was in substantial agreement with the United Kingdom amendments to article 2.

He agreed with the representative of Chile that the reference to war in paragraph 1 was undesirable, but was prepared to support it if the United Kingdom representative agreed to replace the reference to "international law" by a reference to the Charter or to Chapters VII and VIII, to make it clear that war was recognized only in case of self-defence or for other reasons recognized in the Charter.

Commenting on the expression "threatening the life of the nation" he said that, although "nation" was easier to define legally than "people", it would be better to refer to a threat to the life or interest of a people in a covenant on human rights.

He hoped that the United Kingdom representative would agree to add a reference to social origin and birth in the commendable non-discrimination provision at the end of paragraph 1, in order to ensure consistency with other articles of the covenant.

Mrs. ROOSEVELT (United States of America) said that the United States delegation was satisfied with the present text of article 2 and had therefore submitted no amendments. It was, however, prepared to support the United Kingdom proposals for paragraphs 1 and 2, subject to three omissions. She considered that the reference to war in paragraph 1 was unnecessary in view of the inclusion of the words "public emergency" and added that in an international covenant it would be regrettable to include any allusion to war. She also felt that the clause "and do not involve discrimination solely on the ground of race, colour, sex, language or religion" should be omitted because it might be interpreted to authorize discrimination on other grounds, such as national origin.

/In paragraph

In paragraph 2 she felt that it was unnecessary to refer to "except in respect of deaths resulting from lawful act of war". She requested separate votes on those three phrases and said that the United States delegation would vote against them.

She had no objection to the USSR amendment but preferred the United Kingdom phraseology, which she assumed would be put to the vote first.

She had the same objections to the Yugoslav amendment to paragraph 2 as she had stated in connexion with article 18. In her opinion it would be regrettable, confusing and undesirable to add a reference to the Charter and the Universal Declaration of Human Rights and possibly thereby to include the limitations of article 29 of the Universal Declaration, particularly in relation to the articles on torture and slavery. She was also concerned that the reference might be interpreted to cover article 2, paragraph 7 of the Charter and thereby negate any implementation machinery.

The Yugoslav amendment to paragraph 3 was a decided improvement since it added a further safeguard. She was opposed to the Indian amendment because the obligations under the covenant applied only to contracting States. If at a later date all Members of the United Nations ratified the covenant, the United States Government would agree that the Secretary-General should report on derogations to the General Assembly.

Mr. MOROZOV (Union of Soviet Socialist Republics) said in presenting the USSR amendment (E/CN.4/L.121) that it was clear that derogation from obligations under the covenant could not be permitted in all cases of emergency, but should be restricted to emergencies threatening the interests of the people. That concept was broad enough to cover the point adequately and to exclude cases of abuse by Governments acting contrary to the interests of their people.

The USSR delegation was prepared to support the United Kingdom amendment, which was similar to the USSR proposal, on condition that the reference to "time of war" should be omitted from the first paragraph

/and the

and the words "except in respect of deaths resulting from lawful acts of war" deleted from the second paragraph. He explained that his delegation was opposed in principle to any reference to war in an international instrument such as the covenant.

Mr. JUVIGNY (France) preferred the original text of paragraph 2 referring to "international law" without the added reference to the Charter and the Universal Declaration, as suggested by the Yugoslav delegation. He noted that the article dealt with derogations in time of emergency and that in that context the Charter and the Universal Declaration would not be meaningful.

The Indian amendment would be dangerous in permitting States which were not parties to the covenant to judge derogations. In that connexion, he agreed with the United States representative's remarks.

The Yugoslav amendment to paragraph 3 was acceptable because it was normal to require justification of the serious action of derogation by a State.

He pointed out, in connexion with the United Kingdom amendment to paragraph 1, that the omission of the requirement of official proclamation of a public emergency might result in arbitrary action and abuse. In many countries the state of siege could be declared only under conditions defined by law, that guarantee would be lost unless the requirement of public proclamation was maintained. He would therefore move the insertion of the words "officially proclaimed by the authorities" taken from the original text of paragraph 1. He also felt that that wording would cover war and added that from the legal and the psychological point of view a direct reference to war was undesirable.

The United Kingdom formulation at the end of paragraph 1 had merit, but consideration should be given to the Chilean suggestion, especially in connexion with social origin. It might be unwise to deprive victims of discrimination or unlawful acts of all remedies, and under the United Kingdom formulation States could derogate from the guarantees relating to remedies.

Mr. NISOT (Belgium) noted that under international law, in case of war, the covenant would be at least suspended between belligerents.

AZMI Bey (Egypt) was in general agreement with what the Chilean, United States, USSR and French representatives had said about the United Kingdom amendment.

He wondered whether the omission of a reference to article 13 in the list of articles in the United Kingdom amendment from which derogation was not permitted was due to an oversight. Certainly derogation from the right to hold and change religion or belief was unthinkable even in direst emergencies.

Mr. HOARE (United Kingdom) explained that, while his delegation would not wish to permit interference with freedom of religion in any circumstances, the difficulty was that article 13 also spoke of the right to manifest religion or belief in public and in private, and that the exercise of that right might be identical with the exercise of the right of freedom of expression and the right of peaceful assembly, from which derogation was obviously necessary in certain emergencies, such as a state of war. It might therefore happen that a derogation in a particular case which could be promoted under articles 15 and 16 would at the same time be prohibited under article 13. Perhaps the Commission could help him find a way out of that difficulty.

Mr. AZKOUL (Lebanon) agreed with the French representative that the Yugoslav amendment introducing a reference to the Charter and the Declaration in paragraph 2 was unacceptable. As the covenant was admittedly narrower in scope than the Declaration, derogation from the covenant which was not contradictory to the Declaration was impossible, and the provision as amended would become meaningless. He would, however, vote in favour of the Yugoslav amendment to paragraph 3, as States should certainly be required to explain why they had derogated from the covenant.

The words in the United Kingdom amendment, "threatening the life of the nation" should not be a replacement of the phrase "officially proclaimed by the authorities" but an addition to it, as that phrase represented an added safeguard in many countries, in which the official proclamation of a state of emergency was strictly regulated by law. The word "solely" in the United Kingdom amendment should be deleted, as it implied that while discrimination was not permitted on any one ground given in the text, it would be permissible on any two grounds. He agreed with the Chilean representative that the words "social origin" should be added to that passage.

/The difficulty

The difficulty to which the United Kingdom representative had drawn attention might perhaps be solved by so re-drafting the text of article 13 that manifestation of religion or belief should be contained in a separate paragraph. It would then be possible to state that no derogation should be permitted from that paragraph of article 13 which would then deal exclusively with freedom to hold or change religion or belief.

AZMI Bey (Egypt) remarked that there should be no difficulty about including the whole article 13 in that list, as paragraph 3 of that article, as adopted by the Commission (E/CN.4/668/Add.7), already permitted limitation of the right in the interests of public safety and order, so that whatever restrictions could be applied under article 2 were already applicable under article 13 itself.

Mr. AZKOUL (Lebanon) observed that if the Egyptian representative was right, the list of articles from which derogation was not permitted should include articles 14, 15 and 16, which also contained such specific limitations.

Mr. JEVREMOVIC (Yugoslavia) accepted the United Kingdom amendment, with the reservations made by previous speakers. He wondered, however, whether it would not be preferable, in the clause dealing with non-discrimination, to establish an exhaustive list, such as was contained in the Declaration.

The United Kingdom amendment, like the original text of article 2, contained a reference to international law. Inasmuch as the Charter and the Declaration were an integral part of international law, he moved his original amendment (E/1992, annex III, section A) to paragraph 2 as an insertion in the United Kingdom amendment (E/CN.4/L.139); thus, the words "and in particular with the principles of the Charter of the United Nations and the Universal Declaration of Human Rights" would be placed after the words "international law" in that text.

Mrs. ROOSEVELT (United States of America) asked for a vote in parts on the Yugoslav amendment, first, down to the word "nations" and, secondly, on the remainder. The amendment seemed to imply that the Declaration was part of international law; of course it was not.

Mr. NISOT (Belgium) said that the Declaration was not part of international law, since it was not mandatory. Moreover, the reference to it and to the Charter might deter non-Member States from adhering to the covenant. He would therefore vote against the Yugoslav amendment.

Mr. MOROZOV (Union of Soviet Socialist Republics) formally moved the deletion from the United Kingdom amendment of the words "war or other", "except in respect of deaths resulting from lawful acts of war", and "solely"; the last for the reason given by the Lebanese representative.

Mr. HOARE (United Kingdom) appreciated the argument against mention of war advanced by several delegations, and therefore accepted the first two deletions proposed by the USSR representative. The word "solely", however, had a certain importance: as it might easily happen that during an emergency a State would impose restrictions on a certain national group which at the same time happened to be a racial group, that word would make it impossible for the group to claim that it had been persecuted solely on racial grounds. He therefore asked for a separate vote on that word.

He was prepared to accept a reference to social origin, as suggested by the Chilean representative, but not the mention of birth, as legitimate restrictions might in some cases be imposed on persons because of their birth in a foreign country, although they were no longer that country's nationals.

He did not think that article 13 as a whole could be included in the list of those from which no derogation was possible, any more than articles 14 and 15. All those articles provided for the same type of limitation, but limitation which applied in times of peace were plainly inadequate in a case of public emergency, when much more stringent measures might be required. Some solution should be found making it possible to refer only to the relevant part of article 13.

Mrs. MEHTA (India) recalled that her delegation had always contended that the covenant would be a treaty between the various States parties to it and the United Nations as a whole; that was the reason for the Indian amendment (E/1992, Annex III, section A). As the Commission did not share that view, and as measures of implementation had not yet been drafted, she withdrew that amendment for the present.

/She would

She would support both the United Kingdom amendment, with a reference to "people", rather than "nation", as suggested by the Uruguayan representative, and the additional language proposed by Yugoslavia to paragraph 3.

Mr. VALENZUELA (Chile) was pleased that the United Kingdom representative had accepted the addition of the words "social origin", and agreed, after the explanation given, that a reference to birth was not desirable. He did not think that "the life of the nation" was a concept recognized in law. If the United Kingdom representative maintained that text, he would ask for a separate vote on the words "threatening the life of the nation".

He wished to put on record the Chilean delegation's deep concern with the inaccurate translation into Spanish of the various texts before the Commission. He had no desire to criticize the Spanish translation section, which was doing excellent work; but measures had not been taken to endow that section with sufficient staff so that it could prepare acceptable translations. Thus, in an amendment to article 2, public emergency had been mistranslated as "peligro extraordinario". In general, the Secretariat should not regard Spanish as a sub-species of the French language, as literal translations from the French frequently resulted in absurdities.

Mr. BRACCO (Uruguay) fully associated himself with the Chilean representative's remarks.

He was glad that the United Kingdom representative had deleted the mention of war in his amendment; as, however, in the view of the Uruguayan delegation the only legitimate kind of war was war waged in self-defence, as provided for in the Charter, he would like to see a reference to the Charter after the words "international law" in the United Kingdom amendment. He would therefore support the Yugoslav amendment to that passage, as well as the Yugoslav amendment to article 2, paragraph 3. He fully agreed with the United Kingdom representative that in the part of the United Kingdom amendment dealing with non-discrimination there should be a mention of social origin, but not of birth.

The Chilean representative had been quite correct in saying that "nation" was not a generally recognized concept. Furthermore, since the covenant dealt with the rights of individuals, it would be more appropriate to

/speak of

speak of "people" -- individuals in the aggregate, as it were -- then of "nation", and derogation should be permitted not only when the life of a nation or people was at stake, but in case of such calamities as floods and earthquakes, which might affect only a section of the population. He therefore preferred the phrase in the USSR amendment, "threatening the interests of the people", and would be glad to vote for it as a substitution for the United Kingdom wording, "threatening the life of the nation".

AZMI Bey (Egypt) still thought that the words "public safety" and "order" in paragraph 3 of article 13 (E/CN.4/668/Add.7) gave a broad enough limitation to meet all the requirements of a state of emergency either in war or in peace time, since the concept of ordre public was very flexible. He therefore moved an amendment to insert "13" in the United Kingdom amendment (E/CN.4/L.139) to paragraph 2.

Mr. JUVIGNY (France) replied that, in French law at least, the concept of ordre public was far from flexible. In fact, a state of emergency could be proclaimed in peace time only under conditions very strictly defined by law and only by a judicial or other competent authority. Restrictions were imposed under quite different conditions in time of war and, with regard to the rights set forth in articles 14, 15 and 16, were regarded as inevitable in any country. Thus, derogations from the rights set forth in those articles were not, contrary to what the Lebanese representative had said, to be regarded as comparable to the suggested derogation from the rights in article 13. In any case, he still could not see why any restrictions should be placed on manifestations of religion or beliefs even in time of war, except the normal limitations such as those necessary to protect public safety, since "beliefs" in that context meant simply religious or philosophic convictions and excluded political convictions and manifestations. Moreover, during the Second World War, the manifestations of religion had in fact been much more widespread than in time of peace. That implied that the application of a special form of "ordre public" for war time did not seem appropriate in that connexion.

/Mr. AZKOUL

Mr. AZKOUL (Lebanon) said that it would be very dangerous to apply the Egyptian representative's interpretation of "ordre public" to article 13, as it might enable the same limitations to be placed upon the freedom to manifest religion or belief in peace time as in time of war. It might well be, however, that the French representative's explanation that the dangers resulting from the manifestation of religion or belief were virtually the same in times of war and peace and his interpretation of the meaning of the word "beliefs" in the context might be sufficient. Yet beliefs might not be merely philosophical; they might be political. If it was agreed that limitations might be imposed only on the manifestation of religion or beliefs, the problem might be solved by a structural alteration of article 13.

AZMI Bey (Egypt) could find no conflict between his interpretation of the conception of ordre public and the French representative's interpretation. The term was flexible because, in Egyptian law at least, it was nowhere precisely defined and there was no exhaustive listing of the cases to which it might apply. Abuses might occur, and it was then that the judicial or other competent authorities took action.

Mr. WHITLAM (Australia) observed that his country's experience during the Second World War showed that some limitations on the freedom to manifest religion or beliefs must be permitted in time of war. There had been an organization claiming to be a religious body, and indeed recognized as such by a decision of the Australian courts, which sincerely believed that the British Empire was the incarnation of evil and must be destroyed. In peace time that body had full freedom to preach that belief, but obviously in time of war it had had to be restrained. Thus, the best solution might be to insert in the United Kingdom amendment (E/CN.4/L.139), which he supported as a whole, the phrase "13 (except in respect of the freedom to manifest his religion or belief)".

/Mr. HOARE

Mr. HOARE (United Kingdom) thought that the solution proposed by the Australian representative was likely to be the best possible in the circumstances. The Egyptian representative's interpretation of the term "ordre public" entirely bore out his delegation's contention that it implied an unduly broad limitation. He could not agree with the French representative that no limitations need be imposed on the freedom of religion and belief in time of war; so-called philosophical convictions might be among the most dangerous forms of expression of opinion in war time, and the illustration cited by the Australian representative was also abundant proof that that argument was incorrect. He could not agree with the Uruguayan representative that "people" should replace "nation". In the Anglo-Saxon interpretation, at any rate, the connotation of "nation" was much more comprehensive than that of nationality law; in fact, the usual term to describe the state of emergency contemplated in that article was "national emergency". Such a broad term, embracing all the people in the State provided the only justification for action. The word "people" might give rise to some doubt whether it denoted all the people or some of them. He would, however, be prepared to consider any satisfactory amendment or a separate vote on the phrase "the life of the nation", so that the Commission could take the final decision.

AZMI Bey (Egypt) thought that the Australian representative's suggestion was, if not the best possible, the least unsatisfactory, solution. It conveyed what the Commission intended.

Mr. NISOT (Belgium) opposed the Australian suggestion, as a deplorable impression would be made by an admission that there were cases in which freedom to manifest religion could be restricted.

Mr. AZKOUL (Lebanon) proposed that in addition a reference to article 6, paragraphs 1 and 2, and article 8, paragraph 2, sub-paragraph (a) should be inserted in the United Kingdom amendment to paragraph 2.

Mrs. ROOSEVELT (United States of America) did not think that a reference to article 6, paragraph 2, was warranted and asked for a separate vote.

The CHAIRMAN invited the Commission to act on the United Kingdom amendment (E/CN.4/L.139) in parts and the amendments thereto.

/Mr. MOROZOV

Mr. MOROZOV (Union of Soviet Socialist Republics) asked that the USSR amendment (E/CN.4/L.121) should be regarded as moved to the French oral amendment to insert the words "officially proclaimed by the authorities", as that was tantamount to the reinstatement of part of the original text.

Mr. VALENZUELA (Chile) asked for a separate vote on the words "caused by circumstances" in the USSR amendment (E/CN.4/L.121).

Mr. HOARE (United Kingdom) thought that the USSR representative's proposal would give rise to confusion, but would not press his objections to it.

After further discussion, Mr. MOROZOV (Union of Soviet Socialist Republics) found that the insertion of the French and USSR amendments would give rise to a wording that could not be regarded as satisfactory. That might not be so in the English or French version, but it seemed to be so in the Russian. He wished to ponder the situation and therefore moved the adjournment of the meeting.

The motion for adjournment was adopted by 9 votes to 4, with 3 abstentions.

The meeting rose at 5.50 p.m.

1/7 a.m.