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COMMISSION ON HUMAN RIGHTS

Sixth Session

SUMMARY RECORD OF THE HUNDRED AND SEVENTY-FOURTH MEETING

Held at Lake Success, New York,
on Friday, 28 April 1950, at 11 a.m.

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Draft international covenant on human rights (Annexes I and II to the report of the fifth session of the Commission on Human Rights, document E/1371)(continued):

Article 20 (E/CN.4/365, E/CN.4/447, E/CN.4/455, E/CN.4/455/Rev.1, E/CN.4/456)(continued);

Article 21 (E/CN.4/365, E/CN.4/353/Add.10, E/CN.4/353/Add.11, E/CN.4/358, paragraph 52).

<u>Chairman:</u>	Mrs. ROOSEVELT	United States of America
<u>Members:</u>	Mr. WHITLAM	Australia
	Mr. NISOT	Belgium
	Mr. VALENZUELA	Chile
	Mr. CHANG	China
	Mr. SORENSON	Denmark
	Mr. RAMADAN	Egypt
	Mr. CASSIN	France
	Mr. KYROU	Greece

Members: (continued)

Mrs. MEHTA	India
Mr. MALIK)	
Mr. AZKOUL)	Lebanon
Mr. HOARE	United Kingdom of Great Britain and Northern Ireland
Mr. ORIBE	Uruguay
Mr. JEVREMOVIC	Yugoslavia

Also present:

Mrs. GOLDMAN	Commission on the Status of Women
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Representatives of non-governmental organizations:

Category A:

Miss SENDER	International Confederation of Free Trade Unions (ICTFU)
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Category B:

Mr. HALPERIN	Co-ordinating Board of Jewish Organizations
Miss TOMLINSON	International Federation of Business and Professional Women
Miss ROBB	International Federation of University Women
Mrs. GARTLAN	International Union of Catholic Women's Leagues

Secretariat:

Mr. SCHWELB	Assistant Director of the Division of Human Rights
Mr. LIN MOUSHENG)	
Mr. DAS)	Secretaries of the Commission

FUTURE MEETINGS

1. Mr. JEVREMOVIC (Yugoslavia) proposed that the Commission should not meet during the day of Monday, 1 May, out of respect for the sentiments of workers throughout the entire world and in particular of those in Yugoslavia, for whom the first of May was a day of symbolic commemoration. He was aware that the Commission had very little time for the completion of its work, but he hoped nevertheless that it would be willing to accept his proposal, which was based on considerations of principle to which the Yugoslav people attached great importance.

2. The CHAIRMAN

2. The CHAIRMAN after hearing the opinions of several members, suggested that, as the Chinese representative had proposed, there should be no plenary meeting on Monday, 1 May, but that the Committees should meet. That suggestion meeting the Yugoslav representative's approval, she stated that the Committee on Communications would hold a closed meeting at the beginning of the afternoon and that the Yearbook, Communications and Drafting Committees would meet in the course of the day on Monday, 1 May.

It was so decided.

DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS (ANNEXES I AND II OF THE REPORT OF THE FIFTH SESSION OF THE COMMISSION ON HUMAN RIGHTS, DOCUMENT E/1371) (continued)

Article 20 (E/CN.4/365, E/CN.4/353/Add.10, E/CN.4/353/Add.11, E/CN.4/358, E/CN.4/418, E/CN.4/435, E/CN.4/447, E/CN.4/451, E/CN.4/455, E/CN.4/456) (continued)

3. The CHAIRMAN pointed out that the general debate on article 20 was closed, except with regard to the amendment which the Lebanese delegation had reserved the right to present at the current meeting.

4. Mr. AZKOUL (Lebanon) said that the Lebanese delegation had previously asked for a postponement of the vote on article 20 solely because it wished to attempt to reconcile the two divergent views which had become manifest with regard to such an important article and to bring about the greatest possible agreement in the Commission.

5. He referred briefly to the difficulties encountered by the Commission with regard to paragraph 2 of that article. Some members, such as the Indian representative, had thought that its application could not be restricted only to the rights and freedoms defined in the covenant, while others had held the opposite view. Fearing that in the circumstances many States would be unable to accede to the covenant, the Lebanese delegation suggested, in a spirit of compromise, that there should be no reference at all to rights and freedoms in the article.

6. Article 20 might then consist either of a single paragraph, conceived in the following terms: "All are equal before the law; all shall be accorded equal protection of the law without discrimination on any ground such as race, etc", or of two paragraphs, the second of which would begin: "No one shall be discriminated against on any ground such as race, etc".

7. He added

7. He added that it might be possible and even desirable to transfer the contents of paragraph 2 of article 20 to article 2 of the covenant, leaving only the first paragraph in article 20.

8. He hoped the Commission would accept one of these two solutions, since they took into account the various views expressed.

9. Mrs. MEHTA (India) introduced the revised text (E/CN.4/455/Rev.1) of the amendment previously proposed by her delegation to paragraph 2 of article 20 (E/CN.4/455). In order to avoid any possibility of confusion between article 20 and article 2 of the draft covenant, the Indian delegation had used a form of words to indicate that the non-discrimination referred to had to be assured by the law.

10. Miss SENDER (International Confederation of Free Trade Unions) emphasized the great importance of paragraph 2. In its original form, that paragraph safeguarded only the rights and freedoms defined in the covenant. As in all probability the covenant would contain no reference to certain economic and social rights, such a wording would certainly endanger the interests of the workers. She therefore urged the members of the Commission to continue their attempts to reach a compromise and to follow either the suggestion made by the Lebanese delegation or that put forward by India.

11. Mr. CHANG (China), supported by Mr. KYROU (Greece), pointed out that it was most difficult to take a decision before the Lebanese delegation had submitted a formal proposal in writing.

12. Mr. AZKUL (Lebanon) said that the solution suggested by his delegation was very simple: it consisted merely of merging paragraphs 1 and 2, and deleting the words "Everyone shall be accorded all the rights and freedoms defined in this covenant". Before making a formal proposal, however, the Lebanese delegation wished to hear the views of other members.

13. Mr. ORIBE (Uruguay) said that the Lebanese suggestion offered a clever solution which met the principal objections with regard to form raised previously by his delegation, and he was therefore ready to vote for it. It did not, however, resolve the question of substance which was to decide whether the contracting
/States

States would be bound to prevent discrimination only in connexion with the rights defined in the covenant. The Uruguayan delegation wished to reserve its position on that point.

14. Mr. NISOT (Belgium) was of the opinion that the revised Indian amendment had the same legal meaning as the original amendment; he wondered whether the Indian representative shared that view.

15. Mrs. MEHTA (India) said that her revised amendment should be interpreted in the following manner: whatever rights were granted by a contracting State to its nationals would also have to be granted to all persons under its jurisdiction without any discrimination.

16. Mr. NISOT (Belgium) observed that, in those conditions, the two versions of the Indian amendment had the same legal meaning.

17. Mr. CHANG (China) supported by Mr. CASSIN (France) asked that the discussion on article 20 should be postponed until the following meeting to enable representatives to study the written text of the Lebanese proposal and to give that very important article the thorough consideration it deserved.

18. The CHAIRMAN put the Chinese representative's proposal to the vote.
That proposal was adopted by 10 votes to none, with 4 abstentions.

Article 21 (E/CN.4/365, E/CN.4/353/Add.10, E/CN.4/353/Add.11, E/CN.4/358,
paragraph 52)

19. The CHAIRMAN recalled that two draft versions of article 21 had been submitted to the Commission at its previous session and that the Commission had decided to postpone consideration of those texts until it had considered article 17.

20. She opened the discussion on those two drafts, submitted by the USSR and France respectively (E/CN.4/365, page 57).

21. Mr. CASSIN (France) said that he had little to add to the text submitted by his country. Members would realize that the French draft was the more moderate of the two before the Commission in that it did not seek to promote the adoption of preventive and censorship measures but left Governments free to choose the means by which they might prohibit certain kinds of harmful propaganda.

/22. The French

22. The French draft concerned only propaganda which represented an incitement to violence and hatred. Since it appeared from the observations made by Governments -- the United Kingdom Government in particular -- that the concept of incitement to hatred might not be accepted by all, he proposed that the French draft should be voted upon in parts so that the Commission could register its opinion on the question.

23. He also wished to emphasize that in the opinion of his delegation articles 21 and 17 were not necessarily linked together. It was true that the press often served as a medium for incitement to violence and hatred, but that aspect of the question would be taken care of by the conventions on freedom of information. Since, however, there were other forms of such propaganda than press propaganda, the covenant should contain provisions to prohibit them, irrespective of the scope to be given to article 17.

24. The CHAIRMAN, speaking as the representative of the United States, said that her delegation wanted to have article 21 deleted.

25. She believed -- as the Netherlands Government had pointed out in its comments -- that the French and USSR proposals did not fit in with the system of the covenant. Indeed, they would result in the imposition of limitations on the freedom of expression in violation of the very right set forth in article 17. It would be extremely dangerous to encourage Governments to issue prohibitions in that field, since any criticism of public or religious authorities might all too easily be described as incitement to hatred and consequently prohibited. Article 21 was not merely unnecessary, it was also harmful.

26. The United States delegation felt that the two draft texts before the Commission also raised other problems. Indeed, it was difficult to draw a distinction between advocacy and incitement. It was equally difficult to differentiate between the various shades of feeling ranging from hatred to ill-feeling and mere dislike. Such an attempt might lead the Commission to the difficulties it had rightly tried to avoid in the case of article 17.

27. She warned the Commission against using such vague expressions as national hostility and religious hostility which appeared in the French text. If the Commission were to adopt the latter, however pure its intentions might be, it would only encourage Governments to punish all criticisms in the name of protection against religious or national hostility.

/28. She recalled

28. She recalled that during the debate in the General Assembly the previous year on fundamental human rights and freedoms in Hungary, Bulgaria and Romania, the Polish representative had explained that the acts taken by the three Governments accused had been entirely justified under the peace treaties -- in particular article 4 of the peace treaties relating to the suppression of fascism or hostility to democracy or the United Nations,

29. The Commission must be careful not to include in the draft covenant any provision likely to be exploited by totalitarian States for the purpose of rendering the other articles null and void. The peace treaties with Hungary, Bulgaria and Romania called upon those countries to safeguard basic human rights and fundamental freedoms for all people in those countries; but the clause permitting suppression of fascism and hostile propaganda provided a loophole for those seeking to ignore their obligations and enabled them to consider themselves justified in their attitude.

30. For those reasons, the United States Government was opposed to the adoption of either the French or the USSR proposal for article 21 of the draft covenant.

31. Mr. NISOT (Belgium) shared the apprehensions of the United States delegation. It seemed to him that article 21 was dangerous and likely to lead to abuses and he did not think that it came within the scope of the draft covenant. He was therefore in favour of its deletion.

32. Mrs. MEHTA (India) did not think that article 21 should stand as a separate article. Its provisions should be included in article 17. If that were done, the Indian delegation would vote for it.

33. Mr. MALIK (Lebanon) was of the opinion that only one amendment, that submitted by the French delegation, was before the Commission. If, however, the USSR amendment was also before the Commission, he wished to say that he did not understand the meaning of the expressions used in it. For various reasons which he would state, should it prove necessary to do so, he would oppose the

/USSR amendment.

USSR amendment. As regards the French proposal, he shared the views of the United States, Netherlands and Belgian representatives concerning the danger of including such an article in the draft covenant.

34. The idea of peace was the guiding thought in the French proposal, but it was apparently to be peace at any price. Peace was a noble ideal, but there was something even more precious and that was truth. He would be quite prepared to accept the French draft if the representative of France could prove to the Commission that its adoption would not be liable to restrict the possibility of expressing the truth. The French draft referred to national hostility, a term which might be interpreted in various ways. For example, someone might wish to make an objective study of the characteristics, ideology and traditions of a nation. Would telling him that he was forbidden by law to reveal certain facts constitute an attempt to restrict the freedom to speak the truth?

35. That was certainly not the spirit of the French amendment, but the case might arise and it should be given thought.

36. Truth stood above national peace. It would be a serious mistake to introduce a provision into the covenant prohibiting in effect the scientific and objective utterance of truth, which was the best guarantee of human progress.

37. The French draft referred also to religious hostility -- a particularly delicate question. If the French amendment were adopted, it would, for example be possible for a Government to prohibit a person from preaching a religion which was not practised in the country and that would be an encroachment on freedom of thought. The word "advocacy" was also used in the French draft. In his opinion that word should be understood to mean systematic and persistent propaganda and some clarification should be given.

38. Finally, he drew attention to the expression "incitement to violence or hatred" in the French draft. In that connexion, he agreed with the United Kingdom representative that it was difficult to give a legal interpretation of the word "hatred". The word "violence" was certainly appropriate, but it would be very difficult to define incitement to violence. In any case, he would approve of incitement to violence when it was used in order to forge weapons of defence.

39. In view of all those reasons, his delegation did not think that article 21 should be included in the draft covenant.

40. Mr. JEVREMOVIC (Yugoslavia) supported the text proposed by the USSR for article 21 (E/CN.4/365). It had been said that the expression "fascist-Nazi views" was somewhat ambiguous and equivocal; but the ideas it referred to had been the cause of the death of two million Yugoslavs. It was essential to overcome those ideas and to crush the groups which made use of them. It would doubtless be easier to interpret the expression "public order", which was used to justify restrictions of freedom; but there were no words which had but a single meaning and there was no reason to exclude the words "fascist-Nazi views" from the covenant simply because they could be interpreted in various ways.

41. Yugoslavia had undergone many ordeals. It had fought for its independence against fascism and its people knew what was meant by incitement to hatred. There were already laws in Yugoslavia prohibiting such incitement. It was therefore necessary to define it and to introduce the idea into the covenant. The texts submitted for article 21 corresponded to the purposes of the Charter and his delegation heartily endorsed the spirit in which they had been submitted.

42. Mr. KYROU (Greece) agreed with the representatives of the United States, Belgium, India and Lebanon that the texts submitted for article 21 should not be inserted in the covenant. Their provisions did not come within the scope of the covenant and their negative import would be prejudicial to the success of the document.

43. The representative of India had expressed the opinion that those provisions would be more appropriately placed in article 17, while the Government of Australia, in its comments transmitted to the Secretary-General (E/CN.4/353/Add.10), had stated that article 21 should finally be considered in conjunction with article 17.

44. The French representative had pointed out that the press was not the only means of inciting national hostility. If the Commission decided to retain article 21 as a separate article, he would consider the possibility of amending the French draft by proposing the deletion of the reference to incitement to hatred.

45. Mr. CASSIN (France), said in reply to the Lebanese representative that he did not wish to give the impression that he was prepared to make every sacrifice for peace. Realities should be faced squarely. On one side were those who wished to silence free men, and on the other, those who wished to permit full freedom of expression for the purpose of incitement to hatred and violence.

46. Between those two extremes, however, there was a middle course. Freedom of the press was recognized in France; nevertheless, punishment for incitement to violence was provided for under French law. That provision had been made on the eve of the Second World War and was based on provisions already in effect in the Netherlands for punishment in cases of incitement to hatred. Two great democracies had thus been led to put into effect what some did not wish to have stipulated. Human freedoms should, of course, be proclaimed, but man should also be told that they had certain duties towards their fellow men with whose freedoms they could not interfere.

47. He wished to allay the fears expressed by the Lebanese representative, and, to that effect, he was prepared to amend his proposal so as to make a clear distinction between objective studies of a scientific nature and pure propaganda. For instance, the works of Gobineau, which gave a predominant role in the Germanic race but were in the nature of a scientific study, should not be confused with the newspaper "Der Stürmer" which incited to murder.

48. He was therefore prepared to amend the text for article 21 proposed by France by inserting after the word "hostility" the words "contrary to fundamental human rights and freedoms". Between the two extremes of authoritarianism and unlimited freedom which would make it possible to interfere with the freedoms of others, the French amendment represented a middle course; it recognized both the right to freedom and the obligation to respect the rights and freedoms of others.

49. Mr. CHANG (China) felt that the texts proposed for article 21 were not entirely clear. The French draft was, of course, constructive. It resulted from the harrowing experiences of the Second World War and the memory of racial persecutions against the Jews. The words "fascist-Nazi" which appeared in the USSR text, could not, however, be accepted by some countries. Those words, in fact, designated ideologies which could be given other names, depending on the countries involved, and therefore had no place in a document such as the covenant.

50. The French draft expressed a principle which should not be overlooked. Application of that principle would no doubt meet with some difficulty and, as pointed out by the United States representative, might lead to abuse. Moreover, the use of such words as "national" and "religious" to qualify the word "hostility" was debatable. It would be difficult to give a definition of what constituted the national or religious domain. Caution should therefore be exercised in the use of such words.

51. He hoped that the French representative would review his text, making the necessary changes. The Commission should, in any event, take that text into account since it expressed a principle for which millions of men had given their lives, in China as well as in France.

52. Mr. NISOT (Belgium) paid a tribute to the French representative's intentions. Some of the implications of the French draft, however, were a source of concern to him; in particular, he wondered whether the expression "any advocacy of national...hostility" would prevent a country from engaging in internal propaganda with a view to arming for defence.

53. Mr. CASSIN (France) said that the adjective "national" could be interpreted in two ways. Both in the Declaration and in the covenant it was understood to refer to persons of different national origin living in the same country. It could also be interpreted as applying to the population of a State or of a nation. The French representative felt that his suggestion would not restrict the meaning of the word.

54. Mr. KYRSU (Greece) thought that the word "propaganda" in the text as proposed by France should have been translated into English by the word "propaganda" rather than "advocacy".

55. Mr. VALENZUELA (Chile) fully agreed with the representative of Lebanon and was in favour of the deletion of article 21.

56. It was very difficult to give an exact definition of the word "advocacy" as used in the expression "any advocacy of national, racial or religious hostility". In his opinion, the choice of that word might lead to regrettable abuse. It was the purpose of the Commission to ensure freedom of expression and to avoid censorship in so far as possible. The only restrictions permitted with regard to that freedom were defined in article 17.

57. Not wishing to recall events which had occurred prior to and during the hostilities, he would give a recent example to illustrate how far abuse could be carried in the name of nationalism. In 1949 the USSR and the other Communist countries had launched a campaign against "cosmopolitanism", which had included the confiscation of all foreign books and magazines available in those countries, a purge of libraries and a revision of scientific texts with a view to the deletion of all references to progress achieved by foreign scientists. That had been done under the pretext of combatting cosmopolitanism in the interests of national ideology, but the real purpose had been to bring about the cultural isolation of the nation, in contravention of the principles of the Charter. To lay the groundwork for that isolation and to prevent some citizens of those countries from having any contact with western culture, schools had been prohibited from teaching English and French.

58. In the western countries where freedom of thought and of information prevailed, the problem was a different one. He feared, however, that an unduly narrow conception of national dignity might induce some officials to take advantage of the provisions contained in the French draft to impose an unjustified censorship.

59. Where the second part of the French draft was concerned, he respected the views of the Chinese representative on the subject of racial hostility, but wished to point out that the problem still existed and that much would be gained if the victims of persecution were to treat their former oppressors with clemency. As the Lebanese representative had rightly pointed out, any publication or study which dealt objectively with ethnic matters might be interpreted as hostile propaganda under the terms of the French draft.

60. The risk was even greater where religious hatred was concerned, in view of the fact that all the religions based on the dogma of revelation believed they had an absolute and unquestionable monopoly of the truth; their propaganda was accordingly unfavourable or positively hostile towards other religions. The French draft might have the effect of precluding all religious discussion.

61. Lastly, he agreed that the word "incitement" was too vague and that the words "violence or hatred" were too general.

62. Mr. HOARE (United Kingdom) said he had accepted the phrase "incitement to violence" because the legislation of the United Kingdom and of other countries envisaged circumstances which might give rise to violence and provided for the punishment of the inciters to violence. Advocacy of national, racial or religious hostility might therefore appropriately be included under the general heading of incitement to violence.

63. That did not, however, apply to hatred, having regard to the difficulty of reaching a precise definition of what constituted incitement to hatred. The French draft, moreover, did not state the object of the hatred. Hatred might assume a wide variety of forms and degrees and the hatred of what was sincerely believed to be false doctrine might be a legitimate objective of religious propaganda.

64. He recalled the liberal attitude of 18th Century absolutism and remarked that under the French draft, on the contrary, the writings of Voltaire might have been suppressed. The misgivings expressed by some representatives regarding the risks which the adoption of the French draft might involve even if hatred were omitted had greatly impressed him. For that reason, although his Government had accepted article 21 with the omission of hatred, he would prefer the article to be deleted.

65. As regards the English translation of the word "propagande", he considered the word "advocacy" to be the proper legal term; the widely used word "propaganda" was both vague and derogatory.

66. Mr. WHITIAM (Australia) was opposed to the texts for article 21 proposed by the USSR and France both because they were unsatisfactory in themselves and because he considered that their provisions already formed part of all judicial systems. The French draft was too vague and might open the door to arguments regarding its precise interpretation.

/67. The problem

67. The problem which the French draft was endeavouring to resolve might, in his opinion, be met by the adoption of a formula prohibiting incitement to violence on religious grounds or grounds of national origin. A provision of that sort would serve as a useful indication of the limits which freedom of expression must observe.

68. In reply to a question put earlier by the Lebanese representative, the CHAIRMAN expressed the view that the Commission was still seized of the USSR text.

69. Mr. CHANG (China) considered that the Australian representative's proposal deserved careful consideration and he accordingly moved the adjournment of the debate.

It was decided to adjourn the debate.

The meeting rose at 1.5 p. m.