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COMMISSION ON HUMAN RIGHTS

Third Session

SUMMARY RECORD OF THE FIFTY-FOURTH MEETING

Held at Lake Success, New York
on Tuesday, 1 June 1948, at 2.30 p.m.

<u>Chairman:</u>	Mrs. F. D. ROOSEVELT	United States of America
<u>Rapporteur:</u>	Mr. MALIK	Lebanon
<u>Members:</u>	Mr. HOOD	Australia
	Mr. LEBEAU	Belgium
	Mr. STEPANENKO	Byelorussian Soviet Socialist Republic
	Mr. LARRAIN	Chile
	Mr. CHANG	China
	Mr. LOUFI	Egypt
	Mr. CASSIN	France
	Mrs. MEHTA	India
	Dr. AZKOUL	Lebanon
	Mr. QUIJANO	Panama
	Mr. LOPEZ	Philippines
	Mr. KLEKOVKIN	Ukrainian Soviet Socialist Republic
	Mr. PAVLOV	Union of Soviet Socialist Republics
	Mr. WILSON	United Kingdom
	Mr. FONTAINE	Uruguay
	Mr. MCRA	Venezuela
	Mr. VILFAN	Yugoslavia
<u>Also Present:</u>	Mrs. LEDON	Commission on the Status of Women
<u>Specialized Agencies:</u>		
	Mr. COX	International Labour Organization
	Mr. LEBAR	United Nations Educational, Scientific and Cultural Organization

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Non-governmental Organizations:

Miss SENDER
Mr. Van ISTENDAEL

American Federation of Labor
International Federation of
Christian Trade Unions

Mr. GOLDSMITH
Mr. BROTMAN

Agudas Israel World Organization
Co-ordinating Board of Jewish
Organizations

Miss STRAHLER

International Committee of the
Red Cross

Miss BURGESS

International Federation of
Business and Professional Women

Miss ROBB

Liaison Committee of Women's
International Organizations

Mr. BIENENFELD

World Jewish Congress

CONTINUATION OF CONSIDERATION OF DRAFT INTERNATIONAL DECLARATION ON HUMAN RIGHTS
(document E/CN.4/95).

Article 3

Mr. CHANG (China) reported that the drafting sub-committee appointed at the fifty-third meeting had agreed on the text of paragraph 2, Article 3 as originally amended. The Philippine representative had accepted the view of the French representative that the words "in violation" should be retained. The English and the Russian texts would contain the word "discrimination", while the French text would use "distinction", since the words in question were so used in the United Nations Charter.

The CHAIRMAN suggested that the second part of the paragraph should be voted first.

Mr. WILSON (United Kingdom) wished that the paragraph should be voted on in two parts and supported the Chairman's view that the second part i.e. "against any discrimination in violation of the Declaration or incitement to such discrimination" should be put to the vote first.

The CHAIRMAN put the second part of paragraph 2, of Article 3 to the vote.

/The second part

The second part of paragraph 2 of Article 3, was adopted by eleven votes to none, with five abstentions.

Mr. WILSON (United Kingdom) regretted that he felt obliged to vote against paragraph 2 as a whole although he was in agreement with the principle expressed in the first part. However, he considered that the expression "equal protection against any discrimination" was ambiguous and the words "without any discrimination" were unnecessary. The Declaration should merely state general principles and not elaborate them. In its present form the paragraph was weaker than the original.

Mr. LEBEAU (Belgium) was opposed to the present text of the paragraph which he considered confused both verbally and in the ideas which it wished to convey. A simple declaration which would be clearly understood was preferable to a detailed and involved statement.

The CHAIRMAN put the whole of paragraph 2, of Article 3 to the vote.

Paragraph 2 was adopted by a vote of nine votes to six, with one abstention.

The CHAIRMAN put the whole of Article 3 to the vote.

Article 3 was adopted by nine votes to five, with two abstentions.

Article 6.

The CHAIRMAN outlined the background of Article 6. The text adopted at the second session of the Commission contained 4 main elements: 1) no arrest or detention except in cases prescribed by law and, 2) after due process; 3) immediate judicial determination of the legality of detention; 4) trial within reasonable time of release.

The minority text contained in the report of the Drafting Committee included four additional elements: 5) arrest or detention must be in accordance
/with pre-existing

with pre-existing law; 6) the person arrested or detained must be informed of the reasons for his detention; 7) there must be no imprisonment for inability to fulfill contractual obligations; 8) there must be compensation for false arrest.

Some members had felt that eight separate provisions were too many and consequently the Drafting Committee's article had been rejected. Article 6 represented the view of the majority of the Drafting Committee on what should be said about arrest.

The Commission had at present before it the proposal of the Chinese, Indian and the United Kingdom delegations that the article should simply state "no one should be subjected to arbitrary arrest or detention". (E/CN.4/99 and E/CN.4/102)

Speaking as the representative of the United States of America, the CHAIRMAN favoured the proposed text. She suggested that the Chinese, Indian and the United Kingdom amendment should be voted first as **furthest** removed from the original draft. If the text were rejected, she would make a further suggestion as to the order of considering the various points in the Drafting Committee and Geneva texts.

Mrs. MEHTA (India) pointed out that the Declaration should lay down principles and not become involved in details. It should be couched in as simple language as possible. The proposed amendment possessed that quality.

Mr. MALIK (Lebanon) favoured the text of the amendment. It was short and concise but contained all the essential elements. Detailed elaboration was more appropriate in the Covenant than in the Declaration. In addition the second part of Article 3 which had just been adopted implied the details contained in Article 6.

/Mr. PAVLOV

Mr. PAVLOV (Union of Soviet Socialist Republics) felt that simplicity might be carried to extremes and opposed the amendment as over-simplified. The amendment must be considered a very general statement which contained no effective guarantees against arbitrary arrest. He referred to Article 6 in the minority report which had been voted twelve times and rejected only in the thirteenth vote by the narrow margin of three to two. Thus it could not be considered a true reflection of the majority decision. Both the text adopted at the second session of the Commission and that adopted by the Drafting Committee were better than the proposed amendment.

Mr. WILSON (United Kingdom) pointed out that what was needed was not a longer or a shorter text. The length should be determined by the substance. The Declaration should state the principle involved but should not deal with its application. The USSR representative had correctly recalled what had happened in the Drafting Committee. There was always substantial agreement when a vote was taken on principles but disagreements immediately appeared when details were discussed.

Mr. Wilson was not opposed to the details but he felt that a selection must be made of what should be included in the Declaration. Since the Declaration was to be an important basis for teaching education and propaganda, it should be as simple as possible. He favoured the amendment as being less complicated than the original article.

Mr. LOUTFI (Egypt) recalled that the United Nations Charter contained a guarantee of personal safety. Agreement on detailed provisions was difficult. The text of the relevant article in the communication from the French Government (document E/CN.4/82/Add.8) seemed clearer than the proposed substitute. He wished to know whether the United Kingdom representative would accept the first sentence of the French text.

/Mr. WILSON

Mr. WILSON (United Kingdom) would not vote against the French text but preferred the China-India-United Kingdom substitute as being more precise.

The CHAIRMAN considered that in substance the proposed substitute and the French text meant the same.

Mr. CASSIN (France) expressed the view that the Drafting Committee's text could form part of the Covenant but not of the Declaration. The text adopted at the second session of the Commission **represented** a happy medium and he was prepared to vote for it. Acceptance of the Egyptian suggestion would make it easier for him to vote for the China-India-United Kingdom substitute.

Mr. LARRAIN (Chile) favoured the text adopted at the second session of the Commission, which covered all principles and ideas which should be stated. He merely wished to substitute "immediately" for "within a reasonable time".

Mrs. MEHTA (India) pointed out that the proposed substitute was identical with the language used in Article 9 of the Covenant and that consequently it should be also accepted for the Declaration.

The CHAIRMAN said she would put the text to the vote in the following order: first the China-India-United Kingdom substitute as furthest removed from the original, and then the first sentence of the text adopted at the second session of the Commission.

The China-India-United Kingdom text was adopted by ten votes to four with two abstentions.

/Mr. PAVLOV

Mr. PAVLOV (Union of Soviet Socialist Republics) wished to draw the Commission's attention to the fact that, apart from arbitrary arrest mentioned in the adopted article there were other violations which had to be considered. They were contained in the minority report which included the following provisions: Every person has the right to be promptly informed of the reasons for his detention; the right to judicial determination whether his detention was legal or illegal, and the right to be tried before a court. No person should be in prison for inability to meet a contractual obligation. In case of illegal arrest an innocent person must be compensated.

The Commission should vote those provisions one by one, but it could not reject them without previous examination.

The CHAIRMAN stated that the Commission had given the Article careful consideration. It did not seem possible to reopen discussion of an article which had been adopted. She assured the USSR representative that his remarks would be included in the summary record.

Mr. PAVLOV (Union of Soviet Socialist Republics) considered the Chairman's statement a violation of the rules of procedure.

In order to ascertain the sentiment of the Commission members concerning her ruling the CHAIRMAN put the question of whether the Commission wished to proceed with a discussion of Article 7 or consider the USSR representative's suggestion, to a vote.

The Commission decided by ten votes to four with one abstention to consider Article 7.

Article 7

Mr. CHANG (China) accepted the India-United Kingdom text (E/CN.4/99) but suggested that it should be changed as follows: "Every one in the determination of any criminal charge against him and of his rights and obligations

/is entitled

is entitled..." He explained that he suggested the change because the text adopted at the second session of the Commission followed that order.

Mr. CASSIN (France) was ready to accept the India-United Kingdom text but considered that the present position of the Article in question between two articles dealing with penal law was not appropriate. The important word in the Article was "tribunal". If the text was made shorter it should also be made stronger and the idea of access to the tribunal must be emphasized.

Mr. WILSON (United Kingdom) was ready to accept the Chinese representative's suggestion concerning the transposition of the clauses. He agreed with the French representative that the Article might be inserted in a more appropriate place but felt that it was necessary to decide first what articles should be included and the question of order might be settled later.

Mr. STEPANENKO (Byelorussian Soviet Socialist Republic) found the India-United Kingdom amendment unsatisfactory. The draft adopted at the second session of the Commission mentioned the right to the aid of a qualified representative in court. The amendment did not mention the right to trial in one's native language. Such an omission must be regarded as discrimination and many countries practiced such discrimination against members of minority groups.

Mr. PAVLOV (Union of Soviet Socialist Republics) referred the Commission to the text submitted by the Union of Soviet Socialist Republics delegation and contained on page 29 of document E/CN.4/95. He pointed out that the India-United Kingdom amendment made no reference to the important principle that all persons were equal before the courts, that judges should be independent, that legal procedure should be based on
/democratic

democratic principles, that trials should be public and that an accused person was entitled to defence in his native language. He proposed the entire text as a separate amendment to Article 7.

Mr. CASSIN (France) requested that the USSR amendment should be voted in parts. He would be ready to accept only the first sentence.

The CHAIRMAN pointed out that Article 3, paragraph 2 had stated "all are equal before the law" which seemed synonymous with equality before the courts. Considering that the India-United Kingdom text was farthest removed she suggested that it should be voted first.

Mr. PAVLOV (Union of Soviet Socialist Republics) stressed that his proposal was farthest removed because it stated general principles, whereas the India-United Kingdom text was specific. Equality before the law and equality before the courts were not synonymous. He could quote many examples to show that coloured and white people were in theory equal before the law but that such was certainly not the practice of the courts. The Commission might not agree to those proposals of democratic guarantees but it should not distort them. Mr. Pavlov insisted that his proposal should be put to the vote.

In order to determine which text was farthest removed from the Geneva text the CHAIRMAN read the USSR proposal and the India-United Kingdom substitute.

Mr. MALIK (Lebanon) favoured the India-United Kingdom text but felt that the USSR proposal contained a very valuable element, i.e., equality before the law.

Mr. WILSON (United Kingdom) felt that the Chinese-Indian-United Kingdom draft, being the shortest, was farthest removed from the Geneva

/text

text. As regards the first sentence of the USSR amendment to Article 13 of the Covenant, in the United Kingdom the concept of equality before tribunals was included in the principle of equality before the law. He therefore opposed the USSR proposal as repetitious of previously stated principles.

Mr. CHANG (China) also felt that the principles of equality before the law and before the tribunal were the same.

Mrs. MEHTA (India) observed that the Chinese-Indian-United Kingdom draft was simpler and covered all provisions of the USSR amendment. In India the two above-mentioned concepts were also synonymous; for countries where that was not so, the words "fair hearing" and "impartial tribunals" should cover the first sentence of the USSR amendment.

The CHAIRMAN agreed with the Indian representative's remarks.

Mr. PAVLOV (Union of Soviet Socialist Republics), replying to the preceding speakers, noted that, in colonial history the principle of equality before the law had not always implied equality before the tribunals. With reference to the remarks by the Indian representative, he stated that the USSR text was more definite and concrete, leaving no room for different interpretations to which the Chinese-Indian-United Kingdom draft might give rise. He would welcome a sentence by sentence vote which would clearly show the Commission's views on the various provisions of his proposal.

Mr. LEBEAU (Belgium), while not opposing the USSR proposal in principle, would vote against it as inappropriate for a Declaration.

Mr. FONTAINA (Uruguay) stated that he did not oppose the principle of the USSR proposal, but would vote against it as inappropriate in the

/Declaration

Declaration. He would abstain on paragraph 2 of that proposal in view of the fact that the problem concerned did not exist in his country.

The CHAIRMAN noted that while there was general agreement with the principle of the USSR proposal, the feeling was that its detailed provisions belonged to the Covenant.

After further discussion of the procedure to be followed, the Chairman, at the request of the USSR representative, put the latter's amendment to the vote sentence by sentence. (E/CN.4/95, page 29)

Paragraph 1. sentence 1 was rejected by eight votes to six with one abstention.

Paragraph 1. sentence 2 was rejected by seven votes to four with four abstentions.

Paragraph 1. sentence 3 was rejected by nine votes to four with three abstentions.

Paragraph 1. sentence 4 was rejected by six votes to four with five abstentions.

Paragraph 2 was rejected by six votes to five with four abstentions.

Mr. CASSIN (France) appealing for the greatest possible measure of agreement on the text, urged the Commission to accept the following amendment:

"Everyone is entitled in full equality to a fair hearing by an independent and impartial tribunal in the determination of his rights..."

Mr. WILSON (United Kingdom) was not opposed to the addition of the words "independent and", but felt that the expression: "in full equality" was repetitious, and therefore inadvisable.

Mr. CHANG (China) shared the United Kingdom representative's opinion.

Mrs. MEHTA (India) also felt that the French amendment was covered by the original Chinese-Indian-United Kingdom text. Moreover, the addition of the word "independent" would only require further explanations in the Covenant.

Mr. IARRAIN (Chile) stated that he would vote for the French amendment with the understanding that the words "in full equality" included the question of language to which his delegation had attached great importance ever since the second session of the Commission.

The CHAIRMAN put to the vote the French amendment to the Chinese-Indian-United Kingdom draft.

The addition of the words "in full equality" was accepted by seven votes to six with four abstentions.

The addition of the words "independent and" was accepted by eight votes to two with six abstentions.

The CHAIRMAN put to the vote the Chinese-Indian-United Kingdom draft, as amended by the representative of France.

The Chinese-Indian-United Kingdom draft, as amended, was adopted by thirteen votes to none, with four abstentions.

Article 8

Mr. CASSIN (France), upon a suggestion by the CHAIRMAN with regard to the voting procedure, pointed out that the India-United Kingdom text, while farthest removed from the text adopted at the second session of the Commission, could not be put to the vote first in view of the fact that it omitted several fundamental principles contained in the other drafts. He therefore felt that the Commission should either amplify the India-United Kingdom draft, or shorten the draft adopted at its second session.

/Mr. LOUFFI

Mr. LOUTFI (Egypt) would support the United Kingdom draft provided it was made to include the last part of paragraph 1 of the text adopted at the second session of the Commission, which contained an important corollary to the principle of non-retroactivity of law. He also thought the Article should include the principle that a person must be presumed to be innocent until proved guilty.

The CHAIRMAN proposed that a drafting group should be set up to reformulate Article 8, paragraphs 1 and 2. Paragraph 3 could be put to the vote at once.

Mr. BIENENFELD (World Jewish Congress) spoke in favour of retention of Article 8, paragraph 2, of the draft adopted at the second session of the Commission. Omission of that paragraph would be contrary to the principles of the Hague Convention of 1907 as well as the principles established by the International Military Tribunals at the Nuremberg Trials. Those principles protected the law of humanity against violation by national laws (as had happened in the case of Nazi Germany). Omission of that paragraph would constitute a step back in international law.

Mr. WILSON (United Kingdom) agreed with a suggestion by the representative of Lebanon to vote, paragraph by paragraph on Article 8 of the Drafting Committee's text, and explained the reasons for omitting some principles from his amendment. The first sentence of the text adopted at the second session had been deleted in view of the fact that the presumption of a defendant's innocence was frequently shifted during a trial. The second sentence had been omitted, its principle being covered by the preceding Article. With regard to the last principle of paragraph 1, he explained that it was sometimes unwise, as in the case of people engaging in the black market, to permit offenders to weigh the pre-established penalty against the
/profits

profits they hoped to make. The question of penalty was not a fundamental human right and should be considered on a different basis. He pointed out that the last part of paragraph 1 proposed by the United Kingdom included national as well as international law.

Mr. HOOD (Australia) did not think that the United Kingdom draft of paragraph 1 covered the provisions of paragraph 2 of the Geneva text which, he felt, should be retained so as to avoid any lacunas in the Declaration. It might be better, however, to consider later whether that provision might not be included elsewhere, possibly in the limitation clause of Article 2.

Mr. PAVLOV (Union of Soviet Socialist Republics) pointed out that the first sentence of paragraph 1 of the text adopted at the second session contained the important principle of innocence until proved guilty, which represented great progress from the inquisitorial trial concepts of the Middle Ages to which Nazi Germany had reverted. If established, the drafting group should take that point into consideration. With reference to paragraph 2, he stated that he had always opposed the expression: "principles of law recognized by civilized nations" which implied the condescending attitude of colonial powers toward their colonial peoples. The Commission should rather use the word "democratic countries". He supported an immediate vote on paragraph 3.

Mr. CHANG (China) noted general agreement on the clear and simple drafting of paragraph 3. As regards the other paragraphs, disagreement might arise, not on the principles involved, but with regard to their appropriateness in the present context. He favoured retention of the first sentence of paragraph 1, deletion of the second sentence, and would abstain from voting on the third and fourth sentences. Paragraph 2 could be deleted, and paragraph 3 maintained.

Mr. LEBEAU (Belgium) agreed with the representative of France. The full text of paragraph 1 should be retained in view of the importance of the principles contained. All the important principles cited by the French representative were contained in the French draft (E/CN.4/82/Add.8). He shared the view of the representative of the World Jewish Congress with respect to paragraph 2, the importance of which his delegation had stressed already at the second session. While supporting paragraph 3, he suggested that the wording might be rearranged in a more logical sequence: "No one shall be subjected to torture, or to cruel, inhuman or degrading treatment or punishment."

Mr. VILFAN (Yugoslavia) also favoured retention of paragraph 2, pointing out that the defence at the Nuremberg Trials had based itself on the non-retroactivity of penal law. Moreover, several German war-criminals had been acquitted on the basis of legalistic interpretation of the principle of non-retroactivity of laws, as could be seen from the Official Transcript of 19 February 1948 of the American Military Tribunal in Nuremberg, (0930-1630), pp. 10440 and 10438. Consequently, it was most important to retain paragraph 2, and he thought, in that connection, that some of the conclusions reached at the Nuremberg Trials (see document E/CN.4/W.19) could well be included in the present Declaration.

After a brief exchange of views on a suggestion by the CHAIRMAN to proceed to a vote on the principles contained in Article 8 for the drafting sub-committee's guidance, Mr. PAVLOV (Union of Soviet Socialist Republics) proposed that the Commission should not commit itself as yet, but rather appoint a drafting sub-committee for a reformulation of that Article. The sub-committee could take full account of the views expressed in the Commission.

/Mr. CASSIN

Mr. CASSIN (France) suggested that the following concepts should be considered in connection with Article 8: innocence until proven guilty, public trial, guarantees of defence (independent tribunals could be omitted in view of the preceding provisions), non-retroactivity of laws and punishment, and the non-applicability of those rights to war-criminals -- for which the USSR amendment could be considered.

The CHAIRMAN then put to the vote Article 8, paragraph 3, with the amendment proposed by the representative of Belgium.

Paragraph 3 with the proposed amendment was adopted unanimously.

The Chairman then appointed a sub-committee, consisting of the representatives of the United Kingdom, India, France, China, and Yugoslavia, to compose a new draft of Article 8, paragraphs 1 and 2.

The meeting rose at 5.45 p.m.