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Fifth Session

SUMMARY RECORD OF THE HUNDRED AND NINTH MEETING

Held at Lake Success, New York,
on Wednesday, 1 June 1949, at 2.55 p.m.

CONTENTS:

Chairman:	Mrs. Franklin D. ROOSEVELT	United States of America
Members:	Mr. SHANN	Australia
	Mr. STEYAERT Mr. LEBEAU	Belgium
	Mr. SAGUES	Chile
	Mr. Hsiu CHA	China
	Mr. SOERENSEN	Denmark
	Mr. LOUTFI	Egypt
	Mr. CASSIN	France
	Mr. GARCIA BAUER	Guatemala
	Mrs. MEHTA	India
	Mr. ENTEZAM	Iran
	Mr. INGLES	Philippines
	Mr. KOVALENKO	Ukrainian Soviet Socialist Republic
	Mr. PAVLOV	Union of Soviet Socialist Republics
	Miss BOWIE	United Kingdom
	Mr. MORA	Uruguay
	Mr. VILFAN	Yugoslavia

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Representative of a specialized agency:

Mr. ARNALDO	United Nations Educational, Scientific and Cultural Organization (UNESCO)

Consultants from non-governmental organizations:

Category A:

Miss SENDER	American Federation of Labor (AFL)

Category B:

Miss SCHAEFER	International Union for Catholic Women's Leagues
Mrs. ARETA Mrs. VERGARA	Catholic International Union for Social Service
Mr. LEWIN	Agudas Israel World Organization
Mr. MOLDE	Commission of Churches on International Affairs
Dr. ROBB	International Federation of University Women
Mr. FRIEDMAN	Co-ordinating Board of Jewish Organizations

Secretariat:

Mr. HUMPHREY	Representative of the Secretary-General
Mr. LAWSON	Secretary of the Commission

DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS (E/800, E/CN.4/253, E/CN.4/279, E/CN.4/280, E/CN.4/281, E/CN.4/282, E/CN.4/283, E/CN.4/284)

Article 13 (discussion continued)

Mr. SOERENSEN (Denmark), referring to the remarks of the representative of France at the previous meeting, stated that the fact that one article contained provisions regarding both criminal charges and civil suits gave rise to difficulties. In the case of criminal charges, the problem was to safeguard the individual

against any abuse of power by the organs of the state; in civil suits what was required was simply that the decision taken should be as fair as possible for the parties concerned. In his opinion it would be advisable to distinguish between the two categories as in the original United States amendment (E/CN.4/170) which, in its first paragraph, referred to civil suits and, in its second, to criminal charges. The amendment presented jointly by France and Egypt (E/CN.4/280) tended on the contrary to put the two types of action on the same basis.

Mr. Soerensen drew the attention of the Commission to certain points which showed the usefulness of distinguishing between the two types of action. For example, in determining whether the public and the press should be excluded from a hearing, he concurred in the opinion of the representative of France that in a civil suit it was often to the interest of the party concerned for the public not to be admitted. When the private life of individuals was involved, in a divorce case for example, it was in keeping with the spirit of article 12 of the Universal Declaration of Human Rights for the public to be excluded from the hearings. Therefore the United Kingdom amendment (E/CN.4/281) seemed defective since it prescribed public hearings when a tribunal was considering a civil suit or a criminal charge. It was inappropriate to impose on States by international convention a rule which was imperfect.

The representative of France and Egypt proposed that everyone should have the right to have a tribunal determine his rights and obligations. Mr. Soerensen considered that that provision was much too broad in scope; it would tend to submit to judicial decision any action taken by administrative organs exercising discretionary power conferred on them by law. He appreciated that the individual should be ensured protection against any abuse of power by administrative organs but the question was extremely delicate and it was doubtful whether the Commission could settle it there and then. The study of the division

of power between administrative and judicial organs could be undertaken later. It would be preferable not to refer to civil suits and Mr. Soerensen asked the representatives of France and Egypt whether the scope of the provision in question might be limited to indicate that only cases between individuals and not those between individuals and the State were intended.

He thought that the United States amendment (E/CN.4/170) presented a vicious circle; on the other hand he considered that the joint amendment presented by France and Egypt was right in laying greater emphasis on the question of substance rather than that of procedure.

He could not vote for the United Kingdom amendment (E/CN.4/281) which provided for the admission of the press or the public to all trials; he preferred the amendment presented by the delegations of the United States and the Philippines. In the latter amendment he proposed that in order to express a more general idea the text should read "from all or part of a trial" instead of "from all or part of the trial".

Mr. VILFAN (Yugoslavia) thought that, in view of the great number of amendments which had been presented, it would be necessary to appoint a drafting committee. He would limit himself to comments on the principal ideas contained in the amendments.

He thought that article 13 should retain the principle set forth in the USSR amendment (E/CN.4/253) that legal procedure in every State should be based on democratic principles. Mr. Vilfan did not agree with the representative of Lebanon who had stated that it was impossible to define that idea concretely and that the idea should therefore not be mentioned. He pointed out that in some cases the organization of tribunals was contrary to democratic principles. For example, juries belonged to a certain social class. He therefore proposed that, in the third line of paragraph 1 of the United States-Philippine amendment, the words "established on democratic principles" should be added after the words "impartial tribunal" (E/CN.4/284).

Mr. Vilfan thought that there was no reason for concluding from paragraph 2 of the USSR amendment that the tribunal should be in a position to understand directly and to speak in the native language of the accused. He considered that his amendment was preferable (E/CN.4/284).

Mr. Vilfan supported the Lebanese amendment which provided that everyone had the right to a prompt hearing.

Mr. KOVALENKO (Ukrainian Soviet Socialist Republic) did not share the view of the representative of Lebanon that it was useless to stress, in the first paragraph of article 13, the need for legal procedure to be based on democratic principles because that formula contained no new element.

The provisions of paragraph 2 of the USSR amendment (E/CN.4/253) seemed very important; information received with regard to Trust Territories showed that very rarely did the accused know the language used by the tribunal and that often he did not understand the charge against him; moreover, the laws were not published in the local language. That procedure was unfair.

Mr. Kovalenko would therefore support the USSR amendment.

Mr. INGLES (Philippines) indicated that most of the ideas contained in the USSR amendment were covered by the United States-Philippine amendment, particularly the idea of complete equality and the right of self-defence for the accused.

The Philippine delegation did not understand clearly the meaning of the words "democratic principles" which the representative of Yugoslavia proposed to insert in the first paragraph (E/CN.4/284). Mr. Ingles could not accept that amendment if the meaning was not made clear. The representative of the USSR had pointed out that in his country judges were elected; in the Philippines they were appointed and Mr. Ingles did not wish to take a stand as to whether one method was preferable to the other.

The principle on which the second Yugoslav amendment was based seemed excellent to him, but he considered that the second paragraph of the United States-Philippine amendment adequately provided for the right of the accused to speak his native language.

/In connexion

In connexion with the Chilean amendment (E/CN.4/283), which was similar to the Lebanese amendment (E/CN.4/282), that the tribunal should be pre-established by law, he understood perfectly that the sponsors of those amendments did not wish the accused to be judged by a tribunal set up for that purpose. In his opinion those amendments still presented disadvantages. If they were approved, a country would never be able to reorganize its tribunals. Similarly it could be claimed that the Nürnberg tribunal was not in existence at the time the war criminals had committed their crimes. Mr. Ingles therefore felt that the disadvantages of the Lebanese and Chilean amendments were greater than their advantages and that he could not accept them.

On the other hand, he supported the second Chilean amendment which provided for free assistance by an interpreter.

Mr. Ingles considered that the second Lebanese amendment guaranteeing the right of a prompt hearing to everyone was satisfied by article 9, paragraph 4. He thought that, in the United Kingdom amendment (E/CN.4/281) it was inadvisable to lay down, as the representative of the United Kingdom proposed, that the press or the public should be refused access to the hearing. That procedure would discriminate in favour of or against the public; moreover, the press could be included in the public and Mr. Ingles did not see the point of that change.

Regarding the United Kingdom proposal to replace the word "trial" by "hearing", he stated that in his country the two expressions were interchangeable. The delegations of the United States and the Philippines had used the word "trial" to indicate that it was only during the trial that the public and the press were not admitted.

In connexion with paragraph 3 of the original Philippine amendment (E/CN.4/232) which provided that in case of erroneous criminal conviction a person was entitled to compensation and that that right was transferred to the heirs if the person had been executed, the representative of the United Kingdom had asked who would pay the compensation. Mr. Ingles replied that the same objection could have been raised in connexion with article 9,

paragraph 4. In his opinion, it was the responsibility of the State, as was the practice in France, to decide by law who would pay the compensation.

Mr. GARCIA BAUER (Guatemala) thought that the United States-Philippine amendment was very close to the Franco-Egyptian amendment. He endorsed the view of the representative of Lebanon that the United States-Philippine amendment contain. i all the provisions of the USSR amendment.

Mr. Garcia Bauer thought that civil suits did not cover all the cases contemplated, for example, commercial and labour questions; he felt that the first paragraph of the United States-Philippine amendment was ambiguous and preferred the amendment submitted by France and Egypt.

He accepted the amendments of Chile and Lebanon providing for the pre-establishment of tribunals because the impartiality of tribunals should be guaranteed to the greatest possible extent.

The Constitution of Guatemala provided that the press and the public could be excluded from a trial in the interests of morality, security and public order and Mr. Garcia Bauer would therefore support that provision.

He also considered that any person accused of an offence must be presumed innocent until legally proved guilty. As in article 9, paragraph 4, it should also be indicated that the hearing should be held promptly.

The United Kingdom amendment to use the wording "to the press or the public" was more precise and Mr. Garcia Bauer would therefore support it.

With regard to paragraph 2 (c) of the amendment of France and Egypt, he thought that the compulsory attendance of prosecution witnesses was necessary in criminal cases, but not in civil suits.

/Finally,

79

Finally, paragraph 2 (d) of the amendment of France and Egypt was in his opinion preferable to paragraph 2 of the USSR amendment.

Miss BOWIE (United Kingdom) felt that the Commission should retain the expressions "against him" and "judgment shall in every case, be pronounced publicly" which were in the original text suggested by the Drafting Committee and in the Franco-Egyptian amendment.

Regarding the proposal to change the word "and" into "or" at the beginning of the second sentence of paragraph 1, she favoured the first alternative, as she felt that there was more danger in excluding than in admitting the public.

Regarding the assistance of an interpreter, she thought that the text proposed by Yugoslavia was the better proposal.

Mr. SAGUES (Chile) thought it essential to insert, as he had suggested, the words "pre-established by law" in order to prevent persons being charged before special commissions or tribunals. That provision was to be found in the Chilean Constitution and continuity was one of the fundamental aspects of justice.

The Philippines proposal regarding compensation in the case of an erroneous conviction of crime did not go as far as the Chilean Constitution which provided for compensation in respect of moral as well as material damage. The former point was not taken into account in the Philippines proposal.

The CHAIRMAN, speaking as the representative of the United States of America, suggested the insertion of the words "in a suit at law" in the first sentence of the United States-Philippines proposal to emphasize the fact that appealing to a tribunal was an act of a judicial nature.

Regarding the USSR proposal, she felt it was not sufficient to provide that judges should be independent. The United States-Philippines proposal provided that tribunals would be not only independent but also impartial. Furthermore, the USSR proposal did not include the notion that an accused person was presumed innocent until proved guilty.

Regarding the first paragraph of the Chilean amendment and of the Lebanese amendment, she believed that the insertion of such a provision might raise considerable difficulties in some cases such as the re-organization of the judiciary system of a country or the setting up of special tribunals such as the International Military Tribunal of Nürnberg.

Regarding the United Kingdom amendment, she feared that the word "hearing" would not comprise all the aspects of a judiciary settlement, such as the verdict, for instance. The original text was preferable because in certain cases both the press and the public would have to be excluded from the trial. She was prepared to have the word "counsel" in the last line of sub-paragraph 2 (b) replaced by the words "legal assistance".

Mr. CASSIN (France) said the Danish representative's statement had convinced him that it was very difficult to settle in that article all questions concerning the exercise of justice in the relationships between individuals and governments. He was therefore prepared to let the words "or of his rights and obligations" in the first sentence of the Franco-Egyptian amendment, be replaced by the expression "or of his rights and obligations in a suit at law".

The same problem would arise in connexion with the implementation of article 8 of the Declaration of Human Rights. The question had not been fully thrashed out and should be examined more thoroughly.

Mr. PAVLOV (Union of Soviet Socialist Republics) was certain that his proposal had withstood all criticism. The latter could be divided into two categories: according to some, the proposal was not bad but its entire substance could also be found in the United States-Philippines proposal. If that were the case, it would also be true that unanimity could be achieved on both proposals.

According to the others, the USSR proposal contained fewer interesting elements than the final text of the United States proposal. According to the USSR proposal, judges should be independent which meant that they should be independent of the executive power and of the administrative authorities. Stating that they should be subject only to the law amounted to laying down that they should also be impartial.

It was alleged that the USSR proposal did not mention witnesses and did not provide for free legal assistance for the accused. The USSR proposal, however, mentioned the right of defence which was the essential

point. Furthermore, he did not think that an international covenant should deal with the smallest details. It sufficed to lay down the principles; the text proposed by the USSR had the advantage of being brief and concise. Consequently the above criticisms were very weak and did not in any way detract from the merits of the USSR proposal.

He remarked that no one objected to allowing an accused person to be assured full knowledge of all the material in the case after its translation into his native language; several members of the Commission, however, were extremely chary of allowing the accused the right to address the court in his native language. How could he defend himself if he was not allowed to use the only language he knew? Without that right he would be defenceless, and that was too often the case in the Non-Self-Governing and Trust Territories. It was illogical to grant the accused the right of defence but to withhold from him the right to conduct that defence in his native language.

Regarding the need for basing legal procedure of tribunals on democratic principles, he remarked that all agreed with democratic principles in general, but that some members of the Commission displayed sudden shyness when it became necessary to incorporate them into a juridical text. That particular clause of the USSR proposal meant that the accused would receive a minimum of guarantees and that the rights of the individual would be safeguarded.

He quoted several instances of undemocratic procedure. In certain Latin-American countries, for example, political prisoners had remained imprisoned for over eighteen months without being allowed to appear before a tribunal. Another instance was that of a trade union leader who had been imprisoned for opposing discrimination against certain elements of the population. He could quote numerous similar cases. In view of those conditions there was obviously need for including such a provision in the covenant. The function of the Commission was to protect minorities. In that connexion, he quoted a passage from the report on the exercise of human rights which had been recently made public by President Truman and which showed the treatment meted out to some minorities in the United States.

In conclusion, he said that he would press for a vote on his proposal.

Mr. SOERENSEN (Denmark) proposed a new amendment which could apply both to the United States-Philippine and to the Franco-Egyptian proposals, namely, to delete the word "public" from the second line of paragraph 1 and to add the following words at the beginning of the second

sentence of that same paragraph: "Hearings of criminal proceedings shall be public, but the press and public may be ...".

Mr. PAVLOV (Union of Soviet Socialist Republics) asked for a separate vote on the various parts of his proposal, as follows:

A roll-call vote on the sentence: "All persons shall be equal before the court or tribunals."

A vote by show of hands on the sentence: "Judges shall be independent and subject only to the law."

A roll-call vote on the sentence: "Legal procedure in every State shall be based on democratic principles."

A roll-call vote on the sentence: "The trial of cases in all courts shall be public, subject to exceptions prescribed by law for the protection of public morals and national security."

A vote by show of hands on the phrase: "and the accused person shall be assured the right of defence".

A vote by show of hands on the sentence: "When any person who does not know the national language is prosecuted, he shall be assured full knowledge of all the material in the case through an interpreter."

A roll-call vote on the phrase: "and shall also have the right to address the court in his native language".

Mrs. MEHTA (India) remarked that the USSR proposal merely aimed at establishing general principles. She would not be able to vote for it as she preferred more concrete wording.

Mr. LEBEAU (Belgium) said that he would vote against the USSR proposal, not because he objected to the general notions it contained, but because of the way in which they were presented. Furthermore, he agreed with the Indian representative's view.

The CHAIRMAN put to the vote the first sentence of the USSR proposal.

A vote was taken by roll-call, as follows:

In favour:	Denmark, Guatemala, Iran, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics.
Against:	Australia, Belgium, Chile, Egypt, France, India, Philippines, United Kingdom, United States of America, Uruguay.

/The first

The first sentence of the USSR proposal was rejected by 10 votes to 5.

The CHAIRMAN put to the vote the second sentence of the USSR proposal.

The second sentence of the USSR proposal was rejected by 8 votes to 4, with one abstention.

The CHAIRMAN put to the vote the third sentence of the USSR proposal.

A vote was taken by roll-call, as follows:

In favour: Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics.

Against: Belgium, Chile, Denmark, Egypt, France, India, Philippines, United Kingdom, United States of America, Uruguay.

Abstaining: Guatemala, Iran.

The third sentence of the USSR proposal was rejected by 10 votes to 2, with 2 abstentions.

Mr. ENTEZAM (Iran) said he had abstained during the previous vote because of the extremely vague meaning of the words "democratic principles"; he had given up trying to understand their exact meaning.

The fourth sentence of the USSR proposal was rejected by 8 votes to 2, with 4 abstentions.

The fifth sentence of the USSR proposal was rejected by 8 votes to 3, with 3 abstentions.

The sixth sentence of the USSR proposal was rejected by 4 votes to 3, with 7 abstentions.

The seventh sentence of the USSR proposal was rejected by 5 votes to 4, with 5 abstentions.

Mr. LOUTFI (Egypt) said he had voted against the USSR proposal not because he was against the principle but because he felt that the Franco-Egyptian proposal was better worded.

Miss BOWIE (United Kingdom) said she had voted against the USSR proposal although she agreed with its principles. It was a drafting matter and the same principles had been better expressed in other proposals.

The CHAIRMAN put to the vote the Danish amendment.

The Danish amendment was rejected by 4 votes to 3, with 6 abstentions.

Mr. ENTEZAM (Iran) said it was difficult to vote with full knowledge of the facts on the various amendments before the Commission. The situation had become extremely confused because of the number and similarity of the amendments. He moved therefore that the meeting should be adjourned and that the sponsors of amendments should meet and try to agree on a smaller number of proposals.

The CHAIRMAN supported that proposal.

The Iranian proposal was adopted by 9 votes to 3, with 2 abstentions.

The CHAIRMAN proposed that article 13 should be the first item on the agenda for the following meeting of the Commission.

It was so decided by 10 votes to none, with 4 abstentions.

The meeting rose at 5.25 p.m.