

United Nations
ECONOMIC
AND
SOCIAL COUNCIL

Nations Unies
UNRESTRICTED
E/CN.4/SR.119 15
13 June 1949
ORIGINAL: ENGLISH
CONSEIL
ECONOMIQUE
ET SOCIAL

COMMISSION ON HUMAN RIGHTS

Fifth Session

SUMMARY RECORD OF THE HUNDRED AND NINETEENTH MEETING

Held at Lake Success, New York,
on Wednesday, 8 June 1949, at 2.30 p.m.

CONTENTS:

Draft international covenant on human rights; measures of
implementation: chapter 2: proposals relating to the
question of the rights of individuals (E/CN.4/292, E/CN.4/299)

<u>Chairman:</u>	Mrs. ROOSEVELT	United States of America
<u>Rapporteur:</u>	Mr. MALIK	Lebanon
<u>Members:</u>	Mr. HOOD	Australia
	Mr. STEYAERT	Belgium
	Mr. CHANG	China
	Mr. SOERENSEN	Denmark
	Mr. LOUFI	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

Any corrections of this record should be submitted in writing, in either of the working languages (English or French), and within two working days, to Mr. E. Delavenay, Director, Official Records Division, Room F-852, Lake Success. Corrections should be accompanied by or incorporated in a letter, on headed notepaper, bearing the appropriate symbol number and enclosed in an envelope marked "Urgent". Corrections can be dealt with more speedily by the services concerned if delegations will be good enough also to incorporate them in a mimeographed copy of the record.

Representative of a specialized agency:

Mr. ARNALDO

United Nations Educational, Scientific
and Cultural Organization

Consultants from non-governmental organizations:

Category A:

Miss BENDER

American Federation of Labor

Mrs. MEAGHER

World Federation of United Nations
Associations

Category B:

Mrs. AIETA

Catholic International Union for
Social Service

Mr. STEINER

Commission of Churches on
International Affairs

Mr. MOSKOWITZ

Consultative Council of
Jewish Organizations

Mr. BERNSTEIN)

Co-ordinating Board of
Jewish Organizations

Mr. FRIEDMAN)

Mr. BEER

International League for the
Rights of Man

Miss ZUZZANUA

International Union for
Catholic Women's Leagues

Mr. JACOBY

World Jewish Congress

DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS: MEASURES OF IMPLEMENTATION:
CHAPTER 2: PROPOSALS RELATING TO THE QUESTION OF THE RIGHT OF INDIVIDUALS,
OR GROUPS OF INDIVIDUALS AND OF ORGANIZATION TO PETITION (E/CN.4/292,
E/CN.4/299)

Mr. VILFAN (Yugoslavia), explaining his vote at the previous meeting, stated that he had been unable to take part in all the debates on the right to petition. He agreed with the remarks of the Chinese representative regarding the question of implementation, and stressed that the Yugoslav Government considered that the implementation of the draft international covenant on human rights was essentially a matter within the domestic jurisdiction of each State.

At the previous meeting reference had been made to Upper Silesia as a place where the right of petition had been established and used in the interests of human rights, but he felt that it was misleading to mention only the case of Upper Silesia, as there were many other such cases.

The fact that the right of petition had been used by Hitler to undermine the status of Central Europe proved that such a right could be misused. The international situation had not changed much since the end of the Second World War, and the right of petition might still be misused. The Yugoslav Government was therefore opposed to such a right.

Mr. MALIK (Lebanon) said that the Commission should plan the work to be carried out during the time remaining at its disposal. The number and duration of interventions of each representative should be limited. Speakers should be allowed ten minutes for the first intervention on each article and five minutes for each subsequent intervention. The number of interventions regarding each article should be limited to one except in the case of movers of amendments. The Commission should concentrate on the draft international covenant on human rights, and defer discussion of proposals relating to implementation.

Mr. PAVLOV (Union of Soviet Socialist Republics) recalled that he had made a similar proposal regarding the work of the Commission earlier in the session. The Commission had decided, however, to adopt another procedure. A two-thirds majority vote would be necessary to reverse that decision.

He would not have objected to the limitation of the number and duration of interventions if such a procedure had been adopted at the beginning of the session. Certain representatives had made lengthy speeches and there should not be any discrimination against those who had not yet spoken. The Commission should conclude its discussions of the proposals relating to implementation at the current meeting and, on the following day, should pass to the consideration of the draft covenant.

If the Lebanese proposal were put to the vote he requested that a separate vote should be taken on each part of it. He asked the Lebanese representative, however, to withdraw the first and second parts of his proposal as they were discriminatory.

Mrs. MEHTA (India) suggested that the proposals submitted in connexion with the problem of implementation should be sent direct to the various Member States as it would be difficult for the Commission to reach any definite conclusions on them. They could be discussed later when the comments of the various Governments had been received.

The CHAIRMAN said that several members of the Commission had had the same idea as the Indian representative, but she felt that such action should not be taken until later in the session.

She agreed with the USSR representative that the Commission had decided previously to work on the draft covenant and proposals on implementation on alternate days, but pointed out that the rules of procedure did not call for a two-thirds majority vote in cases where the Commission wished to reverse a decision. That question had been discussed at the eighth session of the Economic and Social Council but no such rule had been adopted in view of the fact that Article 61 of the Charter laid down that "decisions of the Economic and Social Council shall be made by a majority of the members present and voting".

Mr. GARCIA BAUER (Guatemala) could not support the Lebanese proposal that speeches of members should be limited. Members of the Commission should have complete freedom of speech and should be allowed sufficient time to discuss each question thoroughly. The time allowed for speeches in the Third Committee during the third session of the General Assembly had been limited, and that, in his opinion, had not led to any worthwhile results.

Referring to the suggestion that the Commission should concentrate on the draft covenant and defer consideration of the question of implementation, he pointed out that his delegation had abstained from voting when that matter had been raised earlier in the session. He felt, however, that, as the Commission had decided to deal with the question of implementation and the draft covenant on alternate days, it should not reverse its decision. Although the Commission might not be able to terminate its work on the draft covenant at the current session, the resolutions adopted in that connexion should be forwarded to the various Member States, together with a statement that the Commission had not been able to study all the articles. Governments should also receive records of the Commission's debates on proposals relating to implementation.

Mr. HOOD (Australia) suggested, as an alternative to the Lebanese proposal, that a target date should be set for the conclusion of the work on the draft covenant, and that a certain amount of time should be devoted to further discussion of proposals regarding implementation.

He felt the Commission might incur criticism if no attempt was made to deal further with the question of implementation at the current session. After additional discussion, the various proposals made and a record of the views expressed by members of the Commission could be sent to Governments. He would support the third part of the Lebanese proposal if an attempt were made to set a final date for work on the draft covenant.

Mr. MALIK (Lebanon) said that he would withdraw his proposal if it prejudiced in any way the consideration at the current session of the Commission of the question of implementation. He accepted the Australian proposal.

He reminded the Australian, Guatemalan and USSR representatives that rule 50 of the rules of procedure laid down that "the Commission may limit the time allowed to each speaker." He would not, however, press for the limitation of time to be applied to members submitting draft resolutions or amendments.

Mr. CHANG (China) felt that it had been agreed in the Economic and Social Council that votes on matters of substance could not be reconsidered at the same session, but that there was no such rule regarding votes on procedural questions. He agreed that the Commission should finish its work by 20 June, but pointed out that in the short time at its disposal it could not hope to finish work on the draft covenant and the proposals regarding implementation.

Miss BOWIE (United Kingdom), referring to the procedure followed in the consideration of questions of implementation, said that it would be a pity if the Commission did not continue its work on the proposals submitted at the current session regarding that question. In view of the results of the voting at the preceding meeting, she felt that the Commission could not draw up any final proposals. The various suggestions made might be further discussed at one or two meetings in the hope that a greater measure of agreement would be reached among the members who had submitted such proposals. The Commission could then take up the consideration of the draft covenant.

The CHAIRMAN suggested that the members of the Commission who had submitted proposals regarding measures of implementation should meet and try to reach agreement.

She pointed out that work on the draft covenant would have to be finished before 20 June, as that was the date set for the last meeting of the current session of the Commission.

Mr. CASSIN (France) said that the Commission should consider the repercussions upon its work of the votes taken at the previous meeting, and in that connexion he felt that it would be premature to cut short the debate on measures of implementation.

A questionnaire regarding measures of implementation should be prepared by the Secretariat and considered by the Commission on Friday, 17 June. The questionnaire should then be forwarded to the various Governments together with the proposals submitted at the current session of the Commission and the records of the discussions which had taken place on those measures. Those measures should be discussed at the next two or three meetings and then the Commission should pass to the consideration of the draft covenant and continue with it until the end of the following week.

Mr. MORA (Uruguay) suggested, with regard to the Lebanese proposal, that a compromise solution might be possible. The Commission could continue its work as planned until Friday, and then decide if it desired to devote all its time to the draft covenant.

He had no objection to imposing a time limit for speeches, but could not agree that the number of statements made by representatives should be limited. Such a limitation would constitute a form of discrimination against members who had submitted written papers, and who would consequently be able to make more frequent and longer statements.

Mr. LOUTFI (Egypt) suggested, with regard to the time limit, that members submitting amendments should be allowed twenty minutes for their first and five for their second intervention.

He supported the Lebanese proposal that the Commission should devote the time remaining at its disposal to the draft covenant. With regard to measures for implementation, he suggested that the various drafts should be submitted to the Governments, and that a questionnaire should then be prepared by the Secretariat which would consist of a summary of the memorandum before the Commission, and which would include all the important points of principle on which the Commission wished to obtain the views of Governments.

Miss BOWIE (United Kingdom) supported both statements of the Lebanese proposal with regard to the time limit.

Mr. MALIK (Lebanon) pointed out, in support of his proposal, that past experience had proved the usefulness and the practicability of applying the time limit. He desired to have all three parts of his proposal put to the Commission. His proposal aimed at completing one document entirely, but he nevertheless desired to carry forward the examination of measures for implementation as far as possible.

Mr. HOOD (Australia) proposed that 15 June should be set as the target date for the completion of the draft covenant.

Mr. PAVLOV (Union of Soviet Socialist Republics) proposed that item 3 of the Lebanese proposal should be voted upon first, since it was logical to determine what the Commission would work on. The Commission should work on the draft covenant from 9 June until it was completed, taking 18 June as an approximate completion date. After that date the Commission could return to questions of implementation.

With regard to items 1 and 2 of the Lebanese proposal, he stated that he was opposed to limiting speeches to ten minutes since the aim of the Commission should be to draw up as good a covenant as possible, rather than to accomplish its work within a minimum period. He thought that the Egyptian proposal to allow twenty minutes for the first speeches by members submitting amendments and five minutes for their following speeches might be acceptable.

The CHAIRMAN read out item 3 of the Lebanese proposal, amended in accordance with the suggestions made by the USSR representative: "Concentrate on the covenant beginning 9 June to the exclusion of everything else until 18 June."

Mr. GARCIA BAUER (Guatemala) pointed out that he was opposed to changing the working procedure of the Commission for the time being, because the time which had so far been devoted to measures for implementation would be wasted.

With regard to the time limit, he recalled that the Commission had devoted two months in Paris to drawing up thirty articles of the Declaration on Human Rights, and concluded that to adopt the time limit would jeopardize the effectiveness of the Commission's work.

Mr. CASSIN (France) stated that he could not vote for the Lebanese proposal, because it would mean that no discussion would take place with Governments concerning measures for implementation.

The CHAIRMAN put to the vote the words "beginning 9 June" of the Lebanese proposal.

Those words were rejected by 8 votes to 5, with 3 abstentions.

The CHAIRMAN put to the vote the words "until 18 June" of the Lebanese proposal.

Those words were rejected by 7 votes to 3, with 4 abstentions.

Mr. MALIK (Lebanon), in view of the suggestion made by the Australian representative that 15 June should be set as a termination date for the work on the draft covenant, accepted "16 June" instead of "18 June".

The CHAIRMAN put to the vote the Lebanese proposal, amended as follows: "Concentrate on the Covenant to the exclusion of everything else until 16 June".

That proposal was adopted by 11 votes to none, with 3 abstentions.

The CHAIRMAN put to the vote the Lebanese proposal with regard to the time limit, as follows: "limit time of first intervention on Covenant to ten minutes, and every subsequent intervention to five minutes".

That proposal was rejected by 5 votes to 5, with 6 abstentions.

Mr. CEANG (China) stated that he had not voted because he felt that the first vote was not clear. He asked whether the Lebanese proposal signified that the Commission would continue its discussion on the draft covenant up to and including 16 June.

Mr. LOUFI (Egypt) pointed out that the Commission had asked the Secretariat to prepare a questionnaire in order to obtain the views of Governments on the drafts submitted, and that it would be desirable to have the discussion on that questionnaire on 16 June.

The CHAIRMAN stated that she considered the Commission agreed upon 16 June inclusive as the date on which the work on the draft Covenant would be concluded.

She asked the Commission to consider document E/CN.4/303 in order to decide upon the date on which it would consider the questionnaire prepared by the Secretariat. The Commission should consider the questionnaire on Friday, 17 June, the day after it had completed its work on the draft covenant.

Mr. PAVLOV (Union of Soviet Socialist Republics) asked the Chairman to explain what purpose the questionnaire to be prepared by the Secretariat would serve, in view of the fact that the Commission was already in possession of the proposals submitted by Governments, the Secretariat's memorandum, and the Commission's previous documents.

The CHAIRMAN replied that the representative of France had already explained that such a questionnaire would define the differences which had arisen in the Commission's discussions, and would better enable Governments to express their views concerning the various drafts submitted and the Secretariat's memorandum.

The Chairman put to the vote the proposal contained in document E/CN.4/303 with the words "Friday, 17 June" in place of the words "Wednesday, 15 June".

That proposal was adopted by 12 votes to none, with 3 abstentions.

The CHAIRMAN asked the Commission to decide upon the inclusion of the word "reasonably" before the word "necessary" in the French amendment to paragraph 2 of article 16 (E/CN.4/301).

Mr. MALIK (Lebanon) stated that he had asked for the deletion of the word "reasonably", because he considered that it was unnecessary.

The CHAIRMAN, speaking as the representative of the United States of America, stated that the word "reasonably" was a recognized legal term in the United States, with a wider meaning than the word "necessary", which in itself did not provide any protection against measures which could be considered unreasonable.

Mr. MALIK (Lebanon) stated that he did not feel that the word "reasonably" constituted any protection against arbitrary limitation, but that on the contrary it opened the way to misinterpretation.

Mr. PAVLIK (Union of Soviet Socialist Republics) stated that, if the French amendment were to be included in the draft covenant, it would make it difficult for some States to sign the convention because, in whatever light that amendment were interpreted, it would necessarily be concluded that the laws of each signatory State were divided into reasonable and unreasonable ones. He could not support such a distinction.

Mr. CASSIN (France) pointed out, in reply to the USSR representative, that in all countries there were police officials who did not act in a reasonable manner in enforcing the law. He had maintained the word "reasonable" in the French amendment because it signified a protection against arbitrary limitation. In other words, it established the distinction between reasonable and unreasonable limitations, and not, as the USSR representative had supposed, between reasonable and unreasonable laws.

The CHAIRMAN remarked that a measure might be called necessary and yet be unreasonable.

Mr. MALIK (Lebanon) stated that, if "reasonably necessary" could mean that such measures might be interpreted by the State as not being strictly necessary, he could not agree with the inclusion of the word "reasonably".

He suggested the wording "which is reasonable and necessary".

The CHAIRMAN accepted that wording.

Mr. ENTEZAM (Iran) said that he did not share the opinion of the Lebanese representative. It was not sufficient for a State to take measures; it was also necessary for those measures to be reasonable. Qualifying the limitations as "reasonable and necessary" would defeat the purpose of the amendment. The representative of the USSR had not supported the idea because he felt that the good faith of Governments was being questioned.

Mr. KOVALENKO (Ukrainian Soviet Socialist Republic) pointed out that the explanation given by the United States representative contradicted the statement made by the representative of France. According to the latter's explanation, his amendment envisaged limitations covered by laws which could be carried out by an official, although they might not be laws but official acts. The interpretation given by the French representative opened the door to arbitrary police action. The United States interpretation was quite different.

Miss BOWIE (United Kingdom) agreed with the Ukrainian representative that the explanations given by the representatives of the United States and France were contradictory. The English translation did not agree with the original French. She could not support the United States version. In her opinion, the English text should read: "such reasonable limitations as are pursuant to..." although she maintained that the word "necessary" was superfluous.

Mr. Charles MALIK (Lebanon) agreed that a discrepancy existed between the French and English texts. The French text reflected the idea in a manner with which he agreed completely. He would vote in favour of the French text but would not vote for the English text, if the word "reasonably" was left before the word "necessary", as an erroneous interpretation could be given. He was willing however to vote for the United Kingdom suggestion as it would bring the English translation closer to the French text.

The CHAIRMAN, speaking as representative of the United States of America, said that she would agree to the text reading: "subject only to such limitations as are pursuant to law and are reasonable and necessary". She asked the French representative whether that translation accurately reflected his idea.

Mr. CASSIN (France) said that the basic meaning was undoubtedly the same. The idea in the French text was that such limitations should exist when they were considered necessary by a reasonable person. Once that principle was agreed upon, an adequate translation could be found by the English-speaking delegations.

Mr. MALIK (Lebanon) wondered why the word "security" should have replaced "public safety" which was the term used in the original United States amendment. The French text used the word "sécurité" which had a political connotation.

The CHAIRMAN, speaking as representative of the United States of America, explained that it had been a simple translation from the French text.

Mr. MALIK (Lebanon) said that the change altered the meaning considerably. The United States representative had explained "public safety" as including such things as traffic and fire regulations. If he was correct in his assumption that "sécurité" in French had a much broader meaning, it changed the substance of the text.

Mr. CASSIN (France) said that "sécurité" in French meant security of persons, of things generally, perhaps even of the nation but it would be better not to use the term "sécurité publique" which was covered by the word "ordre".

Mr. MALIK (Lebanon) remarked that the explanation by the French representative confirmed his opinion that there was a difference between the English and French texts.

The CHAIRMAN, speaking as the representative of the United States of America, said that her delegation would be prepared to restore the term "public safety" if it was closer to the French text.

Mr. CASSIN (France) said that the expression "sécurité" had been the translation given by the Secretariat and that the French delegation felt that it was entirely satisfactory.

Mr. MALIK (Lebanon) said that he could not support a French translation which departed from the original text. The French version should express the equivalent of "public safety". Otherwise the French delegation should make it quite clear that their text departed from the English version.

Mr. CASSIN (France) explained that the translation into English of the word "sécurité" was "public safety" and he reaffirmed his opinion that the French text should be maintained as it had been submitted to the Committee.

Mr. STEYAERT (Belgium) supported the opinion of the French representative on the meaning of "sécurité".

Mr. MALIK (Lebanon) said that from the explanation given by the representatives of the United States and of France, the terms "public safety" and "sécurité" did not have the same meaning, and the representative of France would have to take the responsibility for a text which departed from the English version.

Mr. HOOD (Australia) wondered whether the expressions "pursuant to law" and "reasonable and necessary" conveyed the meaning intended. He felt that in some instances those two ideas could conflict in their practical application. In the case under discussion, it was not clear whether the ultimate criterium would be the legality of the limitations or the fact that those limitations were necessary.

/ Perhaps the

Perhaps the expression "pursuant to law" could be eliminated from the text.

Mr. PAVLOV (Union of Soviet Socialist Republics) agreed that there were differences in the English, French and Russian texts. For instance, the word "beliefs" ("croyances") did not coincide with the Russian text. The question of "religious beliefs" was distinct from "beliefs" in general.

Mr. CASSIN (France) said that the USSR representative was correct in raising that point. The word "croyances" in the French text should be replaced by "convictions".

The CHAIRMAN pointed out that that change would apply to the French text but not to the English version which would remain unchanged.

In reply to the question raised by the Australian representative, the Chairman, speaking as the United States representative, said that the reason for including the expression "pursuant to law" -- the original text said "prescribed by law" -- was that her delegation felt that it would represent an additional protection against arbitrary action. The authorities should not be allowed to take action unless there was a law which justified it, and that law should be established on the basis of reasonableness.

At the request of Mr. PAVLOV (Union of Soviet Socialist Republics), the CHAIRMAN put to the vote, in parts, the French amendment to article 16, paragraph 2, reading: "Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are pursuant to law".

That text was adopted by 11 votes to none, with 3 abstentions.

The CHAIRMAN then put to the vote the second part reading: "and are reasonable and necessary to protect public safety, public order and health, morals and the fundamental rights and freedoms of others".

That text was adopted by 9 votes to none, with 5 abstentions.

The CHAIRMAN finally put to the vote the French amendment as a whole.

The French amendment as a whole was adopted by 9 votes to none, with 5 abstentions.

/ Mr. VILFAN

Mr. VILFAN (Yugoslavia) explained his vote. He had been unable to be present at the discussion which had taken place in the Commission but had voted for the French amendment on the understanding that the limitations it prescribed were twofold: they were based on law and they would have to be reasonable and necessary. His vote had been based on the explanation by the French representative of his amendment.

Mr. PAVLOV (Union of Soviet Socialist Republics) had abstained from voting because he had certain doubts with regard to the second part of the French amendment. The text should have confined itself to the limitations contained in laws and not restricted freedom of speech and thought. The article allowed too much scope and freedom to police action. So many limitations had been added to those provided by law that little had been left of the freedom which the article was supposed to express. The text was, in fact, contradictory; in the first part it provided for certain freedoms, which were denied in the second part because of the limitations imposed. He would therefore abstain from voting on the article as a whole.

The CHAIRMAN put to the vote article 16 as a whole.

Article 16, as a whole, was adopted by 10 votes to 1, with 4 abstentions.

Mr. CASSIN (France) expressed the hope that the USSR representative might later change his mind when he had had a chance to study more carefully the French text. He felt sure that that representative would find that his aim was identical to that of the French delegation.

Mr. MALIK (Lebanon) explained his vote. His opinion differed from that of the USSR representative in that the latter assumed that every law was ipso facto necessary and reasonable, but the text aimed at making a clear distinction between laws which were arbitrary and those which were reasonable and necessary for the purposes enumerated.

Mr. CHANG (China) could not understand why, in connexion with such a serious question as freedom of religion or beliefs, the Commission should have imposed limitations which had not been considered necessary in other articles. He felt that those who really practised their religion would not feel complimented by the restrictions which had been

/ imposed on

imposed on them. Mr. Chang hoped that the Committee might eventually decide to delete the second paragraph of that article and replace it by a general limitation. It seemed to him inconsistent to promote, on the one hand, freedom of religious beliefs and, on the other, to limit such freedom not only by law but also by considerations of public safety, public order and health.

In that connexion, he mentioned the missionary effort in China. There had been a time when religion was not linked to "civilization", as in the seventeenth and eighteenth centuries when the Jesuits had gone to China not to civilize but simply to preach religion. A happy collaboration had existed and the Jesuits learned also a great deal from their Chinese friends. In the nineteenth century a different attitude had developed and trade and financial and other interests became linked to religious activities. Mr. Chang was glad to note that a change of attitude was developing and he hoped that religion and "civilization" would remain separate.

Mr. VILFAN (Yugoslavia) wished to comment on the statement of the Lebanese representative. The point he had raised on whether or not the French amendment implied judgment on the reasonableness and necessity of laws was not related to the decision which had just been voted upon by the Commission. Every State believed that its laws were reasonable and necessary. The French amendment showed that each limitation should be provided for by law and that those legal limitations should be applied reasonably if they were considered necessary.

Mr. KOVALENKO (Ukrainian Soviet Socialist Republic) had abstained from voting on article 16 as a whole because of the distinction made between reasonable and unreasonable laws. Democratic States could not pass arbitrary laws; if they did so they became undemocratic. Who was going to pass judgment on whether a law was arbitrary or unreasonable? Such an attitude reflected a constant tendency to intervene in the sovereign rights of certain States. He could not accept the attempt by the French representative to divide the world into reasonable and unreasonable people.

The meeting rose at 6 p.m.