United Nations

ECONOMIC AND SOCIAL COUNCIL

Nations Unies

UNRESTRICTED

E/CN.4/SR 121
14 June 1949

CONSEIL ECONOMIQUE ET SOCIAL

ORIGINAL: ENGLISH

COMMISSION ON HUMAN RIGHTS

Fifth Session

SUMMARY RECORD OF THE HUNDRED AND TWENTY-FIRST MEETING

Held at Lake Success, New York,
on Thursday, 9 June 1949, at 2.30 p.m.

CONTENTS: Draft International Covenant on Human Rights (E/800, E/CN.4/227, E/CN.4/230, E/CN.4/272, E/CN.4/272/Corr.1, E/CN.4/296, E/CN.4/296/Corr.1, E/CN.4/306, E/CN.4/307, E/CN.4/308, E/C.2/196) (discussion continued): Articles 18, 19 and 20

Chairman:	Mrs. ROOSEVELT	United States of America
Rapporteur:	Mr. Charles MALIK	Lebanon
Members:	Mr. SHANN	Australia
	Mr. STEYAERT	Belgium
	Mr. SAGUES	Chile
	Mr. CHANG	China
	Mr. SOERENSEN	Denmark
	Mr. LOUTFI	Egypt
	Mr. CASSIN	France
	Mr. GARCIA BAUER	Guatemala
	Mrs. MEHTA	India
	Mr. ENTEZAM	Iran
	Mr. INGLES	Philippines

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.

Members:	Mr. KOVALENKO	Ukrainian Soviet Socialist Republic
	Mr. PAVLOV	Union of Soviet Socialist Republics
	Miss BOWIE	United Kingdom
	Mr. MORA	Uruguay
	Mr. VILFAN	Yugoslavia
Consultants from non-governmental organizations:		
Category A:	Miss SENDER	American Federation of Labor (AF of L)
	Mrs. MEAGHER	World Federation of Trade Unions (WFTU)
Category B:	Mr. PERLZWEIG	World Jewish Congress
	Mr. GOLDSMITH	Agudas Israel World Organization
	Miss ROBB	Liaison Committee of Women's International Organizations
	Mrs. MUDGE	World Alliance of Young Men's Christian Associations
	Mrs. VERGA	Catholic International Union for Social Service
	Miss SCHAEFER	International Union of Catholic Women's Leagues
Secretariat:	Mr. HUMPHREY	Representative of the Secretary-General
	Mr. LAWSON	Secretary of the Commission

DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS (E/800, E/CN.4/227, E/CN.4/230, E/CN.4/272, E/CN.4/272/Corr.1, E/CN.4/296, E/CN.4/296/Corr.1, E/CN.4/306, E/CN.4/307, E/CN.4/308, E/C.2/196) (discussion continued)

Article 18 (discussion continued)

Mr. CHANG (China) agreed to accept certain modifications proposed by the French delegation (E/CN.4/306) in the Chinese amendment to the Drafting Committee's text of article 18 (E/CN.4/307). However, he wished to press for the retention of the word "national" before "security" in the second sentence of the Chinese amendment. He was anxious that there should be no confusion between national and social security.

/Mr. CASSIN

Mr. CASSIN (France) was unable to agree to the insertion of the word "national" in the French amendment.

Mr. CHANG (China) withdrew his amendment and proposed instead the insertion of the word "national" before "security" in whatever text was taken as a basis for voting.

The CHAIRMAN said that the text of the French amendment (E/CN.4/306) would be taken as a basis for the vote, and the alternative suggestions put forward by the delegations of the United States, China and Chile, would be regarded as amendments to that text.

Mr. PAVLOV (Union of Soviet Socialist Republics) objected that he found no mention of the right to hold street processions and demonstrations in the French text. As the text stood, freedom of assembly was guaranteed but the right to hold demonstrations, which was equally valuable for freedom of expression, was left unprotected. He urged the French representative to incorporate a reference to it in his text of article 18.

Mr. CASSIN (France) was unable to accept the inclusion of the words "and to freedom of street processions and demonstrations" in the text of the French amendment. In his opinion, such demonstrations might constitute a public nuisance and lead to civil disorder. He could not be responsible for the insertion of those words and suggested that Mr. Pavlov should submit the proposal as a formal USSR amendment.

Mr. PAVLOV (Union of Soviet Socialist Republics) agreed to that suggestion.

Mr. INGLES (Philippines) was anxious to understand the implications of the words "or the protection of the rights and freedoms of others" in the French text. He was not sure that they were appropriately placed in that article.

Mr. CASSIN (France) explained that whereas the term "public order" protected the physical rights of private persons, the phrase queried was felt to protect their spiritual rights, against totalitarian agitation, for example.

/Mr. MORA

Mr. MORA (Uruguay) said that he would vote in favour of the French amendment. It had many advantages and embodied several of the concepts of the Uruguayan Constitution. He was uneasy, however, with regard to the phrase in question. He considered that it might be better placed in article 4, which was to be a general article of limitation, and he suggested that it should be deleted from article 18.

The CHAIRMAN explained that although like the representative of Uruguay she felt that all limitations would be better deleted and replaced by a general article, article 4 had not yet been written and in the meantime it was necessary to include particular limitations in each article.

Mr. INGLES (Philippines) thought that the phrase in question was a restriction on freedom of expression, designed to safeguard the interests of private persons. He considered therefore that it should be included among the limitations on the right to freedom of speech in article 17, and he requested that the phrase should be voted on apart from the body of the French text.

The CHAIRMAN put the USSR amendment to the vote.

The amendment was rejected by 5 votes to 3, with 6 abstentions.

The CHAIRMAN put to the vote the United States amendment proposing the insertion of the words "reasonable and" before "necessary" in the third line of the French amendment.

The United States amendment was rejected by 5 votes to 3, with 7 abstentions.

The CHAIRMAN put to the vote the Chinese amendment proposing the insertion of the word "national" before "security" in the third line of the French amendment.

The Chinese amendment was adopted by 7 votes to 4, with 4 abstentions.

/The CHAIRMAN

The CHAIRMAN then put to the vote the Chilean proposal to insert, at the end of the French amendment, after "in a democratic society", the words "...and, in countries which consider it necessary, to prevent the activities of fascist or totalitarian groups or parties" (E/CN.4/308).

After a short discussion, in which Mr. PAVLOV (Union of Soviet Socialist Republics) asked for a separate vote on the word "totalitarian" as being tautological, and Mr. MALIK (Lebanon) asked for a separate vote on the word "fascist" as being unnecessary, Mr. SAGUES (Chile) withdrew the words "fascist or".

Mr. PAVLOV (Union of Soviet Socialist Republics) objected that the word "totalitarian" had no clear connotation and said that he would be unable to support the amendment in that form.

The Chilean proposal, as amended, was rejected by 8 votes to 3, with 4 abstentions.

The CHAIRMAN put to the vote the phrase "or the protection of the rights and freedoms of others".

It was decided to retain the phrase by 10 votes to 1, with 4 abstentions.

The CHAIRMAN put to the vote the words "in a democratic society".

The phrase was rejected by 6 votes to 2, with 6 abstentions.

The CHAIRMAN put to the vote the first part of the French amendment as far as the words "prescribed by law".

The first part of the amendment was adopted by 14 votes to none, with 1 abstention.

The CHAIRMAN put to the vote the words "and which are necessary to assure national security".

The phrase was adopted by 10 votes to none, with 5 abstentions.

The CHAIRMAN put to the vote the words "public order".

The words were adopted by 11 votes to none, with 2 abstentions.

The CHAIRMAN put to the vote the words "the protection of health or morals".

The words were adopted by 12 votes to none, with 3 abstentions.

The CHAIRMAN put to the vote the whole of the French text of article 18, amended to read as follows: "Everyone has the right to freedom of peaceful assembly. No restriction shall be placed on the exercise of this right other than those prescribed by law and which are necessary to assure national security, public order, the protection of health or morals, or the protection of the rights and freedoms of others".

Article 18 was adopted by 12 votes to none, with 3 abstentions.

Mr. PAVLOV (Union of Soviet Socialist Republics) said that he had been unable to vote for that version of article 18 because the important USSR amendment regarding street processions had been rejected, as had the reference to the prohibition of fascist organizations. As it stood, he considered that the article omitted the essential restriction and included many others which were unnecessary. Further, he was unable to understand how the right to freedom of assembly could affect public health.

The CHAIRMAN explained that in cases of epidemics, it might well prove necessary to restrict the public's right of assembly for its own protection.

Mr. KOVALENKO (Ukrainian Soviet Socialist Republic) said that his delegation had abstained from voting on article 18 because of the omission of the freedom to hold street processions and the refusal to adopt a proposal banning fascist organizations. He regretted that the word "fascism" was losing its sharp definition; in his opinion, the true meaning of the word "democracy" was also becoming clouded in certain countries.

Article 19

Mrs. MEAGHER (World Federation of Trade Unions) wished to point out that there was a fundamental difference between trade union rights and freedom of association. Trade union rights were of the utmost importance to the workers in both capitalist and socialist societies.

The permanent character of trade unions made it impossible for an article on freedom of association to cover trade union rights: a special article on those rights should be included in the Covenant. The Economic and Social Council had sanctioned that view in its Resolution 193 (VIII) which suggested that a special article on trade union rights should be drawn up for inclusion in the Covenant on Human Rights.

The additional article proposed by the USSR delegation (E/CN.4/263) answered the preoccupations of the workers, and was fitted to serve as a formal medium between the affirmation of principles in the Declaration of Human Rights and the ILO Convention.

Miss SENDER (American Federation of Labor) urged the Commission to include in the Covenant provisions for the protection of working men and women. She wished to propose an amendment containing an enumeration of the minimum rights needed to insure that protection (E/C.2/196); the most controversial had been omitted. Many of the so-called civil rights guaranteed by the Covenant would be illusory without the economic and social rights proposed in that amendment.

She did not agree that the existence of prior conventions on a topic should prevent its inclusion in the Covenant; there was to be an article on freedom of information, although there were already special conventions on that topic.

Although the matters under discussion closely concerned the ILO, not all Members of the United Nations were members of thatspecialized agency. She therefore hoped that the Commission would adopt the French amendment to article 19 (E/CN.4/230), designed to extend the guarantees provided in the International Convention on Freedom of Association and Protection of the Right to Organize.

She emphasized that the working people of the world were among the best supporters of the United Nations and urged that their cause should be supported by the Commission on Human Rights.

Mr. PAVLOV (Union of Soviet Socialist Republics) reminded the Chairman that the Soviet proposal to substitute a new text for articles 18 and 19 (E/CN.4/272) was also before the Commission with regard to article 19. In addition, if the amendment of the American Federation of Labor was to be discussed at that juncture, the Soviet Union's proposed new article on trade union rights (E/CN.4/263) should also be dealt with. It contained certain positive and far-reaching proposals and had the support of many workers' organizations.

/The CHAIRMAN

The CHAIRMAN said that unless one of the delegations represented on the Commission sponsored the amendment of the American Federation of Labor (E/C.2/196), it was not formally before the Commission. She assumed that only the second paragraph of the Soviet proposal for articles 18 and 19 would apply to the current discussion. With regard, however, to the proposal for an additional article, she considered that the question of new articles should be taken up at the end of the discussion on part II of the Covenant.

Article 19 dealt with freedom of association in the broad sense and she did not feel that trade union rights should be referred to explicitly. However, if the proposal of the American Federation of Labor were sponsored, that part of it concerned with the right to form and join trade unions would be in place in the discussion on article 19.

Mr. LOUTFI (Egypt) said he was willing to support the United States text of article 19 (E/CN.4/296). He wished to suggest, however, that the words "and reasonably" before"necessary" should be deleted, and that the words "public order" followed by the usual list of restrictions, "public health or morals, etc." should be inserted after "national security". The use of those words had already been explained in earlier discussions.

Mr. CASSIN (France) accepted the United States text as a basis for discussion. He proposed, however, that the wording should be brought into line with the other articles, in accordance with the Egyptian proposal, and the first paragraph made into a positive statement.

With regard to the amendment proposed by France (E/CN.4/230), he recalled that in the previous article he had wished to include the concept of a democratic society. The earlier rights guaranteed by the Covenant were personal and legal safeguards, not connected with the political form of society. Articles 18 and 19 were connected with public freedoms, so that the Commission must needs give some characterization of the framework of society. He was anxious, therefore, to include a provision to some extent controlling national legislation.

There had been lengthy discussion on trade union rights in the Economic and Social Council, and the text of its resolution was significant. He considered, therefore, that great care must be taken to avoid prejudicing earlier conventions and he would stand by the amendment proposed by his delegation.

/Miss BOWIE

Miss BOWIE (United Kingdom) was, generally speaking, in favour of the article 19 suggested by the Drafting Committee. The right of association concerned associations in general and not simply trade unions. The amendment proposed by the American Federation of Labor, therefore, should be the subject of a separate article.

However, the United Kingdom had certain proposals to make in connexion with article 19 (E/CN.4/227). The last sentence of the Drafting Committee's text with the cross references to article 16 and 17 should be deleted. A new paragraph should be added, providing for certain possible restrictions on the right of association of civil servants, the armed forces and the police.

With regard to the French amendment (E/CN.4/230), she considered that there was no point in mentioning the earlier ILO Convention, since all the signatories were necessarily bound by it, while on the other hand it was impossible to bind other countries by that Convention simply by a statement in the Covenant.

Speaking as representative of the United States, the CHAIRMAN said that her delegation accepted most of the suggestions made by the representatives of France and Egypt in the new version of the United States amendment (E/CN.4/296/Corr.1). She requested a separate vote, however, on the words "reasonable and".

The United States delegation considered that the Drafting Committee's text left the way open for legislation restricting the freedom of association. The United Kingdom amendment (E/CN.4/227) provided for too many exceptions, and the American Federation of Labor amendment, if sponsored, would have to be discussed in connexion with a separate article.

She was not wholly in favour of the French proposal to incorporate an additional paragraph in article 19, but considered that it would be improved by the addition of the words "in so far as States parties to that Convention are concerned" and the use of the word "impair" rather than "prejudice".

Mr. CASSIN (France) was prepared to accept the first United States suggestion, but wished to retain the word "prejudice" since the wording had been very carefully framed and discussed in the Economic and Social Council. He was anxious that the amendment should be adopted since it was essential that contradicotry obligations under international instruments should be reconciled.

/Mr. MALIK

Mr. MALIK (Lebanon) remarked that the text proposed by the United States formed an acceptable basis for article 19. He preferred the first paragraph of the United States text to the corresponding part of the Drafting Committee's text and the United Kingdom amendment thereto, as being more in conformity with the articles immediately preceding article 19; and he felt that the words "reasonably and" should be retained, although they had been deleted from article 18. As regards the additional paragraph proposed in the United Kingdom amendment, he would have no difficulty in supporting it, since it was framed in the permissive form, and since the restrictions it imposed were a matter of course. He would, however, be unable to support the French amendment in any form, for the reasons already stated by the representative of the United Kingdom and the United States. If it were put to the vote as amended by the representative of the United States, he would abstain from voting.

As regards the United Kingdom proposal to delete the second sentence of the Drafting Committee's text, Mr. Malik thought it was important that the enjoyment of rights and freedoms guaranteed for individuals should be ensured also for associations as such, and therefore proposed that that sentence should be added to the United States text; but since the United Kingdom representative objected to references to other articles by their numbers, he would agree to have the text of the sentence modified accordingly.

Mr. SOERENSEN (Denmark) remarked that the purpose which the representative of Lebanon wished to achieve by the retention of the second sentence of the Drafting Committee's text could be attained more conveniently by inserting in article 17 a phrase similar to that already included in article 16, to the effect that the freedom concerned could be enjoyed by every one "alone or in community with others".

Mr. Soerensen felt that the question of trade union rights should be dealt with in another part of the Covenant; while recognizing the important part played by trade unions, he stressed that they were not the only associations which protected the economic interests of the people; in his own country, as no doubt in many

others, those interests were safeguarded also by such organizations as farmers' and fishermen's associations. The general principle of the freedom of association for purposes of economic protection was sufficiently provided for in the United States text; trade unions should not be singled out for special mention in article 19.

In conclusion, the representative of Denmark stated that he would support the amendment proposed by the French delegation.

Mr. CASSIN (France) remarked that the French amendment had originally been submitted as an amendment to the Drafting Committee's text. He would, however, agree to present it as an amendment to the United States text.

He endorsed the Danish representative's observations with regard to the point raised by the representative of Lebanon.

Mr. MALIK (Lebanon) said in reply to the representative of Denmark that the course which the latter had suggested would fail to meet his purpose, since the phrase "alone or in community with others" would still protect the right of the individual rather than that of the association as a corporate body.

Mr. INGLES (Philippines) was unable to support the French amendment. It was a principle of international law that States parties to an international convention were in duty bound not to pass any national legislation inconsistent with that convention. Consequently, the reservation formulated by the representative of France might perhaps be incorporated in the International Convention on Freedom of Association and Protection of the Right to Organize, but on no account in the International Covenant on Human Rights.

Mr. PAVLOV (Union of Soviet Socialist Republics) remarked that the United States text was unsatisfactory in its present form, because its first paragraph was too general while the second was, conversely, too narrow and restricted. However, those defects would become harmless if the second paragraph of the USSR amendment to

articles 18 and 19 (E/CN.4/272) were added as the third paragraph of the United States text. That paragraph would ensure that organizations which conspired to destroy human rights would be denied the freedom of association. If the article were in that form, the USSR delegation would be able to vote in favour of it.

Mr. Pavlov favoured the deletion of the words "reasonable and" from the United States text, since those words imposed an additional restriction and implied, moreover, that parts of the national laws of some States were not reasonable. He would oppose the French amendment, which he considered superfluous; he did not think that the International Covenant on Human Rights need take into consideration the provisions of less general special conventions. He would also oppose the additional paragraph proposed by the United Kingdom, since the reference to "restrictions pursuant to law" in the United States was sufficient to cover the case of members of the administration of the State, the police and the armed forces. He explained, however, that he would oppose the proposed reference to the armed forces only because he considered it superfluous, not because he objected to it in principle.

Mr. Pavlov agreed with the representative of Lebanon that the rights of associations as separate bodies should be protected, but felt that another article might be devoted to that concept. He remarked, in conclusion, that the reason why trade unions had been the only associations to be referred to individually in connexion with article 19 was that they were most widely representative of the working masses of the world.

The CHAIRMAN put to the vote the USSR proposal to add to the United States text the second paragraph of its amendment to articles 18 and 19 appearing in document E/CN.4/272.

The proposal was rejected by 7 votes to 3, with 6 abstentions.

The CHAIRMAN put to the vote the French amendment as amended by the United States.

The amendment was adopted by 8 votes to 4, with 4 abstentions.

The CHAIRMAN put to the vote the Lebanese amendment, consisting in the addition to the United States text of the second

/sentence of

59

sentence of the text prepared by the Drafting Committee.

The amendment was rejected by 9 votes to one, with 6 abstentions.

The CHAIRMAN put to the vote the Egyptian amendment consisting in the deletion of the words "reasonable and" from the United States text.

The amendment was adopted by 9 votes to 3, with 4 abstentions.

The CHAIRMAN put to the vote the first part of the United States text, down to the words "pursuant to law".

The first part of the United States text was adopted by 14 votes to none, with 2 abstentions.

The CHAIRMAN put to the vote the second part of the United States text, as amended by Egypt and France.

The second part of the United States text was adopted as amended by 12 votes to none, with 4 abstentions.

The CHAIRMAN put to the vote article 19 as a whole, as amended by the United States.

Article 19 was adopted by 11 votes to none, with 5 abstentions.

The CHAIRMAN stated that, as the article had been adopted in the form proposed by the United States, the United Kingdom amendment to the Drafting Committee's text would not be put to the vote.

Mr. PAVLOV (Union of Soviet Socialist Republics) said in explanation of his vote that he had abstained for the same reasons as those he had indicated in connexion with the vote on article 18.

Article 20

The CHAIRMAN called upon the Commission to consider article 20 and the United States, Philippine, USSR, and French amendments thereto, as set forth in document E/CN.4/296.

Speaking as representative of the United States of America, she drew attention to the fact that the United States amendment followed the text of Article 2 of the Declaration of Human Rights more closely than the wording proposed by the Drafting Committee.

/Mr. INGLES

Mr. INGLES (Philippines) stated in explanation of his amendment that the text of Article 7 of the Declaration of Human Rights provided wider safeguards than the text prepared by the Drafting Committee; that was why he had proposed the replacement of the latter text by that of Article 7, substituting the word "Covenant" for "Declaration". The Drafting Committee's text would have been more acceptable if its list of possible grounds for discrimination had not been exclusive but had adopted the phrase used in Article 2 of the Declaration: "without distinction of any kind, such as....". However, the text of Article 7, being more categorical, was generally preferable.

Replying to a remark by the CHAIRMAN, who would accept the Philippine text provided that ended with the words ".....in this Covenant", Mr. Ingles pointed out that the words "and against any incitement to such discrimination" offered an additional safeguard, and should therefore be retained.

Mr. CASSIN (France) observed that the difficulty might be resolved if the Commission adopted as article 20 the wording proposed in the French amendment, adding as a separate paragraph the substance of the second part of the Philippine amendment. He remarked that the French and United States amendments were identical in substance, and should thenceforth be considered as a single text.

Mr. PAVLOV (Union of Soviet Socialist Republics) drew attention to the text proposed by his delegation in replacement of article 20. He would comment on that text at the proper time. As regards the present article 20 which, according to his suggestion, should become article 21, he favoured the Philippine amendment.

The CHAIRMAN told the representative of the USSR that the text he proposed would be discussed at a later stage together with other proposed new articles.

Miss BOWIE (United Kingdom) said that she would support the French-United States amendment. She was unable to support the Philippine

amendment because she did not feel that the time had yet come when a listing of possible grounds for discrimination could be dispensed with. The United Nations had repeatedly proclaimed its opposition to discrimination of any kind, but conditions had not changed sufficiently to warrant the assumption that discrimination was no longer being practised. Thus, the fact that so few women were sent to represent their Governments in the United Nations was a proof of continued discrimination against women: if women really enjoyed equal opportunities, the proportion of women representatives would surely be higher. Miss Bowie stressed that when the draft Covenant was transmitted to Governments for consideration, the latter should earnestly consider the need to demonstrate by practical measures their avowed belief in the equality of the sexes.

Mr. PAVLOV (Union of Soviet Socialist Republics) observed, in reply to the United Kingdom representative, that the extent to which Governments practised or did not practise sex discrimination could not be gauged by the number of women members in their delegations to the United Nations: what mattered were such wider questions as equal pay for equal work and so forth. In the USSR, all women citizens enjoyed the real benefits of sex equality.

Mr. CHANG (China) remarked that protection of the law under article 20 should not necessarily be restricted to the enjoyment of rights and freedoms set forth in the Covenant; other freedoms which, for some reason, might not be incorporated in the Covenant might deserve an equal measure of protection. He stressed that his remark was not intended as a formal proposal but only as a tentative suggestion for consideration by the Commission.

Mr. INGLES (Philippines) having suggested that the text of article 2 of the Declaration of Human Rights might be adopted as article 20 of the draft Covenant, with the replacement of the word "Declaration" by "Covenant", Mr. PAVLOV (Union of Soviet Socialist Republics) pointed out that such a text would not be entirely satisfactory, as it was impossible to speak of "rights and freedoms set forth in this Covenant":

the Covenant did not set forth rights but guaranteed them. He suggested that the representatives of the United States of America, France and the Philippines should consult together and submit an agreed text to the Commission at the opening of the following meeting.

It was decided accordingly.

The meeting rose at 5.35 p.m.