

United Nations

Nations Unies

**ECONOMIC
AND
SOCIAL COUNCIL**

**CONSEIL
ECONOMIQUE
ET SOCIAL**

UNRESTRICTED

E/CN.4/SR 123

14 June 1949

ORIGINAL: ENGLISH

MASTER FILE

COMMISSION ON HUMAN RIGHTS

Fifth Session

SUMMARY RECORD OF THE ONE HUNDRED AND TWENTY-THIRD MEETING

Held at Lake Success, New York,
on Friday, 10 June 1949, at 2.45 p.m.

CONTENTS: Draft international covenant on human rights (E/800,
E/CN.4/296, E/CN.4/312)

Article 20 (discussion continued)

Article 21

Article 22

Chairman:	Mr. P. C. CHANG	China
Rapporteur:	Mr. Charles MALIK	Lebanon
Members:	Mr. HOOD	Australia
	Mr. STEYAERT	Belgium
	Mr. SAGUES	Chile
	Mr. SOERENSIEN	Denmark
	Mr. CASSIN	France
	Mr. BAUER	Guatemala
	Mrs. MEHTA	India
	Mr. GOUDARZI	Iran
	Mr. INGLES	Philippines
	Mr. KOVALENKO	Ukrainian Soviet Socialist Republic
	Mr. PAVLOV	Union of Soviet Socialist Republics
	Mr. ALLEN	United Kingdom
	Mr. SIMSARIAN	United States of America
	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.

Consultant from Non-Governmental Organization:

Category A:

Miss SENDER

American Federation of Labor (AFL)

Secretariat:

Mr. HUMPHREY

Director of the Human Rights Division

Mr. LAWSON

Secretary of the Commission

DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS (E/800, E/CN.4/296, E/CN.4/312)
Article 20 (discussion continued)

The CHAIRMAN reopened the discussion on article 20 and suggested that the Commission should treat the Indian amendment to that article (E/CN.4/312) as its basic working document.

Mr. PAVLOV (Union of Soviet Socialist Republics) requested a separate vote on the words "defined in this Covenant" contained in paragraph 2 of the article, so that whoever wished to reserve his position on that particular phrase might do so either by abstaining or by voting against it. He regretted that the Indian representative had not agreed to accept temporarily, pending the final approval of the Covenant, the USSR suggestion that the following two alternative versions should be left in parentheses: "in this Covenant" or "in the Declaration of Human Rights". The Commission could then have chosen either version once the exact contents of the Covenant had become clear. As it was, members would be approving the provision irrespective of the ultimate contents of the Covenant.

The words "all are equal before the law" in the first paragraph of article 20 were adopted by 11 votes to none.

The words "and shall be accorded equal protection of the law" in the first paragraph of article 20 were adopted by 8 votes to none, with 3 abstentions.

The whole of the first paragraph of article 20 was adopted by 10 votes to none, with 2 abstentions.

/Mr. MALIK

Mr. MALIK (Lebanon) wished to explain his vote in view of the important discussion which had taken place on the first paragraph of article 20 at the previous meeting of the Commission. Together with the United States representative, he interpreted the paragraph to mean that its provisions were subject to certain natural distinctions and that they would not open the door to all kinds of unfounded claims. The paragraph meant that the law would be applied impartially within a State to human beings as human beings.

Mr. BAUER (Guatemala) referred to previous decisions reached by the Commission regarding the question of interpretations and emphasized that the Lebanese representative's opinion could not be regarded as the interpretation of the Commission as a whole.

Mr. CASSIN (France) remarked that while there was general unanimity on the first sentence of paragraph 1, he doubted whether an international court of justice would interpret the second sentence in the same way as some members of the Commission had done. Hence he had abstained from voting on the second sentence and on the whole of the paragraph.

The words "defined in this Covenant" in the second paragraph of article 20 were adopted by 10 votes to none, with 3 abstentions.

The whole of paragraph 2 of article 20 was adopted, with slight drafting changes, by 13 votes to none.

The third paragraph of article 20 was adopted by 12 votes to none, with one abstention.

The whole of article 20 was adopted by 11 votes to none, with 2 abstentions.

Mr. ALLEN (United Kingdom) remarked that if his delegation could have taken part in the vote, it would have voted for the adoption of article 20.

Mr. PAVLOV (Union of Soviet Socialist Republics) and Mr. KOVALENKO (Ukrainian Soviet Socialist Republic) said they had voted for article 20, but had abstained on the expression "defined in this Covenant". By so doing they had wished to make the following reservation: in their opinion, nothing in the Covenant could place any limitations on the rights enumerated in the Universal Declaration of Human Rights, in respect of which there could be no discrimination whatever.

Article 21

The CHAIRMAN opened the discussion on the above and referred members to document E/CN.4/296, which contained the original text of article 21, deleted by the Drafting Committee the previous year, and the text proposed by the USSR.

Introducing his proposal, Mr. PAVLOV (Union of Soviet Socialist Republics) said that it was based on the experience acquired by mankind after many years of hard and bitter struggle against Hitlerite Germany and other fascist countries, and all its suffering under fascist occupation. Millions had perished because the propaganda of racial and national superiority, hatred and contempt, had not been stopped in time. Yet five years had hardly elapsed since the end of the war, and there were already signs of a revival of similar tendencies in various countries of the world. The notorious Fulton speech, for instance, openly advocated the superiority and supremacy of the Anglo-Saxon peoples and described them as the chosen race.

Replying to the United States representative, who had asked the Chairman whether his remarks were in order, he emphasized that he was not attacking any country or any Government in particular, but only nazism and fascism as such. In his opinion, fascism was equally obnoxious and unacceptable, whether advocated by Germans or anyone else, and had to be fought irrespective of its source. His remarks had been directed at fascist and nazi elements in various countries.

He believed that all honest people throughout the world, including the great majority of the people in the United States and in the United Kingdom, were against any propaganda of racial and national

superiority and hatred. There was more than obvious need to prohibit and suppress any such propaganda. Anyone attempting to propagate such views in the USSR would soon be suitably dealt with, and the same ought to be the case in all countries throughout the world.

He appealed therefore to all members of the Commission to support his proposal, bearing in mind that the immense majority of the peoples of the world wanted peace and friendship.

Mr. SIMSARIAN (United States of America) referred to a decision taken by the Supreme Court of the United States of America on 16 May 1949 concerning a person who had been accused of creating dissension between political and religious groups. The person accused had been set at liberty because the Supreme Court had held that the principle of democracy was better served by allowing individuals to create disputes and dissension than by suppressing their freedom of speech. He urged that nothing should be included in the Covenant which might serve to suppress that freedom.

Mr. PAVIOW (Union of Soviet Socialist Republics) suggested that the dissenting opinion recorded by the minority in the Supreme Court, which amounted to an objection to allowing freedom for the dissemination of fascist views, might also interest the Commission.

Mr. SOERENSEN (Denmark) suggested that, as article 21 was closely connected with freedom of speech, the discussion should be postponed, as had been decided in the case of article 17, until the General Assembly had considered the convention on freedom of information.

Mr. KOVALENKO (Ukrainian Soviet Socialist Republic) supported the text proposed by the USSR representative. Fascist-nazi views were opposed to every right expressed in the Covenant, which could not be allowed to guarantee freedom for the propagation of hatred.

Mr. VILFAN (Yugoslavia) also supported the USSR proposal. Murder and arson were prohibited by national legislations, and fascist-nazi views and the propaganda of racial and national superiority constituted a similar crime at the international level. No person advocating such criminal views should be allowed the protection of the Covenant.

/Mr. SOERENSEN

Mr. SOERENSEN (Denmark) considered that the point raised by the Yugoslav representative was covered by article 17 in the existing draft.

Mr. CASSIN (France) agreed that where freedom of speech was abused to provoke criminal acts, it should be curbed: the difficulty was to determine where use became abuse. The principle of the proposal, that propaganda of hatred should be prohibited, was entirely acceptable, but the wording should be made more general. He proposed that the wording of article 21 contained in document E/800 should be substituted for the USSR draft, with the insertion of the words "and hatred" after the word "violence", as follows:

"Any advocacy of national, racial or religious hostility that constitutes an incitement to violence and hatred shall be prohibited by the law of the State."

On the question of procedure, he supported the Danish representative's suggestion that consideration of article 21 should be postponed, as article 17 had been. If, however, the Commission decided otherwise, he would submit the above draft of article 21.

Mr. SIMSARIAN (United States of America) also supported the Danish representative's proposal for a postponement.

Mr. MORA (Uruguay) agreed that there might be a legitimate fear of the freedom conferred by the covenant being abused for the purpose of fascist-nazi propaganda; yet he felt that there was ample provision in article 22 to protect the Covenant against that danger, and that there was therefore no need to include the proposed article 21.

Mr. PAVLOV (Union of Soviet Socialist Republics) regretted the tendency to postpone consideration of one article after another. The discussion on article 21 had made it possible for all members to express their views concerning the freedom to be allowed for propaganda of racial and national superiority, and a vote could be taken forthwith.

The CHAIRMAN put to the vote the question whether consideration of article 21 should be postponed until article 17 was discussed.

The proposal was adopted by 5 votes to 3, with 4 abstentions.

/The CHAIRMAN

The CHAIRMAN stated that when article 21 was eventually reconsidered, the two texts proposed by the French and USSR representatives would be submitted to the Commission.

Article 22

The CHAIRMAN drew attention to the opinion expressed by the United States representative in document E/CN.4/296, to the effect that the article was vague and unnecessary. After consultation with Mr. CASSIN (France) and Mr. HOOD (Australia), he amended the draft proposed by the French delegation as follows:

"Nothing in this Covenant shall be interpreted as implying for any State, group or individual any right to engage in any activity or to perform any act aimed at the destruction or impairment of any of the rights and freedoms defined herein."

That text combined the French and Australian proposals and brought the drafting into conformity with the terms of article 30 of the Universal Declaration of Human Rights.

At the suggestion of Mr. MALIK (Lebanon) the words "may be" were substituted for the words "shall be", as being the stronger of the two expressions. The French text was not affected.

Mr. SIMSARIAN (United States of America) reiterated the view that the article was too vague; he would like to have examples of cases in which it would prove to be an additional protection of a particular right. He suggested that a proposal for the modification of one of the articles might legally be construed as an act aimed at the impairment of the right set forth therein, and thus be a violation of the article. Moreover, a person who opposed a motion in national legislation respecting one of the rights and freedoms set forth in the Covenant might also be violating the terms of the proposed article 22.

Mr. CASSIN (France) requested time for the consideration of those points.

/Mr. INGLES

Mr. INGLES (Philippines), replying to the United States representative's question regarding the additional protection article 22 would afford stated that he had supported that representative's proposal that the test of reasonableness should be applied in the application of restrictions to certain rights and freedoms; that proposal having been rejected, he considered that some provision such as that offered in article 22 should be included to ensure that the guise of necessity would not be allowed to justify attacks on the rights and freedoms recognized by the Covenant.

Mr. MALIK (Lebanon) emphasized the importance of preventing groups with fascist tendencies from invoking the protection of the Covenant for activities which were ultimately aimed at the destruction of the very rights and freedoms which it guaranteed.

If the United States representative was not convinced of the necessity for the article and objected that it was redundant, he might yet prefer, in such an important matter, to err on the side of redundancy rather than of omission.

Mrs. MEHTA (India) suggested that the words "group or individual", though appropriate in the Universal Declaration on Human Rights, should not be included in a covenant to be signed by States.

Mr. HOOD (Australia) said that the considerations advanced by the Indian representative should not weigh against the article, since, although States were the contracting parties, the functions they assumed were carried out in relation to individuals.

The article was directed against the abuse of possible loopholes in the Covenant and he therefore thought that, on the whole, it should be included.

Mr. CASSIN (France) said that the utility of the article had been demonstrated by the remarks of other members. The edifice of liberty which was erected in the Covenant must not be capable of being used against liberty itself. He pointed out that, under the article dealing with freedom of association, a State might permit the formation on its territory of an apparently harmless association, which was in reality directed against another State. Under article 22 that other State would be in a position to draw attention to such an occurrence.

He concurred with the Australian representative's remarks.

/He would

He would vote in favour of the text, and he hoped that the United States representative would be convinced by the arguments presented.

Mrs. MEHTA (India) still doubted the necessity of including the words "group or individual" in the article.

Mr. SAGUES (Chile) stated that the wording of the article in Spanish was too unemphatic and colourless and proposed that it should be redrafted as follows: "It shall not be admitted that anything in this Covenant be interpreted..." ("No se admitirá que ninguna disposición del presente Pacto se interprete...")

Mr. MALIK (Lebanon) said that the example given by the French representative furnished a partial answer to the Indian representative's question. Moreover, within the domestic jurisdiction of a State, the article provided a test of the State's sincerity in carrying out the other articles of the Covenant. He favoured the inclusion of the article.

Mr. PAVLOV (Union of Soviet Socialist Republics), like the United States representative, found the article vague and possibly unnecessary. Its purpose appeared to be to prevent any deterioration in the position of any established human rights.

He proposed that the words "rights and freedoms defined herein" should be amended to "rights and freedoms set forth in the Declaration", since the Covenant did not give an exhaustive list of such rights. With that alteration, he would support the article.

He pointed out that in the text of the articles so far adopted there were many limitations of rights and, since a limitation was the same as an impairment, he proposed, in order to avoid an internal contradiction in the Covenant, that the words "or impairment" should be deleted and that some such expression as "or at their limitation to an extent greater than is already provided in the present Covenant" should be added at the end of the article.

Mr. SOERENSEN (Denmark) recognized the importance of the points raised by the USSR representative. It was true that rights existed which were not mentioned in the Covenant, such as, for example, those embodied in ILO conventions. To meet the USSR representative's point of view, he proposed that the last part of the article should read "of any human right or fundamental freedom recognized by the covenanting parties".

Mr. SIMSARIAN (United States of America) proposed as a substitution for the Danish amendment the words "of any human right or fundamental freedom set forth in Conventions to which States are parties."

Mr. SOERENSEN (Denmark) preferred his own amendment, since a number of rights and freedoms were not yet governed by any international instrument but were dependent merely on domestic legislation.

Mr. MALIK (Lebanon) opposed the USSR representative's amendment to the term "rights and freedoms defined herein", since he felt that the provisions of the Covenant concerned only the rights embodied in it, and no conclusions could be drawn from it concerning other rights and freedoms which it did not specifically mention.

Mr. PAVLOV (Union of Soviet Socialist Republics) agreed with the Danish representative's point that many human rights owed their existence merely to the legislation or custom of a State. He proposed that the text should simply read "of any human rights and freedoms".

Mr. INGLES (Philippines) associated himself with the USSR representative's proposal for the deletion of the words "or impairment". He would not object to the additional wording proposed by the latter in that connexion, although he felt it would be simpler to omit it altogether.

In connexion with the USSR representative's other amendment, he drew attention to the additional article proposed by the United States of America on page 35 of document E/800, and proposed that the wording of the Danish representative's amendment should follow that article and read: "rights and freedoms as may be guaranteed to all under the laws of any Contracting State."

Mr. CASSIN (France) thought that the USSR representative had correctly pointed out the contradiction of including the words "or impairment". He accepted the formula the USSR representative had proposed in that connexion.

Since attention had been drawn to the additional article proposed by the United States in document E/800, he felt even more strongly than before that article 22 should be restricted to "rights and freedoms herein defined" (namely, in the Covenant) and that the United States proposal should then be added as an additional sub-paragraph to the article.

In view of the importance of the article and the complexity of the amendments presented, he suggested that a vote should not be taken until the following meeting and that a text combining the proposed amendments should in the meantime be established.

It was so agreed.

The meeting rose at 2.35 p.m.