

United Nations
ECONOMIC
AND
SOCIAL COUNCIL

Nations Unies
CONSEIL
ECONOMIQUE
ET SOCIAL

MASTER FILE

UNRESTRICTED

E/CN.4/SR 127
17 June 1949

ENGLISH
ORIGINAL: FRENCH

49

COMMISSION ON HUMAN RIGHTS

Fifth Session

SUMMARY RECORD OF THE ONE HUNDRED AND TWENTY-SEVENTH MEETING

Held at Lake Success, New York,
on Tuesday, 14 June 1949, at 2.50 p.m.

- CONTENTS:** Draft International Covenant on Human Rights:
Article 4 (E/800, E/CN.4/319, E/CN.4/324) (discussion continued)
Article 23 (E/CN.4/296)

<u>Chairman:</u>	Mr. CHANG	China
	later Mrs. ROOSEVELT	United States of America
<u>Rapporteur:</u>	Mr. Charles MALIK	Lebanon
<u>Members:</u>	Mr. HOOD	Australia
	Mr. STEYAERT	Belgium
	Mr. SAGUES	Chile
	Mr. SOERENSEN	Denmark
	Mr. LOUFI	Egypt
	Mr. CASSIN	France
	Mr. GARCIA BAUER	Guatemala
	Mrs. MEHTA	India
	Mr. ENTIEZAM	Iran
	Mr. AQUINO	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:
(continued)

Mr. KOVALENKO	Ukrainian Soviet Socialist Republic
Mr. PAVLOV	Union of Soviet Socialist Republics
Miss BOWIE	United Kingdom
Mr. SIMSARLAN	United States of America
Mr. MORA	Uruguay
Mr. VILJAN	Yugoslavia

Consultants from non-governmental organizations:

Category A:

Miss SENDER American Federation of Labor (AF of L)

Category B:

Mr. LEWIN Agudas Israel World Organization
Mr. MOSKOWITZ Consultative Council of Jewish Organization
Mr. GROSSMANN Commission of the Churches on International Affairs
Mr. STEINER World Jewish Congress

Secretariat:

Mr. HUMPHREY Representative of the Secretary-General
Miss KITCHEN Secretary of the Commission

DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS

Article 4 (E/800, E/CN.4/319, E/CN.4/324) (discussion continued)

Miss BOWIE (United Kingdom) recalled that the Commission had agreed at the preceding meeting to vote on the principles contained in the United Kingdom amendment and not on the text itself, the drafting of which could be perfected when part II of the Covenant was completed.

Mr. SAGUES (Chile) remarked that absolute and full freedom did not exist and that the purpose of the Covenant was precisely to put into practical application the principles set forth in the Declaration. It was not possible to make a complete list of all the

limitations emanating from the legislation in force in the various countries, and to add to it the list of limitations which might be placed subsequently upon human rights, although only in that way would it be possible to prevent States from adopting laws contrary to the Covenant.

The United Kingdom amendment was not designed to restrict human rights; it provided for exceptional cases such as of war or public emergency, in which it was necessary to suspend the application of the Covenant. The Covenant must fix the line to be taken in circumstances which, however unfortunate they might be, actually did arise.

Consequently, the delegation of Chile, while not entirely satisfied with the form of the United Kingdom amendment, would accept the principles which it embodied.

Mr. SIMSARIAN (United States of America) reminded the meeting that the United States delegation had withdrawn its proposal for a general restrictive clause in view of the fact that the Commission had decided to include limiting conditions in each article where it considered them necessary. The United States delegation thought it useless to draft an article 4 which would authorize derogations from the provisions of the Covenant in case of war or public emergency, since the words "national security" and "public security", which figured in several articles of part II, made adequate allowance for cases of war or public emergency; moreover, those words had the advantage of appearing only in articles in which limitations of human rights in such cases had been considered indispensable.

The United States delegation therefore hoped that the Commission would reject paragraph 1 of the United Kingdom amendment, as well as paragraph 1 of the text drawn up by the Drafting Committee, that article 4 would thus be omitted, and that only the limitations provided for in the various articles would

be retained. If, however, the Commission adopted paragraph 1 of the United Kingdom amendment, the United States delegation would prefer to see the French amendment to paragraph 2 of the United Kingdom amendment adopted also.

Mr. HOOD (Australia) would vote for the principle expressed in the United Kingdom amendment, on the understanding that the Commission would adopt only the principle of that amendment and not a definite text.

Unlike the representative of the United States, Mr. Hood did not believe that the words "national security" appearing in a number of articles of part II were sufficient to meet all the contingencies arising out of a war or a serious emergency. The Commission should be practical and reasonable enough to see that the Covenant must provide for the possibility of a war.

Mr. GARCIA BAUER (Guatemala) preferred that only a provisional study should be made of article 4, as part II of the Covenant had not yet been drawn up in its final form. There would be a need for article 4 only if the articles of part II did not adequately provide for cases of serious emergency.

The delegation of Guatemala was therefore inclined to give provisional support to the text providing for the possibility of a war. During the discussion of article 5, it had opposed an amendment containing a reference to war because it had thought that the Covenant should be an instrument applicable in times of peace. The situation was altogether different in the case of article 4, which provided for the only case in which the Covenant would not be applied.

Mr. Garcia Bauer would prefer to vote on a text rather than on principles; he feared that the Commission might subsequently find it difficult to give concrete form to the principles on which members would believe that agreement had been reached.

Mr. Garcia Bauer agreed with the Chairman's view that paragraph 2 of the United Kingdom amendment should not be considered before part II of the Covenant had been completed, and that article 4 would be more in its place in part II of the Covenant. Generally speaking, it was impossible to decide the correct place of articles at the present time, the more so as the Commission had not yet taken a decision as to whether measures of implementation should be included in the Covenant or should appear in a separate instrument.

Mr. KOVALENKO (Ukrainian Soviet Socialist Republic) believed that the United Kingdom text, far from providing for only a temporary suspension of the Covenant, imposed excessively far-reaching limitations upon human rights. Adoption of the text proposed by the United Kingdom would be tantamount to admitting that, in case of war, human rights could be suppressed or drastically limited. Now, the Commission should take an entirely different stand with regard to the possibility of a war and should condemn war instead of authorizing manifold impingements on human rights. If the Commission did not wish to adopt such an attitude, it would do better not to include any reference to war in the Covenant on human rights.

Mr. Kovalenko claimed, moreover, that the words "public emergency" appearing in the United Kingdom text would leave the door open for still more far-reaching limitations than those laid down in a number of articles in the name of "national security". There was also a danger that those limitations might be applied to articles containing no restrictive clauses. The proposed article would give rise to difficulties of interpretation and would undoubtedly lead to abuses. It would be more prudent to reduce to a minimum the possibilities of restricting human rights, by specifying that such restrictions would be authorized only in cases of public emergency directed against the interests of the people, as was proposed in the USSR amendment.

Mr. AQUINO (Philippines) reminded the meeting that his delegation considered it useless to envisage the possibility of war in the Covenant, for if a war were to break out, conventions on the rules of war would take precedence over all other international instruments. However, the Philippine delegation saw a distinction between "war" and "public emergency", both of which terms appeared in the United Kingdom amendment. The case of public emergency was sufficiently provided for by the words "national security" appearing in a number of articles. If a general limitation were added to the specific limitations contained in those articles, the general clause might be used to justify more far-reaching limitations than those contemplated in the articles themselves.

Mr. Aquino also claimed that it would be difficult to draft a general clause because the derogations to be authorized would vary from one State to another in accordance with national legislation.

The Philippine delegation would therefore oppose the texts submitted by the Drafting Committee and the United Kingdom. If, however, the Commission wished to draft an article 4, Mr. Aquino felt that instead of authorizing certain derogations from the Covenant, the article should prohibit any such derogations except in definite specified cases. That slight change of form would make a not inconsiderable difference.

Mr. LOUFI (Egypt) would support the principle contained in the United Kingdom amendment, because he considered the limitations contained in the various articles to be insufficient and thought it important to make definite provision for cases of "war" and "public emergency".

Mr. Charles MALIK (Lebanon) felt that the arguments of the representatives of the Ukraine and Philippines were justified, and said he would vote against the United Kingdom amendment.

He observed that if the Commission deleted the word "war" from the proposed text, it would be difficult to determine the cases in which derogations were permissible on the basis of so elastic a term as "public emergency". Consequently, article 4 might give rise to interpretations more far-reaching than the United Kingdom delegation intended. The French amendment to paragraph 2 of the United Kingdom text ensured certain guarantees on that point, as it did at least establish a complete list of articles from which no derogation could be made in any circumstances.

Mr. Malik agreed with the distinction drawn by the representative of Chile between a derogation as such and a temporary suspension of obligations under the Covenant.

As paragraph 2 would in any case have to be re-examined after part II of the Covenant had been finally drafted, and as paragraph 3 dealt with implementation, Mr. Malik did not think that any draft of article 4, however restricted in scope, should be prepared at the present time. He would vote against the immediate inclusion of an article 4 in the draft Covenant.

Mr. Malik recognized, however, that the Commission might find itself compelled to make wider provision for possible derogations from the Covenant at some future date, especially after it had studied the comments of Governments.

/Mr. PAVLOV

Mr. PAVLOV (Union of Soviet Socialist Republics) believed that, by adding to the limitations already specified in various article, the United Kingdom text, which some of the delegations were endeavouring to present as harmless, might actually make it possible to suspend completely many provisions of the Covenant in what were at best inadequately defined circumstances.

He was in favour of limiting the scope of the United Kingdom proposal by specifying that derogations should be allowed only when the interests of the people demanded them. He cited several cases where civil disturbances had led to the proclamation of martial law and the suppression of basic rights and freedoms, when the interest of the people did not demand such strict measures. He recalled the massacres at Durban in January 1949, where the authorities, after having intentionally stirred up racial hatred among various elements of the population, had shown unrelenting sternness in checking the disturbances. The USSR delegation proposed, therefore, to add, after the words "in time of war or other public emergency" in the United Kingdom amendment, the words "directed against the interests of the people". The interest of the people was the critical test.

Mr. CASSIN (France) pointed out that, when the draft general limitation clause had been submitted several months before, the French delegation had announced its opposition to it, fearing the arbitrary suppression of human rights on the plea of a national emergency.

The French delegation had, however, come to approve the United Kingdom amendment for two reasons: first, paragraph 2, forbidding any derogation from certain rights (to be specifically listed) was a sound and permanent safeguard; secondly, there was an essential distinction between the restriction of certain rights and the suspension of the Covenant's application. States might well succeed in imposing extensive restrictions on human rights as a whole, were they to proceed to adopt specific limitations without publicity. Now, the real purpose of article 4 was to require States to take a decision in public when they were obliged to restrict such rights.

Mr. Cassin declared, however, that he could not approve the text of the United Kingdom amendment as it stood. He thought that the word "war" should not be included. For that reason he preferred that the Commission should vote only on the principles expressed in the amendment.

The CHAIRMAN, replying to the remarks of the United Kingdom and Philippine representatives, agreed that principles could hardly be voted upon unless they were formulated in words. He pointed out that, if the Commission adopted a provisional text, it would remain free to improve it during its next succeeding session. The members of the Commission could, therefore, proceed to vote immediately on (1) the principle of derogations from provisions of the Covenant "in time of war"; (2) the principle of derogations in the event of "other public emergency"; (3) the USSR amendment; and (4) paragraphs 2 and 3 of the United Kingdom amendment, should occasion arise.

Mrs. ROOSEVELT (United States of America) indicated that only paragraph 1 of the United Kingdom amendment called for a decision, since paragraph 2 could not be given final form until part II of the Covenant had been completed, while paragraph 3 referred to implementation.

Mr. MALIK (Lebanon) declared that the meaning of the words "public emergency" was very hazy, whereas the word "war" had the advantage of having an exact meaning in international law.

Mr. PAVLOV (Union of Soviet Socialist Republics), in reply to the representative of Lebanon, pointed out that the USSR amendment defined the expression "public emergency" quite adequately.

Mr. MORA (Uruguay) wished to draw the Commission's attention to the fact that paragraph 1 of the United Kingdom text differed substantially from the text of the Drafting Committee. Where the former text spoke of "obligations under part II of the Covenant", the latter referred to "measures derogating from its obligations under article 2" of the Covenant.

He feared, furthermore, that the inclusion of the expression "in time of war" might cause some difficulty, so the Charter did not permit States to resort to war to settle their disputes. Perhaps the expression "in case of aggression" would be more suitable.

The word "derogation", finally, did not seem apt. It was not a matter of derogating from the principles of the Covenant, but of "suspending" their application in some cases.

The CHAIRMAN declared that the observations of the representative of Uruguay were worthy of the Commission's attention when it returned to the examination of the article in question.

Miss BOWIE (United Kingdom) could not agree with the suggestion just made by the United States representative. She realized that paragraph 2 could not yet be given final form, but believed that it was none the less essential to vote on it immediately. The fact that provision might be made under certain conditions to suspend human rights listed in part II of the Covenant made it all the more necessary to specify that among those rights were some which were never to be suspended.

Mrs. MEHTA (India) felt that the Commission could vote, not on the exact wording of a text, but rather on the three following principles: (1) Whether in a public emergency a State would be entitled to take measures derogating from its obligations under part II of the Covenant; (2) whether that provision would apply to the whole of part II of the Covenant, or whether exceptions would be allowed; and (3) whether a State availing itself of the right of derogation must so inform the Secretary-General.

If, on the other hand, the Commission decided to vote on a text, such as that of the United Kingdom, the Indian delegation proposed that the vote should be of a provisional nature and that the Commission should examine the article afresh, after it had finished drawing up part II of the Covenant.

The Indian proposal that the Commission should vote on principles only and not on any precise text was rejected by 6 votes to 4, with 6 abstentions.

Referring to the United Kingdom text (E/CN.4/319) Mr. SAGUES (Chile) noted that the expression "other public emergency" lacked precision and thought it might be better to say "other similar emergency".

The CHAIRMAN said he would take a vote on the second Indian proposal that the Commission should take a provisional decision on the United Kingdom text and reconsider the question when it had finished dealing with the second part of the Covenant.

Mr. PAVLOV (Union of Soviet Socialist Republics) believed that to take even a provisional decision on paragraphs 2 and 3 of the United Kingdom text would be outside the Commission's competence. He proposed, therefore, that the Commission should defer the consideration of the two paragraphs and vote immediately on paragraph 1.

Mr. GARCIA BAUER (Guatemala) thought, on the contrary, that the Commission should take a provisional vote on the United Kingdom text and inform Governments accordingly.

The CHAIRMAN observed that the Commission had not taken a single final decision regarding the draft Covenant during the current session. It was, however, at liberty to decide that the vote on article 4 should be still more provisional in character.

Mrs. MEHTA (India) suggested that the Commission should adopt the text of article 4 in the same way as it had adopted article 2, in other words, "provisionally, pending the completion of its work on part II of the Covenant".

Mr. Charles MALIK (Lebanon) referred to the Indian proposal regarding article 4 and pointed out that the situation was somewhat different. Indeed, whereas the whole of the Commission had agreed on the insertion of article 2 in the Covenant, some members were opposed to including article 4.

Mr. PAVLOV (Union of Soviet Socialist Republics) did not agree with the procedure suggested by the Indian representative and submitted that the motion to adjourn consideration of paragraphs 2 and 3 of the United Kingdom text should be put to the vote first.

Mr. CASSIN (France) emphasized that the three paragraphs of the United Kingdom text could not be separated as they formed a coherent whole. In his opinion, the procedure of the provisional vote did not raise any insuperable difficulty; a blank space could be left after the word "articles" in paragraph 2, on the understanding that the sentence would be completed at a later date.

The Indian proposal that the Commission should take a provisional decision on the text of article 4 pending the completion of its work on part II of the Covenant was adopted by 8 votes to 4, with 4 abstentions.

The CHAIRMAN said that he would take a vote on the USSR amendment to the United Kingdom text (E/CN.4/319) and then on the United Kingdom text itself.

Mr. Charles MALIK (Lebanon), supported by Mrs. ROOSEVELT (United States of America), remarked that the English translation of the USSR amendment was not quite satisfactory.

The Commission decided to substitute the word "threatening" for the expression "directed against" in the English text of the USSR amendment.

Mr. Charles MALIK (Lebanon) still felt that the translation did not convey the USSR representative's idea with sufficient clarity. To avoid any abuse, the article should make it clear that it referred to emergencies threatening fundamental rights.

/Mr. PAVLOV

Mr. PAVLOV (Union of Soviet Socialist Republics) observed that the use of the word "emergency" and of the expression "danger public" emphasized the exceptional character of the situation envisaged. The USSR amendment introduced yet another notion, namely, that of a threat to the interests of the people.

Mr. CASSIN (France), supported by Miss BOWIE (United Kingdom), remarked that the word "nation" in the French version of the USSR amendment did not convey exactly the same meaning as the English expression "people". While he would vote for the amendment if it related to the interests of the nation as a whole, he would vote against if it concerned the interests of a particular group within the nation.

Mr. PAVLOV (Union of Soviet Socialist Republics) said that certain States were composed of several nationalities, so that it might be advisable to use, in the French text, the word "peuple" instead of the word "nation".

The Commission decided to substitute the word "peuple" for the word "nation" in the French version of the USSR amendment.

The USSR proposal to add the words "threatening the interests of the people" after the words "public emergency" in the first paragraph of the United Kingdom text was adopted provisionally by 5 votes to 3, with 8 abstentions.

At the request of the Chinese representative, the Commission decided to take a separate vote on various parts of the first paragraph of the United Kingdom text.

The words "in time of war or" in the first paragraph of the United Kingdom text were adopted provisionally by 6 votes to 5, with 5 abstentions.

The whole of the first paragraph in the United Kingdom draft, as modified by the USSR amendment, was provisionally adopted by the Commission by 8 votes to 3, with 5 abstentions.

Miss BOWIE (United Kingdom) said that she would accept the French amendment, to the effect that the numbers of the articles in paragraph 2 of the United Kingdom draft should be left blank.

Paragraph 2 of the United Kingdom draft, as amended,^{was} provisionally adopted by 9 votes to none, with 6 abstentions.

At the suggestion of the Lebanese representative, and in order to facilitate the future work of the Commission, it was decided to include in a note the proposals submitted respectively by the United Kingdom (draft in document E/CN.4/319, amended by the inclusion of the words "except in respect of death resulting from lawful acts of war" after the words "Article 5") and by France (E/CN.4/324) concerning the articles of the Covenant to be mentioned in article 4, paragraph 2.

Paragraph 3 of the United Kingdom draft was provisionally adopted by 11 votes to 2, with 3 abstentions.

The text of article 4 as a whole, and as modified by the amendments indicated above, was provisionally adopted on the understanding that it would have two footnotes, one calling attention to the provisional nature of the decision taken by the Commission, the other giving the texts of the French and United Kingdom proposals relating to paragraph 2.

Mrs. Roosevelt (United States of America) resumed the Chair.

Mr. Charles MALIK (Lebanon) wished to explain his vote. He had voted against the first paragraph for the reasons which he had already given; however, following the adoption of that paragraph by the Commission he had naturally favoured the inclusion of paragraph 2, which partly corrected paragraph 1; similarly, he had been obliged to vote for paragraph 3, which tended to prevent some of the abuses which paragraph 1 might cause; finally, he had voted in favour of the United Kingdom text as a whole in order not to run counter to the wishes of the majority of the Commission. At the same time, the recent vote has been entirely provisional and he very much hoped that when the Commission reconsidered it, it would decide to omit article 4 completely.

Mr. AQUINO (Philippines) thought that the Commission had made a mistake, which might, indeed, be repaired, but nevertheless was very regrettable, by voting as it had done.

/Mr. CHANG

Mr. CHANG (China) said that he had always opposed the inclusion of such an article in the draft Covenant, and expressed the hope that the Commission would ultimately decide, after careful consideration, to omit the article in its entirety. Should the Commission decide to maintain article 4, however, its position should be changed; it might perhaps be inserted after article 22, which concluded with a limitative provision.

Mr. ENTEZAM (Iran) had abstained from voting because the decision of his delegation would depend entirely on the content of part II of the Covenant. The fact that he had not voted against the article was dictated by his desire not to prevent reconsideration of the question. He, like the representative of China, thought that the position of article 4 should be changed, as the early part of the Covenant was an unfortunate place for such an article.

Mr. PAVLOV (Union of Soviet Socialist Republics) had voted against paragraph 3 for various reasons of principle.

In the first place, he considered it to be premature to take a decision on that paragraph. He had already advanced a certain number of arguments in support of that view. He also pointed out that paragraph 3 mentioned only part II of the Covenant, which appeared to show that it did not apply to part I, though that part contained very important articles, such as article 2. It was obvious that that question, which might lead to subsequent controversy, should have been settled by a prior decision. Finally, he considered that paragraph 3 should not have been divorced from the question of the implementation of the Covenant, with which it was closely linked. The Commission's decision was, of course, only provisional, but the system of provisional voting hardly seemed to be entirely satisfactory; it would have been much better to have postponed consideration of the article.

In the second place, the procedure laid down in paragraph 3 was not justified by anything in the Charter; the USSR, which wished to adhere both to the letter and to the spirit of the Charter, had therefore been forced to vote against that paragraph.

Article 23 (E/CN.4/296)

The CHAIRMAN said the members of the Commission had to consider the Drafting Committee's text (E/800), the amendment submitted by the United States of America (E/CN.4/170) and an amendment submitted by the French delegation.

Speaking as the representative of the United States, she stressed the point that the amendment proposed by her delegation was intended to make the International Covenant on Human Rights open for accession to any State which wished to subscribe to the obligations contained therein. Moreover, that amendment stipulated that the Covenant would come into force when not less than fifteen States had acceded to it, so that, as soon as it came into force, the Covenant would have a very wide application.

Mr. PAVLOV (Union of Soviet Socialist Republics) wondered whether, under the provisions of the United States amendment, any State, including even Franco Spain, might accede to the Covenant.

Following a proposal by Mr. SOERENSEN (Denmark), it was agreed that the Secretariat should be requested to submit to the Commission, at its next meeting, all the relevant information concerning the signature and ratification of international instruments.

The meeting rose at 5.30 p.m.