

UNITED NATIONS
ECONOMIC
AND
SOCIAL COUNCIL



GENERAL
E/CN.4/SR.143
10 April 1950
ORIGINAL: ENGLISH

COMMISSION ON HUMAN RIGHTS

Sixth Session

SUMMARY RECORD OF THE HUNDRED AND FORTY-THIRD MEETING

Held at Lake Success, New York,
on Monday, 3 April 1950, at 11 a. m.

CONTENTS:

Appointment of members to the Committee on Communications
Appointment of members to the Committee on the Yearbook
Appointment of members to the Committee on Prevention of
Discrimination and Protection of Minorities
Draft International Covenant on Human Rights (E/1371, E/CN.4/365,
E/CN.4/353/Add.10, E/CN.4/370, E/CN.4/374, E/CN.4/375,
E/CN.4/379, E/CN.4/380) (continued)
Article 8 (continued)

Chairman:

Mrs. ROOSEVELT

United States of America

Members:

Mr. WHITLAM	Australia
Mr. STEYAERT	Belgium
Mr. SANTA CRUZ	Chile
Mr. CHANG	China
Mrs. WRIGHT	Denmark
Mr. RAMADAN	Egypt
Mr. ORDONNEAU	France
Mr. KYROU	Greece
Mrs. MEHTA	India
Mr. C. MALIK	Lebanon
Mr. GARCIA	Philippines
Mr. HOARE	United Kingdom of Great Britain and Northern Ireland
Mr. ORIBE	Uruguay
Mr. JEVREMOVIC	Yugoslavia

Representatives of specialized agencies:

Mr. EVANS	International Labour Organisation (ILO)
Mrs. CASTILLO-LEDON	Commission on the Status of Women

Representatives of non-governmental organizations:

<u>Category A:</u>	Miss SENDER	International Confederation of Free Trade Unions (ICFTU)
	Mrs. BERG	World Federation of United Nations Associations (WFUNA)
<u>Registered:</u>	Mrs. VERGARA	Catholic International Union for Social Service
	Mrs. NOLDE	Commission of the Churches on International Affairs
	Mr. BERNSTEIN	Co-Ordinating Board of Jewish Organizations
	Mr. HUNTINGTON	Friends World Committee for Consultation
	Mr. CRUICKSHANK	Inter-American Council of Commerce and Production
	Miss SCHAEFER	International Union of Catholic Women's Leagues
	Mr. SCHNIDT	Pax Romana

Secretariat:

Mr. HUMPHREY

Director of the Division of
Human Rights

Mr. LIN MOUSHENG

Secretary of the Commission

APPOINTMENT OF MEMBERS OF THE COMMITTEE ON COMMUNICATIONS

1. The CHAIRMAN recalled that she had been requested to nominate the members of the Committee on Communications which was to consider items 6 and 7 of the agenda (E/CN.4/356/Rev.1). She suggested that the representatives of Chile, France, India, Lebanon, the United Kingdom, the United States, Uruguay and Yugoslavia should be appointed to the Committee and that the latter should be convened by the representative of the United Kingdom.

It was so decided.

APPOINTMENT OF MEMBERS OF THE COMMITTEE ON THE YEARBOOK ON HUMAN RIGHTS

2. The CHAIRMAN proposed that the representatives of Australia, Belgium, China, France, Guatemala and the United Kingdom should be appointed to the Committee on the Yearbook on Human Rights which was to consider item 9 of the agenda, the Committee to be convened by the representative of Australia.

It was so decided.

APPOINTMENT OF MEMBERS OF THE COMMITTEE ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES

3. The CHAIRMAN remarked that while she was prepared to nominate the members of the Committee on Prevention of Discrimination and Protection of Minorities, which was to consider item 11 of the agenda, the Commission, at its first session, had agreed to postpone the election of a member of the Sub-Commission on Prevention of Discrimination and Protection of Minorities (item 3 of the agenda). In a note concerning items on the agenda of the Commission (E/CN.4/373) the Secretary-General had suggested that consideration of item 3 was urgent and that if the Commission decided to elect a member to fill the existing vacancy, the machinery whereby the new member of the Sub-Commission was to be nominated and elected should be established early in the session.

/4. The Commission

4. The Commission should therefore decide whether the vacancy should be filled, or whether the membership of the Committee should be reduced from thirteen to twelve.

5. If no nominations had been received by the following Monday, the Commission might then take a decision on the matter.

6. Mr. HUMPHREY (Director of the Division of Human Rights) in reply to a question by Mr. SANTA CRUZ (Chile), stated that the decision to increase the membership of the Committee to thirteen had been taken by the Economic and Social Council at the request of the Commission on Human Rights. Should the Commission wish to reduce the membership to twelve it should transmit a recommendation to that effect to the Economic and Social Council.

7. The CHAIRMAN nominated the representatives of Denmark, Egypt, Greece, India, the Philippines and the United States to the Committee on Prevention of Discrimination and Protection of Minorities, to be convened by the representative of Denmark.

8. Should the representative of Guatemala not arrive in time for the meetings of the Committee on the Yearbook, it was hoped that the representative of Chile would agree to take his place.

It was so decided.

DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS AND MEASURES OF IMPLEMENTATION --
(a) DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS (ANNEXES I AND II OF THE
REPORT OF THE FIFTH SESSION OF THE COMMISSION ON HUMAN RIGHTS)(E/1371)(continued)
Article 8 (continued)

9. Mr. HOARE (United Kingdom) observed that some confusion had arisen following the adoption, at the previous meeting of the Commission, of the United Kingdom suggestion for the deletion of the words in paragraph 3: "except pursuant to a sentence to such punishment for a crime by a competent court", as a result of which the paragraph read: "No one shall be required to perform forced or compulsory labour".

10. He felt that the Commission ought to consider fully the implications of the amendment to paragraph 3 in relation to the United Kingdom amendment to paragraph 4 (a) (E/CN.4/388). The Commission was not bound by its previous decision and, if permitted under the rules of procedure, he would be in favour of its taking the matter up again and proceeding to another vote.

11. If not, he felt that the discussion should be full and free and he wished, therefore, to explain his views.

12. As in the case of the ILO Convention, the article did not attempt to define the term "forced or compulsory labour" but merely gave a list of exceptions.

13. The difficulty lay in the fact that persons confined by due course of law were required to work and were therefore doing forced or compulsory labour. It was therefore necessary to make some exception for work done by such persons. As it stood, the text excluded from the conception of forced labour certain types of work performed by prisoners. The effect of paragraph 3 of the Commission's text was that if a court included in a sentence a requirement of labour, that labour was not to be regarded as forced or compulsory labour. That appeared to be a safeguard. No illusions should however be entertained as to the extent of that safeguard. The paragraph would not prevent an authoritarian State from inflicting harsh labour upon prisoners by the simple expedient of its courts including in their sentences a requirement of labour.

14. Paragraph 4 (a) sought to make another exception in order to deal with cases where a sentence was imposed without an official requirement of labour. The existing text provided for the exclusion from compulsory or forced labour of any work in prison not amounting to hard labour. That paragraph was open to criticism, for it introduced a new conception, namely ^{hard}labour, in addition to the conception of forced labour. French law might take it to be the equivalent of "travaux forcés". Under English law, however, the term "hard labour" no longer existed, having been abolished in 1948.

15. Paragraph 4 (a) was incompatible with the conditions of a modern prison system because it left it in doubt what kinds of labour could be permitted where the court sentence did not in terms specify labour. It should be so drafted as to take account of a modern prison system in States where such a system existed. If that could allow abuses in the prison systems of other States, it must be remembered that the existing text would equally allow abuses.

16. If it maintained its previous decision, the Commission should consider whether paragraph 4(a), as it stood, was a possible text, since it would imply that anything short of "travaux forcés", as understood in France, would be /recognized.

recognized, but that type of hard labour itself would not be permitted.

17. The combined effect of the United Kingdom amendments could be that any person undergoing detention imposed by a lawful tribunal and subject to prison authorities appointed by due process of law would not be considered to be doing forced or compulsory labour.

18. The CHAIRMAN thought that it would not be advisable to establish the precedent of reconsidering decisions. The Commission should abide by the vote it had taken at the previous meeting, in the knowledge that it could reconsider its position during the second reading.

19. Mr. WHITLAM (Australia) stated that his delegation agreed with the United Kingdom in principle, though it felt that the idea of forced or compulsory labour was rendered unnecessarily obscure by the reference to prison labour. If the latter question were dealt with in a separate paragraph, article 8 would be clearer.

20. If paragraph 3 were retained in its amended form, paragraph 4 (a) could not be accepted as it stood. In Australia, the term "hard labour" was still used in sentencing people. His delegation would not wish to prevent the imposition of hard labour by order of, or pursuant to order of, the court.

21. Subject to the reservation that paragraphs 3 and 4 would be reconsidered at the second reading, and unless any other amendments were presented, he would vote in favour of the United Kingdom amendment.

22. Mr. ORDONNEAU (France) thanked the representative of the United Kingdom for recognizing French legislative difficulties. If the last part of paragraph 3 were deleted, as the Commission had agreed at its previous meeting, sub-paragraph 4 (a) must take into account the possibility of prisoners performing penal labour, which was a normal and sound procedure. The United Kingdom amendment was precise and at the same time flexible enough to cover all eventualities.

23. He wondered, however, whether the French translation was quite satisfactory and proposed an alternative translation.

24. Mr. HOARE (United Kingdom) understood that the French representative's difficulty arose from the fact that the French word "détention" had certain specific connotations and excluded any form of imprisonment accompanied by forced labour.

25. The word "detention" in the English text was intended to cover all forms of compulsory residence in institutions under court sentence. It had the advantage of including inmates of establishments other than prisons -- for example, approved schools.

26. The United States representative had objected that, as it stood, sub-paragraph 4 (a) did not cover the routine housekeeping work required of all prisoners. The United Kingdom amendment was intended as an all-inclusive approval of all forms of work legally required of persons confined by the due processes of law.

27. The CHAIRMAN thought that it was a question of translation which might be left to the French representative and the Secretariat.

28. Mr. SANTA CRUZ (Chile) pointed out that his delegation was also interested in the question of translation. The word "crime" must be very carefully translated in Spanish in order to cover offences or misdemeanors which were not always crimes.

29. In Chilean legislation the term "detention" had a restrictive meaning. It was limited to the period during which an individual was deprived of his freedom as a result of a court sentence; it should be clearly distinguished from the concept of forced labour. According to Chilean legislation the individual sentenced to imprisonment had to perform a certain amount of work under the prison regulations. In other words, the obligation to work was included in the sentence, without implying hard labour, which required a different type of sentence. Sub-paragraph 4 (a), as it stood, covered both routine housekeeping prison work and hard labour. He would therefore prefer the United Kingdom amendment, which differentiated between them.

30. Mr. WHITIAM (Australia) suggested that the United Kingdom amendment might be rendered more generally acceptable if the word "ordinary" were deleted.

31. Mr. C. MALIK (Lebanon) stated that if an immediate vote were taken on the United Kingdom amendment, he would be obliged to abstain. It was generally admitted that sub-paragraph 4 (a) was inseparably linked to paragraph 3 and since there seemed to be considerable doubt whether the Commission had adopted the

/correct decision

correct decision on paragraph 3, he felt that it would be impossible for his delegation to vote on a precise text of sub-paragraph 4 (a).

32. The Commission should bear in mind that there were three kinds of prison labour. Firstly, there was hard labour which formed part of a sentence passed by the competent court. That sentence might no longer exist in the United Kingdom and some other countries but it still existed in many countries where the prisoner was forced to perform a certain amount of labour under the terms of his sentence. Secondly, there was routine work performed in the course of imprisonment. The making of beds, washing of clothes, etc. were not hard labour; they were routine requirements similar to those demanded of pupils at boarding schools. Thirdly, there was work done to promote the delinquent's rehabilitation and not as a punishment for a crime. He felt that it should be specified that prisoners who did that type of work should be paid at the wage rate current in the community to which they belonged.

33. The United Kingdom amendment covered all those forms of prison labour without any differentiation, and that was not advisable. As it stood, it opened the door to many abuses. He had not had time to consider the amendment thoroughly but he tentatively suggested that it might be improved if the words "by law" were added after the word "required".

34. Whereas the types of work mentioned in sub-paragraph 4 (a) were not really exceptions to forced or compulsory labour but merely usual forms of labour, hard labour was forced or compulsory under the law. He therefore suggested that hard labour should be mentioned in paragraph 3, perhaps under some formula such as the Committee had agreed to use in article 5. He suggested the phrase: "In countries where the penal system of hard labour exists...".

35. Mr. GARCIA (Philippines) asked whether it would be possible to postpone the vote on both article 8 and article 5 as the Philippine representative was unavoidably detained in New York. He pointed out that, under the rules of procedure, a delegation could only exercise its vote if its representative or his alternate were present.

36. The CHAIRMAN regretted that she could not agree to that request since it would establish a very dangerous precedent. It would mean that the Commission would never be able to vote if any member were absent.

37. Mr. GARCIA (Philippines) withdrew his suggestion.

38. Mr. KYROU (Greece) agreed with Mr. Malik that it would be advisable to differentiate between the concept of hard labour, travaux forcés in France, and any work or service done in the ordinary course of detention.

39. He therefore suggested that paragraph 3 should be retained in its amended form but that sub-paragraph 4 (a) should be re-drafted and that the United Kingdom amendment, with the deletion of the word "ordinary", should be inserted as a new sub-paragraph 4 (b). He proposed the following text for sub-paragraph 4 (a): "hard labour imposed for a crime by a competent court;".

40. The CHAIRMAN, speaking as representative of the United States, explained that, since paragraph 3 had been amended, she would withdraw her proposal to delete sub-paragraph 4 (a) and would support the United Kingdom amendment. If the Australian proposal to delete the word "ordinary" were adopted, her delegation would accept that deletion.

41. Mr. HOARE (United Kingdom) thanked the representative of Greece for his suggestion, which was prompted by the desire to reach a compromise solution on sub-paragraph 4 (a). Mr. Kyrrou had tried to meet the Lebanese point of view by introducing a distinction between hard labour and other forms of prison work. Mr. Hoare felt, however, that the Lebanese proposal required further consideration and was not fully covered by the Greek text. Sub-paragraphs 4 (a) and 4 (b), as proposed by the Greek representative, overlapped, since a particular exception was first made for hard labour and then a general exception for all prison labour.

42. He therefore suggested that sub-paragraph 4 (a) should be accepted in its present terms. It would have to be considered very closely together with paragraph 3. His amendment and any others could be considered at the second reading.

43. Mrs. MEHTA (India) stated that her delegation also wished to distinguish between hard labour and routine prison work. She was therefore afraid that she would be unable to vote in favour of the United Kingdom amendment.

44. She was inclined to agree that the distinction could be made in paragraph 4 as the Greek representative had suggested; if not, paragraph 3 would have to be reconsidered. At that stage, however, she would prefer to vote on sub-paragraph 4 (a) as it stood.

45. Mr. ORDONNEAU (France) felt that most of the Commission's difficulties arose from the fact that a useful phrase had been deleted as the result of a vote of the consequences of which most representatives had not been fully aware. If paragraph 3 were re-modified, the United Kingdom amendment would then be acceptable to everybody. He therefore suggested that the Commission should reconsider its decision on paragraph 3.

46. The CHAIRMAN emphasized that that would set a bad precedent. She suggested that the Commission might decide not to take a vote on sub-paragraph 4 (a) at the first reading and appoint a sub-committee to re-draft paragraph 3 and sub-paragraph 4 (a). If the Commission agreed to that suggestion, it could proceed to vote on sub-paragraphs 4 (b), (c) and (d) and could postpone the vote on paragraph 4 as a whole until the second reading.

47. Mr. KYROU (Greece) was prepared to agree to that suggestion, but wondered whether it would not be possible to solve the question by taking a vote on the reconsideration of paragraph 3.

48. Mr. HUMPHREY (Director of the Division of Human Rights) explained that such a vote could be taken under the rules of procedure. There being no rule of procedure providing for the reconsideration of a vote the Commission could assume, a fortiori, that it could take such a step. If, on the other hand, it interpreted the silence of the rules of procedure to mean that reconsideration was impossible, the rules of procedure could be set aside under rule 76. A simple majority would be sufficient.

49. Mr. C. MALIK (Lebanon) would not object to taking a vote on reconsideration, but preferred the Chairman's previous suggestion. The suspension of any action on sub-paragraph 4 (a) would be sufficient to indicate that the Commission intended paragraph 3 to be reconsidered. A sub-committee should be appointed to draft the new text and the Commission should proceed to discuss sub-paragraphs 4 (b), (c) and (d).

/50. The CHAIRMAN

50. The CHAIRMAN asked the representatives of Australia, France, Lebanon, the United Kingdom and the United States to draft an agreed text of paragraphs 3 and 4 (a), to be submitted at the second reading.

51. She then read sub-paragraph 4 (b)

52. Mr. ORDONNEAU (France) recalled that he had been unable to attend the meeting during which the joint French and United Kingdom amendment (E/CN.4/391) had been submitted. Upon further consideration the drafting of that amendment raised certain difficulties for the United Kingdom as well as for France. For the moment, therefore, it would be better for the Commission not to take that amendment into account.

53. Mr. HOARE (United Kingdom) concurred in that request. The amendment had been drafted to meet United Kingdom objections to an original French amendment, but he too had doubts on the text of the amendment. The French view could be upheld, but he felt that the best solution had not yet been found.

54. The CHAIRMAN felt that if the representatives of France and the United Kingdom wished for further time to consider their proposed amendment, that would mean that the vote on sub-paragraph 4 (b) would also have to be postponed until the second reading, which would be regrettable.

55. Mr. ORDONNEAU (France) realized the difficulty in which the Commission had been placed. He pointed out that the pressure of work had made informal discussions impossible, though it had often been found that agreement could easily be reached if such discussions were held. In future, it might be wise to leave one or two afternoons free each week for informal discussions.

56. The CHAIRMAN did not wish to curtail the Commission's working time, but was prepared to consider the idea if it would eventually expedite the work. She asked whether the Commission would be in favour of setting every Wednesday afternoon aside to give members an opportunity to consult together informally.

/57. Mr. CHANG

57. Mr. CHANG (China) felt that it was not so much a question of making regular provision for consultation among delegations as of ensuring that such consultations took place while the points at issue were clearly in members' minds. While it was open to the Commission to suspend discussion of paragraph 4 until the second reading, he felt that most members were in favour of reaching an immediate decision. He felt that a short period of consultation would be sufficient and he therefore suggested that the Commission should adjourn forthwith with a view to considering an agreed text at the following meeting.

58. The CHAIRMAN said that, while she agreed with Mr. Chang in principle on the usefulness of the procedure he suggested, she thought that, in the given instance, it would be difficult to reach an agreed solution in the limited time available before the following meeting.

59. Mr. C. MALIK (Lebanon) supported the Chairman's view.

60. Mr. ORDONNEAU (France) supported Mr. Chang's proposal, which he did not, however, consider affected his own proposal that more opportunity should be given for consultation among delegations.

61. The CHAIRMAN agreed with Mr. Ordonneau's view that afternoon meetings should occasionally be devoted to consultation among delegations and undertook to ascertain the Commission's wishes on the matter.

62. Mr. ORIBE (Uruguay) did not consider that, at the existing stage of the Commission's discussion, consultations would serve any useful purpose. He therefore formally proposed that the discussion of paragraphs 3 and 4 should be re-opened.

63. Mr. SANTA CRUZ (Chile) pointed out that the omission from the revised rules of procedure of the Functional Commissions of the Economic and Social Council of any provision for the reconsideration of proposals was the result of a deliberate decision on the Council's part. If, therefore, the Commission re-opened its discussion of paragraphs 3 and 4, it would be departing from the

procedure laid down by the Council. If, however, the Commission agreed to regard a resumed discussion of the two paragraphs as a second reading, any infringement of the rules of procedure would be avoided, also the delay of twenty-four hours required by rule 76 of the rules of procedure.

64. The CHAIRMAN pointed out that the twenty-four hours' notice could be waived if no member objected.

65. Mr. ORIBE (Uruguay) said that, if, as the explanation given by Mr. Santa Cruz appeared to indicate, his proposal for reconsideration was out of order, he was prepared to withdraw it. Since, however, the decisions adopted at the previous meeting had been taken by many delegations without a full realization of their implications, he wondered whether they could not be declared null and void.

66. The CHAIRMAN considered that rule 76 of the rules of procedure would permit that to be done.

67. Mr. HOARE (United Kingdom) felt that the proposal to re-open discussion of paragraphs 3 and 4 forthwith had certain disadvantages. For example, proposals relating to those paragraphs had been put forward in the course of the meeting by the representatives of Australia and Greece but had not yet been circulated in written form. It would in his opinion be preferable to postpone further discussion until the drafting committee had produced an agreed text.

68. Mr. C. MALIK (Lebanon) pointed out that the Commission had already agreed to appoint a drafting committee to draft an agreed text. Mr. Oribe's proposal would affect that decision also. Since the committee would inevitably consider paragraph 3 in conjunction with paragraph 4 (a), its work would in fact be tantamount to reconsideration of the two paragraphs. He therefore felt that Mr. Oribe's object had in fact been achieved.

69. Mr. KYROU (Greece) reverted to Mr. Chang's proposal that provision should be made for immediate consultation, and suggested that the following morning's meeting should be cancelled to enable the drafting committee to produce an agreed text for submission to the afternoon meeting.

/70. The CHAIRMAN

70. The CHAIRMAN suggested that the Commission should decide whether or not the reconsideration of paragraphs 3 and 4 was to be regarded as a second reading.

71. Mr. HOARE (United Kingdom) did not feel that in view of the difficulties involved, the work of the drafting committee should be subject to any time limit. He therefore suggested that its proposals should be circulated and discussed either in the course of a normal second reading or of a continued first reading.

72. Mr. CHANG (China) proposed that the Committee should suspend its discussion of article 8 until the drafting committee had completed its work. The drafting committee should work on the assumption that a second reading would take place.

It was so decided.

The meeting rose at 1 p.m.