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COMMISSION ON HUMAN RIGHTS
Sixth Session

SUMMARY RECORD OF THE HUNDRED AND FIFTY-SIXTH MEETING

Held at Lake Success, New York
on Monday, 17 April 1950 at 11 a.m.

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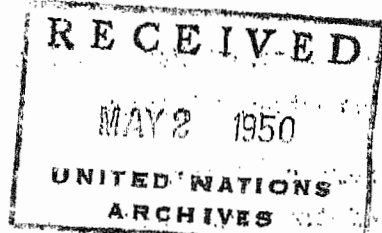
Organization of the work of the Commission

Draft international covenant on human rights (E/1371, E/CN.4/365,
E/CN.4/353/Add.10, E/CN.4/422/Rev.1, E/CN.4/426) (continued)

Article 13 (continued)

Chairman: Mrs. ROOSEVELT

United States of America



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| <u>Members:</u> | Mr. WHITLAM | Australia |
| | Mr. STEYAERT | Belgium |
| | Mr. VALENZUELA | Chile |
| | Mr. CHANG | China |
| | Mr. SORENSON | Denmark |
| | Mr. RAMADAN | Egypt |
| | Mr. LEROY BEAULIEU | France |
| | Mr. KYROU | Greece |
| | Mrs. MEHTA | India |
| | Mr. MALIK | Lebanon |
| | Mr. MENDEZ | Philippines |
| | Miss BOWIE | United Kingdom of Great Britain and Northern Ireland |
| | Mr. ORIBE | Uruguay |
| | Mr. JEVREMOVIC | Yugoslavia |

Representatives of specialized agencies:

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| Mr. LEMOINE | International Labour Organisation (ILO) |
| Mr. WEIS | International Refugee Organization (IRO) |

Representatives of non-governmental organizations Category A:

| | |
|-------------|---|
| Miss SENDER | International Confederation of Free Trade Unions (IOFTU) |
|-------------|---|

Representatives of non-governmental organizations Category B:

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|--------------------|---|
| Mr. EASTMAN | Commission of Churches on International Affairs |
| Mr. KRUCKSHANK | Inter-American Council of Commerce and Production |
| Miss ROBB | International Federation of University Women |
| Mrs. FREEMAN | International Council of Women |
| Miss SCHWARZENBACH | International Federation of Friends of Young Women |
| Mr. GROSSMAN | World Jewish Congress |

Secretariat:

| | |
|------------------|---|
| Mr. HUMPHREY | Director, Division of Human Rights |
| Mr. SCHWELB | Assistant Director, Division of Human Rights |
| Mr. WOOD | Director, Bureau of General Services |
| Mr. LIN MOUSHENG | Secretary of the Commission |

STATEMENT BY MR. BYRON WOOD

1. Mr. WOOD (Secretariat) said that an investigation of the circumstances of the previous closed meeting of the Commission had been conducted by the Secretariat.* He explained that the usual procedure in cases of closed meetings was that all outlets were disconnected except those used for the simultaneous interpretation. Investigation revealed a failure to disconnect one plug through the fault of the Bureau of General Services. The mistake was most regrettable. No disciplinary action except a reprimand had been taken, but he gave assurance that in the future the utmost care would be taken to avoid any similar incident.
2. Miss BOWIE (United Kingdom) stated that reports that the opening statements of the closed meeting had not been heard outside the conference room while later speeches had been heard seemed to indicate that the plug in question might have been re-inserted.
3. Mr. WOOD (Secretariat) stated that he had been advised that the first half hour of the meeting only had been heard outside the conference room.
4. The CHAIRMAN felt that no further action was indicated, but urged extreme care in the future.

ORGANIZATION OF THE WORK OF THE COMMISSION

Mr. JEVREMAVIC (Yugoslavia), speaking on a point of order, indicated that, at the beginning of the fourth week of its session, the Commission had discussed thirteen articles of the covenant but had completed action on only seven. Nineteen further articles, as well as important complementary articles and implementation measures, remained to be discussed. The Commission's agenda also contained ten additional items. It was extremely important for the Commission to discuss methods of organizing its work to ensure full discussion and satisfactory completion of the covenant and ancillary items.

* Document E/CN.4/SR.155 is issued in two parts. Part I, summary record of a closed meeting has not been published.

/6. Nevertheless,

6. Nevertheless, care should be taken to avoid any limitation of the right to speak by closing the list of speakers or restricting the time allotted to each speaker. Any such measures would cast a shadow over the covenant and would be unfair, as the earlier articles had been discussed at great length.

7. A considerable amount of time might, however, be saved by adopting a decision in principle as to whether exceptions to general provisions should be treated in the form of an enumerative list in each article or as an omnibus article. He also noted that the Third Committee had held night meetings in Paris and that the Commission might consider that method of expediting its work.

8. Turning to the question of measures of implementation, Mr. Jevremovic expressed misgivings at the proposal to set up a sub-committee. Such action would interrupt the discussion of the covenant and would be confusing. Furthermore, satisfactory measures for implementation could be prepared only when the tenor of the entire covenant was clear and its draft completed.

9. A candid discussion of the obstacles to the completion of the Commission's work would be in the interest of the Commission and would contribute to the successful completion of its work.

10. The CHAIRMAN recalled that the Commission had decided to take up the question of implementation on 25 April but that decision could be altered if necessary.

11. Miss BOWIE (United Kingdom) said that it was difficult to engage in a discussion of the important points raised by the representative of Yugoslavia at the current meeting and proposed that a closed session should be held later that week.

12. Mrs. MEHTA (India) thought that a closed meeting could appropriately be held only when the discussion of the covenant had been completed.

13. Mr. KYROU (Greece) stressed the adverse psychological effect of closed meetings on public opinion and urged caution in deciding to hold such meetings.

14. Mr. MALIK (Lebanon) pointed out that the Commission had not held meetings during about 20 per cent of the first three weeks of its session. Moreover, a measure of agreement on the formulation of important substantive

/articles,

articles, including articles 5 and 9 which were most highly controversial, had been reached. In assessing the Commission's progress, it should be considered that the remaining articles had aroused few comments and therefore the prospects for future progress appeared brighter.

15. Referring to the suggestion for a closed meeting, he expressed the view that all meetings should be open. He recalled that the Commission had held many crucial public debates in the past, and felt that it would be unfortunate to make a practice of holding closed meetings at the current session.

16. In his opinion the suggestion that a decision in principle should be taken might not be useful at the current stage of the Commission's work. He noted that the principle of enumeration had been admitted in respect of article 8 and urged that each article should be considered separately and later reviewed in the light of the structure of the entire covenant.

ARTICLE 13 (continued)

17. The CHAIRMAN called for discussion of the second sentence of paragraph 1 of article 13.

18. Mr. RAMADAN (Egypt) supported by Mr. LEROY-BEAULIEU (France) requested that in the French text the words "le huis clos sera prononcé" should replace "L'accès de la salle d'audience peut être interdit".

19. Mr. ORIBE (Uruguay) expressed reservations on behalf of his delegation and stated that he would abstain from voting. The Uruguayan delegation considered it preferable to draft a more general formula which could be used uniformly in each article or in a separate article listing reservations and exceptions.

20. Mr. WHITIAM (Australia) asked whether the term "trial" applied both to civil and to criminal proceedings.

21. The CHAIRMAN said that the Commission had agreed that "trial" should be applicable to both civil and criminal proceedings.

/22. In order

22. In order to eliminate redundancy in the use of the word "interest" Mr. CHANG (China) suggested that the phrase "for reasons of" should replace "in the interest of" before the word "morals".

It was so agreed.

23. Mr. LEROY-BEAULIEU (France) was prepared to accept the United States amendment (E/CN.4/426); the drafting change suggested by China did not affect the French text. He stressed the importance of reading both the English and French versions of amended articles before taking the vote.

24. Mr. WHITLAM (Australia) shared that view and felt that a slight delay was justified to ensure equivalence of the two authentic texts.

25. After a reading of the United States amendment in both languages, the CHAIRMAN put it to the vote.

The United States amendment (E/CN.4/426) was adopted by 12 votes to none, with 1 abstention.

Paragraph 1 of article 13, as amended, was adopted unanimously.

26. The CHAIRMAN drew attention to two amendments to paragraph 2 of the article (E/CN.4/365): the United States suggestion to replace the verb forms "has" and "is" by the future tense, and the Philippine proposal to replace the word "penal" by "criminal" and to insert the phrase "beyond reasonable doubt" after "guilty".

27. Mr. MENDEZ (Philippines) pointed out that "criminal" should be used consistently instead of "penal" to avoid any suggestion of punishment. The phrase "beyond reasonable doubt" should raise no objection. It was generally implicit in democratic legislation.

28. The CHAIRMAN, speaking as representative of the United States, was prepared to accept the first Philippine suggestion, but feared that countries unfamiliar with the concept of "reasonable doubt" in their own legislation might hesitate to introduce it in the draft covenant. To achieve the greatest measure of agreement, it might be wiser to let the original text stand.

/29. Mr. LEROY-BEAULIEU

29. Mr. LEROY-BEAULIEU (France) has no difficulty in accepting the first Philippine amendment and the United States amendment to the English text; the French text remained unchanged.

30. Miss BOWIE (United Kingdom) could accept the word "criminal", but saw no need to qualify a fair trial by a presumably independent and impartial tribunal by inserting the phrase "beyond reasonable doubt". The text, as it stood, was perfectly clear to all Governments which accepted the rule of law; those which did not would in any case ignore the provisions of the covenant.

31. Mr. MENDEZ (Philippines) distinguished between a fair trial by an impartial tribunal, which constituted the process of law, and the judgment itself, to which the phrase "beyond reasonable doubt" applied specifically. For example, it was normal in procedural law to base a judgment on the preponderance of evidence; if, however, a "reasonable doubt" subsisted in the minds of judge or jury, the preponderance of evidence might no longer be the only determining factor in their decision. Undoubtedly, all democratic legislation implicitly recognized the factor of "reasonable doubt" and a specific reference to it would merely offer added protection to the defendant.

32. Mr. ORIBE (Uruguay) also agreed to replace "penal" by "criminal" but felt, like the representative of the United Kingdom, that the reference to "reasonable doubt" was an unnecessary qualification of the law. If any such qualification was to be introduced, the draft covenant should define the law as being in accordance with the Charter or the Declaration of Human Rights. However, in the absence of any such general qualification, the phrase suggested by the Philippine representative appeared superfluous.

33. Mr. VALENZUELA (Chile) endorsed the views of the United Kingdom and Uruguayan representatives. The element of "reasonable doubt" was not applicable to substantive or procedural law in Chile. The positive legislation of that country fully safeguarded the social interests of the defendant, provided him with a fair and impartial hearing during which his innocence was automatically presumed, and offered him recourse to a review of his case and appeal of any court decision. The Philippine suggestion would actually place an unnecessary limitation on Chilean legislation.

/34. Mr. WHITLAM

34. Mr. WHITLAM (Australia) also thought the reference to "reasonable doubt" was superfluous because it applied to the nature of the evidence. He would, however, be prepared to accept it if the Commission agreed.

35. Mr. RAMADAN (Egypt) thought it would create confusion; the defendant was adequately protected by the article as it stood.

36. Mr. MALIK (Lebanon) saw no grounds for rejecting the second Philippine amendment. If no positive proof could be adduced to show that the insertion of the phrase "beyond reasonable doubt" was harmful or directed against human rights, he would vote in favour of it. Its effect could only be to strengthen human rights and to safeguard the defendant against abuse of those rights by law and Governments.

37. The representative of Chile had appeared to imply that he would vote against the phrase because it did not conform with the legal system in force in his country. Such reasoning was fallacious and defeated the very purposes of an international covenant. While the Commission was not bound by its terms of reference to promote human rights beyond the status quo, it would in fact be failing in its task if it adhered strictly to existing legal systems. If it were to reject automatically those concepts of human rights which were not specifically set forth in current legislation, the resulting legal instrument would represent the least common denominator of the various legal systems and no progress would have been achieved. The Commission must conceive its task otherwise; it must strive to go beyond existing legislation in order to provide additional safeguards which were too often overlooked.

38. Mr. VALENZUELA (Chile) emphasized that Chile was not attempting to impose its legislation in the draft covenant. The concept of "reasonable doubt" was fully covered in Chilean law and adequate methods were provided for review and appeal of judgments. Explicit reference to the phrase therefore seemed unnecessary.

39. Mr. KYROU (Greece) accepted substitution of the word "criminal" for "penal". The remainder of the paragraph provided adequate protection of the defendant and should be adopted without change. Two factors must be borne in mind: first, the language of the covenant must be confined to legal terminology; /secondly,

secondly, the draft covenant under discussion was but the first of a series of conventions and every effort should be made to obtain the greatest measure of acceptance and support for it. Accordingly, its provisions should be harmonized with existing legal systems as far as possible.

40. Mr. JEVREMOVIC (Yugoslavia) considered that paragraph 2 of article 13 provided adequate protection for the defendant in terms which were generally accepted in the jurisprudence of most nations. The draft covenant would not be expected to enumerate the specific provisions of all legal codes; the original text was entirely satisfactory and Mr. Jevremovic would vote in favour of it.

41. Mrs. MEHTA (India) thought that the original text contained the idea expressed in the Philippine amendment and that the amendment was therefore unnecessary. Moreover, under existing legal systems, a person had to be proved guilty beyond reasonable doubt before sentence could be passed on him, and he could appeal his sentence. Under the legal system of India the accused person was given the benefit of the doubt.

42. The Philippine draft amendment was superfluous, and she would vote against it.

43. Mr. LEROY-BEAULIEU (France) did not believe that the introduction of the Philippine amendment in the covenant would advance the legal systems of the world; all existing legal systems, moreover, recommended that a person should not be condemned unless his guilt had been proved beyond all reasonable doubt.

44. The introduction of a provision to the effect that a person would be deemed innocent until proved guilty beyond any doubt whatsoever would indeed be a step forward. If the Philippine amendment were adopted, however, it might give the impression that the Commission feared that States did not recognize the principle of reasonable doubt.

45. Mr. STEYAERT (Belgium) wondered whether the Philippine amendment, if introduced into the French text, might not be interpreted to mean just the opposite of what its author had intended.

46. The CHAIRMAN put to the vote the Philippine proposal to substitute the word "criminal" for the word "penal" in the first line of the second paragraph of article 13 (E/CN.4/365, page 37).

The proposal was adopted by 12 votes to none, with 1 abstention.

/47. Mr. JEVREMOVIC

47. Mr. JEVREMOVIC (Yugoslavia) explained that he had abstained from voting on the Philippine amendment because it was a question of drafting on which he did not feel competent to take a decision.

48. The CHAIRMAN then put to the vote the Philippine proposal to insert the phrase "beyond reasonable doubt" after the words "to be presumed innocent until proved guilty" in paragraph 2 of article 13.

That amendment was rejected by 8 votes to 2, with 3 abstentions.

49. Mr. MALIK (Lebanon) did not think it was necessary to put drafting changes which only affected the text in one language to the vote. In the past, such amendments had been considered as drafting amendments and had not been voted upon.

50. In view of the Lebanese representative's remarks, the CHAIRMAN said she would not put to a formal vote the United States drafting amendments to paragraph 2 of article 13. As there were no objections to those amendments, however, they would be incorporated in the text of article 13.

51. She then put to the vote the first four lines of paragraph 2 of article 13, as amended, ending with the words "in full equality".

That text was adopted by 13 votes to none, with no abstentions.

52. The CHAIRMAN asked the Commission to consider sub-paragraph (a) of paragraph 2 of article 13.

53. Mr. ORIBE (Uruguay) pointed out that, at the Chilean representative's suggestion, the words "without delay" had been substituted for the word "promptly" in article 9 and he proposed that, in the interest of maintaining the same terminology throughout the covenant, a similar amendment should be introduced in sub-paragraph (a).

54. Mr. LEROY-BEAULIEU (France) agreed to that proposal. He reserved the right to review the French translation of the phrase "without delay" on second reading.

/55. Mr. MALIK

55. Mr. MALIK (Lebanon) agreed that it was desirable to keep the terminology of the covenant uniform.

56. He wondered whether it was necessary to maintain the phrase "the nature and cause of the accusation". In his opinion, the word "cause" was included in the word "nature". He pointed out, moreover, that in article 9 the words "reasons" and "charges" were used. Could the two texts not use the same wording?

57. Mr. RAMADAN (Egypt) suggested that the word "cause", if retained, should be translated into French by the word "motifs". He thought the two words "nature" and "cause" were essentially different in meaning; "nature" referring to the category of the offence, and "cause" referring to the particular crime itself.

58. Mr. MENDEZ (Philippines) pointed out that the phrase "nature and cause" was used in several national constitutions. To his mind, the two terms were different in meaning.

59. The CHAIRMAN, speaking as representative of the United States, preferred the original text. She thought that the word "nature" referred to the type of offence committed, and that the word "cause" meant the reasons for the accusation against the person concerned.

60. Mr. WHITIAM (Australia) thought that the phrase referred to the procedure for making an accusation, whereby a formal indictment was issued and then further particulars were furnished to the accused.

61. Mr. JEVREMOVIC (Yugoslavia) was in favour of retaining the original text. When a person was accused of a crime, it was not sufficient to tell him what he had been accused of; he must also be informed of the nature of the offence, that is to say, the seriousness of the crime and the penalties attaching thereto. The word "cause" should also be retained, as it referred to the acts which had caused the accusation to be made.

62. Miss BOWIE (United Kingdom) thought it was clear that the two words were different in substance. The drafting committee could bear the discussion in mind, however, and attempt to make the terminology of article 9 and article 13 uniform.

63. Mr. KYROU (Greece), like the representative of Yugoslavia, thought the phrase "nature and cause" should be retained.

64. Mr. LEROY-BEAULIEU (France) also agreed with the representative of Yugoslavia. The phrase should be retained because it expressed two essentially different ideas.

65. Mr. MALIK (Lebanon), in view of the interpretations which had been given of the phrase "nature and cause", wondered whether some simpler phraseology should not be substituted for the legal term.

66. Mr. LEROY-BEAULIEU (France) thought that, inasmuch as the covenant was a legal instrument, it would be better to use legal terminology in it wherever possible. He thought that, among jurists, the term "nature" was generally understood to mean the type of crime committed and the term "cause" the reasons for the accusation.

67. Mr. JEVREMOVIC (Yugoslavia) pointed out by way of illustration that there were many types of crimes. The phrase should be retained in order to ensure that the accused would be informed of the charge against him and of the penalties for the particular crime.

68. Miss BOWIE (United Kingdom) agreed with the representative of Yugoslavia. The covenant was a legal instrument and it would be better therefore to draft it in legal terminology.

69. The CHAIRMAN put sub-paragraph (a) of paragraph 2 of article 13, as amended, to the vote.

Sub-paragraph (a) of paragraph 2 of article 13 was adopted by 11 votes to none, with no abstentions.

The meeting rose at 1.5 p.m.