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Sixth Session

SUMMARY RECORD OF THE HUNDRED AND FIFTY-SEVENTH MEETING

Held at Lake Success, New York
on Monday, 17 April 1950, at 3 p.m.

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<u>Chairman:</u>	Mrs. ROOSEVELT	United States of America
<u>Members:</u>	Mr. WHITLAM	Australia
	Mr. STEYAERT	Belgium
	Mr. VALENZUELA	Chile
	Mr. CHANG	China
	Mr. SORENSON	Denmark
	Mr. RAMADAN	Egypt

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Members: (continued)

Mr. LEROY-BEAULIEU	France
Mr. KYROU	Greece
Mrs. MERPA	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 non-governmental organizations:

<u>Category A:</u>	Miss SENDER	International Confederation of Free Trade Unions (ICFTU)
<u>Category B:</u>	Mr. LEWIN	Agudas Israel World Organization
	Miss VERGARA	Catholic International Union for Social Service
	Mr. EASTMAN) MR. NOLDE)	Commission of the Churches on Inter- national Affairs
	Mr. BERNSTEIN	Co-ordinating Board of Jewish Organi- zations
	Mr. CRUICKSHANK	Inter-American Council of Commerce and Production
	Miss BERG	International Alliance of Women
	Miss TOMLINSON	International Federation of Business and Professional Women
	Miss ROBB	International Federation of University Women
	Mr. BEER	International League for the Rights of Man
	Miss SCHAEFER	International Union of Catholic Women's Leagues

Secretariat:

Mr. HUMPHREY	Director of the Division of Human Rights
Mr. SCHWELB	Assistant Director of the Division of Human Rights
Mr. LIN MOUSHENG) Mr. DA)	Secretaries of the Commission

DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS (ANNEXES I & II OF THE REPORT OF THE FIFTH SESSION OF THE COMMISSION ON HUMAN RIGHTS, DOCUMENT E/1371) (continued)
Article 13 (E/CN.4/353/Add.10, E/CN.4/365, E/CN.4/358, E/CN.4/422/Rev.1, E/CN.4/426, E/CN.4/428) (continued)

Paragraph 2 (b)

1. Miss BOWIE (United Kingdom) submitted the United Kingdom amendment to paragraph 2 (b); she considered that the impression should not be given that legal assistance should always be free; the defendant should pay for legal assistance if he had the means to do so.

2. She thought the words "if legal assistance is unobtainable by him" in the United States amendment unnecessary, unless there was some implication not obvious in the words.

3. The CHAIRMAN, speaking as United States representative, said that her delegation confined itself in its amendment to adding certain fundamental guarantees to the Commission's text.

4. Mr. LEROY-BEAULIEU (France) thought it unnecessary to amend the original French text, as the United Kingdom objections did not apply to it. He saw no reason for depriving the accused of any of his rights; the only question was that of deciding whether the accused should be informed of his rights.

5. Miss BOWIE (United Kingdom) considered that the words "s'il ne peut en user" were not sufficiently precise; the same was true of the expression "if unobtainable by him" in the English text.

6. Mr. KYROU (Greece) noted that the only difference between the United Kingdom and United States amendments was in the provision that the accused should be informed of his right to be defended. If the United States representative did not press the point, the texts of the two amendments could be merged into one.

/7. The CHAIRMAN,

7. The CHAIRMAN, speaking as United States representative, thought that that right must appear in the covenant.
8. In reply to a question from the Lebanese representative, she said that the tribunal itself would assign legal assistance to the accused when the interests of justice so required.
9. Mr. MALIK (Lebanon) feared that that procedure might, in certain cases, prove prejudicial to the interests of the accused. He also proposed that the texts of the United Kingdom and United States amendments should be combined.
10. Mr. MENDEZ (Philippines) objected to the deletion of the provision under which the accused must be informed of his rights.
11. Miss BOWIE (United Kingdom) was inclined to accept the Lebanese proposal. She would prefer the verb "informed" to be replaced by another term.
12. Mr. WHITLAM (Australia) observed that in Australia, legal defence was assigned to the accused either by the tribunal or by the Attorney-General on the recommendation of the tribunal.
13. Mr. SORESSON (Denmark) remarked that according to the Lebanese representative, the accused must have the right to choose his defence and the Government would pay the lawyer's fees if the accused himself was unable to do so. He feared that in practice that system might create difficulties as the general tendency would be to choose the same lawyers; he therefore thought that that prerogative should be left to the tribunal.
14. Mr. MALIK (Lebanon) wondered whether the United Kingdom text would cover the case of an accused person who possessed the means to pay the lawyer's fees but could not find a lawyer.
15. Miss BOWIE (United Kingdom) said that in the United Kingdom, all accused persons, no matter how unpopular their case, could always find a lawyer to defend them, because that was the etiquette of the English bar.

/16. The CHAIRMAN

16. The CHAIRMAN, speaking as representative of the United States, recognized that such a case was nevertheless possible. She thought that the Lebanese representative was in order in urging that such cases should be provided for.
17. Mr. MALIK (Lebanon) suggested that the United Kingdom and United States drafts should be combined in such a way as to cover the case of an accused who was unable to use his right to be defended.
18. Mr. LEROY-BEAULIEU (France) proposed reverting to the original French text and adding at the end the words "when the interests of justice so require".
19. Mr. KYROU (Greece) suggested that the United States text should be amended to read: "informed of this right and to profit by it when the interests of justice so require and without payment if he has no means of paying for his defence".
20. Mr. STEYAERT (Belgium) supported the French proposal.
21. Mr. WHITLAM (Australia) suggested that the United States text should be amended to read "... to be informed of this right and to have legal assistance assigned when the interests ..." The words "the interests of justice" covered both the case of an accused who was unable to find legal assistance and that of an accused person who had no means of paying for such assistance.
22. Miss BOWIE (United Kingdom) supported the Greek representative's suggestion.
23. Mr. LEROY-BEAULIEU (France) proposed the following text:
"To defend himself in person or through legal assistance which shall include the right to legal assistance of his own choosing, or, if he does not have such, to be informed of his right and, if unobtainable by him, to have legal assistance assigned where the interests of justice so require."
The expression "if unobtainable by him" covered both cases in which legal assistance was assigned free of charge and cases in which no one was able to defend the accused. It was a very broad formula which would be to the interest of the accused because it covered all possible cases. Any attempt to make it more specific would narrow down its scope.

/24. Mr. MALIK

24. Mr. MALIK (Lebanon) said an accused might find it impossible to obtain legal assistance either through lack of funds or because he could not find a lawyer prepared to defend him. In the first case, one should not speak of "assigning" legal assistance. The two ideas were confused in the French representative's text, which he could not support.

25. The CHAIRMAN, speaking as representative of the United States of America, expressed similar doubts regarding the French amendment.

26. Mr. SORENSON (Denmark) observed that, in practice, an accused who did not have the means to pay for his defence did not have the same freedom of choice as one who could pay substantial fees to a well-known counsel. He himself preferred the text submitted by the Australian representative.

27. Mr. MALIK (Lebanon) noted that the problem was of capital importance. An accused should not be deprived of the right of choosing his own legal assistance because he was poor. It was essential to prevent any discrimination based on wealth.

28. Speaking as representative of the United States, the CHAIRMAN indicated that, in the United States, an accused had the right to refuse the counsel assigned to him and to ask for another.

29. Mr. SORENSON (Denmark) said that in Denmark, the Minister of Justice had appointed a certain number of lawyers who took cases as they arose. Obviously taxpayers would not agree that the sometimes excessive fees asked by certain well-known counsel should be paid out of public funds. The system advocated by the Lebanese representative could not work in practice.

30. Mr. MENDEZ (Philippines) thought the tribunal must be allowed a certain amount of discretion; it was, after all, essentially concerned with the interests of justice.

31. Miss BOWIE (United Kingdom) agreed with the Danish representative and proposed the following text:

"...and to be provided with legal assistance, in any case where the interests of justice so require, and without payment by him in any such case where he does not have sufficient means to pay for it."

32. Mr. WHITLAM (Australia) agreed with the representative of Denmark. The Lebanese representative had started from a hypothesis which did not exactly correspond to the facts. The standards of the legal profession were very high and it was not considered dishonourable to defend anyone. Consequently, no apprehension need be felt about the word "assigned".

33. He considered the last text proposed by the United Kingdom representative satisfactory and would support it.

34. Mr. MENDEZ (Philippines) preferred "assigned" to "provided". He asked what authority would provide the accused with legal assistance.

35. Speaking as representative of the United States, the CHAIRMAN accepted the last text proposed by the United Kingdom, but did not think the modification proposed by the Philippine representative would in any way alter its substance.

36. Mr. MALIK (Lebanon) asked what would happen in a case where the accused did not have sufficient funds to pay for legal assistance and did not like the legal assistance assigned to him by the court.

37. Speaking as representative of the United States, the CHAIRMAN said that in the United States the accused could always refuse the legal assistance assigned to him by the court and other legal assistance will be assigned if available; the fees, if any, were usually controlled by the Court.

38. Mr. LEROY-BEAULIEU (France) and Mr. MENDEZ (Philippines) said that was also the case in their respective countries.

/39. Mr. SORENSON

39. Mr. SORENSEN (Denmark) said that was also the practice in his country. Moreover, if the accused was not satisfied with the way in which his defence was conducted, he could always ask for a replacement in the course of the trial.

40. Mr. RAMADAN (Egypt) said that in his country the president of the court drew up a list of counsel for the defence from which the counsel for the case was selected by the court. If the latter refused for a reason which was not valid, he might be subjected to disciplinary action.

41. Mr. CHANG (China) accepted the last text proposed by the United Kingdom representative. He suggested the Commission should proceed to a vote and should request the Secretariat to give its opinion on the text before the second reading.

42. Speaking as representative of the United States of America, the CHAIRMAN withdrew the United States amendment in favour of the last text proposed by the United Kingdom representative.

43. Mr. LEROY-BEAULIEU (France) said that for his part he much preferred the original drafting; however, the new text presented no difference of substance and could therefore have the support of the French delegation.

44. The CHAIRMAN put to the vote the United Kingdom amendment to paragraph 2, sub-paragraph (b) (E/CN.4/428).

That amendment was unanimously adopted.

45. Mr. MALIK (Lebanon) explained that he had not opposed the adoption of the United Kingdom amendment although he retained doubts concerning the expression "to have legal assistance assigned to him". He understood however the practical difficulties which would be created by depriving courts of the power of appointing legal assistance for an accused without means. The provision under consideration was an example of a case in which it seemed impossible to guarantee completely the protection of human rights; that was why he had deferred to the reasons advanced by the supporters of the United Kingdom amendment.

/46. The CHAIRMAN

46. The CHAIRMAN put to the vote paragraph 2, sub-paragraph (b) as amended.

Paragraph 2, sub-paragraph (b), was adopted unanimously.

Sub-paragraph (c)

47. The CHAIRMAN, speaking as representative of the United States of America, explained that her delegation had proposed the addition of the words "who are within the jurisdiction and subject to the process of the tribunal" to the original text of paragraph 2, sub-paragraph (c), with a view to safeguarding the special rights and privileges enjoyed by certain categories of persons in foreign territories, for example, by the members of the diplomatic corps and by representatives accredited to the United Nations.

48. Mr. CRIBE (Uruguay) said he would abstain from voting on the United States amendment because he considered that diplomatic immunity was one of the most generally recognized rules of international law and did not require special mention.

49. The CHAIRMAN put to the vote the United States amendment to sub-paragraph (c) of paragraph 2 (E/CN.4/365, page 38).

The amendment was adopted by 6 votes to 2, with 4 abstentions.

50. The CHAIRMAN put to the vote sub-paragraph (c) of paragraph 2 as a whole, as amended.

Sub-paragraph (c) was adopted unanimously.

51. Mr. WHITLAM (Australia) explained that he had voted against the addition proposed by the United States because he regarded it as unnecessary. In deference to the majority view, he had however voted in favour of sub-paragraph (c) as a whole.

Sub-paragraph (d)

52. The CHAIRMAN put to the vote sub-paragraph (d) of paragraph 2 in its original form (E/1371), no amendments having been submitted to that text.

Sub-paragraph (d) was adopted unanimously.

/Additional

Additional paragraph proposed by the French delegation for insertion between paragraphs 2 and 3

53. Mr. LEROY-BEAULIEU (France) said that his delegation had proposed the insertion of an additional paragraph between paragraphs 2 and 3 of article 13 for the purpose of ensuring special protection to juvenile offenders (E/CN.4/365, page 40).
54. Mr. MENDEZ (Philippines) pointed out that article 13 stated the right of every accused person to a fair and public hearing. It did not seem to him necessary to list all the possible exceptions in the text of that article. Guarantees for juvenile offenders were not in fact the only case in point; reference might for example be made to the legal axiom "non bis in idem". If it were to act thus, the Commission might stray far from its course.
55. Mr. CRIBE (Uruguay) questioned the soundness of the Philippine representative's view. He recalled that the Egyptian delegation had raised the question of special protection for juvenile offenders in connexion with article 5 on the right to life. The Commission had then thought it inadvisable to adopt that amendment. In Mr. Cribé's opinion the time was ripe for the inclusion in the covenant of a humanitarian principle recognized by the domestic legislation of the majority of States. If the Philippine representative felt impelled to submit an alternative proposal, the Uruguayan delegation would not hesitate to support it. The French amendment, however, unquestionably met a real need and the Uruguayan delegation would support it.
56. Mr. JEVREMOVIC (Yugoslavia) was also in favour of the French amendment. Generally speaking, the covenant should not specify all the categories of persons to whom special guarantees should be accorded; their protection would be ensured by agreements concluded at a later stage. The problem of juvenile offenders was however worthy of special attention and it was right and proper that an article of the draft covenant on human rights relating to the safeguards enjoyed by every accused person, should stress the need of special treatment for juvenile offenders. The text proposed by the French delegation was not entirely satisfactory inasmuch as the guarantees involved were not clearly stated. The Yugoslav delegation, however, considered that it served to round off article 13 and would vote in its favour.

/57. The CHAIRMAN,

57. The CHAIRMAN, speaking as the representative of the United States of America said that her Government saw no objection in principle to the French proposal, which was in conformity with the legal practice of the United States. The Social Commission was, however, in process of drafting a charter of the rights of the child and a statement of general principle might perhaps be more appropriately included in that document than in the covenant.

58. Mrs. MEHTA (India) was in sympathy with the underlying purpose of the French proposal. She could not however vote for it, because she did not consider that it should find a place in article 13.

59. Mrs. BOWIE (United Kingdom) agreed with the representative of India. The United Kingdom had a special penal code applicable to minors of under eighteen years of age. Her delegation nevertheless considered that the special case of juvenile offenders should not be dealt with in an initial agreement primarily intended to safeguard the fundamental human rights.

60. Mr. LEROY-BEAULIEU (France) realized, as did the Yugoslav representative, that the French text was not as concise as it could have been. It was by design, however, that the French delegation had drafted it in very general terms, having wished to mention a basic principle in the international covenant on human rights without in any way prejudicing the future declaration of the rights of the child.

61. Mr. KYROU (Greece) observed that the first paragraph of article 13 already allowed one exception in favour of juveniles; the French text thus served to round out the article in a logical way and the Greek delegation would vote in favour of it.

62. Mr. MALIK (Lebanon) likewise supported the French proposal; he did not think it could be said that that proposal dealt with a mere detail: the protection of juvenile delinquents was a question of fundamental importance and the international covenant on human rights could not tacitly ignore it. At the same time it might be asked whether it could be appropriately dealt with in article 13 or whether it should not form the subject of a separate article. He suggested the Commission should not take an immediate decision on the matter.

63. The CHAIRMAN observed that the French proposal introduced an entirely new idea; for that reason, it should be discussed at the same time as the other proposals for additional articles, the examination of which had been deferred to the end of the first reading.

64. Speaking as the representative of the United States of America, she emphasized that the French amendment, drafted as it was in very general terms, was out of place in a covenant of an obligatory juridical character.

65. Mr. WHITLAM (Australia), while understanding the French delegation's concern to provide special protection for juvenile delinquents, nevertheless shared the view of the Indian representative that the logical place for a provision of that kind was not in article 13. Article 13 was simply the counterpart of articles 10 and 11 of the Universal Declaration of Human Rights and concerned only guarantees of a sound and just legal code. The French amendment, however, went beyond the original purpose of article 13. For that reason, Mr. Whitlam could not support it. Indeed, if an exception such as that proposed by the French delegation were to be written in, there was nothing to prevent the writing in of others, as the Philippine representative had observed.

66. Mrs. MEHTA (India) pointed out again that she was not opposed in principle to the French amendment, but she thought that the natural place for an amendment of that sort was the declaration of the rights of the child currently being drawn up by the Social Commission. She recalled that when a similar amendment introduced by Egypt to article 5 had been under discussion, the members of the Commission had held that all provisions dealing with juveniles should be incorporated in the declaration of the rights of the child and not in the covenant. That was why the Egyptian delegation had withdrawn its amendment. With that understanding, if the majority of the Commission wished to include that idea in the covenant, she would have no objections, provided that it should not be in article 13.

67. The CHAIRMAN observed that, independently of the Social Commission which was drawing up a draft declaration of the rights of the child, the International Penal and Penitentiary Commission was currently engaged in a study of the whole problem of juvenile rehabilitation. In the circumstances, she thought it would be well to defer any decision on the French amendment so that members of the Commission could investigate the work of those bodies.

168. Mr. JEVREMOVIC

68. Mr. JEVREMOVIC (Yugoslavia) stated that the provisions of the French amendment would fit naturally into article 13 of the covenant dealing with the guarantees to be granted the accused. It had been pointed out that the protection of juvenile delinquents should be provided for in the declaration of the rights of the child. A principle of such importance should appear not only in that declaration but also in the covenant itself, since the latter would be undeniably more effective.

69. Mr. ORIBE (Uruguay) noted, as the representative of Greece had done, that the first paragraph of article 13 already contained a provision enabling the rule of public hearings to be set aside in cases where the interest of juveniles or incapacitated persons so required. In view of the fact that juvenile delinquents constituted a special category of delinquents, it was only logical to state in paragraph 2 that they were entitled to special guarantees. However, if the Commission wished that idea to form the subject of a special article, he personally would have no objection.

70. Mr. MALIK (Lebanon) was unconvinced by the two arguments put forward against the French amendment, namely that it did not concern a fundamental right and that the provision it introduced would be more in place in the declaration of the rights of the child. On the contrary, he thought that the right of juvenile delinquents to protection in justice was one of the most important fundamental rights that there was. As for the second argument, if it were true, a number of other articles would have to be removed from the covenant, such as the article on freedom of expression which was also dealt with in the convention on freedom of information and the press.

71. He had no objection to the proposal to introduce the French amendment in the form of an additional article, but he urged the members of the Commission not to vote against the amendment at that stage of the discussion.

72. Mr. MENDEZ (Philippines) was most anxious that the amendment should be introduced into some article of the covenant. He recalled in that connexion that his delegation also wished to see the Egyptian amendment to article 5 included in the covenant.

73. Mr. LEROY-BEAULIEU (France) emphasized that the French text of the amendment was perfectly clear and precise and that the difficulties encountered

74. The amendment should logically be placed at the end of paragraph 2 of article 13. It was worded in general terms, in the form of a principle, precisely because the ways in which that principle should be applied must be specified by the declaration of the rights of the child.

75. The CHAIRMAN suggested that consideration of the French amendment should be postponed until Friday, 21 April, so that the members of the Commission could study the question more thoroughly and become acquainted with the work of the other bodies concerned with the matter.

It was so decided.

Paragraph 3

76. Miss BOWIE (United Kingdom) said that the United Kingdom delegation proposed that paragraph 3 should be deleted because it considered that article 13 provided sufficient guarantees for the equitable administration of justice, and that it was inappropriate to proclaim an absolute right to compensation even in the case of a sentence quashed on appeal for purely technical reasons. Nevertheless, she wished to make it clear that in the United Kingdom provision was made for ex gratia payments of compensation in the event of a miscarriage of justice.

77. Speaking in her capacity as representative of the United States, the CHAIRMAN said that her delegation was opposed to paragraph 3 of article 13 because it dealt with a question of relatively secondary importance which ought not to be included in the covenant.

78. In the United States, both Federal and State legislation made provision for the payment of compensation in cases of the quashing of a sentence. However, the reasons for the reversal of a sentence which might be grounds for the payment of compensation varied in the different States. She listed the reasons which, in a number of States in the United States, could serve as grounds for compensation and went on to survey the regulations in various foreign countries regarding the payment of compensation for an erroneous conviction.

/79. Referring

79. Referring to the French amendment to paragraph 3 (E/CN.4/365, page 41), Mrs. Roosevelt said she could understand the anxiety of the French delegation to bring the text of the paragraph into line with French law, but pointed out that other delegations might also submit amendments in conformity with their own legislation. It all went to prove how difficult it was to introduce into the covenant a provision regarding the payment of compensation of that kind.

80. She also gave a number of figures indicating the amounts of compensation paid in France and in other countries as the result of the quashing of a sentence. The sums were extremely small, thus showing that the question was of secondary practical importance and should not be dealt with in a covenant designed to safeguard fundamental human rights and freedoms.

81. In conclusion, while pointing out that the federal legislation of the United States provided for the payment of liberal compensation on the grounds of false imprisonment or erroneous conviction, she stated that the United States delegation nevertheless proposed that paragraph 3 of article 13 should simply be deleted, in view of the fact that legislations differed both as to the reasons/^{for}the payment of compensation and on the amount of such compensation.

The meeting rose at 5.30 p.m.