



UNITED NATIONS  
ECONOMIC  
AND  
SOCIAL COUNCIL



GENERAL  
E/CN.4/SR.163  
2 May 1950

ENGLISH  
ORIGINAL: FRENCH

COMMISSION ON HUMAN RIGHTS

Sixth Session

SUMMARY RECORD OF THE HUNDRED AND SIXTY-THIRD MEETING

Held at Lake Success, New York,  
on Thursday, 20 April 1950, at 3 p.m.

CONTENTS:

Draft international covenant on human rights (annexes I and II of the report of the fifth session of the Commission on Human Rights, document E/1371).

Article 17 (E/CN.4/365, E/CN.4/353/Add.10, E/CN.4/360, E/CN.4/360/Corr.1, E/CN.4/415, E/CN.4/424, E/CN.4/432, E/CN.4/433/Rev.1, E/CN.4/433/Rev.2, E/CN.4/434) (continued)

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

Members (continued):

Mrs. MEHTA	India
Mr. AZKOUL	Lebanon
Mr. MENDEZ	Philippines
Miss BOWIE	United Kingdom of Great Britain and Northern Ireland
Mr. ORIBE	Uruguay
Mr. JEVREMOVIC	Yugoslavia

Representative of a specialized agency:

Mr. LEMOINE	International Labour Organisation (ILO)
-------------	---

Representatives of non-governmental organizations:

<u>Category A:</u>	Miss SENDER	International Confederation of Free Trade Unions (ICFTU)
	Miss BERG	World Federation of United Nations Associations (WFUNA)
<u>Category B:</u>	Mrs. VERGARA	Catholic International Union for Social Service
	Mrs. NOLDE	Commission of the Churches on International Affairs
	Mrs. RYDE	} International Alliance of Women
	Mrs. VANDENBERG	
	Miss ROBB	International Federation of University Women
	Mr. BEER	International League for the Rights of Man
	Mr. GROSSMAN	World Jewish Congress

Secretariat:

Mr. HUMPHREY	Director, Division of Human Rights
Mr. SCHWELB	Assistant Director, Division of Human Rights
Mr. LIN MOUSHENG	Secretary of the Commission

DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS (ANNEXES I AND II OF THE REPORT OF THE FIFTH SESSION OF THE COMMISSION ON HUMAN RIGHTS, DOCUMENT E/1371) (continued)

Article 17 (E/CN.4/365, E/CN.4/353/Add.10, E/CN.4/360, E/CN.4/360/Corr.1, E/CN.4/415, E/CN.4/424, E/CN.4/432, E/CN.4/433/Rev.1, E/CN.4/433/Rev.2, E/CN.4/434) (continued)

1. Mr. WHITLAM (Australia) said that the general discussion on article 17 had clarified the situation to a considerable extent, but at the same time it had left certain grounds for anxiety.

/2. In his

2. In his first speech, he had expressed the hope that the delegations which had submitted draft texts would speedily succeed in reconciling their points of view and presenting a single text. It seemed, however, that far from drawing closer together, their positions had crystallized and that finally, the Commission would be called upon to make a choice among the various proposals before it. In that eventuality, the Australian delegation's preference would go to the text proposed by the United Kingdom delegation.

3. Explaining the reasons for that preference, he recalled as an example that on the previous day he had commented on the phrase "by duly licensed visual or auditory devices", and suggested that it was undesirable that in a general convention such as it was their intention to draw up, such detailed provisions should be included. However, none of the other texts proposed would seem to make adequate provision for the special position of broadcasting in Australia and in the United Kingdom. Wireless communication in Australia was subject to a system of licensing freely accepted in the general interest. The Australian people were unanimous in believing that such a system guaranteed them ordered freedom in respect of the dissemination of information and were attached to it.

4. Further, in paragraph 2 of the United Kingdom text, there was a reference to the duties and responsibilities which the exercise of the freedoms set forth in article 17 carried with it. He believed that such a reminder was absolutely necessary at a time when it seemed increasingly difficult to draw a dividing line between liberty and licence. Australia, like all democratic countries, was opposed to censorship. However, it wished to be able to exercise the freedom which it sought within the framework of an ordered society, conscious of its duties and responsibilities.

5. Paragraph 2 of the United Kingdom text had yet another merit in the eyes of the Australian delegation. One of the most often-discussed questions that had arisen in connexion with each article of the covenant in turn was whether the Commission should be content with a general declaration of principle or whether the exceptions which ought to be established in connexion with each right should be specified. In general, the Australian delegation had opted for the first solution; nevertheless, it believed that article 17, which dealt with freedom of information, should be regarded from a slightly different angle. The General Assembly had already studied the question of freedom of information and had agreed on the necessity of establishing an international convention on that topic. Its work had not yet been crowned with achievement

and the Australian delegation for its part was doubtful whether the Assembly would reach a positive result at its next session. In the circumstances, it would appear that it was the Commission's duty to adopt a very firm stand with regard to the problem of limitations in respect of article 17. The resolution adopted by the General Assembly at its fourth session in fact directed the Commission to include in the covenant on human rights a provision regarding freedom of information which would be adequate and which would at the same time take into account the work already done in that field by the 1948 Conference and the Third Committee. The Australian delegation felt that the United Kingdom text complied with the Commission's twofold instructions most closely and concisely and would vote in favour of it.

6. Finally, the United Kingdom proposed a third paragraph which answered exactly to the situation in Australia: that country too was suffering from the dollar shortage which seemed to afflict a large part of the world. The problem was real and it was hard to say when it would come to an end. The Australian delegation did not insist on the United Kingdom text but it would agree to another text only if it could be shown that the wording was calculated to allay its anxieties in that respect. In the circumstances, however, its only course was to vote for paragraph 3 of the United Kingdom text.

7. Mr. RAMADAN (Egypt) said that he felt somewhat guilty in what he was about to say, for he proposed to discuss the prerogatives of the press.

8. Information was considered the best means of fostering understanding between peoples. It was deemed indispensable to the establishment and maintenance of peaceful and friendly relations between nations and peoples. The important part played by information on both national and the international levels had brought out the necessity of finding requisite ways and means to consolidate its advantages and to offset the consequences of possible errors. That had given rise to the concept of the right to reply, the value and usefulness of which could not be underestimated. If a State believed that false or distorted information, prejudicial to its relations with other countries, had been transmitted from one country to another or disseminated abroad, it had the right to send an official statement to the State where that information had been

/published;

published, which the latter would have to disseminate through the usual media and according to the procedure customary for the publication of news about international affairs.

9. While it was regrettable that it had not proved possible immediately to establish on an international level penalties for the publication of false or distorted information, there could at least be no doubt that the right of correction was a perfectly adequate means of counteracting the excesses to which uncontrolled freedom of the press might lead. It was the desire to check such abuses which had led the Egyptian delegation to introduce an amendment calling for the addition of the following paragraph to article 17:

"Any offence committed through the press against the person of a sovereign or head of state of a foreign country and likely to impair the friendly relations existing between States shall also be liable to penalty." (E/CN.4/434).

10. That amendment was a reply to the campaign which had been conducted for some time past by certain United States journalists against his country. The campaign had taken on a very wide variety of forms and had been couched in terms showing utter disregard for that international courtesy prevailing among countries which, from the earliest times, had maintained the most friendly relations and whose frequent intercourse in the cultural and artistic spheres had continually strengthened those bonds. As the right to reply did not exist in the United States every effort to have a correction published in the magazine or editorials which had published or spread the defamatory information had been useless.

11. The Egyptian representative recognized the liberal tradition of the United States press. Nevertheless, when a press campaign similar to that to which he had just referred threatened to impair friendly relations between two States it was necessary to add a provision to international law in order to prevent such abuses.

12. The Egyptian amendment reproduced the text of an article of the Egyptian criminal code; it was also to be found in the French and Belgian criminal codes.

13. Referring to the French proposal, Mr. Ramadan said that he approved it in principle, but the terms used seemed to be too laconic. He would therefore have to abstain from voting on that proposal, and he would support the text of the United Kingdom delegation.

14. Mrs. MEHTA (India) explained the position of her delegation with regard to the various amendments submitted.

/15. She thought

15. She thought the text of the first paragraph of the United States amendment (E/CN.4/433/Rev.1) was satisfactory with the exception of the words "without governmental interference". In her opinion, that text was preferable to the one appearing in the French amendment (E/CN.4/365). The principle of those two texts was the same, but the concise text of the French amendment was out of tune with the text of the articles which had already been adopted.

16. Passing to the examination of paragraph 2, she repeated that she preferred the United Kingdom text (E/CN.4/365) which reproduced article 2 of the Geneva Convention. The Indian delegation had thought it necessary to submit an amendment (E/CN.4/424) to that paragraph. It seemed logical that if certain restrictions could be imposed "in the interests of national security", other restrictions might be necessary in the interest of international security. That amendment took up, in a different form, the principles expressed in article 21, which the Commission had not yet studied.

17. She thought the amendment suggested by the Egyptian representative was unnecessary as the principle it contained had already been expressed in the amendment submitted by India.

18. Referring to the United Kingdom amendment, she pointed out that paragraph 3, which it was suggested should be added, contained a provision which applied only to a temporary situation and should not be included in a general international covenant.

19. Miss SENDER (International Confederation of Free Trade Unions) felt a growing concern about the limitations which the Commission kept introducing into the draft covenant. She was particularly opposed to the repeated use of the expression "public order". It should not be forgotten that the covenant on human rights was intended for those very countries in which the rights the Commission was endeavouring to define were not respected. There was a risk that those countries might use so vague an expression to suit their own ends, and it should therefore be rejected.

20. She shared the Indian representative's opinion with respect to the United Kingdom amendment to paragraph 3, and pointed out that the measures listed in that amendment were dictated by a temporary economic necessity and could not be likened to measures of censorship.

21. Turning to the various paragraphs of article 17 and the amendments to them, she said that paragraph 1 of the United States amendment was satisfactory, but that she would prefer paragraph 2 to be drafted along the lines of the United Kingdom amendment.

22. Mr. CHANG (China) suggested that, in view of the number of proposals and amendments before it, the Commission should adopt the procedure of making a separate study of a basic proposal, deciding whether it required amendments and then voting on the amendments.

23. Following his own suggestion, he would confine his comments to the text of the United States amendment (E/CN.4/433/Rev.1). The first paragraph of that text was satisfactory, but the words "of information and" should be inserted between the words "freedom" and "of expression" in the first line. Inasmuch as the Commission had been concerned for three years with the freedom of information, mention of it appeared indispensable. He also suggested that the words "without governmental interference" should be voted on separately, and that, for reasons of form, it would be better to replace the word "by" before "any other media" by the word "through".

24. He was opposed to the words "This right" at the beginning of paragraph 2. Reference to paragraph 1 showed that the right in question included "freedom to hold opinions, to seek, receive and impart information and ideas". The right to express opinions and the freedom to seek and receive information could not be subject to "such limitations as are provided by law", which could apply only to the right to impart information. He therefore suggested that the first line of paragraph 2 might be re-drafted to read: "The right to impart information and ideas shall be subject only...". He also suggested that the words "for the protection of" before "national security" should be replaced by "in the interest of", and that the words "for the protection of" should be inserted before the phrase, "the rights, reputation or freedom of other persons".

25. He explained that he had asked for a separate vote on the words "without governmental interference" because he considered them dangerous in that they might open the door to many abuses. There would, in any case, be governmental interference as only Governments could impose the limitations mentioned in paragraph 2. Arbitrary interference, however, should be prevented and if the Commission so decided, it could stipulate in paragraph 1 that the right to freedom of information and expression belonged to the individual and that there could be no arbitrary interference on the part of the Government.

26. The Commission was engaged in the study of an extremely broad subject; when future conventions and protocols were being drawn up it could return to the same questions and study them in a more detailed manner.

27. The CHAIRMAN, speaking as the United States representative, accepted the amendments proposed by the Chinese representative to paragraph 1 of the United States text. She would however prefer to keep the beginning of the second paragraph in its present form, and to delete the words "to hold opinions" in paragraph 1. She was willing to accept the substitution of the words "in the interests of" for the term "for the protection of".

28. With regard to the words "to be free from governmental interference", the principal source of interference was censorship enforced by the State. The words "to be free from governmental interference" must therefore be retained in article 17; they provided the necessary protection for freedom of information.

29. Miss BOWIE (United Kingdom) thought that it was necessary to keep the reference to the right to freedom of opinion in paragraph 1 and would prefer the Chinese text to that proposed by the United States representative.

30. Mr. KYROU (Greece) approved the Chinese amendments on the whole, but thought that the addition of the words "of information and" in paragraph 1 after the word "freedom" would overburden the text.

31. Mr. VAIENZUELA (Chile) pointed out that the various proposals under discussion were in no way different in substance. For its part, the Chilean delegation would prefer as a basic text that proposed by the French delegation.

32. With regard to the United States text, he objected to the inclusion in paragraph 1 of the phrase "to be free from governmental interference" in paragraph 1. The United States representative had shown that those words were intended to facilitate protection against censorship and he thought that was a worthy aim. In order to criticize, however, the Chilean delegation adopted a different standpoint. It considered that the Commission should not allow itself to be influenced by the tendency, all too common in United Nations bodies, to set governments and people against each other and to regard governments as separate elements of the national community whose sphere of activity it was essential to control and reduce. The Chilean delegation had always opposed that tendency, feeling that in every democratic country the government emanated from the people and was the expression of its collective will. It would therefore vote against the inclusion of that phrase in article 17.

33. Broaching the question of the limitations to be placed upon the freedoms proclaimed, he noted that the Yugoslav delegation was attempting to replace the idea of national security and public order by a specific reference to racial discrimination and incitement to war. All the members of the Commission doubtless shared the aspirations of the Yugoslav representative, but they could not overlook the fact that the same clause had been originally submitted by certain delegations inspired by political motives. The present intentions of the Yugoslav delegation were above reproach, but the text it submitted was all too painfully reminiscent of the campaign of slander against the democratic Press, and the Chilean delegation did not wish to see it adopted.

34. He also feared that the United Kingdom text was too vague and flexible; national security could actually be put forward as a justification for many abuses. In the absence of a more satisfactory proposal however, the Chilean delegation would accept the United Kingdom text, feeling that it was essential to have some confidence in the good faith of the States which would sign the covenant.

35. On the other hand, the Chilean delegation would vote against paragraph 3 of the text proposed by the United Kingdom, firstly because it referred to an exceptional case due to special circumstances which had no place in the draft covenant, and secondly because the adoption of such a provision might be interpreted as an encouragement to all countries in difficulties to balance their payments with the dollar zone.

36. Mr. Valenzuela understood the motives which had led the Egyptian representative to submit his amendment. But either the press was a government service, in which case the government was responsible for what was published, or the press was a free enterprise, and journals' contributions could in no way compromise relations between countries. Article 17 appeared to affirm the principle of a free and independent press; to adopt the Egyptian amendment would however, be equivalent to endorsing the principle of censorship. For those reasons, the delegation of Chile could not support the Egyptian proposal.

37. Mr. JEVREMOVIC (Yugoslavia) expressed his gratitude to the Chilean representative for the latter's understanding of Yugoslavia's difficult situation; but he felt that the representative of Chile was mistaken in thinking that the Yugoslav delegation's amendment had taken account only of its own country's difficulties. The Yugoslav amendment was based on a fundamental principle and flowed from the desire to prevent any attempt to create conditions favourable to a new world war.

38. The CHAIRMAN, speaking as the representative of the United States of America, said that although the Yugoslav amendment contained certain provisions intended to prevent the spread of false information, it was nonetheless founded upon the concept of a society indoctrinated by the State, in which freedom of expression was tolerated only in so far as it served the aims of the party in power. The amendment was not based upon the generally accepted concept of freedom of information, and the United States delegation could not, therefore, support it.

39. Mr. AZKOUL (Lebanon) explained that his delegation opposed the Yugoslav amendment because it felt that the words "in the interests of democracy" were ambiguous and might give rise to all manner of abuses.

40. As regard the text proposed by the United Kingdom, Mr. Azkoul said that notwithstanding the sympathy originally felt by his delegation for that text, it could not support it for a number of reasons. First of all, the Lebanese delegation felt considerable apprehension regarding the Australian representative's contention that if need be, that text could serve to replace a convention on freedom of information and of the press. In the second place, a close examination revealed the fact that the text contained certain details which diminished its value and even rendered it dangerous. For example, the United Kingdom had substituted for the idea of "public order", that of "disorder". But the expression "public order" was a well-known and accepted phrase which could be clearly defined, whereas the word "disorder" had no precise legal meaning. Similarly, Mr. Azkoul objected to the expression "crime", since unless it were previously determined what acts should be considered in that category, the State was left free to designate any act as criminal. Finally, the representative of Lebanon opposed the expressions "information received in confidence" and "authority ... of the judiciary". Once again, the former left excessive power to the State and the latter would permit the institution of illegal censorship.

41. Mr. Azkoul thought the only interesting idea which merited retention in paragraph 2 of the United Kingdom text was that to limit freedom of information in order to safeguard "the impartiality of the judiciary". For the rest, the United Kingdom delegation had attempted to reproduce the text adopted by the Conference on Freedom of Information and of the Press, while destroying its substance.

42. The United States proposal was almost identical to the French proposal except for the reference to governmental interference. He did not see why freedom of information should be ensured protection only against governmental interference. In many countries, private interference from groups of individuals was more to be feared than governmental interference. His delegation would therefore like reference to be made to private interference.

43. As to the Egyptian amendment, he said it must evoke some sympathy when the tendentious information on Middle Eastern countries published by certain elements of the western Press was remembered. He would therefore be inclined to support that amendment if it were not for the fact that he thought the Indian amendment adequately fulfilled the aim of the Egyptian representative. In order to combine the two amendments he proposed the addition, at the end of the second paragraph of the United States text, of the words "or friendly relations between nations".

44. Finally, Mr. Azkoul said that if the Commission wished to retain the idea of freedom of opinion, article 17 should, for greater clarity, be divided into three paragraphs, the first of which would begin by the words "Every person shall have the right to freedom of opinion", the second by the words "Every person shall have the right to seek, receive and impart information...", and the third by the words "The right stated in paragraph 2 may be subject to restrictions but only with regard to...".

45. Miss BOWIE (United Kingdom) in reply to the remarks of the Lebanese representative, said that the text proposed by the United Kingdom delegation was in no way intended to replace a convention on freedom of information. The United Kingdom delegation had merely drawn up the draft of an article on the basis of discussions which had already taken place, and it had reproduced almost word for word the text of article 2 of the draft convention adopted by the Third Committee, except for the reference to "the authority of the judiciary", which replaced the reference to "the fair administration of justice".

46. The CHAIRMAN, speaking as the representative of the United States of America, submitted a new text which she proposed for article 17 (E/CN.4/433/Rev.2) and which embodied most of the suggestions made by the Chinese representative. The United States delegation regretted that it was unable to accept the Indian amendment. It was not unaware of the situation existing in certain countries and it understood that there were cases where limitations of the type visualized by the Indian amendment were fully justified. But the first duty of the Commission was to protect freedom of information and it would not be able to do so if it had to take into account all the problems which nowadays must be faced by Governments. It should not be forgotten that most of those difficulties were temporary, whereas the covenant was to be a lasting thing. The covenant would, besides, include a general limitative clause which should be sufficient to allay all anxiety in that field.

47. She did not think the Egyptian amendment should be retained, for its result would be to prohibit all legitimate criticism of Heads of State, which was contrary to democratic principles.

48. Proceeding then to answer the representative of Chile, she pointed out that censorship, for example, was imposed by the Government but borne by the people. In democratic countries, the problem did not arise. The case of totalitarian regimes must, however, be provided for and a guarantee should be included in article 17 against possible State action against media of information when it was to the State's interest to suppress freedom of the press.

49. Mr. ORDONNEAU (France) agreed that it was difficult to take a vote when there was no basic text. When there were several texts each of which might be taken as a basic text, the generally accepted criterion for distinguishing between them was the order in which they had been submitted. The Commission should therefore decide first whether it would apply that criterion or whether on the contrary it would select the text which it considered most likely to facilitate its voting procedure.

50. He personally felt that both those methods were acceptable. Nevertheless, if the Commission decided in favour of the principle of the order in which the texts had been submitted, he would be obliged to maintain

/that the

that the French text undoubtedly took chronological precedence, for it was based on the original proposal submitted by the French representative to the Drafting Committee in Geneva in 1949.

51. At the same time, he was ready to agree to the Chinese representative's suggestion and to adopt the United States text as the basic text; he reserved the right, however, to present amendments to that text reflecting the French viewpoint on the question.

52. Mr. CHANG (China) formally asked the Commission to adopt document E/CN.4/433/Rev.2 as the basic text.

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

53. Mr. NISOT (Belgium) requested that when the revised version of the American text was put to the vote, a separate vote should be taken on the words "without government interference", which he would vote against, and also on the words "freedom of opinion" which the Belgian delegation did not wish to see included without explanations in the body of article 17, as thinking as well as breathing was a function of the human body and the law could not impair it.

54. Mr. ORDONNEAU (France), supported by Miss BOWIE (United Kingdom), suggested that the voting should be postponed until the following meeting and that the Commission should adjourn immediately in order to enable representatives to draft their amendments to the basic text which had just been chosen.

It was so decided unanimously.

The meeting rose at 4.55 p.m.