



UNITED NATIONS
ECONOMIC
AND
SOCIAL COUNCIL



GENERAL

E/CN.4/SR.166

1 May 1950

ENGLISH

ORIGINAL: FRENCH

COMMISSION ON HUMAN RIGHTS

Sixth Session

SUMMARY RECORD OF THE HUNDRED AND SIXTY-SIXTH MEETING

Held at Lake Success, New York,
on Monday, 24 April 1950, at 11.15 a.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) (continued):

Article 13, paragraph 5 (E/CN.4/365, E/CN.4/441, E/CN.4/445, E/CN.4/448, E/CN.4/L.4) (continued)

Article 17, paragraph 3 (E/CN.4/365, E/CN.4/424, E/CN.4/433/Rev.2, E/CN.4/434, E/CN.4/438/Rev.1) (continued)

<u>Chairman:</u>	Mr. CHANG	China
<u>Members:</u>	Mr. WHITLAM	Australia
	Mr. NISOT	Belgium
	Mr. VALENZUELA	Chile
	Mr. SORENSON	Denmark
	Mr. PAMADAN	Egypt
	Mr. CASSIN	France
	Mr. KYROU	Greece

<u>Members:</u> (cont'd)	Mrs. MEHTA	India
	Mr. MALIK	Lebanon
	Mr. MENDEZ	Philippines
	Miss BOWIE	United Kingdom of Great Britain and Northern Ireland
	Mr. SIMSARIAN	United States of America
	Mr. ORIBE	Uruguay
	Mr. JEVREMOVIC	Yugoslavia

Also present:

Mrs. GOLDMAN	Commission on the Status of Women
--------------	-----------------------------------

Representatives of non-governmental organizations:

<u>Category A:</u>	Miss SENDER	International Confederation of Free Trade Unions (ICFTU)
<u>Category B:</u>	Mrs. NOIDE	Commission of the Churches on International Affairs
	Mr. MOSKOWITZ	Consultative Council of Jewish Organizations
	Mr. CRUICKSHANK	Inter-American Council of Commerce and Production
	Miss TOMLINSON	International Federation of Business and Professional Women
	Mr. BEER	International League for the Rights of Man
	Miss DINGMAN	International Union for Child Welfare
	Mr. GROSSMAN	World Jewish Congress
	Mrs. ARNOLD	World Young Women's Christian Association

Secretariat:

Mr. SCHWELB	Assistant-Director of the Division of Human Rights
Mr. LIN MOUSHENG } Mr. DAS }	Secretaries 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 13, paragraph 5 (E/CN.4/365, E/CN.4/441, E/CN.4/445, E/CN.4/448, E/CN.4/L.4) (continued)

1. The CHAIRMAN welcomed Mr. Cassin, French representative, who had so far not taken part in the Commission's work during the sixth session.
2. Miss BOWIE (United Kingdom), on the whole, favoured the text suggested for paragraph 5 by the United States of America (E/CN.4/441). She feared, however, that the words "juvenile delinquents" might be interpreted to mean that the juveniles concerned were, in fact, guilty. To meet that difficulty, she proposed the text given in document E/CN.4/445.
3. Mr. KYROU (Greece) supported the United Kingdom proposal and recalled that article 13, paragraph 1, already mentioned the case of juveniles.
4. Mrs. MEHTA (India) agreed with the United Kingdom representative. To her mind, article 13 as a whole dealt with the procedure designed to guarantee everyone the right to a fair and public hearing by an independent and impartial tribunal. The provisions concerning juveniles might therefore be dealt with in a separate article.
5. Mr. CASSIN (France) thanked the Chairman for his words of welcome. He had always taken a great interest in the Commission and his absence had been due to reasons beyond his control.
6. He was prepared to support the text of article 13, paragraph 5 submitted by the United States delegation; it was very close to the French text (E/CN.4/365). He agreed with the United Kingdom representative that it would be better not to use the word "delinquent", as it implied that the juvenile had been found guilty. The French amendment said "charged with".
7. Referring to the Indian representative's objection, he observed that special safeguards for juveniles were appropriate in article 13 because the Commission there sought to stipulate the safeguards which everyone charged with a penal offence should enjoy. If there was no reference to juveniles in the article, the adoption of a text particularly concerned with juveniles would have to be considered later, and that, in his opinion, would be a mistake.

8. Mr. RAMADAN (Egypt) asked the United Kingdom representative whether the word "rehabilitation" corresponded to "re-education", as "réhabilitation" had an entirely different meaning in French.
9. Mr. MENDEZ (Philippines) was not entirely satisfied with the use of the word "contamination" in the English text of the United Kingdom amendment.
10. Miss BOWIE (United Kingdom) explained that, in her opinion, juveniles against whom proceedings were taken should not be placed in the same prisons as hardened and habitual criminals, but should rather be sent to special institutions.
11. The word "rehabilitation" was the equivalent of the French word "rééducation". She had so drafted her text that, apart from the final phrase, it referred only to the procedure.
12. Mr. JEVREMOVIC (Yugoslavia) supported the inclusion of a paragraph for the protection of juveniles in article 13. He also thought that the word "delinquent" should not be used in connexion with juveniles.
13. In penal law the French word "réhabilitation" had a special meaning: -- the action taken to expunge all reference to a sentence from the record; he preferred "re-education".
14. He would prefer the French version (E/CN.4/365). He thought, however, that the word "enfants" was too restrictive and requested the French representative to substitute the word "mineurs" for it.
15. Mr. SIMSARIAN (United States of America) was prepared to accept the United Kingdom text. He preferred the word "rehabilitation" to "re-education", as the former term was broader in meaning and implied the latter. Furthermore, "contamination" was covered by "rehabilitation" and could, therefore, be eliminated.
16. At the same time, he suggested that the representatives of France, the United Kingdom and the United States should meet and prepare a joint text before the Commission's next meeting.

17. Mrs. MEHTA (India) reminded the Commission that the French amendment had already been discussed and rejected because its scope was narrower than that of the United Kingdom and United States drafts. She therefore proposed the following text: "Juveniles charged with a criminal offence shall receive special consideration in keeping with their age" (E/CN.4/448).

18. Mr. MENDEZ (Philippines) observed that a distinction must be drawn between two problems, that of the treatment given to juveniles before and during their hearing and that of their re-education. He proposed that it should be stipulated that the physical and moral welfare of juveniles charged with a criminal offence should be ensured and that the problem of their re-education should be given consideration.

19. Mr. WHITIAM (Australia) agreed that the word "contamination" should be deleted from the English text proposed by the United Kingdom. He was prepared to accept the text proposed by India but suggested the addition of the words "and the desirability of promoting rehabilitation". The process of rehabilitation in fact originated with the decisions of the tribunal.

20. He supported the United States representative's suggestion that an agreed text should be worked out.

21. Miss BOWIE (United Kingdom) also supported the United States representative's suggestion. She further proposed that the Indian representative should be a member of the group preparing a text on which agreement could be reached.

22. Mr. CASSIN (France) also supported the United States representative's suggestion. He was sympathetic to the Yugoslav representative's request and inclined to meet it. As minors who had almost attained their majority were treated as adults in many countries, however, too categorical a term must be avoided.

23. Mr. WHITIAM (Australia) also thought that the Commission should pay particular attention to the fate of children.

/24. The CHAIRMAN,

24. The CHAIRMAN, speaking as representative of China, pointed out that the word "mineurs" had been used in paragraph 1 of the French text and that it might be advisable to use it again. He proposed that the Commission should adopt the United States representative's suggestion and that its next meeting should accordingly be held at 3 p.m. and not at 2.30 p.m.

It was so decided.

Article 17, paragraph 3 (E/CN.4/365, E/CN.4/424, E/CN.4/433/Rev.2, E/CN.4/434, E/CN.4/438/Rev.1)

25. The CHAIRMAN recalled that the Commission had not yet adopted a final text for paragraph 3 (originally paragraph 2) of article 17.

26. Miss BOWIE (United Kingdom) pointed out that the phrase "in the interest of" had already been discussed at length. She considered that the idea of protection was already contained in the text and therefore proposed that a vote should be taken.

27. Mr. MALIK (Lebanon) enquired whether the Australian representative's proposal was a formal proposal or merely a suggestion.

28. Mr. CASSIN (France) did not think that adoption of the phrase "sauvegarde de la sécurité nationale" (E/CN.4/438/Rev.1) would result in any redundancy in the French text. It was undoubtedly the most satisfactory phrase.

29. Mr. WHITIAM (Australia) pointed out that article 17 dealt with the limitations of a right. Those limitations were qualified by the word "necessary" and his delegation's proposal was to replace the phrase "in the interest of" by the word "for".

30. He thought that the Commission might leave it to the Style Committee to ensure that the English and French texts corresponded exactly. If, however, the Commission wished to decide the matter, he would maintain his proposal.

/s/ Mr. CASSIN

31. Mr. CASSIN (France) had no objection to the Australian representative's suggestion with regard to the Style Committee. It was, however, essential that differences of substance should be kept in mind. The word "protection" was the most liberal and indicated that the limitations had been introduced for the sole purpose of protecting the public interest. The phrase "in the interest of", on the contrary, had an active connotation and might justify improper limitations.

32. Mr. MALIK (Lebanon) also considered that there was a difference of substance between the two texts and proposed that a vote should be taken on the matter before the final text was referred to the Style Committee.

33. Mr. SIMSARIAN (United States of America) reminded the Commission that the idea of protection was to be found in articles 16, 17, 18 and 19, and that the original United States proposal had used the words "in the interest of". He suggested that those words should be restored, but would not object to the words "for the protection of..." in the French amendment.

34. Mr. MENDEZ (Philippines) would prefer to see the formula "necessary for the protection of national security" replaced by the words "required by national security".

35. Miss BOWIE (United Kingdom) accepted the French proposal in spite of the possibility of a slight redundancy in its terms.

36. The CHAIRMAN said that, as all the members of the Commission appeared to be in agreement on the French amendment, it was unnecessary to put it to the vote.

It was so decided.

37. Mr. MALIK (Lebanon) suggested that the words "of other persons" in the English text should be replaced by the word "others".

38. Mr. SIMSARIAN (United States of America) pointed out that as a result of the adoption of the French amendment the words "for the protection of," which were repeated at the end of the paragraph, should be deleted. Also, the word "reputation" in the English text should be in the plural.

Those amendments were adopted.

39. The CHAIRMAN then invited the members of the Commission to examine the United Kingdom amendment to replace the words "of public order" by the words "for prevention of disorder or crime" (E/CN.4/365, page 50).

40. Miss BOWIE (United Kingdom) explained that the United Kingdom amendment was merely intended to reduce the restrictions on freedom of information provided in paragraph 2 as much as possible. Her delegation thought that the idea of public order was much too vague and would enable governments to place unjustified restrictions on freedom of information.

41. Mr. CASSIN (France) said it was just so as to meet the United Kingdom representative's objections that his delegation had proposed to complete and clarify the idea of public order by adding the words "in a democratic society" (E/CN.4/438/Rev.1).

42. He could not agree to replacing the idea of public order, an idea which was well known in most countries, by that of "disorder" which did not correspond to any legal concept. Moreover, the expression "public order in a democratic society" appeared in article 29 of the Universal Declaration of Human Rights. It had been inserted in that article after long discussion, during which emphasis had been laid on the need to decide the meaning of the words "public order" so as to prevent any abuse in interpreting them.

43. Mr. SIMSARIAN (United States of America) asked first that two separate votes should be taken on the United Kingdom proposal, one on the words "for prevention of disorder" and the other on the words "or crime".

44. The United States delegation understood the United Kingdom arguments for its amendment, but nevertheless preferred to retain "public order". That was the usual expression and it appeared both in article 29 of the Universal Declaration and in articles 16, 17, 18 and 19 of the covenant itself. For those reasons, the United States delegation would vote against that part of the United Kingdom proposal.

45. His delegation had greater objections to the insertion of the words "or crime". The expression had no exact meaning in law. It would make a big breach in the system for the protection of freedom of information provided by the covenant and would give rise to all sorts of abuses. He would therefore vote against it.

46. Finally, although the United States delegation sympathized with the French amendment, it could not support it, because, like the United Kingdom amendment, it might give rise to abuses in interpretation. The words "democratic society" certainly appeared in the Universal Declaration, but the covenant was a legal instrument and should be drafted as concisely and exactly as possible. The word "democracy" was not interpreted in the same way everywhere: two entirely different systems of government both laid claim to democratic principles. That was why the Commission had rejected a similar proposal for the amendment of article 18 at its previous session, and why the United States delegation would vote against the present French amendment.

47. Replying to the CHAIRMAN, Mrs. MEHTA (India) confirmed that her delegation had not withdrawn its amendment (E/CN.4/424). She would introduce it in due course.

48. Mr. MALIK (Lebanon) admitted, as the French representative had done, that the idea of public order was well known to several legislations, including that of Lebanon. So much stated, he had nevertheless been struck by the United Kingdom representative's arguments; her proposal reduced restrictions on freedom of information as far as was possible. Therefore, although Lebanese legislation and jurisprudence recognized the idea of public order, he would vote for the first part of the United Kingdom amendment in the interest of precisely those freedoms which the French representative wished to safeguard. However,

/bowing

bowing to the arguments of the United States representative, he would vote against the second part of the amendment, that is, the words "or crime".

49. With regard to the French amendment proposing the addition of the words "in a democratic society", he agreed with the United States representative that at such a critical stage in history it would be very dangerous to use an expression which could give rise to more varying interpretations than any other.

50. Lastly, he could not do other than regard the Indian and Egyptian amendments (E/CN.4/424 and E/CN.4/434 respectively) with special sympathy, in view of the tendentious information that had been published against certain countries of the East and Middle East.

51. Mr. NISOT (Belgium) emphasized that the idea of public order was known to most courts in the world, including those of the United Kingdom, and its application was clearly defined by jurisprudence. It would be very risky to substitute for that exact legal concept vaguer terms which would be incompatible with the tenor of such a fundamental text as the covenant under preparation. The Belgian delegation would therefore vote against the United Kingdom amendment.

52. On the other hand, it would support the French amendment because it regarded it as necessary and also because, in so doing, it would show how it wished to see article 17 interpreted.

53. Mr. VALENZUELA (Chile) also thought that the idea of public order could not be replaced by "disorder". Two completely different ideas were involved. There was general agreement on the meaning of public order, although there were differences between the French and German doctrines on the subject. The Chilean delegation would give its wholehearted support to the French amendment. It was useful to define the rather abstract notion of public order for the first time at the international level. If that amendment were adopted, there would be a positive stipulation in the covenant that any law or measure likely to threaten the equilibrium of a democratic society would be contrary to the letter and the spirit of the covenant. There was no need to be afraid of using the term "democratic"; its interpretation was based upon the Charter of the United Nations and the Universal Declaration of Human Rights.

54. Mr. ORRIB (Uruguay) associated himself wholeheartedly with the Chilean representative's words. For the same reasons he also would vote for the French amendment and against that of the United Kingdom.

55. Mr. MENDEZ (Philippines) stated in his turn that the idea of public order went beyond the narrower concept of public security with which alone the United Kingdom amendment was concerned.

56. On the other hand, the French amendment introduced political considerations which his delegation would prefer to see removed from the text under consideration. He suggested that the expression "a democratic society" should be replaced by some such wider formula as "a free society".

57. Mr. JEVREMOVIC (Yugoslavia) recalled that at the previous meeting he had given many examples of the abuses to which the adoption of the United Kingdom amendment might give rise.

58. He recognized that the term "democratic" could be interpreted in many ways. But he did not think that the expression "public order" -- which covered the most diverse orders, including the fascist -- would be more exact if it remained undefined. If the Commission understood "public order" to mean the order in a democratic society, it should not be afraid to say so and to point out that it understood "democratic society" to mean a society governed by the principles of the Charter, which were the foundation of democracy.

59. The French amendment did not, however, entirely satisfy the Yugoslav delegation. The expressions "order" and "public security", even when defined as suggested by the French delegation, were still too vague and might be used to justify many restrictions on freedom of information. The fundamental aim of the United Nations was to keep the peace and ensure harmonious relations between peoples. From that point of view, article 17 was certainly of special importance, in view of the worldwide influence of the Press. It must be borne in mind that freedom of information lent itself to exploitation more than any other. If misused, it could even run counter to the fundamental aim of the Charter, namely, the maintenance of peace. In that connexion, he again drew the Commission's attention to the serious gap in article 17, and to the need to adopt a provision which would stipulate that the freedoms mentioned were limited to the extent to which they endangered peace, collective security and the attainment of the fundamental aims of the Charter.

60. Mr. CASSIN (France) urged the United Kingdom representative to consider how inadvisable it would be to adopt the restrictive text she proposed. Cases could arise which did not involve criminal law, crime or disorder, but which nevertheless threatened public order and which might necessitate a restriction on freedom of information. Thus the balance of payments -- to which the additional paragraph proposed by the United Kingdom delegation itself referred -- came under public order. If the Commission supported the French interpretation of the expression "public order", it would not need to keep that additional paragraph, as the case envisaged would already be provided for in article 17.

61. Reverting to the French amendment, he again stressed the fact that the covenant must be based on the Universal Declaration of Human Rights. The covenant could complement the Declaration by making it more precise, but in no circumstances could it derogate from it. That, however, was what it would do if the expression "in a democratic society", which appeared in the Declaration, was not retained.

62. Furthermore, the French amendment was useful in that it dealt with questions of detail, such as those raised in the Egyptian delegation's amendment. Detailed provisions were out of place in an instrument of such a general character as the covenant on human rights. They would appear in the special convention on freedom of information.

63. In conclusion, Mr. Cassin admitted that he was somewhat disturbed by the Yugoslav representative's remarks. He thought, however, that the French amendment should satisfy the Yugoslav representative; it was unquestionable that in a genuinely democratic society a state of peace was indispensable for national security, and anything which threatened peace could only be considered as running counter to public order.

The meeting rose at 1 p.m.