UNITED NATIONS

ECONOMIC AND SOCIAL COUNCIL

GENERAL

E/CN.4/SR.234
2 July 1951

ENGLISH
ORIGINAL: ENGLISH AND FRENCH

Dual distribution

COMMISSION ON HUMAN RIGHTS

Seventh Session

SUMMARY RECORD OF THE TWO HUNDRED AND THIRTY-FOURTH MEETING

held at the Palais des Nations, Geneva,
on Wednesday, 9 May 1951, at 3.30 p.m.

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Present:

Chairman:	Mr. MALIK (Lebanon)
Members:	
Australia	Mr. WHITLAM
Chile	Mr. SANTA CRUZ
China	Mr. YU
Denmark	Mr. SORENSEN
Egypt	AZMI Bey
France	Mr. CASSIN
Greece	Mr. MUSTAKIADES
Guatemala	Mr. DUPONT-WILLEMIN
India	Mrs. MEHTA
Pakistan	Mr. WAHEED
Sweden	Mrs. MOSSEL
Ukrainian Soviet Socialist Republic	Mr. KOVALENKO
Union of Soviet Socialist Republics	Mr. MOROSOV
United Kingdom of Great Britain and Northern Ireland	Mr. HOWARD
United States of America	Mrs. ROOSEVELT
Uruguay	Mr. CLAUDIO
Yugoslavia	Mr. JEVREMOVIC
Representatives of specialized agencies:	
International Labour Organisation	Mr. PICKFORD
United Nations Educational, Scientific and Cultural Organization	Mr. BAMBATE
World Health Organisation	Mr. CANDAU
Representing the High Commissioner for Refugees:	Mrs. SIMS

Representatives of non-governmental organizations:

Category A

International Confederation of Free Trade Unions	Miss SENDER

Category B and Register

Caritas Internationalis	Mr. PETERMAN
Carnegie Endowment for International Peace	Mrs. CARTER
Catholic International Union for Social Service	Miss de ROMER
Consultative Council of Jewish Organizations	Mr. MOSKOWITZ
Co-ordinating Board of Jewish Organizations	Mr. WARBURG
International Council of Women	Mrs. Carter
International Federation of Business and Professional Women	Miss TOMLINSON
International Federation of University Women	Miss ROBB
International League for the Rights of Man	Mr. BALDWIN
International Union of Catholic Women's Leagues	Miss de ROMER Miss ARCHINARD
Liaison Committee of Women's International Organizations	Miss ROBB
Pax Romana	Mr. MacBRIDE
World Jewish Congress	Mr. BIENENFELD Mr. RIEGNER

Secretariat

Mr. Humphrey	Representing the Secretary-General
Mr. Das	Secretary to the Commission

DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS AND MEASURES OF IMPLEMENTATION (item 3 of the agenda):

(b) Inclusion in the Covenant of provisions concerning economic, social and cultural rights:

1. General Clause concerning Economic, Social and Cultural Rights (E/CN.4/612, E/CN.4/(15) (continued)

The CHAIRMAN invited the Commission to consider the proposal, made by the United States representative at the close of the preceding meeting, that the Commission should again reconsider its decision regarding a time-limit for the submission of new proposals for a general clause concerning economic, social and cultural rights.

Mr. JEVREMOVIC (Yugoslavia) did not believe there was any necessity to re-open the discussion, since the question of a general clause could be discussed in connexion with article 1 of the draft Covenant. For himself, he had certain reservations with regard to paragraph 2 of article 1, and believed that it might be possible to insert a clause extending the application of the whole of article 1 to the provisions on economic, social and cultural rights.

AZMI Bey (Egypt) also opposed the proposal that the discussion should be re-opened. He was afraid that if it were adopted, the effect would be to re-open discussion on the principle of the general clause, on which the Commission had taken a formal, affirmative decision. Also, in view of the slow progress the Commission was making and the length of the discussions which had so far taken place, he was very much afraid that if the proposal were adopted the Commission would not be able to discuss the question of implementation, much less item 3(d) (Study of federal state article) and item 3(e) (The territorial application of the Covenant), to which he personally attached great importance. He therefore urged that the Commission pass to the examination of the next item on its agenda, namely, the question of implementation. The resulting discussion would, he felt, enable the problems arising in connexion with the general clause to be solved later.

Mr. TU (China) said that there was no need to reopen the discussion on the substance of the general clause, but that the vote taken at the previous meeting on the joint French-United States amendment (E/CN.4/615) had been so close as to warrant reconsideration of the Commission's decision, by allowing representatives to submit new texts. As it had already been decided in principle to include a general clause covering the provisions relating to economic and social rights, it was incumbent upon the Commission to give itself another chance to elaborate and adopt a text. He would therefore strongly support the United States proposal.

Mr. KOVALENKO (Ukrainian Soviet Socialist Republic) did not think there was any necessity to reopen the question; the more so as representatives who were opposed to the inclusion of a general clause could raise the matter either in the Economic and Social Council or in the General Assembly. If, however, the United States proposal was pressed to a vote, he considered that a two-thirds majority should be required for its adoption.

The CHAIRMAN said it was true that under the rules of procedure of the General Assembly reconsideration of any decision required a two-thirds majority. However, the rules of procedure of the functional commissions of the Economic and Social Council made no provision for that contingency.

Mr. CLAUSULLO (Uruguay) was not in favour of the United States proposal. In his view, the undertaking contained in article 1 of the draft Covenant could be interpreted as applying to economic, social and cultural rights; moreover, the Commission could, if need be, revise the text of that article when it came to reconsider articles 1 - 18 of the draft Covenant. There would, therefore, be no point in re-opening the discussion on the general clause.

Mr. DUPONT-WILLEMIN (Guatemala) agreed with the Egyptian representative that purely and simply to re-open discussion on the general clause might further hold up the Commission's work. At the same time, it would be a logical step to agree to the United States proposal, since the Commission

had already adopted the first three paragraphs of the original French proposal (E/CN.4/612). That being so, he would formally propose, as a compromise, that the discussion be re-opened for the sole purpose of reconsidering the final paragraph of the French proposal.

The CHAIRMAN said he could not accept so restrictive a proposal.

Mr. CASSIN (France) also pointed out that the United States proposal would give the other members of the Commission a further opportunity of submitting proposals or amendments. The representative of Guatemala was paying a high compliment to the French delegation, but it would surely be less than fair not to allow the other members of the Commission an equal opportunity.

If the Commission adopted the United States proposal, he thought the Chairman might fix a fresh dead-line for the submission of proposals and amendments. The Commission could in the meantime take up the next item on its agenda. So far as he was concerned, he would submit his proposal (E/CN.4/612) again.

Mr. MOROSOV (Union of Soviet Socialist Republics) asked whether he was right in thinking that the rules of procedure made no provision for the reconsideration of a decision.

The CHAIRMAN said that the Soviet Union representative was perfectly right. There was no explicit reference in the rules of procedure to that point. In the past, when any situation had arisen which was not covered by the rules of procedure, the conduct of the Commission's business had been left to the Chairman's discretion, on the understanding that he would act in accordance with its wishes. The silence of the rules of procedure on any point had not been interpreted as excluding any course of action in respect of it. When, at its 232nd meeting, the Commission had decided to reconsider its decision to make 3 May the dead-line for the submission of proposals for the general clause concerning economic, social and cultural rights, it had done so as master of its own procedure.

Mr. MOROSOV (Union of Soviet Socialist Republics) observed that that omission from the rules of procedure of the functional commissions of the Economic and Social Council might have been intentional, since an intolerable situation would ensue if any decision could be reversed by simple majority.

Before making certain observations concerning the interpretation of the rules of procedure, he wished to make it clear that he was committing neither himself nor his Government for the future, but was dealing exclusively with the situation with which the Commission was faced at its present session.

Members would recall that at the 213th meeting the Chairman had given it as his personal view that important procedural questions should be decided by a two-thirds majority, as in the General Assembly. He would support that contention in the present case. If the Commission was to follow the practice of the committees of the General Assembly, it should also adopt their two-thirds majority rule with regard to the re-consideration of decisions. The Commission had already re-considered decisions at its present session, and if it was to go on doing so the two-thirds majority rule must be strictly adhered to. If such re-consideration was to be allowed by simple majority, the Commission's work, which at the present session had not proceeded very smoothly, would be still further dislocated and disorganized. He would remind representatives that although the Soviet Union delegation not infrequently found itself in a minority, it did not try to force its views on the Commission by pressing for the re-consideration of every decision that went against it.

Mr. SUAREZ CRUZ (Chile) recalled his assertion at the previous meeting that, out of courtesy, he would not oppose the United States proposal.

So far as concerned the interpretation of the rules of procedure, he agreed that neither the rules of procedure of the functional commissions of the Economic and Social Council nor those of the Council itself contained any provision relating to proposals for the reopening of discussion on an issue which had already been decided, or concerning the majority required for the adoption of such a proposal. On the other hand, the rules of procedure of the

General Assembly and of its main committees did contain such provisions.

That fact was not due to an oversight. The Economic and Social Council had revised its own rules of procedure and those of its functional commissions in 1950. Its failure to include in either case a provision concerning proposals for reopening discussion on a question which had already been decided had been intentional, and was designed to comply with a ruling given by Sir Ramaswami Mudaliar, President of the Economic and Social Council at its first session, and repeated at subsequent sessions by Mr. Papanek and by Mr. Malik himself. Sir Ramaswami had justified his ruling on the ground that the Council could not, within the limits of one and the same session, re-open a question of substance which had already been decided, since it could thereby be prevented from examining all the questions on the agenda. He had therefore ruled out of order any proposal for the re-opening of discussion on a question of substance on which the Council had already taken a decision. There was, however, nothing to prevent the Council from reversing a procedural decision.

In the light of that interpretation, he considered that the Commission must first decide whether the issue on which the United States representative was proposing that the Commission should re-open discussion was a procedural one or a question of substance. If the latter, the next point to be decided must be the nature of the proposals which the Commission could then consider, since, still according to the interpretation he had given, it could not consider any which were similar in nature to the one it had just rejected.

In his view, it was for the Chairman to give a ruling on those two issues.

Mr. SORENSEN (Denmark) said that he was not very familiar with the rules of procedure of the functional commissions of the Economic and Social Council, but, speaking as a man in the street, he would suggest that the paramount consideration was the quality, and not the quantity, of the Commission's work. He would prefer that it deal with one item on its agenda conscientiously and thoroughly, rather than submit unsatisfactory results to the Economic and Social Council. At the preceding meeting the Commission had voted in favour of the inclusion of a general clause applying to the provisions on economic, social and cultural rights. Later, all the texts for that clause that had been before

the Commission had been voted down. If the matter were to be left there, the Commission would be guilty of inconsistency. The Commission, mindful of its reputation, should not consider that its rules of procedure shackled it to such an extent as to prevent it from re-opening a matter which had not been satisfactorily disposed of.

Mr. CASSIN (France) stressed the importance of the Chilean representative's statement, in which the latter had given an account of the history of the issue of principle with which the Commission was now faced. His own view was that if it were a matter of re-considering the Commission's decision of principle regarding the inclusion of a general clause, a two-thirds majority of members present and voting would be required; alternatively, the Chairman could rule that the Commission could not reverse that decision during the current session.

He felt, however, that the issue was one of procedure: the previous week the Commission had fixed a dead-line for the submission of proposals and amendments relating to the general clause. The Commission had subsequently rejected in turn all the texts submitted to it, although it had decided in principle that one should be included in the draft Covenant. The question now was, was the Commission entitled to fix a fresh dead-line for the submission of new texts? He felt that that was a purely procedural matter, which a majority of members of the Commission, or the Chairman himself, could surely answer in the affirmative.

The CHAIRMAN said that it was not the quality of the work of the Commission that was at stake. The fact of the matter was that the Commission was profoundly divided on a very serious issue. That dilemma had to be faced squarely. He wondered whether, if the whole question was re-opened, any text would be evolved capable of commanding a substantial majority.

Mr. HOWARD (United Kingdom) observed that where the rules of procedure did not cover any particular situation guidance was provided by rule 43, which stated, inter alia:

"The Chairman, subject to these rules, shall have control of the proceedings of the Commission and over the maintenance of order at its meetings."

Should the Chairman give a ruling on the conduct of business, it was always open to any member of the Commission who disagreed with it to challenge it under rule 44.

Mr. YU (China) said that the demand made by the Ukrainian representative that the two-thirds majority rule be observed in reversing a decision of the Commission should have been made when the motion to reverse the decision on the dead-line for the submission of texts had first been moved at the 232nd meeting.

The points raised by the Chilean representative would have been pertinent had the Commission adopted a proposal on the general clause. In fact, it had not done so, and if it made no further attempt to reach agreement on a general clause, it would have failed to carry out the decision which it had itself taken. The United States representative was calling for the re-consideration, not of a decision of substance but of one of procedure, namely, that of the dead-line. If no further action was taken in the matter, what explanation would the Commission be able to give in its report of the decision taken at the previous meeting that a general clause on economic, social and cultural rights be embodied in the draft Covenant? No serious procedural difficulty was in fact involved. All that was necessary was for the Commission to allow its members to submit further texts for the general clause. The length of the Commission's agenda should not be allowed to influence the matter. As the Commission had decided to adopt a general clause, it must continue its efforts to evolve a satisfactory text, otherwise it would be acting contrary to its own decision.

Mr. MOROSOV (Union of Soviet Socialist Republics) said that the Chilean representative had raised some important points, which, if he had understood them correctly, he (Mr. Morosov) proposed to develop further. Assuming that the Commission were to re-consider its decision with regard to the submission of new proposals, and allowed members to put forward new texts for the general clause, in all probability proposals identical with those already rejected would be

tabled; such proposals would clearly be out of order, since they would, in effect, already have been voted down. It was obviously unlikely that the authors of those proposals, however fertile their imaginations, would be able to transcend the frame-work of their original text. At best, if they did not press their proposals in a slightly different form, the Commission might return to the consideration of article 1 of the draft Covenant. If that happened, he reserved his right to re-iterate his view that no general clause should be inserted as a preamble to the provisions relating to economic, social and cultural rights. The Commission was at the moment engaged in a lengthy and singularly unfruitful discussion of considerable complexity, and he doubted whether any result would be achieved by adopting the United States motion, other than leading the Commission into a fresh impasse.

Considerations of prestige had been mentioned, a matter which should not be allowed to pass unnoticed, since, if they were given weight, the Commission's work would suffer. The acceptance or rejection of proposals had nothing whatsoever to do with the prestige of the Commission.

Whenever the Commission had re-considered one of its decisions it had done so by at least a two-thirds majority. He could not agree to any other procedure.

The CHAIRMAN said that the United Kingdom representative had been quite correct in his interpretation of the rules of procedure. In a situation such as that in which the Commission at present found itself, the Chairman could give a ruling which the Commission could if necessary overthrow by a simple majority. It was thus clear that, where no specific regulations were laid down, the Commission was master of its own procedure. He had, indeed, at the 213th meeting expressed his personal view that important procedural questions should be decided by a two-thirds majority, as in the General Assembly. He had not however given a formal ruling to that effect, nor did he propose to do so in the present case, but would merely re-iterate his personal opinion that in matters where views were sharply divided it would be far more reasonable for decisions to be taken by a two-thirds majority. On that point the rules of procedure should indeed be more explicit. As the Soviet Union representative had recalled, when the Commission

had re-considered certain decisions previously there had always been at least a two-thirds majority in favour of reversal. Though that question had not been raised at the time, it stood to reason that in any hotly contested case nothing less than a two-thirds majority was satisfactory.

He was in no sense giving a ruling from the Chair on that question; it would be most undesirable were such a ruling to be challenged and upset, thereby constituting a precedent that a simple majority was enough to reverse any decision, no matter how close the original voting had been. The rules of procedure could still be improved. He would not therefore venture to give a ruling which might in the final outcome have the effect of setting a rigid and undesirable precedent.

The Chilean representative had been perfectly right about the ruling given by Sir Ramaswami Mudaliar as President of the Economic and Social Council, but that ruling had been given before any experience had been gained of the kind of work entailed in the elaboration of such instruments as the draft Covenant. The precedent set by that ruling had in fact been ignored frequently during the preparation of the Universal Declaration of Human Rights, since it had been found impossible for technical bodies of the Council to work in that way. It would be regrettable if the Council's procedures and precedents were applied too rigidly to its functional commissions. If Sir Ramaswami's ruling were extended to the work of the latter, the efficient conduct of their business would be endangered. He would again repeat that, where no specific provision was made in the rules of procedure, the Commission was its own master and the Chairman its servant. He therefore appealed to representatives not to press him to give a ruling which might jeopardize the future efficiency of the Commission's work.

Mrs. ROOSEVELT (United States of America) said she failed to see why an entirely new proposal would have to be submitted in view of the fact that the first three paragraphs of the original French text (E/CN.4/612) had commanded a sizeable majority. If a satisfactory version of the fourth paragraph could be drafted, the difficulty in which the Commission found itself would be resolved, and it would be able to proceed with its work. She agreed that its prestige was not a factor that should be taken into consideration. The Commission must proceed

as expeditiously and efficiently as possible. It was for that reason that she believed that representatives should be allowed to submit new proposals concerning the general clause on economic, social and cultural rights.

Mrs. MEHTA (India) said that if the Commission failed to reverse its decision under which no new proposals for a general clause relating to economic, social and cultural rights could be submitted, it would be leaving part of its work unfinished, in view of its earlier decision that such a general clause should be inserted in the Covenant. If it failed again to reach agreement, there would be nothing left for it but to report its failure to the Economic and Social Council.

The CHAIRMAN, replying to the United States representative, stated that his previous remarks about bare majorities had referred, not to the adoption of the preamble, but to the decision of principle concerning the inclusion of a general clause in the Covenant. The whole issue under discussion had arisen out of the fundamental disagreement existing within the Commission, which had found expression in the fact that the proposal to include a general clause in the Covenant had been adopted by only 10 votes to 8. He begged the Commission not to indulge in assessments of the value of the decisions so far taken, but to confine itself to the examination of the question raised by the United States delegation.

Mr. SÖRENSEN (Denmark) pointed out that at the previous meeting the Commission had taken two decisions which contradicted each other. Moreover, certain representatives were making unfair use of the rules of procedure to engineer particular decisions. Such practices were unworthy of the Commission and derogated from the value of its work.

The CHAIRMAN asked the Danish representative not to enlarge on his point.

Mr. EUSTATHIADES (Greece) said that it was clear that, while speaking on the issue of procedure, many members were in reality thinking of the question of substance. In his view, members should address themselves solely to the

question of procedure, in a purely objective frame of mind.

The Chilean representative, who was also President of the Economic and Social Council, had shown that it was first necessary to determine whether the United States proposal raised a question of substance or one of procedure. The Chairman's statement indicated that the question whether the dead-line for the submission of proposals and amendments relating to the general clause might or might not be extended, could only be regarded as one of procedure. What the Commission had to decide on, then, was a procedural issue.

For his own part, he was in favour of continuing the discussion. With reference to the remarks of the representative of Denmark, he thought it would be more prudent for the Commission to dwell a little on the question under consideration than to evade a task it had given itself by virtue of a decision which was binding upon it. The Commission would very probably reach a positive decision on any new proposal submitted to it. The Chairman was therefore right in calling for a vote on the United States proposal.

Mr. MOROSOV (Union of Soviet Socialist Republics), in reply to the United States representative's assertion that there was no need to submit a fresh text for a general clause, pointed out that the first, second and third paragraphs of the original French proposal (E/CN.4/612), when voted on as a whole, had been rejected by 9 votes to none with 6 abstentions, while the fourth paragraph, in the amended form proposed in the United States/French proposal (E/CN.4/615) had been rejected as the result of a tied vote. It was therefore obvious that any amended form of that proposal would be defeated.

He urged the Chairman to give a ruling on the question before the Commission. The Chairman, expressing his personal opinion, had said that that issue should be decided by a two-thirds majority in accordance with the procedure followed by the General Assembly. No objection had been raised to that opinion when it had been expressed; it had therefore acquired the status of a de facto ruling. If the Chairman were to convert that de facto ruling into a de jure ruling, the discussion, which had wasted several hours of the Commission's time, would be brought to an end.

He observed that several delegations had tried to present the question as a matter of prestige; he was glad, however, to note that the United States representative had decisively disposed of those attempts.

He appealed to all delegations to agree that the only course open to the Commission was to make mention in its report of the impasse reached during the discussion, so that the matter could be raised afresh at the next session of the Economic and Social Council.

He again urged the Chairman to shoulder the responsibilities of his office and give a ruling on the United States proposal.

The CHAIRMAN assured the Soviet Union representative that in declining to give a ruling he was not shirking his responsibilities as Chairman. The question before the Commission raised the extremely important question of principle of whether the Commission could reverse its decisions, and if so by what majority. He did not think that to settle that question by a ruling from the Chair would be in the Commission's best interests.

Mr. CASSIN (France) entirely agreed with the Chilean representative, who had drawn attention to the distinction that must be drawn between substantive and procedural questions, and had shown that decisions on procedural matters might be re-considered at the same session if a simple majority of members of the Commission deemed it necessary to do so.

For the benefit of the Soviet Union representative, he wished to point out that the Commission had neither accepted nor rejected the first three paragraphs of the original French proposal: it had merely been asked, after a provisional vote, to decide whether it was desirable to adopt those three paragraphs as a separate text. The members of the Commission had voted almost unanimously against that suggestion, but in doing so they had not rejected the substance of the text involved. He was inclined to believe, with the Soviet Union representative, that it would be unconstitutional to take a fresh vote on the French/United States amendment, which had in effect already been rejected.

But there was nothing to prevent the submission of other texts to the Commission consisting of either the same elements in a different order, or new material. There would be nothing illegal or contrary to common sense, as had been suggested by the Soviet Union representative, in putting texts of that kind to the vote.

When doubt arose, logic and common sense clarified the rules of procedure, and he was grateful to the Chairman for having explained the reasons which had dissuaded him from giving a ruling from the chair. What would the man in the street think if the Commission, after having decided in principle, as it had done at the previous meeting, to adopt a general clause for economic, social and cultural rights, found itself unable to examine proposals for such a clause simply because it had previously decided to impose a time-limit on the submission of such proposals, and if it was unable to over-ride the earlier procedural decision in favour of the more recent decision in principle? The man in the street would think that the Commission's rules of procedure were absurd, or that the members of the Commission had not ventured to allow common sense to prevail over legal quibbling.

To sum up, the Commission had taken a decision on the substance of the matter, but, if the previous procedural decision was upheld, would be prevented from acting on that decision in principle. The Commission would thus again find itself at an impasse. It was to be hoped that common sense would prevail, and that the Chairman would take the necessary action to see that it did.

The CHAIRMAN pointed out that there was a sharp difference of opinion within the Commission. He drew attention to the history of the federal clause, which it had been proposed should be included in the Convention on the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, which was similar to the case under discussion. The Sixth Committee of the General Assembly had decided in principle that a federal clause should be drafted, but had failed to reach agreement on the texts proposed (E/1721). When the matter had been discussed in the Third Committee, the French representative had proposed that the substance of the federal clause should be considered anew, but the Committee had ruled him out of order. The original decision of

principle that a federal clause should be included in the Convention had therefore lapsed.

The question at present before the Commission, however, was one not of principle, but of fact. He would therefore put to the Commission for immediate decision the United States proposal that the question of the time-limit for the receivability of proposals for the general clause relating to economic, social and cultural rights be re-opened.

Mr. MOROSOV (Union of Socialist Soviet Republics), speaking to a point of order, asked what majority would be required for the adoption of that proposal.

The CHAIRMAN said he would announce his decision on that point after the vote had been taken. In the interests of the Commission's work he appealed to the Soviet Union representative to withdraw his inquiry.

Mr. MOROSOV (Union of Socialist Soviet Republics) agreed to do so.

Mr. YU (China) asked the Chairman whether the proposal was to be considered as a procedural or as a substantive issue.

The CHAIRMAN was not prepared to answer that question. He appealed to the Chinese representative to withdraw it, saying that it would not be in the interest of the Commission for him (the Chairman) to answer it.

Mr. YU (China) said the Chairman did not have to answer the question, but that he (Mr. Yu) had had a right to raise it.

The CHAIRMAN then put to the vote the United States proposal that the Commission should reopen the question of the time-limit for the receivability for proposals on the general umbrella clause for economic, social and cultural rights.

10 votes were cast in favour of the United States proposal, and 6 against, with 2 abstentions.

The CHAIRMAN accordingly declared the question re-opened.

Mr. MOROSOV (Union of Socialist Soviet Republics) challenged the Chairman's ruling on the grounds that a two-thirds' majority should be required for the adoption of the proposal.

The CHAIRMAN put the Soviet Union representative's challenge to the vote.

The Chairman's ruling was upheld by 13 votes to 2 with 2 abstentions.

The CHAIRMAN therefore declared the question of the time-limit for the receivability of proposals relating to the general umbrella clause for economic, social and cultural rights open for discussion.

Mr. SANTA CRUZ (Chile) explained the vote he had cast when the Chairman had put to the vote the ruling from the Chair on the challenge of the Soviet Union representative. The Secretary to the Economic and Social Council had been in the conference room at the time, and had reminded him that when the Economic and Social Council had been discussing what changes should be made in the rules of procedure of its functional commissions, the French delegation had proposed the insertion of a provision whereby the Council's functional commissions would be at liberty to re-open discussion on a question already examined, provided a two-thirds majority of their members voted in favour. That proposal had been rejected, as the Council had felt that the same rule should apply to the functional commissions as to the Council itself. The rule adopted in respect of the Council was based on paragraph 2 of Article 67 of the Charter, which stipulated that "decisions of the Economic and Social Council shall be made by a majority of the members present and voting." That was why he had voted in favour of the Chairman's ruling.

The CHAIRMAN observed that the motives which had led the Economic and Social Council to reject the French proposal that a two-thirds majority should be required for the reversal of previous decisions, had subsequently been admitted to be unsound. That decision had been partly based on the Charter, which

provided that such decisions should be taken by a simple majority. However, it was to be noted that the main committees of the General Assembly had adopted the two-thirds majority rule even though that was not necessarily in accordance with the Charter.

Mr. MOROSOV (Union of Soviet Socialist Republics) wished it to be placed on record that all his observations during the discussion bore solely on the point at issue, and were not to be regarded as general remarks on the Commission's procedure, nor as establishing a precedent.

The CHAIRMAN then put to the vote the French proposal that the Commission

"Decides to authorize until 5.00 p.m. on Thursday 10 May the submission of concrete proposals on the general clause."

The French proposal was adopted by 14 votes to none with 4 abstentions.

2. General Clause relating to non-discrimination (E/CN.4/610)

Mrs. ROOSEVELT (United States of America), in reply to a question from the CHAIRMAN, stated that the United States proposal relating to non-discrimination (E/CN.4/610) had been made with the object of ensuring that the decisions taken with regard to Part IV of the Covenant should apply to that part which dealt with economic, social and cultural rights, and should be included in a general limitation clause. Part IV had not yet been discussed by the Commission, and it was therefore impossible at the present stage to do more than refer to it; but its provisions should nevertheless be included in a general non-discrimination clause.

The CHAIRMAN suggested that it would be more suitable to discuss Part IV of the draft Covenant first.

Mrs. ROOSEVELT (United States of America) pointed out that in the part of the Covenant relating to economic, social and cultural rights, as in the case of the first eighteen articles, one general article should deal with the whole question of non-discrimination. The proposal submitted by her delegation was intended to ensure that the provisions of the latter were applicable to the part now under discussion. If Part IV of the Covenant were subsequently deleted,

the reference to it could also be deleted; but the importance of Part IV was such that some provision should be made to ensure its applicability to the field of economic, social and cultural rights.

Mr. MOROSOV (Union of Soviet Socialist Republics), speaking to a point of order, said that the Commission could not discuss a proposal based on an unknown quantity. He therefore asked the Chairman to rule the United States proposal out of order. He also pointed out that the final text of article 1 of the draft Covenant had not yet been approved.

Mrs. ROOSEVELT (United States of America), replying to the CHAIRMAN, agreed that further discussion of her proposal should be deferred until Part IV of the draft Covenant had been discussed, and the final text of article 1 had been approved.

Further discussion of the general clause relating to non-discrimination was accordingly deferred.

3. General Clause relating to Limitations (E/CN.4/610/Add.2).

The CHAIRMAN pointed out that the United States proposal for an article concerning limitations to economic, social and cultural rights (E/CN.4/610/Add.2) was obviously drafted along the lines of the existing texts of the limitation clauses in articles 13, 14, 15 and 16 of Part II of the Covenant. He drew attention to the fact that use of the expression "public order" had been the subject of detailed discussion and study in the Economic and Social Council and the General Assembly. The discussions and observations concerning the use of that term were summarized in paragraphs 197 - 197 of document E/CN.4/528. Other references to the problem were to be found in paragraph 83 of document E/L.68 and paragraph 15 of document A/C.3/534.

While admitting the importance of a general limitation clause, he felt that the adoption of a proposal such as that submitted by the United States delegation might seriously restrict the applicability of certain of the articles relating to economic, social and cultural rights already adopted. The Commission's task

was to draft a text providing for justified limitation of the exercise of certain rights without impairing the enjoyment of other rights which stood in no need of limitation. He asked the United States representative whether the possible restrictive effect of such an article had been considered in relation to each of the articles so far adopted.

Mrs. ROOSEVELT (United States of America) observed that each of the articles on economic, social and cultural rights so far adopted began with the words: "The States Parties to this Covenant recognize the right of everyone ..."; those rights were thus set forth in absolute, unqualified form. However, article 29 of the Universal Declaration of Human Rights admitted that nothing was absolute in the complicated field of human relations. It specified that

> "In the exercise of his rights and freedom, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society".

The United States delegation proposed the inclusion in the part of the Covenant dealing with economic, social and cultural rights of a general recognition that the rights, when provided by the State, would not necessarily be absolute, but might be subject to the limitations mentioned in article 29 of the Universal Declaration of Human Rights.

Mr. CLSULLO (Uruguay) recalled that he had already recorded his view that there should be no absolute right. Obviously, all rights were limited by the necessity for respecting the rights of others, and by considerations of community interest, which arose naturally in democratic societies.

At the same time, he admitted that the Chairman was justified in asking whether it was necessary to provide for as many limitations as were foreseen in the United States proposal. The expression "for the purpose of securing due recognition and respect for the rights and freedoms of others" was perfectly clear and justified; but the expression "just requirements of morality" embodied two criteria which would give rise to difficult problems of interpretation,

namely, justice and morality. The same remark was true of the words "public order" and "general welfare". The legal purport of those terms was not fully defined.

He felt that the Commission should adopt a single limitation, on the interpretation of which unanimity could be reached, rather than a series of criteria which might give rise to a variety of interpretations, and he therefore suggested amending the United States proposal to read as follows: "Each State Party to the Covenant recognizes that in the enjoyment of those rights provided by the State in conformity with this Part of the Covenant, the State may subject such rights only to such limitations as may be determined by law in the interests of the community in a democratic society".

That shorter version would be adequate, and would have the advantage of not giving rise to contradictory interpretations. The words "interests of the community" covered the various criteria set forth in the United States proposal, while avoiding the introduction into the Covenant of any phraseology likely to give rise to difficulties of interpretation.

The difficulties to which he had drawn attention were, however, of minor importance, and the United States proposal as submitted was both logical and apposite.

Mr. DUPONT-WILLEMIN (Guatemala) wished to examine the summary records of the Commission's discussion on article 29 (2) of the Universal Declaration. He therefore moved the adjournment.

Mrs. ROOSEVELT (United States of America) was prepared to accept the Uruguayan representative's amendment.

The CHAIRMAN appreciated the Uruguayan representative's arguments, but considered that the implementation of the United States proposal as thus amended would depend on the interpretation placed on the phrase "the interests of the community in a democratic society". The last three lines of the United States proposal, beginning with the words "and solely for the purpose ...", set definite

bounds to legislation limiting the enjoyment of economic, social and cultural rights. The amendment proposed by the Uruguayan representative would remove all limitations which the United States proposal sought to place on restrictive legislation.

The United States proposal was based on the text of United Nations resolutions, which had been carefully examined before adoption. The discussion relating to those resolutions had made it quite clear that if human rights were to be defended some restriction had to be placed on the scope of limitative legislation.

Mrs. MEHTA (India) said she was not quite sure whether there was any need for a limitation article of the kind submitted by the United States delegation covering economic, social and cultural rights, as there was in the case of civil rights. She asked how the enjoyment of rights such as the rights to health, education and adequate working conditions could be limited.

The meeting rose at 6.^ p.m.