

UNITED NATIONS
ECONOMIC
AND
SOCIAL COUNCIL



GENERAL

E/CN.4/SR.318

13 June 1952

ENGLISH

ORIGINAL: FRENCH

COMMISSION ON HUMAN RIGHTS

Eighth Session

SUMMARY RECORD OF THE THREE HUNDRED AND EIGHTEENTH MEETING

Held at Headquarters, New York,
on Monday, 2 June 1952, at 2.30 p.m.

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<u>Chairman:</u>	Mrs. MEHTA	India
<u>Rapporteur:</u>	Mr. WHITLAM	Australia
<u>Members:</u>	Mr. NISOT	Belgium
	Mr. VALENZUELA	Chile
	Mr. CHENG FAONAN	China
	AZMI Bey	Egypt
	Mr. CASSIN	France

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Members:

(Cont'd)

Mr. KYROU	}	Greece
Mr. KAPSAMBELIS		
Mr. AZKOUL		Lebanon
Mr. WAHEED		Pakistan
Mr. BORATYNSKI		Poland
Mrs. RÖSSEL		Sweden
Mr. KOVALENKO		Ukrainian Soviet Socialist Republic
Mr. MORCZÓV		Union of Soviet Socialist Republics
Mr. HOARE		United Kingdom of Great Britain and Northern Ireland
Mrs. ROOSEVELT		United States of America
Mr. BRACCO	}	Uruguay
Mr. FORTEZA		
Mr. JEVREMOVIC		Yugoslavia

Representative of a specialized agency:

Mr. DOYLE	Office of the High Commissioner for Refugees
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Representatives of non-governmental organizations:Category B and Register:

Mrs. de BROECK	Catholic International Union for Social Service
Mr. NOLDE	Commission of the Churches on International Affairs
Mr. BERNSTEIN	Co-ordinating Board of Jewish Organizations for Consultation with the Economic and Social Council
Mr. CRUICKSCHANK	Inter-American Council of Commerce and Production
Mr. MANUILA	International Association of Penal Law
Mrs. SOUDAN	International Federation of Business and Professional Women
Miss ROBB	International Federation of University Women
Miss SCHAEFER	International Union of Catholic Women's Leagues
Mr. RONALDS) Mrs. POLSTEIN)	World Union for Progressive Judaism

/Secretariat:

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Secretariat:

Mr. HUMPHREY

Director of the Division of Human
RightsMr. DAS
Miss KITCHEN)

Secretaries of the Commission

DRAFT INTERNATIONAL COVENANTS ON HUMAN RIGHTS AND MEASURES OF IMPLEMENTATION
(E/1992; E/CN.4/528, E/CN.4/528/Add.1; E/CN.4/L.124, E/CN.4/L.133, E/CN.4/L.141,
E/CN.4/L.142, E/CN.4/L.150, E/CN.4/L.153, E/CN.4/L.154, E/CN.4/L.154/Corr.1,
E/CN.4/L.184, E/CN.4/L.190/Rev.1, E/CN.4/L.190/Rev.2, E/CN.4/L.191) (continued)

Article 9 (continued)

Mr. WHITLAM (Australia) said that his delegation would support the United Kingdom amendment (E/CN.4/L.141) to article 9 because the original wording was somewhat ambiguous. In particular, the amendment provided more specific guarantees for all aliens.

Although the right of asylum was especially important in modern times, yet, as the United Kingdom representative had pointed out, it seemed out of place in the covenant. The right of asylum belonged to the State, not the person seeking asylum; it could not therefore be the subject of a legal obligation. The Australian delegation considered the reference to it in the Universal Declaration of Human Rights to be sufficient, and therefore could not support the USSR amendment (E/CN.4/L.184) or the joint amendment proposed by Chile, Uruguay and Yugoslavia (E/CN.4/L.190/Rev.2), which proclaimed it in vague terms.

His delegation was attracted by the French amendment (E/CN.4/L.191) but could not vote for it, because it was not in conformity with the legal obligation recognized in other articles of the covenant on civil and political rights. Such a clause might be included in a special international convention, but not in the covenant.

Mr. CASSIN (France) said that his delegation could not support the revised joint amendment (E/CN.4/L.190/Rev.2), because the inclusion of the word "guaranteed" did not eliminate the legal difficulty raised by the preceding version (E/CN.4/L.190/Rev.1).

/In reply

In reply to some criticisms of the French sub-amendment (E/CN.4/L.191), he stated that he would replace the words "seek asylum" by the words "enjoy asylum" but that his delegation could not go any farther, because the obligation concerned effort and not result. The Universal Declaration of Human Rights recognized the principle of the right to asylum, but since the debtor of that right was the community, no State could be forced to undertake an individual or collective obligation or be required to waive part of its sovereignty by being refused the right to forbid the entry of a given person into its territory.

Mr. BRACCO (Uruguay) appreciated the improvement that the French representative had made in his sub-amendment, but continued to prefer the joint proposal (E/CN.4/L.190/Rev.2).

He asked the Chairman to deal with the texts relating to the right of asylum as separate proposals and to call upon the Commission to vote first on the USSR sub-amendment (E/CN.4/L.184), then on the joint amendment (E/CN.4/L.190/Rev.2), and lastly on the French sub-amendment (E/CN.4/L.191).

Mr. JEVREMOVIC (Yugoslavia) approved the procedure suggested by the Uruguayan representative. He said he would vote for the joint amendment, and asked for a separate vote on the words "war crimes" in the USSR sub-amendment, because those words were unacceptable to his delegation. He shared the Uruguayan representative's views on the French sub-amendment and regretted that it contained no reference to extradition. Nevertheless he would vote for it if the procedure proposed by Uruguay were not followed and the joint amendment and the USSR sub-amendment were rejected. In that event, however, he reserved his delegation's right to propose improvements on the French text to the other organs of the United Nations which would be called upon to consider it.

Mr. HOARE (United Kingdom) criticized the USSR sub-amendment on the ground that it deprived certain categories of persons of the right of asylum, although it expressly guaranteed that right to persons persecuted for their scientific work. That case was less likely to arise in modern times, but the danger of religious persecution was much more real.

The right of asylum comprised three ingredients: the seeking of asylum, the granting of asylum and the enjoying of asylum. The Universal Declaration of Human Rights only mentioned seeking and enjoying asylum; it was silent on the question of the grant of asylum. The enjoyment of asylum was rightly mentioned in the Declaration since that constituted an affirmation of the accepted principle that a State was entitled to extend its protection to those to whom it had decided to give shelter. But since that principle had long been recognized in international law, there was no need to make any reference to it in the covenant. On the other hand, the inclusion of the other elements in the French sub-amendment (E/CN.4/L.191), namely the right to seek asylum, was useless, since in fact no State could prevent a request being made by an individual for admission to its territory. The reference to co-operation with other States might be a fruitful idea, but in fact there was at present no machinery by which such co-operation could be secured in a case where a particular State decided not to grant asylum. His delegation could not therefore vote for the French text, which, moreover, might well be interpreted in the same sense as the USSR sub-amendment and the joint amendment, namely that the right of everyone to enjoy asylum implied an obligation on every State to grant asylum. In view of the great importance of the question of asylum to many oppressed people it would be wrong to include a provision which gave nothing and appeared to give something. A separate convention might in the future be concluded on the subject, but the time did not yet seem ripe for one.

Mr. BORATYNSKI (Poland) pointed out that no serious criticism had yet been advanced against the USSR sub-amendment. His own remarks concerning the joint amendment were now only partially applicable, in view of its revision.

He wished to make it clear that in his preceding statement he had referred to asylum in general and not only to diplomatic asylum, as the United States representative had alleged.

Mr. MOROZOV (Union of Soviet Socialist Republics) said that his delegation could not vote for the United Kingdom amendment (E/CN.4/L.141), which contained unduly detailed provisions in comparison with the original text of article 9. In reply to the United Kingdom representative, he stated his view that persecution for scientific work was certainly a reality. He suggested that the Egyptian representative might submit an amendment to the USSR text replacing the word "interests" by the word "principles", if that were the only objection to the text.

/He thought

He thought that the French sub-amendment (E/CN.4/L.191) was inadequate even as altered, and was surprised that the text did not include war crimes as an exception to the right to asylum. Special mention of such an exception was necessary since war criminals should never be protected, as the United States of America had regrettably done in some cases.

Emphasizing that the covenant should not reproduce the text of the Universal Declaration of Human Rights, he recalled that the French Constitution of 1793 had refused the right of asylum to tyrants.

The CHAIRMAN asked the USSR representative whether the Russian text of his amendment referred to war crimes, or to military offences as implied by the translation.

Mr. MOROZOV (Union of Soviet Socialist Republics) said that the amendment referred to war crimes, meaning crimes against the laws and customs of war recognized by international law, and not to military offences.

Mrs. ROOSEVELT (United States of America) said that the substitution of the words "the right to seek asylum from persecution" for the words "the right of asylum" made the French sub-amendment still less acceptable to the United States delegation because the text as drafted went farther than the Universal Declaration of Human Rights and imposed much too heavy an obligation on States.

The CHAIRMAN recalled that the Uruguayan representative had suggested that the various proposals should be put to the vote in the following order: the USSR sub-amendment (E/CN.4/L.184), the joint amendment (E/CN.4/L.190/Rev.2), and the French sub-amendment (E/CN.4/L.191).

Mr. MOROZOV (Union of Soviet Socialist Republics) thought that the Commission could not proceed in that way, as the French proposal was an amendment to the joint amendment and to the USSR sub-amendment and should therefore be voted upon first.

Mr. BRACCO (Uruguay) pointed out that the French proposal was not a sub-amendment but a new text to replace article 9, and asked for his procedural proposal to be put to the vote.

/Mr. MOROZOV

Mr. MOROZOV (Union of Soviet Socialist Republics) said that such a vote would be contrary to the rules of procedure and would create an inadmissible precedent.

The CHAIRMAN considered that as the French proposal was a new draft article, the Commission was free to decide the question as it wished. The Commission had indeed taken similar action in the past.

Mr. MOROZOV (Union of Soviet Socialist Republics) thought that it would be contrary to the rules of procedure to take such action, and asked that the Legal Department of the Secretariat be consulted on whether the Uruguayan representative's procedural proposal could be put to the vote.

The CHAIRMAN thought that in view of established precedents the Commission could take a decision on the Uruguayan representative's proposal.

Mr. MOROZOV (Union of Soviet Socialist Republics) asked for the vote to be deferred.

The proposal was rejected by 6 votes to 4, with 7 abstentions.

Mr. BORATYNSKI (Poland) thought that the USSR representative's request for an opinion of the Legal Department should be studied. The vote should therefore be deferred until a reply had been received from the Legal Department.

The CHAIRMAN said that such a request would have to come from the Commission.

Mr. MOROZOV (Union of Soviet Socialist Republics), referring to rule 51 of the rules of procedure, asked that discussion of the French sub-amendment, which had been submitted that day, be deferred until the following meeting.

/Mr. AZKOUL

Mr. AZKOUL (Lebanon) thought that it would be better if the Uruguayan representative withdrew his proposal in order to enable the Commission to take a vote immediately.

Mr. BRACCO (Uruguay) agreed solely in order to expedite the Commission's work, but strongly objected to the refusal to follow well-established precedents.

Mr. MOROZOV (Union of Soviet Socialist Republics) decided not to invoke rule 51 of the rules of procedure.

The CHAIRMAN said that the Commission would vote first on the French sub-amendment (E/CN.4/L.191), then on the USSR sub-amendment (E/CN.4/L.184), and lastly on the joint amendment (E/CN.4/L.190/Rev.2).

The French sub-amendment was rejected by 9 votes to 3, with 6 abstentions.

The CHAIRMAN said that in the provisional translation of the USSR amendment the words "military offences" should be replaced by the words "war crimes" in accordance with the Russian original.

The USSR sub-amendment was rejected by 10 votes to 5, with 3 abstentions.

The joint amendment was rejected by 10 votes to 4, with 4 abstentions.

The CHAIRMAN invited the Commission to discuss the United Kingdom amendment (E/CN.4/L.141).

Mr. HOARE (United Kingdom) accepted the French representative's suggestion that the words "to submit evidence to clear himself" should be replaced by the words "to submit the reasons against his expulsion". He was also willing to accept the Greek representative's suggestion, but thought it would involve a good deal of alteration in the sentence.

/Mr. AZKOUL

Mr. AZKOUL (Lebanon) thought that the Greek representative's wish might to a certain extent be met by replacing the word "shall" in the first line of the English text by the word "may".

Mr. HOARE (United Kingdom) accepted that amendment.

The United Kingdom amendment, as amended, was adopted by 8 votes to 3, with 7 abstentions.

Mrs. RÖSSEL (Sweden) said she was sorry that she had had to vote against the French and USSR sub-amendments and the joint amendment. Sweden's policy towards the right to asylum clearly indicated that it did not object to the underlying principle. She thought however that the right was too complicated to be covered by one article only and should not be included in the covenant. She had voted in favour of the draft article submitted by the United Kingdom (E/CN.4/L.141) because it was the nearest to what her delegation wished to see included in the covenant and the principle it laid down agreed with Swedish practice.

Mr. MOROZOV (Union of Soviet Socialist Republics) said he preferred the original text of article 9 and had voted against the United Kingdom draft article because it contained unnecessary enumeration.

Article 10

The CHAIRMAN invited the Commission to consider article 10.

Mr. MOROZOV (Union of Soviet Socialist Republics) said that the USSR amendment (E/CN.4/L.124) proposed to introduce into article 10, paragraph 1 of the draft covenant certain statements of principle concerning judicial procedure. Accordingly paragraph 1 would begin with a statement that all persons were equal before the courts, since in some countries arbitrary distinctions were made on grounds of race. That would be followed by the principle of the independence of the judges, an indispensable prerequisite for the proper administration of justice. Lastly, it was essential to make clear that judicial procedure must be based on democratic principles.

/Further,

Further, the USSR amendment would replace paragraph 2, sub-paragraph (d) by a new text. In order to be assured of proper defence, the accused must have the right to acquaint himself with all the documents in the case. He must also have the right to address the court in his own language, and it was the duty of the court to have his statements translated. The original text of sub-paragraph (d) was not sufficiently clear on those points.

Mrs. ROOSEVELT (United States of America) said that her delegation's amendment to article 10, paragraph 3 (E/CN.4/L.133) did not relate to the principle of compensation for miscarriage of justice. In the United States that principle had been incorporated in the laws of many States. Even so, the mere discovery of a new fact was not sufficient ground for claiming compensation; there must be a new trial and the original conviction must be reversed on the ground that the new fact conclusively showed that there had been a miscarriage of justice. Moreover, the provisions of paragraph 3 should deny the right to compensation to any person who deliberately concealed certain facts which if disclosed would have prevented his conviction of a crime he had not committed.

Mr. HOARE (United Kingdom) emphasized that his delegation's amendment (E/CN.4/L.142) was designed to strengthen the provisions safeguarding the rights of the accused. The French expression "ordre public" did not mean the same thing as the English words "public order", and in his delegation's view was far too wide a restriction: the proper conception was that closed hearings could be held with a view to preventing disorder.

Also, besides the interests of minors, there were two other categories of private interests requiring closed hearings under existing legal practice. United Kingdom law and no doubt the law of other countries provided for the exclusion of the public from hearings concerning matrimonial disputes or the guardianship of children. Those categories should be included in paragraph 1 of article 10.

The accused should be given the necessary time and facilities to prepare a defence, and he proposed a new sub-paragraph to that effect. The words "to be informed, if he does not have legal assistance, of this right" in paragraph 2, sub-paragraph (b) were unnecessary, since there was nothing

/in such

in such information which the accused did not already know and such an intimation would not ensure more effective defence for the accused. If the accused had no counsel it was cold comfort for him to be told that if he could get a lawyer the lawyer could appear for him. A requirement to tell him what facilities, such as free legal aid, he could be given, would be a very different matter.

Paragraph 2, sub-paragraph (c) of the original text carried the implication that witnesses for the defence would invariably attend: not even the full exercise of the powers of the court could always ensure that. What was required was to affirm that the full powers of the court would be available to obtain the attendance of witnesses for the defence to the same extent as for any other witness. The United Kingdom amendment to sub-paragraph (c) therefore stated that provision should be made for the attendance of witnesses for the prosecution under the same conditions as for witnesses on behalf of the accused.

He proposed the deletion of paragraph 2, sub-paragraph (f) because it was not concerned with minimum guarantees and dealt with one particular class. Moreover, in a text which provided that the accused should be presumed innocent until legally proved guilty, it was improper to speak of the rehabilitation of minors who had the same right to be presumed innocent. The use of the word "rehabilitation" would imply that they had not.

He reserved the right to speak later on paragraph 3.

Mr. CASSIN (France) proposed, in his amendment (E/CN.4/L.154), that the words "in a democratic society" of the Universal Declaration of Human Rights should be inserted in article 10, after the words "national security". He agreed with the United Kingdom representative that the paragraph was too restrictive, and protected the interests of minors only. A general provision should therefore be adopted covering all cases in which a closed hearing was desirable in the interests of the parties concerned. That was the purpose of the second French amendment to that paragraph.

The reasons for his amendment to paragraph 5 were the same as those which had prompted the United States amendment (E/CN.4/L.153).

Mr. JEVREMOVIC (Yugoslavia) recalled that the word "competent" -- which his delegation proposed should be added before the word "independent" in article 10, paragraph 1 (E/1992, Annex III, section A, page 31) -- had appeared in the text of the draft covenant of 1949. The competence of the court should be fixed by law in advance in order to prevent arbitrary decisions in the matter to suit the occasion.

Mrs. MEHTA (India), speaking as the representative of India, noted that in her country provision was made for legal counsel in the case where a person was accused of homicide only. That was the reason for her amendment to paragraph 2, sub-paragraph (b) of article 10 (E/1992, Annex III, section A, page 31). The second part of that amendment, which related to sub-paragraph (c) of the same paragraph, was based on the principle that the courts themselves must determine whether the attendance of a witness was necessary; that function should be expressly stated in the covenant.

Mr. SANTA CRUZ (Chile) entertained certain doubt, from the legal point of view, concerning the French (E/CN.4/L.154) and the United States (E/CN.4/L.153) amendments which limited the right to compensation to victims of miscarriage of justice who were not guilty of neglect or misconduct. That provision placed on the person concerned the burden of proving that there had been no negligence or misconduct on his part; yet the impossibility of negative proof was recognized in law, and to require the person concerned to furnish such proof when instituting action for compensation would vitiate that right. The Chilean delegation therefore was opposed to the French and United States amendments.

He thought that the first point of the USSR amendment (E/CN.4/L.124) and the Yugoslav amendment (E/1992, Annex III, section A, page 31) improved the original text of article 10. Concerning the second point of the USSR amendment, he thought that the accused were not the only persons who might need the assistance of a translator, and the right to it should be extended to any person who appeared in a trial, for example witnesses. There might, however, be some danger in informing an accused person of the details of the charges or evidence against him; it should be therefore stated that that provision was subject to the limitations established by law. He shared Mr. Cassin's view that there should be a general provision for closed meetings in all cases in which the interests of the parties concerned so required.

Referring to the United Kingdom amendment (E/CN.4/L.142), he noted that there was no standard interpretation in legal theory or positive law of the meaning of the words "public order" which should therefore be deleted.

Mr. NISOT (Belgium) asked whether the French representative would not agree to replacing the words used in his own amendment by the words

/"unless

"unless it be proven that he was wholly or partly responsible for the unknown fact not being disclosed in time". He also proposed that the word "final" in the United States amendment (E/CN.4/L.133) should be replaced by the words "a judgment which has become res judicata".

The meeting rose at 5.20 p.m.