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Fifth Session

SUMMARY RECORD OF THE HUNDRED AND SEVENTH MEETING

Held at Lake Success, New York,
on Wednesday, 1 June 1949, at 11 a.m.

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<u>Rapporteur:</u>	Mr. K. AZKOUL	Lebanon
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Members (continued)

Mr. KOVALENKO	Ukrainian Soviet Socialist Republic
Mr. PAVLOV	Union of Soviet Socialist Republics
Miss BOWIE	United Kingdom
Mr. MORA	Uruguay
Mr. VILFAN	Yugoslavia

Representative of specialized agency:

Mr. ARNALDO United Nations Educational,
Scientific and Cultural
Organization

Consultants from non-governmental organizations:

<u>Category A:</u>	Miss SENDER	American Federation of Labor
	Mrs. MEAGHER	World Federation of United Nations Associations
<u>Category B:</u>	Mrs. ARETA } Mrs. VERGARA }	Catholic International Union for Social Service
	Mr. NOLDE	Commission of Churches on International Affairs
	Mr. CRUICKSHANK	Inter-American Council of Commerce and Production
	Dr. ROBB	International Federation of University Women
	Miss SCHAFER	International Union for Catholic Women's Leagues

RESUMPTION BY THE URUGUAYAN REPRESENTATIVE OF HIS SEAT IN THE COMMISSION

After a brief discussion, the Commission decided, by 14 votes to none, with 1 abstention, to allow Mr. Mora (Uruguay) to resume his place on the Commission with the right to vote, replacing Mr. Fontaina who had been acting as his alternate.

DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS (E/800, E/CN.4/253, E/CN.4/279) (discussion continued)

Article 13

The CHAIRMAN, speaking as the United States representative, introduced the United States amendment to article 13 (E/CN.4/253). She pointed out that paragraph 1 of that amendment differed from the original text in that the words "civil rights or obligations" had been replaced by "civil suit". The reason for that was that many civil rights and obligations, such as those connected with military service and taxation, were generally determined by administrative officers rather than by courts; the original text, on the other hand, appeared to suggest that all such

/rights end

rights and obligations must necessarily be determined by an independent and impartial tribunal. The United States amendment would obviate such an interpretation.

Turning to the Philippine amendment (E/CN.4/253), she suggested that the words "his rights and obligations" in paragraph 1 might be replaced by "a civil suit", for the reasons already stated. The words "in full equality" might be omitted, because the subject was adequately covered in article 1; and the phrase "other than the judgment" should be deleted, because on some occasions, such as at trials of juvenile delinquents, it might be in the interest of the defendant for the judgment not to be publicly pronounced.

In paragraph 2 of the Philippine amendment, she supported the statement that everyone charged with a penal offence had the right to be presumed innocent until proved guilty. She would prefer the next sentence to begin, as the original text had done, "In the determination of any criminal charge against him everyone is entitled to:". She supported sub-paragraphs (a), (b), (c) and (d) of the Philippine amendment, with the sole exception that she would prefer to add to sub-paragraph (b) the wording of sub-paragraph (b) of the United States amendment, from the words "which shall include" onwards. Paragraph 3 should, however, be deleted, since its subject matter was adequately covered in article 9 as adopted by the Commission.

Mr. INGLES (Philippines) accepted the United States representative's suggestions with respect to the first two paragraphs of his amendment, with the exception of the deletion of the phrase, "in full equality". While it was true that article 20 of the draft covenant guaranteed to all equal protection of the law without discrimination, its provisions were not sufficiently comprehensive to ensure full equality in court. It was absolutely necessary to state in the covenant that the strictest equality should be observed during trials. He would consequently be prepared to withdraw the phrase "in full equality" only on condition that article 20 would later be amended on those lines.

With regard to the proposed deletion of paragraph 3 of his amendment, he could not agree that article 9, which spoke of compensation only in cases of unlawful arrest or deprivation of liberty, covered the same ground. Paragraph 3 provided for a right to compensation of all those who had "undergone punishment as a result of an erroneous conviction of crime". That punishment need not necessarily be deprivation of liberty; it might, for example, be a fine, or corporal punishment, or exile, or even death. If compensation was to be provided for unlawful arrest, there was all the more reason to grant compensation to, say, the heirs of an unjustly executed person.

/The CHAIRMAN

The CHAIRMAN, speaking as the representative of the United States, agreed to the retention, in paragraph 1 of the Philippine amendment, of the words "in full equality", on the understanding that, if the text of article 20, when adopted, answered the requirements of the Philippine representative, those words could be deleted by the drafting committee which would review the whole covenant.

Mr. PAVLOV (Union of Soviet Socialist Republics) stated that the USSR amendment to article 13 had a broader significance as compared with the United States and Philippine amendments and the original text of the Drafting Committee, and that it was intended to broaden democratic guarantees, in particular with regard to peoples finding themselves in a prejudicial position.

In the original draft text, penal law alone was mentioned, whereas the USSR amendment referred to civil charges, as well as to criminal charges. In that sense, the amendment submitted by the Soviet Union corresponded to articles 10 and 11 of the Declaration on Human Rights, in which reference was made not only to criminal justice, but also to justice in court procedure in general.

In spite of the existence of formal equality before tribunals, it was a fact that judges did not always apply justice equally. The Soviet Union wished the courts of tribunals to deal with people without discrimination on account of their race, and wished to eliminate the inequality existing between people of full or limited citizenship. With regard to persons appearing before a court who were unfamiliar with the language used in court, the only protection as yet provided for them in article 13 and in the United States and Philippine amendments to it, was the assistance of an interpreter. But it was important that populations in Non-Self-Governing Territories should have the right to defend themselves in court in their own language. If the other amendments were to be adopted, the representatives of Trust Territories would be deprived of that right, and consequently the rights of individuals would not be guaranteed.

With regard to the independence of judges, he pointed out that the judges in the Soviet Union were chosen by popular elections, and that the peoples' magistrates who participated in court procedure were also elected. Democratic principles were fully applied to the election of judges and administrative officers.

/With regard

With regard to public trials, he stated that the Soviet Union favoured public hearings in all courts. In the draft text, reference was made only to criminal accusations, whereas the Soviet Union proposal referred to both criminal and civil courts. He felt that there were only two cases in which the hearings could be closed, first, when public morality was involved, and, secondly, when national security required that the details of the trial should not be disclosed, as for instance when military secrets might be revealed.

Finally, in all cases the accused should be guaranteed the right of defence, which could be carried out personally by the accused himself, or with the aid of a counsel.

With regard to paragraph 3 of the Philippine amendment, he recalled that he had defended the principle of compensation to all people in cases of illegal arrest. The Philippine amendment dealt rather with the right of the heirs of a person executed as a result of an erroneous sentence. Such an approach to the question appeared to him incorrect, since such compensation in no way affected the person who had been executed.

Mr. CASSIN (France) stated that generally speaking the USSR was worthy of being embodied in the Declaration, rather than in the text of a technical convention. He pointed out, however, that the statement that judges should be independent and subject^{only} to law, did not take into account the complexity of the question. One could not ask Governments to assume obligations of such a vague nature as that implied in the statement that judges should be independent and subject only to law. Secondly, with regard to public hearings of court trials, he pointed out that in certain cases a tribunal was asked to deliberate in a closed session in order to protect the interests of a minor. Furthermore, if individuals were given the right to speak before a tribunal in their own language, that would signify that the judges and the court would also need to be familiar with that language. He felt that the question could be the subject of a future convention dealing with the rights of minorities. He agreed however with the reference in the Soviet Union amendment to the right of defence, and felt that that right should be incorporated in the article.

/He noted

He noted that the United States amendment was an improvement on the text of the Drafting Committee. However, he disapproved of the inclusion of the word "civil" in paragraph 1, since it did not include fiscal, administrative and military questions, in which matters it was possible to appeal, in the final instance, to court. He felt that the words "full equality" should be placed after the words "public hearing" in the Philippine amendment. With regard to the statement in the USSR amendment, that all persons were equal before the court, he pointed out that in certain cases in France, people did not come before the court enjoying full equality. Foreigners, for instance, were required to pay a deposit at the beginning of a trial. With regard to paragraph 2 of the Philippine amendment, he suggested using the words "everyone shall have the guarantees necessary to his defence" in the first two lines, to be followed by paragraphs (a), (b) and (c) of the United States amendment, and paragraph (c) of the Philippine amendment.

Miss BOWIE (United Kingdom) approved of the Philippine amendment to article 13 (E/CN.4/253) which she felt added many useful and important ideas to the article. In particular, she agreed with the introduction to paragraph 2, paragraph 2 (a) and paragraph 2 (b) provided "legal assistance" in the latter did not necessarily mean a lawyer, but merely assistance in the legal conduct of a case. Under Moslem law or in cases judged according to native tribal law and custom the compulsory assistance of a lawyer might give rise to difficulties.

She agreed in principle with the United States amendment to that paragraph but did not like its phrasing and wondered whether the United States would agree to the following wording: "To defend himself in person or through legal assistance of his own choosing, which shall be assured free of charge where necessary."

The joint United States and Philippine amendment (E/CN.4/279) to the first paragraph was satisfactory except that in English law "trial" referred to a criminal suit only. She also proposed that "the press and public" should be changed to "the press or public".

She did not consider paragraph 3 of the Philippine amendment necessary since that matter was already covered by article 9, paragraph 6. Moreover if an individual were, for example, wrongly fined he should not be entitled to compensation but merely to the refunding of the fine.

Mr. SAGUES (Chile) considered the reference by all the amendments to an "independent and impartial tribunal" insufficient. In his country, the concept of an independent and impartial tribunal was fulfilled by the regular tribunals as opposed to exceptional courts. A provision of the Chilean constitution laid down that no one should be judged by a specially established court, but only by a previously established regular tribunal. He therefore proposed the insertion of "regular" before "independent and impartial".

The idea of "public hearing" also appeared in all the amendments. This phrase to him implied a court in which trials took place by jury and the judge pronounced the sentence. In Chile and the majority of Latin American countries there was a different system. Justice was an attribute of the State, and the judge was the instrument of justice. In criminal cases the first part of the trial, in which evidence was accumulated, was secret and only the second part was public. The percentage of judicial errors under such a system was very small and it appeared to him better than the system of trial by jury. He therefore proposed that the amendments should say that in countries with the system of trial by jury the trial should be public, and in other countries only the latter part of the trial should be public.

He accepted the United States amendment concerning legal assistance. According to Chilean legislation the accused had the right to choose a lawyer and, if he was unable to do so, a lawyer was assigned to him.

If the accused did not speak the language of the country it might be difficult for him to obtain the assistance of an interpreter, and it was the State's duty to provide such service. He therefore proposed that the amendment should read "The presence of an interpreter" instead of the aid or the assistance of an interpreter.

Mr. LOUFI (Egypt) speaking on the text of the joint Philippine United States amendment (E/CN.4/279) said that "civil" was not in accordance with the legislation of his country and was too narrow in that it did not include matters dealing with taxation or military service, for instance. He therefore preferred the text of the Declaration.

Moreover judgment must be pronounced in public. He therefore proposed that the words "judgment shall, in every case, be pronounced in public" should be added at the end of the first paragraph of the amendment. He also

proposed that the words "where considerations of national security or morals are involved" should be substituted by "in the interest of morals, public order and security."

On paragraph 2(b) he agreed with the French representative that the French translation of "legal assistance" should be "assistance d'un défenseur".

Mr. AZKOUL (Lebanon) said that the ideas of equality before a court, of the independence of judges, of public trial and of the right to use one's native language were satisfactorily contained in the joint Philippine-United States amendment (E/CN.4/279). The idea that legal procedure should be based on democratic principles added nothing concrete to the article. He therefore felt that all the ideas of the USSR amendment (E/CN.4/253) were satisfactorily contained in the joint Philippine-United States amendment and that the latter also contained additional ideas.

It was important, as the Chilean representative had pointed out, that the tribunal should be an already established court and not one specially created for the occasion. He suggested in the first paragraph the addition of the words "by an independent and impartial tribunal pre-established by law..."

He agreed with the Egyptian representative that "civil" did not cover all possible cases and that some other formula should be adopted.

Another idea which had been given prominence during the discussion on article 9 was that persons should be informed immediately of the accusations against them. To include that idea, he proposed the addition of "without delay" after "to a fair and public hearing".

He supported the Egyptian amendment that judgment should be pronounced in public.

He pointed out that the French translation of paragraph 2 (b) was unsatisfactory.

The meeting rose at 1.5 p.m.