

COMMISSION ON HUMAN RIGHTS

Fifth Session

SUMMARY RECORD OF THE ONE HUNDRED AND TENTH MEETING

Held at Lake Success, New York,  
on Thursday, 2 June 1949, at 10.30 a.m.

**CONTENTS:** Draft international covenant on human rights (E/800,  
E/CN.4/253, E/CN.4/281, E/CN.4/283, E/CN.4/284,  
E/CN.4/286) (discussion continued)  
Measures of implementation (discussion continued)

<u>Chairman:</u>	Mrs. Franklin D. ROOSEVELT	United States of America
Later	Mr. CASSIN	France
<u>Rapporteur:</u>	Mr. MALIK	Lebanon
<u>Members:</u>	Mr. SHANN	Australia
	Mr. LEBEAU	Belgium
	Mr. SAGUES	Chile
	Mr. CHANG	China
	Mr. SOERENSEN	Denmark
	Mr. LOUFI	Egypt
	Mr. CASSIN	France
	Mr. GARCIA BAUER	Guatemala
	Mrs. MEHTA	India
	Mr. ENTENZAM	Iran
	Mr. INGLES	Philippines
	Mr. KOVALENKO	Ukrainian Soviet Socialist Republic
	Mr. PAVLOV	Union of Soviet Socialist Republics

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Miss BOWIE	United Kingdom
Mr. MORA	Uruguay
Mr. VILFAN	Yugoslavia

Consultants from non-governmental organizations:

Category A:

Miss SENDER	American Federation of Labor
Miss STUART	World Federation of United Nations Associations

Category B:

Mrs. ARETA	Catholic International Union for Social Affairs
Mr. HOLLE	Commission of Churches on International Affairs
Mr. MOSKOWITZ	Consultative Council of Jewish Organizations
Mr. REER Mr. BALDWIN	International League for the Rights of Man
Miss SCHAFER	International Union of Catholic Women's Leagues
Mr. BENNIE Mr. MILLER	World Alliance of YMCA's

Secretariat:

Mr. HUMPHREY	Representative of the Secretary-General.
Mr. LAWSON	Secretary of the Commission

DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS (E/800, E/CN.4/253, E/CN.4/281, E/CN.4/283, E/CN.4/284, E/CN.4/286) (discussion continued)

The CHAIRMAN said that the drafting sub-committee had submitted a version of paragraphs 1 and 2 of article 13 (E/CN.4/286) adopted unanimously except for the words "including the judgment" in the fifth line of the text, on the inclusion of which opinion was divided.

The United Kingdom representative had submitted an amendment to paragraph 2 (b) (E/CN.4/281), <sup>and</sup> the Yugoslavian representative's amendments to paragraphs 1 and 2 (d) (E/CN.4/284).

Mr. SAGUES (Chile) stated that in accepting the text of the drafting committee he had reserved the right to present his amendment that the phrase "pre-established by law" should be inserted in paragraph 1 (E/CN.4/283).

/Mr. CASSIN

Mr. CASSIN (France), while in favour of the words "established by law", could not accept the amendment to "pre-established" suggested by the Chilean representative. The paragraph in question referred both to civil and penal trials, and it was at times necessary, under special circumstances, to set up new courts. The insertion of the word "pre-established" would make the provisions too rigid and preclude the possibility of making adjustments when necessary. Its omission did not, of course, prejudice the moral idea that in penal law exceptional courts should not be set up. He therefore proposed that the text of the drafting committee should be retained.

Miss BOWIE (United Kingdom) asked for a vote on the United Kingdom amendment to paragraph 2 (b) (E/CN.4/281), since in her opinion the drafting committee's text did not clearly express its originators' intention.

Mr. LOUFFI (Egypt) pointed out that the idea contained in the United Kingdom amendment was expressed in the French text by the use of the words "d'office".

Mr. VILFAN (Yugoslavia) also wished his delegation's amendments (E/CN.4/284) to be put to the vote. The idea contained in the first amendment did not appear in the text, and it was necessary to emphasize the point. He felt that his second amendment went further than paragraph 2 (d) of the drafting committee's text. The position of an accused person who could not speak the language of the country in which he was being tried was most unfortunate, and an effort should be made to enable him to put his case as forcefully as possible to the court.

Mr. CASSIN (France) pointed out to the Yugoslav representative that paragraph 2 (d) of the drafting committee's text safeguarded the right of the accused to address the court through an interpreter, and that the difference between that and the Yugoslav amendment was merely one of form.

Mr. PAVLOV (Union of Soviet Socialist Republics) proposed that the Yugoslav amendment to paragraph 1 (E/CN.4/284) should be amended to read "established and functioning on democratic principles".

Mr. VILFAN (Yugoslavia) accepted that modification.

The Yugoslav amendment to paragraph 1 (E/CN.4/284), as modified, was rejected by 5 votes to 3, with 8 abstentions.

Mr. CASSIN (France) in answer to a question by the USSR representative as to the meaning of "incapacitated persons" in paragraph 1, explained that the phrase was meant to include minors, mentally incompetent persons and others, in cases where it was not to their interest for proceedings concerning, for example, the administration of their property, to be made public. He pointed out that married women in France had formerly been "incapacitated" in many ways, and that that practice still existed in Spain and Italy.

Mr. SAGUES (Chile), presenting his delegation's amendment to paragraph 1 (E/CN.4/283), said that its object was to enforce what he considered one of the most important and fundamental human rights, the right to be tried by a previously-established court. He brought to the Commission's attention the fact that thousands of men were now being tried by exceptional or ad hoc courts.

At the request of the Chilean representative, a vote was taken by roll-call on the Chilean amendment to insert the words "pre-established by law" in paragraph 1.

In favour: Chile, Guatemala.  
Against: Belgium, Denmark, Egypt, France, United Kingdom, United States of America, Uruguay, Yugoslavia.  
Abstaining: China, India, Iran, Philippines, Ukrainian SSR, Union of Soviet Socialist Republics.

The Chilean amendment was rejected by 8 votes to 2, with 6 abstentions.

Mr. MORA (Uruguay), explaining his vote, said that, while he had much sympathy with the ideas expressed by the Chilean representative, the French representative's explanation had led him to consider that there were sufficient guarantees against abuses in the joint text.

Mr. INGLES (Philippines) stated that while he realized the moral force of the Chilean representative's argument, he had abstained in the voting since he had previously stated that he could only support that amendment if it were qualified by his two suggestions.

The CHAIRMAN put to the vote the inclusion of the words "including the judgment" in the text of paragraph 1.

Those words were rejected by 6 votes to 3, with 6 abstentions.

The CHAIRMAN, at the request of the United Kingdom representative, put to the vote the inclusion of the words "or incapacitated persons" in paragraph 1.

Those words were adopted by 8 votes to 2, with 6 abstentions.

The CHAIRMAN, at the request of the USSR representative, put the first and second sentences in paragraph 1 to the vote separately.

The first sentence was adopted by 15 votes to none, with 1 abstention.

The second sentence was adopted by 12 votes to none, with 4 abstentions.

The paragraph as a whole was adopted by 12 votes to none, with 4 abstentions.

#### Paragraph 2

The CHAIRMAN put the introductory paragraph of paragraph 2 to the vote.

The introductory paragraph of paragraph 2 was adopted by 16 votes to none.

The CHAIRMAN put paragraph 2 (a) to the vote.

Paragraph 2 (a) was adopted by 16 votes to none.

The CHAIRMAN submitted for discussion the United Kingdom amendment to paragraph 2 (b) (E/CN.4/281).

Mr. MORA (Uruguay) pointed out that the French text of the drafting committee was clearer than the English text, and that he supported the United Kingdom amendment to the English text for that reason.

The CHAIRMAN, as the representative of the United States, pointed out that the committee felt that its text underlined the fact that the accused should be informed of his right to legal assistance and that the United Kingdom text did not include that point.

Miss BOWIE (United Kingdom) felt that the text presented by the drafting committee was poorly worded.

Mr. LEBEAU (Belgium) shared the opinion of the representative of Uruguay, that the French text of the drafting committee was more satisfactory than the English, and that therefore the United Kingdom's criticism of the English text did not apply to the French translation. The phrase in the French text "se voir attribuer un défenseur d'office" expressed more clearly the right of the accused to legal assistance free of charge, than the phrase in the English text "to have legal assistance assigned". He felt therefore that the English text should be approved.

The CHAIRMAN remarked that the chief difference between the drafting committee's text and the United Kingdom amendment was that the former stated the right of the accused to be informed of his right to legal assistance, whereas the latter merely stated that such assistance should be assured free of charge where necessary. She therefore felt that the French text of the drafting committee was an exact translation of the English text as given by the committee. The vote on the United Kingdom amendment really signified voting on the inclusion in the English text of the words "to be informed of his right".

She then put the United Kingdom amendment to the vote.

The United Kingdom amendment was rejected by 8 votes to 6, with one abstention.

The CHAIRMAN put to the vote the text of paragraph 2 (b) prepared by the drafting committee.

Paragraph 2 (b) was adopted by 11 votes to none, with 3 abstentions.

The CHAIRMAN put to the vote paragraph 2 (c).

Paragraph 2 (c) was adopted by 14 votes to none.

The CHAIRMAN put to the vote the amendment submitted by Yugoslavia to paragraph 2 (c) (E/CN.4/284).

The Yugoslav amendment was rejected by 5 votes to 5, with 4 abstentions.

The CHAIRMAN put to the vote the text of paragraph 2 (d), prepared by the drafting committee.

Paragraph 2 (d) was adopted by 13 votes to none.

The CHAIRMAN put to the vote the whole of paragraph 2.

Paragraph 2 was adopted by 12 votes to none, with 1 abstention.

Paragraph 3 of the Philippine amendment in document E/CN.4/253

Mr. PAVLOV (Union of Soviet Socialist Republics) proposed that paragraph 3 should be voted upon in two parts: firstly, the first sentence dealing with the right of the individual to compensation; and secondly, the second sentence dealing with the right of heirs to compensation. He also suggested that there should be no interchange of the words "courts" and "tribunals" in the text, but that one or the other or both together should be chosen and used consistently throughout the text.

Mr. INGLES (Philippines) pointed out that after a study of the tribunals of different countries, it appeared that at least seven or eight countries represented in the Commission had granted rights such as those visualized in the Philippine amendment, and that at least five countries who were not members of the Commission, and four other countries who were not members of the United Nations, also had such legislation. That total number of countries was greater than that of the countries who had the legislation specified in article 9, paragraph 6, and yet the committee had approved that paragraph. He thought, however, that the decision on the matter should not be based on the number of countries who had so far adopted the legislation referred to in the provision. The Commission should be guided solely by the merits of the case. It had been indicated that the recognition of the right of a person erroneously convicted of crime was broader than that of the right of a person unlawfully arrested. He thought, therefore, that persons erroneously convicted of crime should be entitled to compensation at least on the same grounds as those subjected to unlawful arrest.

/The CHAIRMAN

The CHAIRMAN put to the vote the first sentence of paragraph 3.  
The first sentence of paragraph 3 was adopted by 11 votes to one,  
with 2 abstentions.

The CHAIRMAN put to the vote the second sentence of paragraph 3.  
The second sentence of paragraph 3 was adopted by 4 votes to 3,  
with 7 abstentions.

Mr. ENTEZAM (Iran) stated that he had abstained from voting because it was obvious that the compensation referred to in the second sentence of paragraph 3 could in no way affect the person who had been executed.

Mr. PAVLOV (Union of Soviet Socialist Republics) stated that he had abstained from voting on the second sentence of paragraph 3 for the reasons he had already mentioned. Furthermore, he had abstained because he was opposed to the general principle of the execution of innocent people.

The CHAIRMAN put paragraph 3 as a whole to the vote.  
Paragraph 3 was adopted by 9 votes to one, with 4 abstentions.

The CHAIRMAN put the whole of article 13 to the vote.  
Article 13 was adopted by 12 votes to none, with 3 abstentions.

Mr. PAVLOV (Union of Soviet Socialist Republics) stated that, in addition to what had been said concerning paragraph 3 of the Philippine amendment, no reference had been made to the necessity of establishing justice on democratic principles, and that the Committee had rejected the right of the representatives of minorities to speak in their own language before courts. He had therefore abstained from voting on article 13 as a whole.

#### MEASURES OF IMPLEMENTATION

The CHAIRMAN stated that representatives of two non-governmental organizations had requested permission to address the Commission on the subject of implementation. As there was no objection, she called on them to do so.



Mr. BALDWIN (International League for the Rights of Man)

remarked that he had observed a tendency on the part of the Commission to provide for restricted measures of implementation at first and to leave open the possibility of taking further steps in the light of experience. In the opinion of his organization, it was essential to give immediate attention to four points, which were basic to any implementation of the international bill of human rights. Those points were:

1. The right of petition should be granted to individuals and associations as well as to Governments, with a view to teaching the people of all nations to consider the United Nations as a central agency for the protection of human rights; the right to submit such petitions should be given wide publicity so that all might know where they could seek redress of their wrongs.

2. There should be a permanent commission, the function of which would be to consider complaints and to achieve a settlement by means of conciliation.

3. Judicial machinery should be provided to maintain universal standards of human rights enforceable under international law.

4. It should be borne in mind that any resulting interference with national sovereignty would be voluntarily accepted by the States which ratified the covenant, and that the United Nations as a whole was based on the concept of interference with national sovereignty with the consent of those concerned.

Mr. MOSKOWITZ (Consultative Council of Jewish Organizations)

drew the Commission's attention to a memorandum on implementation submitted by his organization and summarized in document E/C.2/190.

In that memorandum, his organization suggested, as a minimum requirement, the establishment of permanent central and regional commissions composed of independent persons, which would act, in accordance with strict rules of procedure, on complaints of violations of human rights, whether those complaints were made by States, individuals, groups of individuals or non-governmental organizations. Those commissions would be concerned with conciliation rather than compulsion or punishment. The memorandum further suggested certain rules of procedure and analyzed past procedures and lessons that could be derived from them.

His organization

His organization associated itself with those who believed that the right of individuals to present petitions, which was recognized in many national codes of law and for which important historical precedents existed in international relations, should be granted with respect to the draft covenant. Any scheme of implementation which permitted only Governments to submit complaints, and which denied that right to individuals or groups of individuals, would be a step backward. It would certainly not be a contribution to world peace, since action by one State on behalf of a citizen of another was bound to create international friction. If, on the other hand, an individual had the right to present a petition, the matter could be settled between him and his Government without arousing international difficulties. Recognition of the right of individual petition would moreover encourage respect for human rights on the part of governments, and at the same time give those governments the opportunity, when a complaint was made against them, of presenting publicly all relevant facts and of forestalling misrepresentation of their treatment of their own citizens. Any risk of abuses involved in such a scheme could be minimized by proper rules of procedure and careful screening of petitions.

In conclusion, certain measures of implementation could not be separated from the covenant. As the purpose of the covenant was to place human rights under international protection, he thought that those who were ready to accept the covenant would be equally ready to accept the right of individual petition.

Mr. Cassin (France) took the Chair.

Mr. PAVLOV (Union of Soviet Socialist Republics), speaking on a point of order, drew attention to the fact that, although the subject of petitions was frequently mentioned in connexion with measures of implementation, it appeared on the agenda as a separate item (item 6), whereas measures of implementation were to be found under item 5. In order to avoid confusion and repetition, it would be best to decide whether to consider those items together or to postpone all mention of petitions until item 6 had been reached.

The Commission decided that in considering item 5 of the agenda, it would also consider those parts of item 6 that related to item 5.

Mr. PAVLOV (Union of Soviet Socialist Republics) thereupon moved adjournment of the discussion.

The motion to adjourn was adopted by 6 votes to none, with 7 abstentions.

The meeting rose at 12.35 p. m.