

**MASTER FILE**

COMMISSION ON HUMAN RIGHTS

Fifth Session

SUMMARY RECORD OF THE HUNDRED AND TWENTIETH MEETING

Held at Lake Success, New York  
on Thursday, 9 June 1949, at 10.30 a.m.

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<u>Chairman:</u>	Mrs. ROOSEVELT	United States of America
<u>Rapporteur:</u>	Mr. MALIK	Lebanon
<u>Members:</u>	Mr. SHANN	Australia
	Mr. STEYAERT	Belgium
	Mr. SAGUES	Chile
	Mr. CHANG	China
	Mr. SCERENSEN	Denmark
	Mr. LGUTFI	Egypt
	Mr. CASSIN	France
	Mr. GARCIA BAUER	Guatemala
	Mrs. MEHTA	India
	Mr. ENTEZAM	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. YILFAN	Yugoslavia

Consultants from non-governmental organizations:

Category A:

Miss SENDER	American Federation of Labor (AF of L)
Mrs. MEAGHER	World Federation of Trade Unions (WFTU)

Category B:

Mrs. BERGARA	Catholic International Union for Social Service
Mr. NOLDE	Commission of Churches on International Affairs
Mr. SCOTT	International League for the Rights of Man
Miss DINGMAN	International Union for Child Welfare
Miss SCHAEFER	International Union of Catholic Women's Leagues
Mr. RENNIE	World's Alliance of Young Men's Christian Associations

Secretariat:

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

DRAFT COVENANT ON HUMAN RIGHTS (E/800, E/CN.4/272, E/CN.4/272/Corr.1)  
(discussion continued)

Article 17

The CHAIRMAN pointed out that article 17 of the draft Covenant which dealt with freedom of expression and the freedom to disseminate information, was closely connected with the Convention on Freedom of Information, consideration of which had been postponed by the General Assembly until its next session. In the circumstances it appeared that the Commission would be well advised not to draft such an article until it knew the decision of the General Assembly and the reactions of Governments to the Convention which would then have been drawn up. She suggested, therefore, that the Commission should postpone consideration of article 17 to its next session.

/Mrs. MEHTA (India)

Mrs. MEHTA (India) did not object to the postponement of consideration of article 17. Nevertheless, she considered that there was a clear distinction to be drawn between freedom of expression and freedom of information.

The CHAIRMAN emphasized that the two freedoms were closely linked, as was shown by the text proposed by the French delegation for article 17 (E/CN.4/272).

Miss BOWIE (United Kingdom) supported the Chairman's suggestion, as the discussion of article 17 might be extremely lengthy and, in any case, would have to be re-opened when the convention had been adopted.

Mr. CASSIN (France) recognized the advantages that would be gained by postponing consideration of article 17 to the next session, although that article was connected, not only with the Convention on Freedom of Information, but also with articles 18 and 19 of the draft Covenant. When the Commission was informed of the General Assembly's decision, it would still have to consider a matter which fell within its own province, namely, freedom of speech and of publication.

Mr. PAVLOV (Union of Soviet Socialist Republics) considered that, in deciding to finish drafting the Covenant during the current session, the Commission had undertaken to consider all its articles without exception. Postponement of the consideration of one article would constitute an unfortunate precedent. Besides, the Commission would not be helping Governments by leaving a blank in the place of article 17.

Moreover, article 17 dealt with freedom of expression and of the dissemination of ideas and opinions; its scope was therefore wider than that of the Convention on Freedom of Information. Freedom of expression and freedom of information were doubtless closely connected but, whatever the form of the convention which might be adopted by the General Assembly, the Commission would still have to draw up article 17, providing for the freedom of expression. The text proposed by the USSR for article 17 contained nothing which could not be decided on before the adoption of the Convention.

/Mr. Pavlov

Mr. Pavlov proposed that, for the orderly conduct of its work, the Commission should proceed to the discussion of article 17; it would in any case have to consider freedom of expression as distinct from freedom of information.

Mr. INGLES (Philippines) drew attention to article 7 of the draft Convention on Freedom of Information; that article provided that the Convention should be superseded by any general agreement on human rights sponsored by the United Nations to the extent that the two instruments were inconsistent. Thus, the Commission would be quite free to adopt a text which was not in accord with that of the Convention.

He recognized that freedom of expression was distinct from freedom of information. Nevertheless, the Philippine delegation thought that consideration of article 17 should be postponed in order to avoid the possibility that the United Nations drew up two separate texts on freedom of information.

Mr. CHANG (China) observed that paragraph 1 of article 17 as drafted by the United Nations Conference on Freedom of Information covered a very wide field and also dealt with freedom of thought and expression.

He suggested that, before taking a vote on the postponement of the consideration of article 17, the Commission should decide to request the views of Governments on the following two questions: (1) whether the Covenant should contain an article concerning freedom of information; (2) if so, what should the terms of that article be?

Mr. LOUTFI (Egypt) favoured the postponement of the discussion on article 17. The Commission should avoid being drawn into lengthy debates without being acquainted with all the factors necessary to enable it to take a decision. Like several other representatives, he could see a distinction between freedom of information and the rights and freedoms established in article 17. There was no reason why the Commission should not discuss both ideas at its next session.

Mr. KOVALENKO (Ukrainian Soviet Socialist Republic) failed to understand why the Commission should give the Convention any priority over the draft Covenant. If it were true that the Commission was not yet acquainted with all the factors of the matter, it was permissible to discuss freedom of speech and of publication, leaving aside temporarily the question of freedom of information. In any case, the Commission was now drawing up what was only a provisional text; at its next session in 1950 it might have to redraft it to accord with the views expressed by Governments. At that time it might also take into account any decisions which the General Assembly might have taken meanwhile.

The CHAIRMAN put to the vote the proposal to postpone consideration of article 17 of the draft Covenant until the next session, it being understood that, if necessary, the Commission's report would inform Governments as to the reasons for that postponement and also that, to meet the wishes of the representative of China, the Secretariat should ask Governments any questions which it judged would facilitate the solution of the problem.

The Commission decided to postpone consideration of article 17 to the next session by 12 votes to 3, with one abstention.

Mr. PAVLOV (Union of Soviet Socialist Republics) said he had voted against the proposal for the reasons which he had given during the discussion. He considered that, by supporting the proposal made by the representative of the United States of America, the majority of the Commission had shown its unwillingness to consider the USSR proposal and thereby to check the warmongering propaganda and calumnies which were being made by a press serving the interests of the armaments industry.

He still thought the Commission was not justified in avoiding that part of its work which consisted in examining the question of freedom of speech and of publication. He proposed that document E/CN.4/272, containing the USSR proposal, should be appended to the report which was to be addressed to Governments.

Mr. ENTEZAM (Iran) expressed the opinion that the USSR representative had abused his right to explain his vote and that he had seized on that pretext to make accusations against his colleagues and to put forward a new proposal.

Mr. CASSIN (France) wished to explain his vote. He considered that it was the duty of the Commission on Human Rights to co-ordinate all questions concerning human rights; nevertheless, it would be doing the Commission an ill service to want to substitute it for the various bodies of the United Nations which were dealing with certain particular aspects of human rights.

He recalled the fact that the Conference on Freedom of Information had done a great deal of work, and expressed his conviction that, when the Convention on Freedom of Information had been adopted by the General Assembly, the Commission on Human Rights would be able to take over from it that article of the Covenant on Human Rights which referred to freedom of expression. The Commission on Human Rights had, therefore, acted reasonably in deciding to postpone consideration of article 17 of the draft Covenant to a later date.

Mr. KOVALENKO (Ukrainian Soviet Socialist Republic) stated that, if the view expressed by the representative of France were accepted, it would follow that virtually no article of the Covenant on Human Rights could yet be examined, since other organs of the United Nations were engaged in consideration of various questions which related to certain aspects of human rights.

In reply to a remark by Mr. MALIK (Lebanon) regarding explanations of votes, the CHAIRMAN explained that the Commission on Human Rights usually followed the practice established by the rules of procedure of the Economic and Social Council.

#### Article 18

Miss BOWIE (United Kingdom) stated that her delegation would withdraw the second part of its proposed amendment to article 18, namely, the addition of the words which she had proposed in subparagraph (c): "or any similar nuisance" after the word "others"; the United Kingdom delegation was now of the opinion that the addition was of no value.

It particularly wanted the words "or the prevention of disorder" to be included, however; it was essential, in the interests of the community, to be able to prevent disorder resulting, for example, from clashes between political groups.

/With regard

With regard to the United States draft amendment (E/CN.4/272/Corr.1), the United Kingdom delegation preferred the words "public safety" which had been used in the original text of that amendment, to the words "general interest" used in the corrigendum to that amendment.

Finally, with regard to the USSR draft amendment, the United Kingdom delegation considered that the part providing that the law should guarantee "freedom to hold assemblies, meetings, street processions and demonstrations", etc., was too limitative and that, moreover, the terms "Fascist or anti-democratic" should not be used in the current instance, in view of the different interpretations which were put upon those words. Totalitarian and anti-democratic doctrines were better fought by attempting to convince people of the danger of allowing themselves to be influenced by such doctrines.

The CHAIRMAN, speaking as the representative of the United States of America, said that, to ensure the free exercise of the right of assembly, it was sometimes necessary to take certain measures such as the control of traffic and of the movements of persons; such restrictions could be imposed only when they were "reasonable and necessary" for the general interest. The words "general interest" were intended to impose upon those who might limit the freedom of assembly the obligation to act solely and exclusively in the general interest.

The United States proposal not only used the expression "pursuant to law", but set out briefly the conditions to be fulfilled before freedom of assembly might be controlled by the application of the law. Merely to state that freedom of assembly should be subject to the provisions of the law would be to open the door to abuse by allowing those who wished to hamper freedom of information to achieve their objectives by ordinary legal means.

As regards the USSR proposal, the United States delegation considered that the restrictions contained in that proposal, in the form of the qualifications "Fascist and anti-democratic" were far too vague and ambiguous, and consequently wholly unacceptable.

Mr. PAVLOV (Union of Soviet Socialist Republics) explained that the proposal submitted by his delegation was the expression of a wide conception of the freedom of assembly. That conception was in fact the least restrictive of all, since it provided for complete freedom in that field, except in the case of fascist or anti-democratic demonstrations.

In reply to the argument that the USSR proposal contained restrictions of too general a nature, he pointed out that there were more restrictions in the United States proposal. Moreover, the restrictions contained in the United States amendment tended to restrict freedom of assembly in a variety of circumstances which were not defined by the text.

As for the argument that the fight against fascism should be carried out by persuasion, he stated that some countries had paid with their freedom, over several years, for their weakness in the face of Hitlerite and fascist movements; such methods of persuasion were plainly inadequate to combat such enemies and ultimately only favoured the latter.

It was therefore vital that the Covenant on Human Rights should contain provisions prohibiting the dissemination of fascist and anti-democratic ideas; no State which claimed to be democratic could oppose the inclusion of such provisions in the Covenant.

Finally, it was important to lay down the fact that those freedoms should be guaranteed by the law because, in certain countries, though the right of assembly existed, progressive organizations were unable to find the necessary meeting-places when they wished to organize important meetings. It was therefore not sufficient to include in the article the various freedoms in question if, at the same time, it was not stated that those freedoms must be guaranteed by law.

Mrs. MEHTA (India) favoured the original text as it had been clarified by the United Kingdom amendment.

With regard to the United States amendment, she thought that the words "the general interest" were too vague and should therefore not be used.

Finally, with regard to the USSR proposal, Mrs. Mehta thought that the text would be more appropriate in a declaration than in a covenant. Moreover, the restriction in the words "Fascist or anti-democratic" was in any case insufficient; it should also include the words "any other organization using violent methods liable to disturb public order." But even if it were modified in that way, the Indian delegation could still not accept the USSR text.

Mr. CHANG (China) considered the text of the United States amendment preferable to that of the Drafting Committee since it was



clearer and more concise than the latter. All the same, he thought certain changes should be made in the United States text. In particular, he proposed to substitute for the first sentence, the negative form of which he did not approve, article 20, paragraph 1 of the Universal Declaration of Human Rights, which stated that "Everyone has the right to freedom of peaceful assembly and association."

Furthermore, it would seem to him preferable not to introduce restrictive provisions in article 18, but to provide for a general limiting clause applicable to the draft Covenant as a whole. If, however, the Commission did not share his opinion, he would suggest that the restrictive clauses proposed by the United States should be amended as follows: (1) the word "reasonable" which was too vague to be included in the draft International Covenant on Human Rights should be suppressed; (2) instead of sub-divisions (a), (b) and (c) commas should be used; (3) the words "the general interest" which were not specific enough, should be replaced by: "the prevention of public disorder."

The CHAIRMAN, speaking as the representative of the United States of America, explained that her delegation was prepared to substitute article 20, paragraph 1 of the Universal Declaration of Human Rights for the first sentence of its amendment, as suggested by the representative of China.

Mr. CASSIN (France) in turn proposed to replace the first sentence of the United States amendment by article 20, paragraph 1 of the Universal Declaration of Human Rights and to delete the word "reasonable". He also proposed to replace the list included in that amendment by the following: "necessary for national security, public order, the protection of health or morals and the protection of the rights and freedoms of others in a democratic society."

Mr. Cassin explained that he thought it essential to introduce into that article the fundamental idea of the protection of the rights and freedoms of others, as well as the concept of a democratic society, since the latter was included in article 29 of the Universal Declaration of Human Rights.

He added that he had listened with great attention and interest to the remarks of the representative of the USSR on the perils of fascism. It was true that the

democracies had been unable to defend themselves against such dangers in the past; on the other hand, the drastic method suggested by the representative of the USSR had the great disadvantage of limiting freedom too radically. Without going so far, it seemed that an article which contained the fundamental ideas of peaceful association, of protection of rights and freedoms of others and of a democratic society, offered sufficient guarantees against the fascist perils to which the representative of the USSR had pointed.

The CHAIRMAN, speaking as the representative of the United States of America, said her delegation would accept most of the modifications suggested by the delegation of France. She wished, however, to retain the word "reasonable" which, in her opinion, introduced an additional guarantee against all arbitrary action. Furthermore, she would like to have the vote on the French amendment taken in two parts, since she intended to vote against the inclusion of the words "in a democratic society."

Miss BOWIE (United Kingdom) accepted the Chinese proposal to use article 20, paragraph 1 of the Universal Declaration of Human Rights, as well as the French proposal to introduce into the list of restrictions the expression "public order" which she preferred to the one appearing in her delegation's amendment.

In reply to the representative of the USSR, Miss Bowie explained that her country, rather than decree radical measures against fascism and other anti-democratic movements, preferred to place its trust in the people, which it considered perfectly capable of making an intelligent choice between the different ideologies or doctrines presented to it. That was why the United Kingdom Government did not forbid Mr. Mosely, for example, to pursue his pro-fascist activities.

Mr. PAVLOV (Union of Soviet Socialist Republics) pointed out that while the common sense and the intelligence of the popular masses were a powerful factor in the struggle against fascism, it had to be recognized that the campaigns for the propagation of distorted news which were being carried on in some countries in favour of so-called freedom of information and of the press, sometimes prevented those factors from having full play, and enabled fascism to develop underground and manifest itself unexpectedly in all its strength.

Experience had amply demonstrated how imprudent and dangerous it was to adopt an attitude of tolerance and liberalism towards fascism. Such an attitude had almost brought about the downfall of the democracies; the country which had accepted the heaviest sacrifices to vanquish nazism in armed conflict had the right today to ask that all fascist activity in the world should be forbidden by law.

In conclusion Mr. Pavlov asked that his amendment should be voted on in parts. He emphasized that the first paragraph contained nothing which could not easily be accepted by all the members of the Commission. It was precisely with a view to gaining the support of the greatest possible number of members that the USSR delegation had drafted only a very moderate text, one that fell far short of the Constitution of the USSR, which guaranteed to the popular masses true respect of the right to assembly and association by putting at their disposal all the necessary facilities.

Mr. SAGUES (Chile) could not support the USSR amendment. For one thing, his delegation was opposed to the introduction in an article of the Covenant of the concept of democracy, the meaning of which varied considerably from country to country. Moreover, it thought that the prohibition by law of certain demonstrations and meetings even if they were fascist and anti-democratic could be traced to a totalitarian outlook.

The Chilean delegation would support the French proposal, which had the advantage of simplifying the Drafting Committee's text.

The first paragraph of the USSR amendment (E/CN.4/272) was rejected by 6 votes to 3, with 5 abstentions.

At the request of the USSR delegation, a vote was taken by roll-call on the second paragraph of that amendment, as follows:

<u>In favour:</u>	Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Yugoslavia
<u>Against:</u>	Chile, Denmark, France, India, Lebanon, Philippines, United States of America, Uruguay
<u>Abstaining:</u>	China, Egypt, Guatemala, Iran.

The second paragraph of the USSR amendment was rejected by 8 votes to 3, with 4 abstentions.

Mr. INGLIS (Philippines) said that he had voted against the USSR amendment because in the opinion of his delegation, the concept of democracy, which did not have the same meaning in every country, would be out of place in a draft international covenant on human rights. Furthermore, the Philippines delegation viewed with disfavour the adoption of authoritarian measures of the kind proposed in the second part of that amendment.

The meeting rose at 1 p.m.