

UNITED NATIONS
ECONOMIC
AND
SOCIAL COUNCIL



GENERAL

E/CN.4/SR.153

19 April 1950

ORIGINAL: ENGLISH

COMMISSION ON HUMAN RIGHTS

Sixth Session

PROVISIONAL SUMMARY RECORD OF THE HUNDRED AND FIFTY-THIRD MEETING

Held at Lake Success, New York,
on Tuesday, 11 April 1950, at 2.45 p.m.

CONTENTS:

Draft international covenant on human rights (E/1371, E/CN.4/365, E/CN.4/353/Add.10, E/CN.4/387, E/CN.4/393, E/CN.4/398, E/CN.4/413, E/CN.4/414, E/CN.4/417, E/CN.4/420)(continued);

Statement by the representative of the Commission on the Status of Women;

Article 5 (continued);

Article 12;

Article 13.

<u>Chairman:</u>	Mrs. F. D. ROOSEVELT	United States of America
<u>Members:</u>	Mr. WHITIAM	Australia
	Mr. STEYAERT	Belgium
	Mr. VALENZUELA	Chile
	Mr. CHANG	China
	Mr. SORENSON	Denmark
	Mr. RAMADAN	Egypt
	Mr. ORDONNEAU	France
	Mr. KYROU	Greece
	Mrs. MEHTA	India

Members (continued): Mr. MALIK Lebanon
 Mr. MENDEZ Philippines
 Miss BOWIE United Kingdom of Great Britain and
 Northern Ireland
 Mr. ORIBE Uruguay
 Mr. JEVREMOVIC Yugoslavia
Also present: Mrs. CASTILLO LEDON Representative of the Commission on
 the Status of Women

Representative of a specialized agency:

Mr. WEIS International Refugee Organization
 (IRO)

Representatives of non-governmental organizations:

Category A: Miss SENDER International Confederation of
 Free Trade Unions (ICFTU)
On Register: Mr. EASTMAN) Commission of Churches on
 Mr. NOLDE) International Affairs
 Mrs. PARSONS International Council of Women
 Miss R. TOMLINSON International Federation of Business
 and Professional Women

Secretariat:

Mr. HUMPHREY Director of the Division of Human
 Rights
 Mr. SCHWELB Assistant Director of the Division
 of Human Rights
 Mr. LIN MOUSHENG) Secretaries of the Commission
 Mr. DAS)

DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS (E/1371, E/CN.4/365, E/CN.4/353/Add.10
 E/CN.4/387, E/CN.4/393, E/CN.4/398, E/CN.4/413, E/CN.4/414, E/CN.4/417,
 E/CN.4/420)(continued)

Statement by the representative of the Commission on the Status of Women

1. Mrs. CASTILLO LEDON (Commission on the Status of Women) explained the views of her Commission on the manner in which the various provisions of the draft covenant would affect women. The Commission on the Status of Women was anxious that every document adopted by the United Nations dealing with the position of the individual in human society should recognize the equal rights of men and women, which was one of the principles laid down in the Charter and confirmed in the Universal Declaration of Human Rights.

/2. In order

2. In order to make it abundantly clear that such words as "everyone" and "anyone", as used in the draft covenant, applied equally to men and women, the Commission on the Status of Women suggested that the provision to the effect that there should be no discrimination on a number of grounds, including sex, at present contained in article 20 of the draft covenant, should be transferred to article 2, the first sentence of which would then read: "Each State party hereto undertakes to ensure to all individuals within its jurisdiction the rights defined in this Covenant, without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

3. Further, various economic, social and civil rights accorded to women in the Declaration had been excluded from the draft covenant; the Commission on the Status of Women wished to know what action was contemplated with respect to those rights.

4. Mr. CRIBE (Uruguay) warmly congratulated the representative of the Commission on the Status of Women on her lucid and brilliant statement, and requested that the full text might be circulated to the Commission on Human Rights.

5. The representatives of France, Lebanon and the United Kingdom supported the request.

6. The CHAIRMAN stated that the text would be circulated.*

7. Miss BCWIE (United Kingdom) added that since the Commission on Human Rights and the Commission on the Status of Women would be meeting concurrently in May, they might hold a joint meeting to deal with the points which the Commission on the Status of Women wished to be considered.

Article 5 (continued)

8. The CHAIRMAN recalled that at the preceding meeting the Commission had adopted the French amendment (E/CN.4/365) in substitution for paragraphs 2 and 3 of the original text of article 5.

*It has since been issued as document E/CN.4/418.

9. Mr. ORDONNEAU (France) stated that the intention of his Government had been -- as clearly stated in the amendment, which had been submitted months previously -- to propose a substitution for paragraph 1; his understanding was that it had actually been voted as an addition to that paragraph. Consequently, the United States amendment merging paragraphs 2 and 3 (E/CN.4/393) should be put to the vote, and, if it was rejected, the original paragraphs themselves should be put to the vote.

10. Mr. MALIK (Lebanon) pointed out that if the French text -- which had his entire approval -- had not been intended in substitution for paragraphs 2 and 3, it should have been put to the vote before the Lebanese amendment to those paragraphs. Had that been done, upon the adoption of the French text he would have had the opportunity of withdrawing his own amendment; instead of allowing it to be defeated by the Commission.

11. After a procedural discussion, the CHAIRMAN stated that the French text adopted at the preceding meeting could not be considered part of paragraph 1, since that paragraph had been voted on as a whole before the adoption of the French amendment. The Commission might, however, vote on whether it wished that amendment to appear as paragraph 2 of the article, on the understanding that paragraphs 2 and 3 of the original text, and the United States amendment to them, were still to be dealt with.

The Commission decided, by 12 votes to none, with 2 abstentions, that the French amendment should become paragraph 2 of article 5, on that understanding.

12. At the request of Mr. CHANG (China), who wished to be able to vote separately on the words, "pursuant to the sentence of a competent court and", inasmuch as they were covered in the French text, the United States amendment to paragraphs 2 and 3 was put to the vote in four parts.

The words "In countries where capital punishment exists, sentence of death may be imposed only as a penalty for the most serious crimes" were adopted by 13 votes to none, with one abstention.

The words "pursuant to the sentence of a competent court and" were adopted by 9 votes to none, with 5 abstentions.

The words "in accordance with law" were adopted by 12 votes to none, with 2 abstentions.

/The words

The words "not contrary to the Universal Declaration of Human Rights" were adopted by 9 votes to 2, with 3 abstentions.

The United States amendment as a whole was adopted by 12 votes to none, with 3 abstentions, becoming paragraph 3 of article 5.

13. Mr. WEITLAM (Australia), in explanation of his abstention, stated that he had been opposed to the reference to the Universal Declaration of Human Rights in the paragraph just adopted. For one thing that reference complicated the interpretation of the paragraph and, furthermore, it might appear to imply a reflection on the many other articles of the draft covenant not specifically referring to the Declaration. He thought that the issue could best be settled by a single covering clause, applicable to the whole of the draft covenant.

14. Miss POWER (United Kingdom) explained that she had abstained from voting on the paragraph for the reasons given by the Australian representative and for the further reason that she did not deem it desirable to use so vague a phrase as "serious crimes".

15. Mr. MENDEZ (Philippines) explained that he had abstained from voting on the part of the United States amendment reading "pursuant to the sentence of a competent court and" because, as worded, that phrase did not explicitly bar the application of an ex post facto law. It should have been made quite clear that the law must have been in force at the time when capital punishment was imposed.

16. Miss BOWIE (United Kingdom) stated that the United Kingdom amendment (E/CN.4/417) followed the text suggested by Lebanon (E/CN.4/398, paragraph 4) and amplified paragraph 2 of article 5 resulting from the adoption of the French amendment. It was important to define the cases mentioned in the categories in that paragraph 2, for without such definition there would be very wide loopholes. The United Kingdom amendment was designed to remedy that defect.

The United Kingdom amendment was not adopted, 5 votes being cast in favour and 5 against, with 4 abstentions.

17. Mr. ORDONNEAU (France) explained that he had abstained from voting on the United Kingdom amendment for the following reasons. From the point of view of French law, the amendment was unnecessary and he would therefore have been inclined to vote against it. The requirements of French law were fully met by the French amendment, which had been adopted as paragraph 2. On the other hand, he realized that Anglo-Saxon legal concepts differed from those based on Roman law, and in the circumstances he had thought it fair to abstain. If the paragraph was not yet in completely acceptable form, it might be possible to perfect it on second reading, when the substance of the United Kingdom and Lebanese amendments could be carefully considered again. The situation resulting from the voting on first reading should not be construed too rigidly and any possible injustices should be remedied during the second reading.

The Egyptian amendment to article 5, paragraph 4 (E/CN.4/384) was not adopted, 3 votes being cast in favour and 3 against, with 8 abstentions.

18. Mr. MALIK (Lebanon), commenting upon the Lebanese amendment to paragraph 4 (E/CN.4/386), noted that it contained two statements: in the first sentence it recognized for anyone sentenced to death the "right to seek amnesty, or pardon, or commutation of the sentence". The second sentence stated that "amnesty, pardon or commutation of the sentence of death may be granted in all cases". In other words, while the right to seek amnesty and the like was proclaimed positively and without qualification, Governments were left free to grant or withhold such amnesty. The Lebanese amendment thus, in effect, combined the provisions of the original and subsequently withdrawn United States amendment with those found in paragraph 4 of the draft covenant as originally worded. Two distinct ideas were involved, and the Lebanese delegation had combined them in an attempt to present a more complete picture of the kind of right involved.

The Lebanese amendment to article 5, paragraph 4, with adopted by 13 votes to 1.

Article 5, as amended, was adopted in its entirety by 11 votes to none, with 3 abstentions.

19. Mr. ORIBE (Uruguay) said that he had voted for article 5 with very serious reservations as to its first and second paragraphs. He reserved the right of his delegation to submit amendments to those two paragraphs on second reading.

20. Mr. WHITLAM (Australia), while sympathizing with the Egyptian amendment to paragraph 4, had voted for the Lebanese amendment to that paragraph in the belief that it covered the situation more adequately.

21. While he was sympathetic to article 5 as a whole, he feared that as it stood it presented serious difficulties and he had consequently abstained from voting on it. He confidently hoped that the difficulties which he had in mind could be overcome on second reading.

22. Mr. RAMADAN (Egypt) said that he had offered his amendment in an attempt to make the article more precise, but believed that the form in which it had been adopted met his delegation's requirements.

23. Miss BOWIE (United Kingdom) explained that, although some of the provisions of article 5 were satisfactory to her delegation, others were not, and for that reason she had abstained from voting on it. She hoped that a better draft would emerge from the second reading.

Article 12

24. Mr. MENDEZ (Philippines) invited attention to the Philippine amendment to article 12, which provided that "extradition shall not be applied to political crimes".

25. Miss SENDER (International Confederation of Free Trade Unions) urged the Commission to give favourable consideration to the Philippine amendment. Political refugees found it difficult to gain admission to other countries and, in certain cases, entered other countries illegally in order to save their very lives. The special status of political refugees should be recognized and suitable guarantees should be provided. Adoption of the Philippine amendment would at least afford refugees indirect protection.

26. The CHAIRMAN, speaking as representative of the United States of America, stated that it seemed to her Government that the draft covenant should not, as suggested in the Philippine amendment, undertake to include provisions on extradition, a highly technical subject. There was a great network of treaties on the subject and on the treatment of political offenders whose extradition was requested. It scarcely seemed advisable for the Commission to attempt to

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dispose of the subject in one paragraph. It should be noted for example that the Philippine amendment contained no provision as to who was to determine whether a political crime was involved or existed. Nor did it contain a definition of political crimes. The matter was too difficult to be dealt with so briefly. The United States Government was convinced that the Commission should not undertake to refer to "political crimes" in the draft covenant.

27. Mr. ORDONNEAU (France) thought that the last clause of the article was too vague as drafted. It should specify that the legislation of every country should provide safeguards ("garanties") against arbitrary expulsion of aliens legally admitted to the territory of a State. The French amendment (E/CN.4/365, page 36) was designed to implement that objective.

28. The CHAIRMAN, speaking as representative of the United States of America, stated that the French amendment appeared to be satisfactory except that the words "to be" should be omitted.

29. Mr. MALIK (Lebanon) was inclined to think that there was no difference in substance between the English text of the article as currently worded and the text desired by the French representative. He understood the article as worded to mean that a State could expel aliens legally admitted to its territory only on legal grounds. If there was no pertinent law, a State could not expel such an alien at all. It followed that an alien would either be expelled on legal grounds or not at all, so that the French representative's fears appeared to be unfounded. He thought that the article, containing as it did a double negative, was stronger than any alternative draft that had been suggested and that it should be retained.

30. The CHAIRMAN, speaking as the representative of the United States of America, Miss BOWIE (United Kingdom) and Mr. WHITLAM (Australia) agreed with the Lebanese representative that under article 12 as worded no State could expel an alien legally admitted to its territory except on grounds provided by law.

31. Mr. RAMADAN (Egypt) wished the record of the Commission to show that the references to "law" and "safeguards" in article 12 were to national, and not to international, laws and safeguards.

/32. Mr. ORDONNEAU

32. Mr. ORDONNEAU (France) feared that he had not been fully understood. His delegation was concerned less with the grounds provided by law for the expulsion of an alien than with legal provisions in the nature of safeguards for such an alien. The main purpose of the French amendment was to oblige each State to write such safeguards into its national law.

33. Mr. ORIBBE (Uruguay) fully shared the French representative's concern and thought that a way should be found to harmonize the English and French texts in accordance with the idea underlying the French amendment.

34. Safeguards for aliens could take various forms. They could be, and often were, of a purely administrative nature. They should, however, be of a juridical nature which would allow the alien to take his case not to the administrative authorities of the country concerned, but to its courts. His delegation strongly favoured a provision which would recognize the right of aliens legally admitted to the territory of a State to appeal to the courts of that country against possible expulsion.

35. Mr. VALENZUELA (Chile) agreed with the substance of the French amendment. The question whether international law prevailed in the absence of national law had been discussed for a long time and had given rise to many difficulties; it was far from settled. In the circumstances, it would be very desirable to replace any possible silence of the national law on the subject covered in article 12 in the manner suggested by the French delegation. In the absence of any international tribunal to which an alien could appeal, it was necessary and proper that national legislation should accord to such an alien the right to take his case to the courts of the country concerned. The French amendment would oblige a State to adopt positive legislation to that effect. The matter was quite clear, and from a legal and moral point of view the French amendment was worthy of support.

36. Mr. MALIK (Lebanon) concluded from the explanation given by the French representative and from the statements of the representatives of Uruguay and Chile that the matter was not primarily one of drafting, as he had originally assumed. In effect, a serious difference in substance between the French and English texts had been disclosed. The French representative, it had become clear, was worried more about legal grounds than about safeguards. It might indeed be
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possible that the grounds on which the alien could be expelled might be provided by law, but that the law was silent as to procedure and safeguards. Perhaps the point brought out by the French representative could be met by some such formulation as the following: "...on such grounds as are provided by law and according to such procedures and safeguards as shall be provided by law." The English and French texts must be consonant. To illustrate the seriousness of that aspect of the question, Mr. Malik stated that although great care had been taken to bring the English and French texts of the Universal Declaration of Human Rights into consonance, he had lately discovered no fewer than twenty-three divergencies between the two texts of the Declaration, at least eight of which were important.

37. Mr. WEIS (International Refugee Organization) referred the Commission to the communication from the Director General of the IRO (E/CN.4/392) for the detailed comments of his organization on articles 11 and 12. In addition, he would point out that article 12 as currently drafted was rather weak, as the French representative had pointed out. Expulsion was a very severe measure, comparable in many instances to a penalty inflicted by sentence of a court. It appeared justified to suggest that the article on expulsion should contain certain minimum requirements for expulsion proceedings and that the question of the justifiable reasons for expulsion and also of safeguards should be considered. The present draft left everything to domestic law and might be compared with the rule that expulsion should not be arbitrary, a rule which, at the present time, was already part of customary international law. Considering the gravity of the matter, it would be desirable that the safeguard of due process of law should be applied to that procedure. In any case, in order to grant an individual enforceable rights, at least some of the safeguards should be specified.

38. Mr. WHITLAM (Australia) thought that more time should be given to consideration of the definition of the safeguards upon which the French representative laid such stress; his delegation had not studied that aspect of the question.

39. Mr. ORDONNEAU (France) acknowledged that the word "safeguards" might be somewhat inadequate in itself, but thought it should be retained, because it should be assumed that States signing the covenant would do so in good faith and would therefore regard themselves as bound to provide adequate safeguards. That would at least be an advance from the existing situation.

40. Miss BOWIE (United Kingdom) thought that the difficulty arose from the excessive conciseness of the original text. She therefore submitted an amendment (E/CN.4/420) specifying that no legally admitted alien might be expelled except on established legal grounds and according to procedure and safeguards which must in all cases be provided by law.
41. Mr. ORDONNEAU (France) accepted that amendment.
42. Mr. SORENSON (Denmark) drew the Commission's attention to paragraphs 1 and 2 of article 27 of the draft convention relating to the status of refugees prepared by the Ad Hoc Committee on Statelessness and Related Problems which was reproduced in a communication from the Director-General of the IRO (E/CN.4/392). That article laid down that safeguards must be provided, but should be applied in accordance with established law and procedure. There should be no discrepancy between article 12 of the draft covenant and that article, as it was probable that many Governments would sign both instruments.
43. Miss BOWIE (United Kingdom) observed that the United Kingdom amendment was very similar in principle to the article of the draft convention on refugees cited by the Danish representative.
44. Mr. WHITLAM (Australia) agreed that the substance of the relevant articles in the draft covenant and that draft convention should be similar, but believed that a more concise statement would be sufficient in the draft covenant. Such a statement could then be expanded in the draft convention, the purpose of which was more specific.
45. The CHAIRMAN suggested that the vote on the United Kingdom amendment to article 12 should be taken immediately after the opening of the next meeting.
It was so decided.
46. Mr. WEIS (International Refugee Organization) pointed out that, although an article on the right of asylum had been incorporated in the Universal Declaration of Human Rights and although the Commission had decided to include

such an article in the draft covenant or in a special convention for that purpose, no action had yet been taken. He was fully aware of the difficulties involved. The implementation of the right of asylum was, however, essential in order to make any international instrument on human rights really universal. For refugees the right of asylum was the corollary of the right to life stated in article 5 of the draft covenant, since the possibility of finding admission to another country was a prerequisite for the enjoyment of all the rights laid down in the draft covenant.

47. Although the right of States to regulate the admission of foreigners could not be contested, the Members of the United Nations had recognized that the refugee problem was a matter of international concern by setting up the International Refugee Organization, the task of which was not only the international protection of refugees, but also their care and maintenance, repatriation and resettlement. In the course of dealing with the problem of resettlement, the IRO had concluded a number of agreements with Governments for the admission of refugees into their territories. The agreements covered both the question of the temporary admission of refugees and that of admission for permanent settlement of refugees who had found temporary shelter in countries of immigration.

48. Those agreements would lapse when the IRO terminated its work on 31 March 1951. The General Assembly at its fourth session had again recognized that the refugee problem was a matter of international concern and had provided for the establishment of a United Nations High Commissioner's Office for Refugees. It was essential that Governments should assist the High Commissioner by adopting a liberal policy on the admission of refugees.

49. When the Universal Declaration of Human Rights had been discussed, the French Government had proposed that the article on the right of asylum should contain a provision to the effect that it should be implemented by the United Nations, acting in agreement with Member States. The French representative had then stated that if the right of asylum was to be incorporated in the Declaration, it should be made clear whose duty it was to give effect to that right. That argument was still valid.

50. The Commission should, therefore, give effect to the right of the individual to seek asylum. If it did not wish to incorporate it in the draft covenant, it might recommend its inclusion in the draft convention on the status of refugees which the Economic and Social Council would discuss at its next session. It was essential, however, that action should be taken immediately, at a time when there was still a large residual group of refugees who would be neither resettled nor repatriated when the IRO was terminated.

51. While the right of admission of foreigners was an attribute of sovereignty, States had in practice taken the need to grant asylum to refugees into account. The draft covenant included an article dealing with expulsion and States had accepted restrictions on the unlimited right of expulsion in other international instruments, particularly in the draft convention relating to the status of refugees. Governments had, moreover, generously admitted a large number of refugees for temporary residence and other Governments had relieved them of that burden by admitting those refugees for permanent resettlement.

52. Furthermore, in the light of recent developments in constitutional law, in which the right of asylum was finding growing recognition, the incorporation of a provision in the covenant guaranteeing that right would not be such an innovation as it might seem at first sight. By taking immediate action, the Commission would make a valuable contribution to the development of international law and to the solution of the problems of a most deserving category of human beings.

Article 13

53. Mr. SORENSON (Denmark) said that he had submitted his amendment to paragraph 1 of article 13 (E/CN.4/414) because the provision on the publicity of the hearings of trials in the original text (E/1371) was not satisfactory. Historically, publicity had been introduced as a safeguard against arbitrary action by the courts, but there were cases in which it might harm the legitimate interests of the individual as well as those of the community. The original text did not take all such cases into account. In many cases, the individual's human rights would be better protected by a private rather than a public hearing. The United States comment (E/CN.4/365, page 38) took that consideration into account by making an exception in order to conserve the subject matter of the litigation and the Australian comment (E/CN.4/353/Add.10, page 9) had provided a similar exception in the interests of

/the welfare

the welfare of certain types of individuals. The innovation in the Danish amendment was the stipulation that the court itself should decide when the Press and public should be excluded. The crucial point in that amendment was, however, the exclusion of the Press and public when publicity would prejudice the interests of justice. That provision would cover cases in which the legitimate interests of one or other of the parties, or even of a third party, would be manifestly prejudiced, and also cases in which the elucidation of the matters or the conservation of the subject matter of the litigation manifestly required secrecy.

54. Mr. RAMADAN (Egypt) observed that he had doubted the wisdom of employing the word "impartial" to describe a tribunal in connexion with article 9; he still wondered whether the impartiality of a tribunal should be placed in doubt in an international legal instrument. He also wondered whether the word "equitablement" in the French text did not in itself make the word "impartial" unnecessary.

55. Mr. MALIK (Lebanon) pointed out that the word "fair" applied to the hearing and the word "impartial" to the tribunal. The Commission at its fifth session had felt that every precaution should be taken against the possibility of abuse of the article by a summary court and that, therefore, the signatory States should bind themselves to absolute impartiality, independence and fairness in the administration of justice.

56. Mr. ORDONNEAU (France) said that it had been very hard to find an appropriate French equivalent for the English word "fair". The Egyptian representative's objection to an apparent redundancy in the French text would be seen to be unfounded if it was noted that the word "equitablement" referred to the hearing and "impartial" to the tribunal and that both aspects must be covered.

57. Mr. RAMADAN (Egypt) accepted the explanations of the French and Lebanese representatives.

58. Mr. WHITLAM (Australia) would accept the word "independent", because article 13 was one of the central articles in the draft covenant. He had no objection to the retention of the words "fair" and "impartial", as an impartial court might act unfairly and a fair hearing might be given by a biased court. While he found the original text satisfactory in general, he thought that the exceptions should be extended as suggested in the Australian comment (E/CN.4/353/Add.10) and in the Danish amendment. The order of the first sentence should, logically, be altered; it seemed incorrect to state that the hearing should be fair and public and subsequently place limitations upon publicity. There were cases in which publicity would cause injustice; they should be specified. The reference to a fair hearing should, therefore, be separated from the reference to a public hearing, the limitations on which should be specified immediately after the statement of the general principle.

The meeting rose at 5.30 p.m.