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COMMISSION ON HUMAN RIGHTS

Sixth Session

SUMMARY RECORD OF THE HUNDRED AND FIFTY-FIFTH MEETING (PART II*)

Held at Lake Success, New York,
on Friday, 14 April 1950, at 4 p.m.

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Articles 12 and 13 (E/1371, E/CN.4/365, E/CN.4/423,
E/CN.4/426, E/CN.4/414)

Chairman: Mrs. ROOSEVELT

United States of America

* Part I of E/CN.4/SR.155, Summary Record of a closed meeting has not been published.

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<u>Members:</u>	Mr. WHITLAM	Australia
	Mr. STEYAERT	Belgium
	Mr. CHANG	China
	Mr. SORENSON	Denmark
	Mr. RAMADAN	Egypt
	Mr. ORDONNEAU)	France
	Mr. LEROY-BEAULIEU)	
	Mr. KYROU	Greece
	Mrs. MEHTA	India
	Mr. MALIK	Lebanon
	Mr. MENDEZ	Philippines
	Miss BOWIE	United Kingdom of Great Britain and Northern Ireland
	Mr. ORIBI	Uruguay
	Mr. JEVREMOVIC	Yugoslavia

Representative of a specialized agency:

Mr. WEIS	International Refugee Organization
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Representatives of non-governmental organizations:Category A:

Miss SENDER	International Confederation of Free Trade Unions
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On register:

Mr. EASTMAN	Commission of Churches on International Affairs
Mr. MOSKOWITZ	Consultative Council of Jewish Organizations
Miss TOMLINSON	International Federation of Business and Professional Women
Miss ROBB	International Federation of University Women
Mr. BEER	International League for the Rights of Man

Secretariat:

Mr. HUMPHREY	Director, Division of Human Rights
Mr. SCHWELB	Assistant Director, Division of Human Rights
Mr. LIN MOUSEHENG	Secretary of the Commission

/DRAFT

DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS (continued): ARTICLES 12 and 13
(E/1371, E/CN.4/365, E/CN.4/423, E/CN.4/426, E/CN.4/414)

Article 12 (continued)

1. the CHAIRMAN suggested that before continuing the examination of article 12 and amendments, the Commission should hear a statement by the representative of the International Confederation of Free Trade Unions.
2. Miss SENDER (International Confederation of Free Trade Unions) urged the adoption of the Philippine amendment to article 12 (E/CN.4/365, page 36). She did not feel that the arguments advanced against it were sufficient to justify its omission. It was true that the question was complicated, but many other equally complicated questions had been touched upon briefly in other articles of the draft covenant. She pointed out that there was already in the first paragraph of article 12 a phrase, "alien legally admitted", which might be criticized as too restrictive in the case of political refugees.
3. In international law there were many concepts which had come to be recognized in all countries; the right of asylum was one of them. Much experience had been gained with regard to that concept, as well as the concept of crime. Although it might be necessary to find a more satisfactory formula than the Philippine amendment in its present form, Miss Sender urged that the problem dealt with in the amendment should not be neglected in the draft covenant.
4. In reply to a question from the CHAIRMAN, Mr. JEVREMOVIC (Yugoslavia) said that he would accept the substitution of the words "derived from" for the words "not incompatible with" in his amendment (E/CN.4/423) to the Philippine amendment, although he considered the text inadequate and ungrammatical.
5. Mr. LEROY-BEAULIEU (France), speaking on a point of order, suggested that the phrase "political offenders persecuted for having fought..." might meet the Yugoslav representative's requirements. He stressed the fact that he wished merely to assist the representative of Yugoslavia, and that his statement was not a declaration of his delegation's position.

/6. Mr. JEVREMOVIC

6. Mr. JEVREMOVIC (Yugoslavia) accepted that text as the best possible expression of his idea.

7. Mr. SORENSON (Denmark) agreed with Mr. MALIK (Lebanon) that the provision as worded would leave the way open to extradition for other political crimes which did not fall within the restricted category mentioned. He preferred the Yugoslav amendment in its original form, and the deletion of the words "political crimes" from the Philippine amendment. As the representative of India and others had recalled at a previous meeting, the words "political crimes" occurred in many bilateral treaties, but were not always defined in the same manner. The inclusion of the words in the draft covenant, therefore, would give rise to the same divergences of opinion as to definition. He would vote in favour of the Yugoslav amendment as originally worded, with the substitution of the phrase "derived from" for "not incompatible with".

8. Mr. KYROU (Greece) regretted that he could not support either the Yugoslav amendment, in either form, or the original Philippine amendment.

9. Mr. MALIK (Lebanon), while not wishing to put forward a further amendment of his own, asked the representative of Yugoslavia whether he would accept the substitution of a phrase such as "...political crimes, including the cases of persons persecuted for having fought for human rights and freedoms as vouchsafed in the Charter of the United Nations and the Universal Declaration of Human Rights".

10. Mr. JEVREMOVIC (Yugoslavia) regretted that he could not accept the Lebanese representative's suggestion. He felt that his text as re-worded by the representative of France was more precise and adequate; it would ensure protection of the particular category of persons mentioned, without prejudicing protection of persons accused of other political crimes.

11. The CHAIRMAN put the Yugoslav amendment (E/CN.4/423), with the substitution suggested by the French representative, to the vote.

The Yugoslav amendment was rejected by 6 votes to 2, with 3 abstentions.

12. The CHAIRMAN then put the Philippine amendment (E/CN.4/365, page 36) to the vote.

The Philippine amendment was not adopted, 4 votes being cast in favour and 4 against, with 3 abstentions.

13. Miss BOWIE (United Kingdom) explained that she had been unable to vote in favour of either amendment, not owing to lack of sympathy with the principles involved, but because her delegation took the view that the right of asylum was not a basic human right, but a derivative one which required more explanation and elucidation. Her Government had been led to that view through its own extensive experience with the granting of political asylum.

14. Mr. JEVREMOVIC (Yugoslavia) also explained his vote. He had voted in favour of the Philippine amendment even though he had previously opposed the adoption of the text as it stood. He felt that the phrase "political crimes" was vague and open to misinterpretation; but he was convinced that protection against extradition was an essential human right, and that the draft covenant would be weak and vulnerable if it contained no mention of such protection. He recognized that the question was difficult and complicated, but he felt that the Commission should endeavour to solve it. He could not conceive of a Covenant on Human Rights which did not contain that essential concept, at least as regards persons persecuted for having fought for human rights and freedoms.

15. The CHAIRMAN stated that since article 12 had previously been voted on in its original form, it would not be put to the vote a second time.

Article 12 was accepted as previously read.

Article 13

16. The CHAIRMAN read paragraph 1 of the article and asked whether there were any further statements on the subject.

17. Mr. JEVREMOVIC (Yugoslavia) felt that the terms in which the text was drafted were too exclusive. As it stood, even ordinary offences of regulations concerning public order such as infringements of traffic regulations would have to be heard by the tribunals. Cases of that kind were usually considered within the jurisdiction of the police or similar authorities and were dealt with as matters of administrative procedure.

/18. The CHAIRMAN

18. The CHAIRMAN was of the opinion that, according to the history of paragraph 2, it was intended to cover only criminal cases.

19. Speaking as the representative of the United States of America, she explained the amendments to paragraph 1 proposed by the United States (E/CN.4/365, pages 37 and 38). She pointed out that in certain litigations, such as those involving secret processes, it might be essential to exclude the press and public in order to keep the subject matter of the litigation secret. She also stressed the importance which her Government attached to the principle that judgment need not be pronounced publicly when the interest of juveniles was concerned.

20. Miss BOWIE (United Kingdom) fully agreed with the United States representative regarding the importance of safeguarding the interests of juveniles. Her delegation did not feel, however, that those interests would be protected by the exclusion of the press and public from trials. In her own country the press was forbidden to publish the names of juveniles being tried, but it was considered that a public trial constituted in itself a protection for young offenders. For her part, she would hesitate to discard that protection.

21. As regards the proposed provision to conserve the subject matter of certain litigations, the United Kingdom delegation would support an amendment covering the question, although it considered the present wording unsatisfactory.

22. Finally, Miss Bowie felt that the meaning of the phrase "incapacitated persons" was not entirely clear and should be clarified.

23. Mr. MENDEZ (Philippines) observed that the words "suit at law" showed that paragraph 1 did not refer only to criminal cases.

24. Mr. WHITLAM (Australia) agreed with the Philippine representative. The wording of the article should be consistent throughout; the reference to a penal offence in paragraph 2 clearly indicated that criminal charges were concerned. It was essential that the interests of first offenders, particularly young women, as well as those of juveniles should be safeguarded by a reference in the second sentence in paragraph 1. Furthermore, the phrase "incapacitated persons" was ambiguous. He assumed that it meant persons under a legal disability and that in certain countries, included married women as well as mentally incapacitated persons. He therefore suggested the substitution of the phrase "legally incapable persons".

25. Mr. RAMADAN (Egypt) observed that juveniles were legally incapable persons; the word "other" should logically be inserted between the words "or" and "incapacitated". He would, however, prefer the Australian version.

26. Mr. LEROY-BEAULIEU (France) agreed with the representative of Egypt.

27. Mr. SORENSON (Denmark), at the request of Mr. KYROU (Greece) explained, as Chairman of the Ad Hoc Committee on the Prevention of Discrimination and the Protection of Minorities, that the Sub-Commission dealing with that subject had considered article 13 of the draft covenant in connexion with its terms of reference, and in particular paragraph 2, sub-paragraph (d), and had found it satisfactory for safeguarding a particular right of minorities. It had been pointed out in the Ad Hoc Committee that paragraph 2 dealt only with criminal charges and that the right to have the free assistance of an interpreter was necessary also in civil suits. No change in the wording had, however, been proposed, but it had been agreed that any member of that Committee could raise the question in the Commission on Human Rights with a view to its insertion in paragraph 1. The Ad Hoc Committee had not discussed the point raised by the Yugoslav representative with reference to administrative tribunals.

28. Speaking as the representative of Denmark, Mr. Sorenson said that he thought that the Danish amendment (E/CN.4/414) might meet the objections to the original text and the United States amendment. The words "prejudice the interests of justice" appeared to cover the cases to which the United Kingdom representative had referred, without, however, going further than was strictly necessary.

29. The CHAIRMAN, speaking as the representative of the United States of America, observed that the word "incapacitated" would imply that the persons concerned were legally incapable, since the covenant was a legal document. A defect of the Australian amendment (E/CN.4/353/Add.10) was its omission of a reference to public order; her delegation believed that the court should be empowered to exclude the press and public when the danger of public disorder arose. The Danish amendment (E/CN.4/414) was on the whole satisfactory, but the courts should not be given the discretion to decide in all cases what was in the interest of morals; in cases of sex offences the exclusion of the press

/and public

and public was statutory, not discretionary. That was also true of cases involving national security. In order to safeguard the interests of juveniles it was essential that both the hearing and the sentence should not be public; that was particularly necessary in connexion with rehabilitation programmes such as those currently carried out in the United States. Special juvenile courts had been found very valuable for that purpose, because they allowed rehabilitation work to proceed without publicity. The United States delegation was prepared to withdraw the phrases "incapacitated persons" and "in order to conserve the subject matter of the litigation" in its amendment (E/CN.4/365, page 38), accepting the words "to the extent strictly necessary in the opinion of the court" and "in the special circumstances of the case, publicity would prejudice the interests of justice" as a substitute. It submitted a revised proposal for paragraph 1 of article 13 (E/CN.4/426).

30. Mr. SORENSON (Denmark) withdrew his amendment (E/CN.4/414) in favour of the revised United States proposal.

31. Mr. MENDEZ (Philippines) proposed the deletion of the words "in a suit at law" from the original text (E/1371).

32. Mr. WHITLAM (Australia) agreed that those words seemed inconsistent with the purpose of paragraph 1. He wondered why they had been inserted.

33. Mr. MALIK (Lebanon) was under the impression that the Commission at its fifth session had been convinced by strong arguments for the retention of that phrase. He would therefore vote against its deletion.

34. Mr. HUMPHREY (Secretariat) said that the inclusion of a phrase covering civil suits had been fully discussed at an early stage in the drafting of the covenant text.

35. Miss BOWIE (United Kingdom) said that two thoughts appeared to have been combined in the text submitted by the Drafting Committee (E/800); namely, that everyone was entitled to a fair trial in both criminal and civil cases and that criminal charges should be heard in public.

/36. Mr. WHITLAM

36. Mr. WHITLAM (Australia) felt that the Commission's earlier decision must have been soundly based and could not therefore vote for the Philippine amendment.
37. Mr. RAMADAN (Egypt) agreed with the Philippine representative; the machinery employed in a civil suit was quite different from that in a criminal case, so that the reference in paragraph 1 was out of place.
38. Mr. ORIBE (Uruguay) agreed with the Philippine and Egyptian representatives. The object of paragraph 1 was to provide the individual with safeguards against action by the State, whereas a civil suit was one involving solely action between individuals. The two ideas, if retained, might be stated in separate paragraphs.
39. Mr. SORENSON (Denmark) observed that it was not a fact that civil suits arose solely between individuals; the State might be involved, in expropriation cases, for example. He would therefore vote against the Philippine amendment.
40. The CHAIRMAN, speaking as the representative of the United States of America, said that the Commission at its fifth session had wished to provide protection in both civil and criminal cases. The text of paragraph 1 should therefore not be changed.
41. Mr. MENDEZ (Philippines) agreed with the representative of Uruguay that the great majority of civil cases occurred between individuals. The purpose of the article, however, was to restrain the State from undue action against individuals.
42. Mr. MALIK (Lebanon) said that it stood to reason that the right to a fair and public hearing ought to apply to any person involved in any suit, regardless of its nature; that was the inherent right of all persons belonging to society.
43. Mrs. MEHTA (India) pointed out that the whole of article 13 of the draft covenant was based upon article 10 of the Declaration and reproduced most of its wording. The central concept was a fair and public hearing by an independent and impartial tribunal.

/44. Mr. SORENSON

44. Mr. SORENSON (Denmark) agreed with the Indian representative. The reason for article 13 was the existence of courts influenced by prejudice, such as class prejudice. The Commission wished to make any kind of discrimination impossible.

45. Mr. WHITLAM (Australia) agreed that the purpose of article 13 was merely to state the right laid down in article 10 of the Declaration more specifically. The Philippine representative's misgivings appeared to relate to the question of proof; that, however, was outside the scope of the article and could safely be left to the law of the countries concerned. He would therefore vote against the Philippine amendment.

46. Mr. MENDEZ (Philippines) said that he certainly did not deny the right to protection in civil suits, but the statement of it seemed to be out of context in a paragraph dealing with such fundamental issues as life and liberty.

47. Mr. ORIBE (Uruguay) said that safeguards were necessary in both civil and criminal cases, but it did not follow that they should be the same kind of safeguards in both cases. The two ideas might therefore be more appropriately placed in separate paragraphs.

48. Mr. RAMADAN (Egypt) said that he would vote against the Philippine amendment because it should be emphasized that tribunals must be impartial and independent in civil suits.

49. The CHAIRMAN called for the vote on the Philippine proposal for the deletion of the words "in a suit at law" from paragraph 1.

The Philippine amendment was rejected by 11 votes to 1, with 1 abstention.

50. The CHAIRMAN called for the vote on the United States amendment to the first sentence of paragraph 1 (E/CN.4/365, page 37). That amendment did not affect the French text.

The United States amendment was adopted by 11 votes to none, with 2 abstentions.

/51. Mr. CHANG

51. Mr. CHANG (China) explained that he had abstained from voting on the United States amendment because he thought that the word "entitled" could not be qualified by the words "shall be", since it referred to an inherent right, which could not be made mandatory. He did not object to the use of the words "shall be" -- the form usual in treaties -- but hoped that a substitute for the word "entitled" would be found on second reading.

52. Mr. ORDONNEAU (France) requested that the vote on the United States amendment to the second sentence in paragraph 1 (E/CN.4/426) should be deferred until the French text was available.

It was so decided.

The meeting rose at 5.25 p.m.

24/4 p.m.