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Eighth Session



SUMMARY RECORD OF THE THREE HUNDRED AND SIXTEENTH MEETING

Held at Headquarters, New York,  
 on Thursday, 29 May 1952, at 2.30 p.m.

CONTENTS:

Draft international covenants on human rights and measures of implementation: part II of the draft covenant contained in the report of the seventh session of the Commission (E/1992; annex I, annex III, section A, E/CN.4/528, E/CN.4/528/Add.1, E/CN.4/L.166; E/CN.4/L.123/Corr.1, E/CN.4/L.132/Rev.2, E/CN.4.L.149/Rev.1, E/CN.4/L.152, E/CN.4/L.185, E/CN.4/L.186; E/CN.4/L.141, E/CN.4/L.150, E/CN.4/L.153, E/CN.4/L.184, E/CN.4/L.190/Rev.1) (continued)

Article 8 (concluded)

Article 9

Programme of work of the Commission (continued)

<u>Chairman:</u>	Mr. MALIK	(Lebanon)
<u>Later:</u>	Mrs. MEHTA	India
<u>Rapporteur:</u>	Mr. WHITLAM	Australia

Members:

Mr. NISOT	Belgium
Mr. SANTA CRUZ )	Chile
Mrs. FIGUEROA )	
Mr. CHENG PAONAN	China
AZMI Bey	Egypt
Mr. CASSIN	France
Mr. KAPSAMBELIS	Greece
Mr. AZKOUL	Lebanon
Mr. WAHEED	Pakistan
Mr. BORATYNSKI	Poland
Mrs. RÖSSEL	Sweden
Mr. KOVALENKO	Ukrainian Soviet Socialist Republic
Mr. MOROZOV	Union of Soviet Socialist Republics
Mr. HOARE	United Kingdom of Great Britain and Northern Ireland
Mrs. ROOSEVELT	United States of America
Mr. BRACCO	Uruguay
Mr. JEVREMOVIC	Yugoslavia

Also present:

Mr. DOYLE	Office of the United Nations High Commissioner for Refugees
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Representatives of non-governmental organizations:

<u>Category A:</u>	Mr. THORMANN	International Federation of Christian Trade Unions (IFCTU)
<u>Category B:</u>	Mr. LEWIN	Agudas Israel World Organization
	Mrs. De BROECK) Mrs. VERGARA )	Catholic International Union for Social Service
	Mr. NOLDE	Commission of the Churches on International Affairs
	Mr. MOSKOWITZ	Consultative Council of Jewish Organizations
	Mr. BERNSTEIN	Co-ordinating Board of Jewish Organizations for consultation with the Economic and Social Council of the United Nations

Category B  
(continued):

<u>Category B</u> (continued):	Mrs. CARTER	International Council of Women
	Mrs. SOUDAN	International Federation of Business and Professional Women
	Mrs. ROBB	International Federation of University Women
	Mr. BIER	International League for the Rights of Man
	Miss SCHAEFER	International Union of Catholic Women's Leagues
	Mr. JACOBY	World Jewish Congress
	Mr. RONALDS Mrs. POLSTEIN	} World Union for Progressive Judaism
<u>Secretariat:</u>	} Secretaries of the Commission	
Mr. DAS Miss KITCHEN		

DRAFT INTERNATIONAL COVENANTS ON HUMAN RIGHTS AND MEASURES OF IMPLEMENTATION:  
PART II OF THE DRAFT COVENANT CONTAINED IN THE REPORT OF THE SEVENTH SESSION OF  
THE COMMISSION (E/1992; annex I, annex III, section A, E/CN.4/528,  
E/CN.4/528/Add.1, E/CN.4/L.166; E/CN.4/L.123/Corr.1, E/CN.4/L.132/Rev.2,  
E/CN.4/L.149/Rev.1, E/CN.4/L.152, E/CN.4/L.185, E/CN.4/L.186; E/CN.4/L.141,  
E/CN.4/L.150, E/CN.4/L.153, E/CN.4/L.184, E/CN.4/L.190/Rev.1) (continued)

Article 8 (concluded)

Mrs. ROOSEVELT (United States of America) said that the United States had issued a second revision of its amendment to article 8 (E/CN.4/L.132/Rev.2) bringing the text closer to the wording of the Indian delegation.

Mr. CASSIN (France) recalled that he had withdrawn the French delegation's amendment (E/CN.4/L.152) and would instead request a separate vote on the addition of the words "general welfare" in the United States amendment.

The CHAIRMAN put to the vote the USSR amendment (E/CN.4/L.123/Corr.1) to the United States text.

The USSR amendment was adopted by 12 votes to 2, with 4 abstentions.

/The CHAIRMAN

The CHAIRMAN put to the vote point 2 of the United Kingdom amendment (E/CN.4/L.186) to the United States text.

Point 2 of the United Kingdom amendment was rejected by 13 votes to 5, with no abstentions.

The CHAIRMAN put to the vote the French delegation's oral amendment for the addition of the words "general welfare" after "morals" in the United States text.

The French delegation's oral amendment was rejected by 9 votes to 7, with 2 abstentions.

The CHAIRMAN put to the vote point 3 of the United Kingdom amendment (E/CN.4/L.186).

Point 3 of the United Kingdom amendment was rejected by 12 votes to 3, with 3 abstentions.

The CHAIRMAN put to the vote the United States revised amendment (E/CN.4/L.132/Rev.2) in parts.

The first part, "subject to any general law of the State concerned", was unanimously adopted.

The words "national security, public safety, health or morals" were adopted by 12 votes to 2, with 4 abstentions.

The words "or the rights and freedoms of others" were adopted by 10 votes to 7, with 1 abstention.

The final words of the United States amendment, "consistent with the other rights recognized in this covenant", were adopted by 16 votes to none, with 2 abstentions.

The United States amendment as amended was adopted by 13 votes to none, with 5 abstentions.

Paragraph 1 of article 8, as amended, including sub-paragraphs (a) and (b), was adopted by 15 votes to none, with 3 abstentions.

The CHAIRMAN called upon the Commission to vote on the principle of including a provision on exile in article 8.

By 9 votes to 6, with 3 abstentions, the Commission decided in favour of including a provision on exile.

The CHAIRMAN put to the vote the word "arbitrary" in paragraph 2 (a).  
The word "arbitrary" was adopted by 11 votes to 5, with 2 abstentions.

The CHAIRMAN put to the vote the Australian amendment to paragraph 2(b)  
(E/CN.4/L.189/Rev.1).

The Australian amendment was adopted by 10 votes to 2, with  
6 abstentions.

Paragraph 2 as amended was adopted by 14 votes to none, with 4  
abstentions.

Article 8 as a whole, as amended, was adopted by 11 votes to none,  
with 7 abstentions.

Mr. NISOT (Belgium) said that he had abstained in the vote on  
article 8.

Mrs. MEHTA (India) said that she had abstained on paragraph 2 because  
it involved many complications which the Commission had not examined.

Mr. MOARE (United Kingdom) explained that he had voted in favour of the  
word "arbitrary" in paragraph 2 (a) because, although he disliked that word,  
he felt that some limiting word should be included if the second paragraph was  
to be retained. He agreed with the position of the representative of India on  
paragraph 2 and had abstained on paragraph 1, paragraph 2 and on the article as  
a whole.

#### Article 9

Mr. MOROZOV (Union of Soviet Socialist Republics) pointed out that his  
amendment had been moved to both the Yugoslav amendments in document E/1992,  
annex III, section A and annex IV, section A. The proposed new article 9 (a)  
was analogous to the proposal contained in the joint Chilean and Uruguayan  
amendment (E/CN.4/L.188) and should therefore be considered with it.

Mr. JEVREMOVIC (Yugoslavia) stated that he had withdrawn both his  
amendments in favour of the revised joint Chilean, Uruguayan and Yugoslav  
amendment (E/CN.4/L.190/Rev.1).

Mr. CASSIN (France) did not consider that the questions of expulsion and asylum could be dealt with concurrently, although there was a connexion between the two subjects and an article on the right to asylum would be desirable.

Mrs. MEHTA (India) moved her delegation's amendments to the original article. The first amendment (E/1992, annex III, section A) proposed the deletion of the words "on established legal grounds" and the second amendment (E/CN.4/L.150) proposed the deletion of the words "and safeguards". The purpose of both those amendments was to enable every State not to give reasons for the removal of an alien from its territory, since that might be inadvisable for reasons of national security.

Mr. JEVREMOVIC (Yugoslavia) recalled that his delegation to the Commission's sixth session had proposed an amendment similar to that contained in the revised joint amendment submitted by his delegation together with those of Chile and Uruguay (E/CN.4/L.190/Rev.1). At that time the Commission had not been prepared to adopt the proposal, but he hoped that it would be given favourable consideration at the current session.

He did not agree with the French representative that the questions of expulsion and asylum should be considered separately; the right to asylum and exemption from extradition in certain cases were corollaries of the right to exemption from expulsion and should therefore be referred to in the same article.

A distinction should be made between asylum and exemption from extradition for political offences. In most national legislations, exemption from extradition involved judicial proceedings, whereas asylum was granted on the administrative level. Moreover, in most countries provisions governing extradition procedure were contained in the penal code, whereas the right of asylum was governed by special provisions not contained in the penal code.

Emphasis had been laid at the sixth session on the importance of avoiding the abuse of right to asylum by war criminals; the provisions of the joint amendment excluded the possibility of such abuse by specifying that the right should not be granted in the case of acts which were contrary to the principles and purposes of the Charter and the Universal Declaration.

Mr. SANTA CRUZ (Chile) said that his delegation had sponsored the joint amendment because the idea that persons who were struggling for their national or political freedom should receive every assistance was deeply rooted in Chilean thought. His country's culture and life had been greatly influenced by political refugees from other Latin American countries and from Europe who had been granted asylum.

He explained that the reference to participation in the struggle for national or political liberation meant the struggle for the independence of a country from any other and the struggle to obtain domestic freedoms in compliance with the principles of democracy laid down in the Universal Declaration. The reference in the last phrase to acts contrary to the principles of the Charter had no connexion with the concept of liberation in the second phrase.

The adjective "purely" had been inserted to qualify the words "military offences" in order to make it absolutely clear that the offences in question were disciplinary violations of military codes which could in no way be described as civil offences. There must be no extradition in such cases.

Mr. BRACCO (Uruguay) stressed the great importance attached to the right of asylum in Latin America and pointed out that the co-sponsors of the joint amendment had not specified who was to determine whether or not an offence was political or military. Although his delegation considered that it was for the State concerned to make such a decision, the co-sponsors had refrained from stating that fundamental safeguard in the joint amendment because such a qualification might be unacceptable to other delegations.

The amendment gave a broad interpretation of the right to asylum, since it extended that right to all political and military offenders, with the sole proviso that their offences should not be contrary to the principles of the United Nations. In that connexion, he pointed out that persons seeking asylum in Uruguay were not screened. The question of extradition was closely

connected with the right of asylum and therefore had to be dealt with in the same article.

Mr. HOARE (United Kingdom) agreed with the Indian representative that the original article was unsatisfactory. The right to expel an alien from any country rested on the discretionary powers of the executive to protect the social order and security. The phrase "on established legal grounds" suggested that the question fell within the competence of courts, and not within that of executive authorities. Although executive powers in some countries, including his own, were prescribed by law, the terms of those powers had to be as wide as possible. The text of the original article did not strike the necessary balance between the vigilance of the executive organs of the State and protection against arbitrary action by such authorities.

The competent authorities in the United Kingdom considered cases of deportation and expulsion with great care; any such decisions which seemed to be unjust immediately became the subject of representations to the Ministry concerned and might subsequently be discussed in Parliament. Thus, action by the executive authorities was safeguarded by public opinion and by the activities of various organizations.

The United Kingdom amendment (E/CN.4/L.141) was based on the special provision on the expulsion of aliens contained in article 32 of the Convention on Refugees signed in July 1951. That text seemed to provide a proper basis for action by the executive authority and proper and specific safeguards in respect of the exercise of such action. The amendment provided, except where compelling reasons of national security otherwise required, that any alien who was to be expelled from a country should have all facilities to clear himself and should be ensured a fair review of his case. The wording of the reference to a review of a case was necessarily general, in view of the differences of national systems in that connexion; the detailed procedures concerned had been analysed at the conference which had drawn up the Convention on Refugees and it had been decided that all methods were covered by the text of the article on which the United Kingdom amendment was based.



Mr. CASSIN (France) agreed with the United Kingdom and Indian representatives that the original text of article 9 was unsatisfactory. Although the procedure to be followed was frequently laid down by law, that was not universally applicable. His delegation had therefore submitted its amendment (E/CN.4/L.153) to delete the words "in all cases" from the original article.

He thought that the last phrase of the United Kingdom amendment (E/CN.4/L.141) might be improved and suggested its replacement by a provision of French law to the effect that an alien who was to be expelled from a country should be given every facility to advance reasons militating against his expulsion. With that reservation, however, he would support the United Kingdom amendment, since it seemed to leave the way open to Governments to settle their own procedure in the matter. He would vote for the United Kingdom amendment, but if it was rejected, he would maintain his delegation's amendment.

Mrs. Mehta (India) took the Chair.

Mr. MOROZOV (Union of Soviet Socialist Republics) welcomed, in principle, the addition of a clause to article 9 explicitly stating the right of asylum. The joint Chilean, Uruguayan and Yugoslav proposal (E/CN.4/L.190/Rev.1) was sound in some respects, but weak and inconsistent in others. Since it also brought in the legally complex question of extradition, the greatest care must be taken to achieve a clear-cut text which took into consideration the existing conventions and the Charter of the United Nations. The legal meaning of the phrase "purely military offences" was not at all clear. It would be hard to draw a distinction between violations of military discipline, which concerned only the military authorities, and other military offences, such as crimes committed by an occupation army or gross violations of the Geneva Conventions. The qualification "purely" did not make the meaning any more precise. The phrase might be used to protect war criminals from extradition. Even if the Chilean representative's interpretation was accepted, it would be unwise to include such an ambiguous expression. The proviso that purely military offences were those which were contrary to the principles of the Charter of the United Nations was even more confusing, since it was not clear who would decide whether or not the alleged acts were contrary to the principles of the Charter.

/The wording

The wording was inconsistent. It seemed to say that persons could be extradited when their activities for the achievement of the purposes and principles set forth in the Charter had been contrary to the principles of the Charter; obviously that was not the real intention. The expression "political offences" was not clearly explained; and even if it had been made more specific, no definition could have been exhaustive. In any case, political offenders were not usually extradited, but the attempt to define political offences too closely might well lead to the extradition of some types of political offenders while permitting war criminals to escape extradition. Thus, the USSR delegation, while acknowledging that the joint proposal (E/CN.4/L.190/Rev.1) embodied some good ideas, could not support it as it stood. The USSR amendment (E/CN.4/L.184), on the other hand, employed a phrase -- "activities in defence of the interests of democracy" (rather than "democratic interests") -- which had the weight of history behind it. It was based upon article 120 of the French Constitution of 1793, which dealt with the granting of asylum to those who fought in defence of freedom and denied it to tyrants. The USSR amendment granted asylum to such persons and to no one else. The statement of the right of scientists to asylum was self-explanatory. The right to asylum for those who participated in the struggle for national liberation had been well stated in the joint proposal and should be retained. The last paragraph of the USSR amendment was entirely unambiguous and was consistent with the spirit of article 14, paragraph (2) of the Universal Declaration of Human Rights. Thus, the USSR amendment (E/CN.4/L.184) had embodied all the best features of the joint proposal (E/CN.4/L.190/Rev.1) even before the latter had been submitted in its revised form.

Mr. Malik (Lebanon) resumed the Chair.

Mr. SANTA CRUZ (Chile) could not understand the USSR representative's difficulties with regard to the expression "purely military offences". The concept was quite distinct from that of common crimes committed by soldiers on active service or serving with an army of occupation and that of ordinary breaches of discipline. War criminals could not avail themselves of any protection under that phrase, because they had committed crimes contrary to the

/principles set

principles set forth in the United Nations Charter. The expression was entirely intelligible in Spanish law, but if it was foreign to other legal systems, the sponsors of the joint proposal might be prepared to withdraw it. The reference to the Universal Declaration of Human Rights had been added in the revised joint proposal, not because the concept of political offences was deemed too vague, but because there might be varying ideas of what was meant by the struggle for political liberation. It meant the struggle to throw off the yoke of any political system inconsistent with the enjoyment and exercise of the fundamental rights and freedoms set forth in the Declaration. In his opinion, the joint proposal was clearly worded. He could not agree with the USSR representative's objections.

Mr. NISOT (Belgium) thought that to oblige States to give asylum to any person accused of a political offence would be tantamount to constraining them to receive spies and agitators who might be sent to them after the precaution had been taken of accusing them of such offences. Moreover, an unduly general prohibition of extradition would prove to be irreconcilable with treaties which provided for extradition in cases where a political offence at the same time constituted an offence against ordinary law, murder or an act of terrorism. He would therefore vote neither for the joint Chilean, Uruguayan and Yugoslav proposal (E/CN.4/L.190/Rev.1) nor for the USSR proposal (E/CN.4/L.184).

AZMI Bey (Egypt) supported the United Kingdom proposal (E/CN.4/L.141). The main objection to the joint proposal (E/CN.4/L.190/Rev.1) was that under it the right of asylum would be guaranteed to all persons charged with political offences, whereas each State had hitherto studied each case on its merits and had been free to decide whether the offence was or was not political. The definition of political offences varied from country to country, and some countries might not wish to grant asylum to certain types of political offenders. His own country might, for example, be reluctant to grant asylum to a communist expelled from another country and it certainly would not wish to undertake a commitment to guarantee asylum to such persons. The situation would be even worse if political refugees, once granted asylum, could not be expelled again. The trouble with political militants was that they were always militant; if they had been expelled for trying to overthrow one government, they could not refrain from attempting to overthrow the government of the country in which they had been granted asylum.

/The CHAIRMAN

The CHAIRMAN observed that article 9 must be taken in conjunction with article 8, which had just been adopted. It would be possible to expel an undesirable political offender because that would not come under the heading of arbitrary exile.

AZMI Bey (Egypt) objected that article 8 referred only to nationals and not to aliens. The effect of the joint proposal for article 9 would be that a country could deport undesirable nationals, but not undesirable aliens.

The CHAIRMAN observed that the word "no one" in paragraph 2 of article 8 applied to both nationals and aliens.

AZMI Bey (Egypt) replied that in law exile could apply only to nationals.

Mrs. ROOSEVELT (United States of America) said that article 9 had been intended to deal only with the expulsion of aliens. The very complex matter of asylum should not be dealt with in the same article. Her delegation preferred the original text even to the United Kingdom amendment (E/CN.4/L.141), but could accept the French (E/CN.4/L.153) and Indian (E/CN.4/L.150) amendments to it. The USSR amendment (E/CN.4/L.184) made no distinction between political and diplomatic asylum, the latter of which was not recognized by the United States. Furthermore, that amendment was restrictive, since it applied only to three categories of persons. In the second paragraph, the State's powers to decide to what type of crime it would refuse asylum was also restricted. It would, moreover, be hard to determine whether acts were in fact contrary to the purposes and principles of the United Nations. The effect of the second paragraph of the joint proposal (E/CN.4/L.190/Rev.1) would be to eliminate the lists of extraditable and non-extraditable offences already established in international conventions. A person seeking to avoid extradition would merely have to claim that he had been charged with a political offence to avoid extradition. It would be extremely difficult to deal with such complex subjects as expulsion and extradition in a single brief article. Aliens were expelled

under domestic laws and procedures. Extradition was governed by treaty. The two matters were thus totally different and could not be combined. Extradition should remain a matter for bilateral or multilateral treaties. The greatest possible care would be required to define international political offences, their nature and the jurisdiction to which they were subject. The wording of the joint proposal was confusing, particularly the concept of purely military offences. There might be such a thing as a political military offence. The Commission would be better advised to confine itself to the original subject of article 9, the expulsion of aliens.

PROGRAMME OF WORK OF THE COMMISSION (continued)

The CHAIRMAN announced that the Economic and Social Council had, by a vote of 14 votes to none, with 4 abstentions, acceded to the Commission's request for an extension of the current session. The closing date of the session would therefore be Friday, 13 June 1952, unless the Commission completed its work earlier.

The meeting rose at 5.30 p.m.