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COMMISSION ON HUMAN RIGHTS

Eighth Session

SUMMARY RECORD OF THE THREE HUNDRED AND TWENTY-THIRD MEETING

Held at Headquarters, New York,
on Thursday, 5 June 1952, at 10 a.m.

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Chairman:	Mr. MALIK	Lebanon
Rapporteur:	Mr. WHITLAM	Australia
Members:	Mr. NISOT	Belgium
	Mr. VALENZUELA	Chile
	Mr. CHENG PAONAN	China
	Mr. GHORBAL	Egypt
	Mr. CASSIN Mr. JUVIGNY	France

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Members: (continued):

Mr. KYROU	Greece
Mrs. MEHTA	India
Mr. WAHEED	Pakistan
Mr. BORATYNSKI	Poland
Mrs. ROSSEL Mr. WESTERBERG	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. FORTEZA	Uruguay
Mr. JEVREMOVIC	Yugoslavia

Also present:

Miss MANAS	Commission on the Status of Women

Representatives of non-governmental organizations:

Category B
on Register

Mrs. DeBROECK	Catholic International Union for Social Service
Mr. MOSKOWITZ	Consultative Council of Jewish Organizations
Mrs. PARSONS Mrs. FREEMAN	International Council of Women
Mrs. SOUDAN	International Federation of Business and Professional Women
Miss DINGMAN	International Union of Child Welfare
Mr. RONALDS	World Union for Progressive Judaism
Mr. PENCE	World Alliance of Young Men's Christian Associations

Secretariat:

Mr. LIN	Division of Human Rights
Mr. DAS Miss KITCHEN	Secretaries of the Commission

/DRAFT

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 and III, section A; E/CN.4/528, E/CN.4/528/Add.1, E/CN.4/L.166, E/CN.4/L.124, E/CN.4/L.133, E/CN.4/L.142, E/CN.4/L.154/Rev.1, E/CN.4/L.154/Rev.2) (continued)

Article 10 (continued)

Mrs. ROOSEVELT (United States of America) said that the USSR amendments (E/CN.4/L.124) seemed entirely unnecessary. The first sentence of the first paragraph of the USSR text was already covered by article 17, providing that all were equal before the law. The second sentence was covered by the words "independent and impartial tribunal" in article 10. The omission of the word "impartial" might mean that judges were intended to be partial in their judgments. The present language of article 10 on that point was preferable as it was stronger. While the United States delegation was in favour of democratic principles as the basis for all institutions, it felt that the general reference to such principles proposed by the USSR would dilute the present precise language of article 10 guaranteeing precise rights to the individual in a criminal prosecution or law suit. Moreover the USSR proposal could be interpreted to mean that in criminal trials or civil suits the rights of the individual could be subjected to the changing whims of temporary majorities, particularly if the first paragraph of the USSR proposal was intended to replace the first sentence of article 10. If it was to be an addition, it would be weakening in effect because of its redundancy and its lack of precision. The Commission must not jeopardize the well-considered phraseology of article 10 by inserting the loose language proposed by the USSR.

The second paragraph proposed for sub-paragraph 2 (d) by the USSR sacrificed the broad principle now contained in the present text in attempting to stress details. The USSR text failed to guarantee free interpretation and thus jeopardized the accused person's right of examination and the right to speak his own language. The present provision on interpretation was adequate and should therefore be retained.

/The United States

The United States delegation would vote against both USSR proposals for article 10.

The first of the French amendments to article 10 (E/CN.4/L.134/Rev.1), proposing the addition of the words "in a democratic society" seemed unnecessary and might give rise to differing interpretations and ambiguity. Moreover if that expression was inserted in article 10, it would have to be considered in a number of other articles of the covenant. The United States would therefore vote against its inclusion.

The United States delegation would also be unable to support the second French amendment providing that judgments should be publicly pronounced "except where the interest of the private lives of the parties otherwise requires". The existing text made an exception only in the interest of juveniles. Broadening the exception, as proposed in the French amendment, could lead to dangerous practices and damaging results in the administration of justice. The principle of paragraph 1, that court trials should not only be fair but public, and that court judgments should be public and publicly pronounced, was significant. While discretion could be allowed in excluding the public during the trial of certain kinds of cases, the Commission must guard against secret judgments by courts and insist on public pronouncements of judgments even in cases of closed hearings during the trial. An exception was possible in the case of juveniles for reasons which were well known, but further exceptions, as proposed by the French amendment, were unnecessary and undesirable.

The French amendment to paragraph 3 seemed designed to cover the same point as the United States amendment to that paragraph, in slightly different language. Both seemed agreed that a person who suffered imprisonment because his own deliberate misconduct or negligence resulted in concealing evidence would not be producing new material in presenting the concealed evidence after his conviction and would therefore not be entitled to compensation. The United States delegation also felt that, until the new evidence has been scrutinized by a court and found to justify reversal of the conviction, no basis for payment of compensation existed. She hoped that the French representative would agree that the United States amendment (E/CN.4/L.133) closed the gaps in paragraph 3.

/It was

It was her opinion that the additional limitations proposed by the United Kingdom (E/CN.4/L.142) were unnecessary. The first reference to matrimonial disputes was covered by the reference to morals. In the case of the second, even though a closed hearing might be desirable, she saw no reason for secrecy of the judgment. The guardianship of children was covered twice in the paragraph by references to the interests of juveniles.

The proposed deletion of sub-paragraph 2 (b) would be a serious mistake because there should be an affirmative duty upon the court to inform the defendant in a criminal case of his right to legal assistance. That procedural safeguard was so important that it became a substantive element of the defendant's right and should not be omitted. She saw no reason for the deletion of sub-paragraph 2 (f) as suggested by the United Kingdom; it provided a useful protection. She could not agree to the limiting change suggested in sub-paragraph (c) because it might be interpreted to give the prosecution the right to control the extent to which the defence might compel attendance and examination of witnesses in its behalf. She hoped that the United Kingdom representative would reconsider and withdraw his amendment to sub-paragraph 2 (c).

The United States delegation preferred the original text of article 10 with very few changes.

Mr. HOARE (United Kingdom) said that he approached the covenant as a juridical text with binding and explicit obligations upon signatory States.

He had proposed the reference to matrimonial disputes and guardianship of children in paragraph 1 because he was not convinced that the existing text covered the points adequately. The intention was not to proscribe closed proceedings in ordinary criminal cases but to authorize exclusion of the general public from proceedings involving discussion of intimate details of the private lives of individuals. He wished to make it clear that in the two categories he had proposed the judgment would be pronounced in the court with the family and friends of the parties and representatives of the press present, but with the general public excluded.

The United Kingdom delegation had proposed the deletion from sub-paragraph 2 (b) because it felt that a statement informing a defendant

/of his

of his right to legal assistance was unnecessary and superfluous in that it afforded him no positive help.

In sub-paragraph 2 (c) it was not the intention of the United Kingdom to limit the right of the defence with regard t the attendance of witnesses, but to make it clear that the right was not absolute, in the sense that attendance would invariably result. The United Kingdom wording would not impose the limit suggested by the United States representative, but would mean that precisely the same facilities would be available to both the defence and the prosecution.

Mr. KOROZOV (Union of Soviet Socialist Republics) said that the United States representative had misconstrued the intention of the USSR proposal and based her criticism on the false premise that the USSR proposed deletion of the existing text of paragraph 1. He wished to make it clear that the USSR text would be placed at the beginning of paragraph 1 and would be followed by the existing text without change.

A statement that everyone was equal before the courts was essential in article 10 even though a similar provision might appear elsewhere in the covenant. Equality should extend to rich and poor alike, and should not be conditioned by property status. The provisions for an independent judiciary and legal proceedings based on democratic principles were necessary to avoid having article 10 exclusively technical in approach.

Some of the United Kingdom amendments entered into even greater detail in the case of an article which was already sufficiently detailed. "Public order" was adequate and he would therefore oppose the United Kingdom proposal to replace it by "prevention of disorder". The proposal to add a reference to matrimonial disputes and guardianship was unnecessary because the point was covered by the reference to morals and because further detail was undesirable. The United Kingdom amendment to sub-paragraph 2 (a) was acceptable to the USSR delegation, which would also agree to the proposal for a new sub-paragraph guaranteeing the defendant the time and facilities necessary to prepare his defence. The USSR delegation would

/oppose

oppose the deletion from sub-paragraph 2 (b) and felt that the United Kingdom proposal for sub-paragraph 2 (c) was unacceptable because it weakened the principle that the defendant was entitled to have the compulsory attendance of witnesses guaranteed unconditionally. The USSR delegation would also oppose the deletion of sub-paragraph 2 (f) and of paragraph 3, which it considered essential.

He would also vote against the United States amendment (E/CN.4/L.133) making it more difficult for an innocent man to prove a miscarriage of justice in his case. The United States text introduced superfluous details and dealt with exceptional and almost hypothetical circumstances rather than with typical cases.

Mr. CASSIN (France) stated that the Universal Declaration of Human Rights contained a reference to "a democratic society" and that it would be a mistake to omit that expression from the covenant wherever it was appropriate.

The public could more easily be excluded from hearings of a case than from the judgment, which should be pronounced in public except in the case of juvenile delinquents. The text applied to both civil and criminal cases, and both litigious and non-litigious judgments; the intention should be made clearer in each case.

The USSR addition to paragraph 1 would serve no purpose except to weaken the covenant by repetition of provisions included elsewhere. Moreover, the third sentence of the USSR proposal would prevent States from choosing the system of judges and juries which they considered most appropriate.

The French delegation would support the United Kingdom amendment to sub-paragraph 2 (a) because it safeguarded the rights of the defence. It would also vote in favour of the proposal for a new sub-paragraph giving time for preparation of the defence because in some countries the prosecution spent months preparing its case while the defence lawyer was often given only a few hours. While he recognized that the United Kingdom proposal for sub-paragraph 2 (b) was intended to simplify the text, he noted that the paragraph provided a necessary safeguard which must be retained. The representatives of the United States and the Soviet Union had rightly

/criticized

Mr. AZKOUL (Lebanon) thought that it would be better if the Uruguayan representative withdrew his proposal in order to enable the Commission to take a vote immediately.

Mr. BRACCO (Uruguay) agreed solely in order to expedite the Commission's work, but strongly objected to the refusal to follow well-established precedents.

Mr. MOROZOV (Union of Soviet Socialist Republics) decided not to invoke rule 51 of the rules of procedure.

The CHAIRMAN said that the Commission would vote first on the French sub-amendment (E/CN.4/L.191), then on the USSR sub-amendment (E/CN.4/L.184), and lastly on the joint amendment (E/CN.4/L.190/Rev.2).

The French sub-amendment was rejected by 9 votes to 3, with 6 abstentions.

The CHAIRMAN said that in the provisional translation of the USSR amendment the words "military offences" should be replaced by the words "war crimes" in accordance with the Russian original.

The USSR sub-amendment was rejected by 10 votes to 5, with 3 abstentions.

The joint amendment was rejected by 10 votes to 4, with 4 abstentions.

The CHAIRMAN invited the Commission to discuss the United Kingdom amendment (E/CN.4/L.141).

Mr. HOARE (United Kingdom) accepted the French representative's suggestion that the words "to submit evidence to clear himself" should be replaced by the words "to submit the reasons against his expulsion". He was also willing to accept the Greek representative's suggestion, but thought it would involve a good deal of alteration in the sentence.

/Mr. AZKOUL

Mr. HOARE (United Kingdom) thanked the French representative for his approach to the United Kingdom amendments, which were intended to improve article 10. The new sub-paragraph he had proposed did not mean, as some had said, that the prosecution could control the attendance of witnesses for the defence, but that all the processes of the court available in respect of witnesses for the prosecution, whether they were used or not, should be equally available for the defence.

The various amendments to paragraph 3 showed that the text was not satisfactory, but did not themselves solve the difficulty. The United States amendment (E/CN.4/L.133) would permit compensation only when a conviction had been reversed by a higher court; but not all systems of law provided for compensation whenever an appeal was successful. Under the existing paragraph, persons would be entitled to compensation not only if it was found that they had been unjustly convicted, but even if the conviction was discovered to be invalid because of a technicality; and it was surely going too far to compensate a man, who might have been guilty in the first place, simply because the proceedings against him had not been properly conducted. It was because paragraph 3 was a wholly inadequate statement of the circumstances in which compensation should be granted that he wished to see it deleted.

Mr. NISOT (Belgium) said that the United States amendment to paragraph 3 spoke only of reversal of conviction; it was also necessary to cover cases of miscarriage of justice which were remedied by means of a pardon.

Mr. WHITLAM (Australia) remarked that he would be able to accept most of the United Kingdom amendments, since they were in accordance with the judicial system of his own country, but, being mindful of the fact that countries with different systems felt that they required greater protection, he would oppose the deletion of the words in sub-paragraph (b) and of the entire sub-paragraph (f) suggested by the United Kingdom. While the United Kingdom amendment to sub-paragraph (c) would be acceptable, he hesitated to vote for it for the same reason.

agreed

He agreed with the Belgian representative that in paragraph 3 there should be a reference to pardon, as well as to reversal of conviction. The last sentence of that paragraph was unsatisfactory; it would be improved by inserting a reference to dependents after the reference to heirs, but he would prefer to see the sentence deleted and therefore asked for a separate vote on it.

He would vote against the French amendment to insert the words "in a democratic society" for reasons explained previously, and was hesitant with respect to the other French amendment to paragraph 1. He also had some difficulty in accepting the French amendment to paragraph 3, and would prefer to retain the first sentence of the existing text, subject to later re-examination.

He would vote against the USSR amendment (E/CN.4/L.124). Point 1 contained a needless repetition, while point 2 dealt with an idea better expressed in the United Kingdom amendment.

Mrs. ROOSEVELT (United States of America) introduced the words "or he has been pardoned" after the word "reversed" in the United States amendment in order to meet the Belgian representative's point. She was prepared to vote either for the French amendment to paragraph 3 or for the corresponding United States amendment, as either would solve the problem involved.

Her main objection to the USSR amendment was that it would weaken article 10 by inserting in a precisely worded text glittering generalities, which added nothing new. The reference to democratic principles, for example, in no way added to the clarity of the provision.

Mr. JEVREMOVIC (Yugoslavia) said that the Yugoslav amendment (E/1992, annex XII, section A), inserting the word "competent" before the word "independent" in paragraph 1, was essential to ensure that all persons would be tried in courts previously established by law, and not in summary courts. As that was a prerequisite for a fair and impartial trial, he hoped that the Commission would adopt his amendment.

/He would

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He would support the French amendment to insert the words "in a democratic society" in paragraph 1, as they would make it clear that the limitations mentioned in the paragraph could be applied only in democratic countries; and he would oppose the deletion of paragraph 3.

Mr. MOROZOV (Union of Soviet Socialist Republics) remarked that the United States representative, upon being shown that her first criticism of the USSR amendment had been based on a misunderstanding, had found nothing better to say than that the amendment added nothing to the existing text. He fully understood that it was embarrassing for representatives of countries, which had at one time embraced democratic principles and still paid lip-service to them, to state openly that they would vote against the insertion of a reference to those principles in an article on fair trial because their courts were being used by the ruling classes to keep the workers in subjection. Such a statement would cause widespread indignation in their countries, and they therefore found it politic to resort to arguments such as that used by the United States representative. After the examples cited by the Polish representative, however, it should be clear to everyone that the USSR amendment would indeed add a great deal to the article. He requested a separate roll-call vote on each sentence of the USSR amendment to paragraph 1, in order to record the positions of various delegations on the ideas it contained. He hoped that the majority would vote for that amendment, and thus avoid placing the Commission in the shameful position of rejecting principles which had been accepted since the French Revolution and which had become the common heritage of mankind.

Mr. CASSIN (France) agreed that there should be some mention of pardon in the United States amendment to paragraph 3, provided that it was clear that only cases of miscarriage of justice were concerned.

He introduced a revised text of the French amendment (E/CN.4/L.154/Rev.2) according to which only hearings of certain cases would be held in private, but the judgment would be pronounced publicly.

Mr. VALENZUELA

Mr. VALENZUELA (Chile) would be unable to vote for the Indian amendment (E/1992, Annex III, section A) as it limited unduly the right to free legal assistance and eliminated it entirely in the case of countries which did not apply the death penalty.

The United States and French amendments to paragraph 3 failed to explain who would have to prove that there had been misconduct or neglect; if the burden of the proof was on the accused, he would have to establish his innocence, which was in contradiction with most legal systems. Those amendments therefore tended to distort the conception of the responsibility of the courts which the covenant sought to establish.

He agreed with the Australian representative that the last sentence of paragraph 3 should be deleted, and that the matter should be left for national legislation.

Mr. KOVALENKO (Ukrainian Soviet Socialist Republic) wholeheartedly supported the USSR amendment. Point 1 of that amendment laid down important principles which would strengthen article 10, and he was entirely unable to agree with the arguments that they were superfluous or would weaken the article. There had been considerable opposition to the mention of democratic principles; the Commission had lately fallen into the deplorable habit of voting against such words as "peace" and "democracy" on all occasions and in all contexts. It was perhaps not surprising that the United States delegation intended to vote against the inclusion of the statement that legal proceedings should be based on democratic principles: a country in which lawyers were sent to prison for defending their clients, in which there was appalling inequality of Negroes and whites before the courts, and where lynching was freely practised, could not subscribe to such a statement; but he hoped that the Commission would not follow that example.

He would vote in favour of the French amendment to insert "in a democratic society" in paragraph 1, against the United Kingdom amendment to replace "public order" by "prevention of disorder" and to delete sub-paragraph (f), and against the French and United States amendments to paragraph 3, as the last two were an attempt to avoid compensation by placing the guilt for a miscarriage of justice on the accused rather than on the court.

/Mr. CASSIN

Mr. CASSIN (France) agreed with the Chilean representative that it would be wiser to leave it to domestic law to decide to whom the compensation should be awarded if a person was executed by virtue of an erroneous sentence. The expression "aux ayants-droit" might serve in French. He could not support the Yugoslav amendment (E/1992, Annex III, section A). Either the word "competent" referred to the jurisdiction of the court, which was far too complex a matter for the Commission to decide, or it referred to the technical qualifications of the judges, and might exclude the elected or popular judges without specifically legal training who sat in some courts in some countries. He could assure the USSR representative that the French delegation was as anxious as the USSR delegation that all should be equal before the law, but he still could not accept the way in which the USSR amendment was framed, and regarded article 17 as adequate.

The CHAIRMAN put each sentence of the USSR amendment (E/CN.4/L.124) to paragraph 1 to the vote separately and by roll-call. He suggested that grammatically the words "all persons" would be better than "everyone" at the beginning of the first sentence.

Mr. MOROZOV (Union of Soviet Socialist Republics) accepted that suggestion.

A vote was taken by roll-call on the first sentence.

Sweden, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Yugoslavia, Chile, Egypt, India, Lebanon, Poland.

Against: Sweden, United Kingdom of Great Britain and Northern Ireland, United States of America, Australia, Belgium, China.

Abstaining: France, Greece.

The first sentence of the USSR amendment (E/CN.4/L.124) to paragraph 1 as orally amended was adopted by 8 votes to 6, with 2 abstentions.

/A vote

Mr. HOARE (United Kingdom) withdrew his proposal (E/CN.4/L.142) that the words "or the proceedings concern matrimonial disputes or the guardianship of children" should be inserted after "so requires", as the French amendment just adopted amply covered their substance, but would press for their addition at the end of paragraph 1, as they were more precise in scope than the phrase proposed in the French amendment (E/CN.4/L.145/Rev.2) for addition to the paragraph. He also withdrew the proposal to delete the word "or" after "national security" as it was consequential on his preceding amendment.

The French amendment (E/CN.4/L.154/Rev.2) to substitute a phrase at the end of paragraph 1 was adopted by 9 votes to 3, with 6 abstentions.

The United Kingdom amendment (E/CN.4/L.142) to add at the end of paragraph 1 the words "or the proceedings concern matrimonial disputes or the guardianship of children" was adopted by 11 votes to 4, with 3 abstentions.

Mr. CASSIN (France) thought that the adoption of the phrase proposed by the United Kingdom delegation had given rise to duplication, since the ideas embodied in the phrases "the interest of juveniles" and "the guardianship of children" overlapped.

Mr. HOARE (United Kingdom) could not agree, since the reasons for excluding the public from the judgment in guardianship of children cases were not merely the interests of juveniles.

Paragraph 1 of article 10, as amended, was adopted by 15 votes to none, with 3 abstentions.

The United Kingdom amendment (E/CN.4/L.142) to paragraph 2, sub-paragraph (a) was adopted unanimously.

The CHAIRMAN pointed out that the wording of the new sub-paragraph which the United Kingdom delegation proposed for insertion between sub-paragraphs (a) and (b) of paragraph 2 had been taken from the Rome Convention on the Protection of Human Rights and that in the French text the words "necessaires à" should be substituted for "suffisants pour" to correspond with the authentic text.

The new sub-paragraph proposed by the United Kingdom delegation (E/CN.4/L.142) for insertion between sub-paragraphs (a) and (b) of paragraph 2 was adopted unanimously.

/Mr. HOARE

Mr. HOARE (United Kingdom) withdrew the United Kingdom amendment (E/CN.4/L.142) to delete paragraph 2, sub-paragraph (b), as he appreciated the fact that some countries might require the provision.

The Indian amendment (E/1992, Annex III, section A) to paragraph 2, sub-paragraph (b) was rejected by 11 votes to 2, with 5 abstentions.

The United Kingdom amendment (E/CN.4/L.142) to paragraph 2, sub-paragraph (c) was adopted by 10 votes to 5, with 3 abstentions.

Mrs. MEHTA (India) withdrew her amendment (E/1992, Annex III, section A) to paragraph 2, sub-paragraph (c).

The USSR amendment (E/CN.4/L.124) to paragraph 2, sub-paragraph (d) was rejected by 6 votes to 4, with 8 abstentions.

Mr. HOARE (United Kingdom) maintained his objection to paragraph 2, sub-paragraph (f), but asked that the vote should be taken on the sub-paragraph itself rather than on his proposal (E/CN.4/L.142) for its deletion.

Paragraph 2, sub-paragraph (f) of the original text (E/1992, Annex I) was adopted by 14 votes to 1, with 3 abstentions.

Mrs. MEHTA (India) proposed that sub-paragraph (f) should be placed in a separate paragraph, as it differed in character from the other sub-paragraphs.

The Indian representative's proposal was adopted by 11 votes to none, with 6 abstentions.

The CHAIRMAN observed that sub-paragraph (e) was couched in somewhat different terms from those of the remaining sub-paragraphs of paragraph 2.

After a brief discussion, Mr. KYROU (Greece) proposed that sub-paragraph (e) should begin with the words "not to be compelled" instead of "no one shall be compelled", for the sake of uniformity.

It was so decided.

Paragraph 2 of article 10, as amended, was adopted unanimously.

/The CHAIRMAN

The CHAIRMAN reminded the Commission that the new paragraph 3 had already been adopted.

Mr. CASSIN (France) asked that the phrase "through no misconduct or neglect of his" in the United States amendment (E/CN.4/L.133) to the former paragraph 3 should be put to the vote separately, as the remainder of that amendment virtually coincided with the French amendment (E/CN.4/L.154/Rev.2) to that paragraph.

Mr. HOARE (United Kingdom) asked that his amendment to delete paragraph 3 should be dealt with by a vote on the paragraph rather than on the principle. He also asked that a separate vote should be taken on the words "his conviction has been reversed or" in the United States amendment (E/CN.4/L.133), as orally amended by the United States representative by the inclusion of the words "or he has been pardoned".

The phrase "his conviction has been reversed or" in the amended United States amendment (E/CN.4/L.133) was adopted by 6 votes to 4, with 7 abstentions.

The United States amendment (E/CN.4/L.133) to insert the words "his conviction has been reversed, or he has been pardoned" was adopted by 8 votes to 6, with 4 abstentions.

The United States amendment (E/CN.4/L.133) to insert the words "through no misconduct or neglect of his" was rejected by 9 votes to 5, with 4 abstentions.

French amendment (E/CN.4/L.154/Rev.2) to the former paragraph 3 was adopted by 9 votes to 6, with 3 abstentions.

The CHAIRMAN reminded the Commission that the Australian representative had asked for a separate vote on the second sentence of paragraph 3 (E/1992) and that the French representative had suggested the replacement of the word "heritiers" by "ayants-droit".

After a discussion of the precise scope and the English equivalent of that expression, Mr. WHITLAM (Australia) proposed that the Commission should first vote whether it wished to include the principle embodied in the

second sentence of paragraph 3 (E/1992).

It was decided, by 1[illegible] votes to 4, with 3 abstentions, that the principle should not be included.

Mr. NISOT (Belgium) felt that the result of that vote showed that the Commission had not really understood what had been at issue. It meant that the children of a person executed by virtue of an erroneous sentence would obtain no compensation at all, which would be a flagrant injustice.

Mr. JUVIGNY (France) said that the Commission had decided that a livin victim of a miscarriage of justice had a right to compensation, but its vote might give the impression that no compensation should be awarded in the far more serious case when the victim had been executed. That would bring untold hardship upon his family, children and dependents. The most important sentence in the whole article had been eliminated.

The CHAIRMAN observed that the absence of a reference to the principle could not be interpreted as meaning that the Commission was opposed to it. Even if it was not embodied in the covenant, it could still be enacted in domestic law.

Mr. WHITLAM (Australia) said that the case was provided for in Australian domestic law, but the Commission should really ponder the matter and try to reach some generally acceptable formulation.

The meeting rose at 1.40 p.m.