

COMMISSION ON HUMAN RIGHTS

THIRD SESSION

SUMMARY RECORD OF THE FIFTY-SEVENTH MEETING

Held at Lake Success, New York
on Thursday, 3 June 1948, at 10.45 a.m.

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| <u>Chairman:</u> | Mrs. Franklin D. ROOSEVELT | United States of America |
| <u>Rapporteur:</u> | Mr. MALIK | Lebanon |
| <u>Members:</u> | Mr. HOOD | Australia |
| | Mr. LEEEAU | Belgium |
| | Mr. STEPANENKO | Byelorussian Soviet Socialist Republic |
| | Mr. LARRAIN | Chile |
| | Mr. CHANG | China |
| | Mr. LOUTFI | Egypt |
| | Mr. CASSELI | Franco |
| | Mrs. MEHTA | India |
| | Mr. QUIJANO | Panama |
| | Mr. LOPEZ | Philippines |
| | Mr. KLEKOVKIN | Ukrainian Soviet Socialist Republic |
| | Mr. PAVLOV | Union of Soviet Socialist Republics |
| | Mr. WILSON | United Kingdom |
| | Mr. FONTAINE | Uruguay |
| | Mr. MORA | Venezuela |
| | Mr. VILFAN | Yugoslavia |
| <u>Also present:</u> | Mrs. LEDON | Commission on the Status of Women |
| | Miss KENYON | Commission on the Status of Women |
| <u>Specialized Agencies:</u> | | |
| | Mr. LEBAR | United Nations Educational, Scientific and Cultural Organization |
| | Mr. COX | International Labour Organization |
| <u>Non-governmental organizations:</u> | | |
| | Miss SENDER | American Federation of Labor |
| | Mr. VANISTENDAELE | International Federation of Christian Trade Unions |

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Article 11 -- Continuation of consideration.

The CHAIRMAN pointed out that the drafting sub-committee had prepared the two following versions of article 11, paragraph 1, which differed only slightly from each other.

1. "Everyone has the right to seek and be granted in other countries asylum from persecution as humanity required."

2. "Everyone has the right to seek and be granted in other countries such asylum from persecution as humanity requires."

In reply to a question by the representative of Yugoslavia, she explained that the drafting sub-committee, in re-drafting paragraph 1, had felt that the addition of the qualification: "as humanity requires" might obviate the need for paragraph 2 which had already been adopted by the Commission. The Commission would have to decide that question after a vote on paragraph 1.

Mr. VILFAN (Yugoslavia) thought that such procedure might set a dangerous precedent.

Mr. CASSIN (France) pointed to some errors in the arrangement of the versions of the re-drafted paragraph 1.

Mr. PAVLOV (Union of Soviet Socialist Republics) noted two important changes in the drafting sub-committee's versions of paragraph 1: (1) the optional character of granting asylum, as laid down by the Drafting Committee, had been changed to what seemed an obligation on the part of governments to grant asylum, and (2) the qualification "as humanity requires" added a new element which had not previously been discussed by the Commission. The Committee should consider the two new elements separately. He felt that the qualification clause was vague and its addition to the paragraph would require further qualifications such as "the requirements of democracy and progress,"

/The CHAIRMAN

The CHAIRMAN explained that the expression "as humanity requires" had been chosen by the drafting sub-committee for its all-inclusiveness. As regards paragraph 2, she specified that there was no question of re-considering that paragraph, but only deciding, in the light of the new draft of paragraph 1, whether it was still necessary.

Mr. MALIK (Lebanon) wished to know whether there was any difference of substance between the two proposed versions of paragraph 1. If not, then he would prefer the better style of the second version. The phrase: "as humanity requires" seemed very broad and vague; he therefore suggested that a separate vote should be taken on that qualification clause which he would rather see deleted and replaced by the previously rejected French proposal to entrust the United Nations with the problem of asylum. He was prepared, if in order, to propose reconsideration of that proposal.

Mr. CASSIN (France) would support the first part of the newly proposed paragraph 1, (without the qualification clause) in the hope that the United Nations would find a just solution to the problem.

Mr. WILSON (United Kingdom) observed that the discussion had shown the extreme complexity of the entire article. Control over immigration was one of the most jealously guarded rights of sovereign states. On the other hand, every person had the right to escape and seek asylum from persecution. The drafting sub-committee had attempted to reconcile those two conflicting rights by adding a qualification clause which set the dictates of humanity as a standard for granting asylum. The two proposed versions differed only in style. He suggested that the Commission should defer consideration of the need for paragraph 2 until paragraph 1 had been discussed.

Mr. STEPANENKO (Byelorussian Soviet Socialist Republic), referring to the Chairman's remarks, felt that the vague qualification clause was no

/substitute

substitute for paragraph 2. He recalled, in that connection, that the defence at the Nuremberg Trials had invoked the "law of humanity" in order to mitigate the punishment of war-criminals; nevertheless, the Military Tribunal had pronounced, and humanity had approved, a just sentence for those war-criminals. While recognizing the right of asylum -- also laid down in article 104 of the Constitution of the Byelorussian Soviet Socialist Republic - he noted that such a right could not apply to fascists and other criminals against humanity. Consequently the article needed specific provision excluding war-criminals from the right of asylum.

Mr. LEBEAU (Belgium) shared the Lebanese representative's regrets at the previous rejection of the French amendment. He wished to show that to an uninitiated reader, contrary to the United Kingdom representative's view of the matter, there was a substantial difference between the two alternative versions of paragraph 1. In the French text, the first version implied granting of asylum subject to the humanitarian considerations of the country concerned, while the second version laid down the general philosophical concept of asylum. He favoured the first version with the following amendment:

"Everyone has the right to seek and be granted in other countries asylum from persecution."

Mr. LARRAIN (Chile) agreed with the Belgian representative. He would support the Lebanese proposal for re-opening consideration of the French proposal which provided an effective method of dealing with the problem.

Mr. CHENG (China), agreeing with the Belgian representative's interpretation of the two versions, noted the importance of a clear and unambiguous text on the matter. It was true that the first version gave the country of immigration certain control over the granting of asylum. The original Chinese amendment had included that right of states to control immigration. He supported the French proposal which had been rejected in view

/of the fact

of the fact that a similar question was under consideration by the Council. Should it be impossible to revert to that proposal, the Commission might go on record as considering that a United Nations organ should deal with that problem. He agreed with the representative of Lebanon regarding the vagueness of the qualification clause which could not be a compromise between the rights of states granting, and persons seeking, asylum. The Commission should state clearly and frankly whether or not countries had control over the granting of asylum. If no qualification clause was included, the question might arise whether countries were obliged to grant asylum whenever asked for it. There were two possibilities, the Commission could either accept the first version without the qualification clause, and in that case it would be well to revert to the French proposal or at least go on record that the French proposal constituted the most desirable solution to the problem; or the Commission should clearly leave it to countries to decide whether they would grant asylum. The first alternative should be put to the vote first as being farthest removed from the Drafting Committee's text.

The CHAIRMAN, referring to the Chinese representative's remarks, explained that the Commission's action with regard to the French proposal had been based on the fact that the Council had called for a separate study of the question of nationality which would probably include the problem of asylum. She also pointed out that the qualification clause had been introduced by the drafting sub-committee partly because the Chinese representative had indicated the danger of an unqualified right of persons to seek and be granted asylum. Such a provision might keep many countries unable to make such a commitment from ratifying the Convention.

Mr. MALIK (Lebanon) also agreed with the Belgian representative's interpretation of the meaning of the two versions. He would support reconsideration of the French proposal.

/Ms. MEHTA

Mrs. MEHTA (India) stated that she had not supported the French text in view of the fact that the United Nations could be instrumental in providing permanent asylum only. It was a human right, however, to seek and be granted temporary asylum from persecution. That right was not covered in the French proposal.

The CHAIRMAN recalled that the original United States proposal had provided the right to seek temporary asylum. Without the word "temporary" the right to be granted asylum might come into conflict with the immigration laws of various countries. The problem of permanent asylum might be studied under the above-mentioned Council Resolution; reference to the United Nations, however, as proposed in the French amendment, might raise difficulties.

Mr. PAVLOV (Union of Soviet Socialist Republics) pointed out that a return to the French proposal would raise once more the question of the exact role of the United Nations in the matter. Since the United Nations had no common territory on which to provide asylum, such asylum would have to be granted on the territory of Member States; that, however, would constitute an interference in the domestic affairs of the country concerned. On the other hand, the United Nations were not authorized under the Charter to make recommendations to Member countries on the matter of asylum. He therefore agreed with the Chairman's view on the French proposal.

As regards the two drafting sub-committee versions of paragraph 1, he felt that the two texts had different implications; while the first version seemed to refer to the type of asylum required by humanitarian standards, the second version apparently laid down the demand of humanity as one of the bases for granting asylum. The latter version, he felt, should be amplified by further considerations.

/The CHAIRMAN

The CHAIRMAN recalled that the question of asylum had been raised at the Commission's second meeting. As was evident from the summary record the point then considered had been whether the right to asylum should be included in the Declaration or in a special convention.

In reply to the questions of the Indian and USSR representatives Mr. CASSIN (France) explained that at its previous meeting the Commission had not voted on the text submitted by the French Government, but on his own amendment which contained the provision "the United Nations acting in agreement with Member Governments." What he had meant was that the United Nations should take preliminary steps and provide to Member States material aid to facilitate their acceptance of persons seeking asylum. He wished to make it clear that he had never implied that the United Nations could interfere in the internal affairs of States; he merely considered that an agreement on the whole problem should be reached at the earliest possible time and that the question should not be treated solely on an emergency basis. He had never intended that nations' rights should be infringed upon in any way.

With regard to the USSR representative's remark about the treatment of political refugees in France, Mr. Cassin pointed out that the fact that thousands of them chose to remain in France and make it their adopted country was sufficient proof of the treatment they had received.

Mr. FONTAINA (Uruguay) wished that some misconceptions should be clarified. The task of the Commission consisted in drafting principles. The question of implementation would be considered by the Commission during the discussion of the Covenant. The Commission's sole concern at the present time was to lay down the principle that a person persecuted for political reasons had a right to asylum. The determination of how asylum should be granted belonged to the Covenant.

/The representative

The representative of Uruguay referred to the Declaration on Human Rights adopted at Bogota to show how the problem of asylum for political refugees was treated on a regional basis. He considered that the necessary mechanism should be provided by the United Nations and consequently would favour reconsideration of the French proposal. He reiterated that it was essential to separate a statement of principle from its implementation.

Mr. LOPEZ (Philippines) felt that the significance of the paragraph in question should be considered in practical terms. Some representatives had stressed that the right of asylum should be granted only to the persecuted persons who were deemed desirable from the point of view of the recipient state. An inhabitant of Latvia or Estonia who did not agree with the Soviet regime and therefore was in danger of persecution might seek asylum in Sweden or the United States of America. On the other hand, a person with Communist sympathies in Greece or some other country who was threatened with persecution might seek asylum in the Ukrainian SSR or in Yugoslavia. The right of asylum would thus be available in different countries for exactly the opposite reasons.

Mr. Lopez quoted these theoretical examples to show that it would be inadvisable to try to specify the persons who were entitled to asylum. The paragraph should guarantee the right of asylum in the broadest possible terms. Consequently he would favour an article free from the limitations implied by the phrase "as humanity requires". He would vote for the original Chinese amendment.

Mr. QUIJANO (Panama) considered that the principles should be clearly and precisely stated. If the Commission were unable to agree on a precise formulation it would be advisable to re-examine the French amendment.

/Mr. PAVLOV

Mr. PAVLOV (Union of Soviet Socialist Republics) was not clear on the exact meaning of the two versions of paragraph 1. He wished to know whether the first version referred to the kind of asylum and the second to the reasons for or conditions under which it should be granted. He considered that a specific reference should be made to defence of democracy, scientific activity and participation in the struggle for national liberty. In connection with the Philippine representative's remarks he enquired whether Japanese and Nazis would be granted asylum in the Philippines or in some other country. He also stressed that the USSR did not persecute its citizens for not agreeing with the Government. They were liable to punishment for treason and similar crimes.

Mr. LOPEZ (Philippines) said in reply to the USSR representative that no Japanese or Nazi war criminal would be granted asylum in the Philippines. He would be arrested, tried and probably put to death.

Mr. MALIK (Lebanon) formally moved that the French proposal "The United Nations in agreement with Member Governments" should be resubmitted for consideration.

Mr. KLEKOVKIN (Ukrainian Soviet Socialist Republic) recalled that at its previous meeting the Commission had adopted paragraph 2 of article 11, which contained the very important principle that prosecution arising from acts contrary to the propositions and principles of the United Nations did not constitute persecution. The term "humanity" introduced by the drafting group was very broad and vague. It should be remembered that during the Nuremberg Trials clemency for war criminals had been asked for in the name of humanity. The United Nations, which was based on the defeat of fascism and nazism, should also be mentioned in paragraph 1 and no possibility whatsoever for the escape of war criminals should be implied.

In Mr. Klekovkin's opinion the drafting group had not fulfilled its task and the Commission must redraft the paragraph.

/After an exchange

After an exchange of views between Mr. WILSON (United Kingdom), and Mr. CHANG (China) on the order in which the vote should proceed, Mr. PAVLOV (Union of Soviet Socialist Republics) expressed the opinion that both alternative texts of the amendment were equally removed from the original. He stated that the text he had previously suggested was furthest removed. The final version of the USSR amendment was as follows: "Everyone has the right to seek and be granted in other countries asylum from persecution as required by humanity, defence of democratic interests, activity in the field of science, and participation in the struggle for national liberty". He requested that his amendment should be voted first.

The CHAIRMAN put the USSR amendment to the vote by a show of hands.

The USSR amendment was rejected by four votes to eleven, with two abstentions.

The CHAIRMAN wished to know how the Commission would like to vote. She considered that the deletion of the words "as humanity requires" should be voted first.

Mr. PAVLOV (Union of Soviet Socialist Republics) maintained that his version had included the words "as humanity requires" and since his amendment had been rejected there was no need for another vote.

The CHAIRMAN said she had understood that only the additions to the paragraph had been rejected. In order to ascertain the members' opinion on whether the Commission still had before it the whole of the original text, she put the question to the vote.

The Commission decided by ten votes to four, with one abstention, that a vote on the original text should be taken.

The Commission decided by fourteen votes to one, with two abstentions, to delete the words "as humanity requires".

/In answer to

In answer to a question by Mr. FONTAINE (Uruguay), the CHAIRMAN recalled that the French proposal had been resubmitted by the Lebanese representative, and put it to the vote.

The resubmission of the French proposal was rejected by seven votes to eight, with one abstention.

Mr. HOOD (Australia) suggested that paragraph 1 should be voted in parts.

Mr. LOPEZ (Philippines) opposed that suggestion and Mr. MALIK (Lebanon) considered that instead of dividing the paragraph mechanically its two notions, that of seeking and that of being granted asylum, should be voted separately.

After a short discussion in which Mr. CASSIN (France), Mr. CHANG (China), Mr. HOOD (Australia) and Mr. WILSON (United Kingdom) took part, the CHAIRMAN put the amended version of paragraph 1, article 11 to the vote.

The Commission adopted by twelve votes to one with four abstentions, the following version of paragraph 1: "Everyone has the right to seek and be granted in other countries asylum from persecution".

The meeting rose at 1.20 p.m.