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COMMISSION ON HUMAN RIGHTS

SECOND SESSION

SUMMARY RECORD OF THIRTY-SIXTH MEETING

Held at the Palais des Nations, Geneva,

on Friday, 13 December 1947, at 10 a.m.

Present:

Chairman:	Mrs. Franklin D. Roosevelt (United States of America)
Rapporteur:	Dr. C. Malik (Lebanon)
Members:	Col. W.R. Hodgson (Australia)
	Prof. F. Delhousse (Belgium)
	Mr. A.S. Stepanenko (Byelorussian S.S.R.)
	Sr. E. Cruz Coke (Chile - Alternate)
	Dr. C.H. Wu (China - Alternate)
	Mr. O. Loutfi (Egypt)
	Prof. R. Cassin (France)
	Mrs. Hansa Mehta (India)
	Mr. A.G. Pourevaly (Iran)
	Mr. M. Amado (Panama)
	Gen. C.P. Romulo (Philippine Republic)
	Mr. M. Klekovkin (Ukrainian S.S.R.)
	Mr. A.E. Bogomolov (U.S.S.R.)
	Lord Dukeston (United Kingdom)
	Mr. A.C. Victorica (Uruguay)
	Dr. V. Ribnikar (Yugoslavia)
Representatives of the Commission on the Status of Women:	Mrs. B. Begtrup, Chairman
	Mrs. E. Uralova, Rapporteur
Secretariat:	Professor J.P. Humphrey
	Mr. E. Lawson

Specialized Agencies:	Mr. J. de Givry (I.L.O.)
	Mr. J. Havet (UNESCO)
	Mr. Weis (Preparatory Commission for the International Refugee Organization)
Non-Governmental Organizations:	
Category A:	Miss Toni Sender (American Federation of Labour)
	Mr. P.V.S. Serrarens) (International Federation of Christian Trade Unions)
	Mr. Vanistendael)
	Mr. A.R. de Clery (Interparliamentary Union)
Non-Governmental Organizations:	
Category B:	Mr. O.F. Nolde (Commission of the Churches on International Affairs)
	Mr. J.M.E. Duchosal (Comité Internationale de la Croix Rouge)
	Mr. A.E. Brotman (Coordinating Board of Jewish Organizations)
	Prof. Benturch (Consultative Board of Jewish Organizations)
	Dr. Bienenfeld (World Jewish Congress)
	Mr. Milton Winn (Consultative Council of Jewish Organizations)
	Miss de Romar (Union Internationale des Ligues Féminines Catholiques. Union Catholique Internationale de Service Social)
	Miss van Eeghen (International Council of Women)
	Miss Eder (International Council of Women)
	Mr. C. Pilland (International Red Cross)

1. Consideration of the Reports of the Working Groups on an International Convention on Human Rights (Document E/CN.4/56) and on the Declaration of Human Rights (Document E/CN.4/57) (contd.)

Article 8 of the Declaration and Articles 8 and 9 of the Convention

The CHAIRMAN said that no amendments had been submitted to Article 8.

Colonel W.R. HODGSON (Australia) suggested that:

(1) the Reports of the Working Groups should not be passed over too lightly; the respective Rapporteurs might be called on to give a brief summary of the arguments in the case of contentious Articles; and

(2) since all Member States of the United Nations were interested, it did not follow that rejected amendments might not be found acceptable when the final draft was presented to them; alternative texts should therefore be appended as a footnote.

Dr. BIENENFELD (World Jewish Congress) said that the point he wished to raise was of great importance. Article 8 of the Declaration laid down that no-one should be deprived of his liberty except in cases prescribed by the law. It did not, however, specify the nature of the law. Under the Nazi regime thousands of people had been deprived of their liberty under laws which were perfectly valid. Law in that sense ought therefore to be in conformity with the principles of the Declaration. Otherwise a Bill of Human Rights might become a Bill against Human Rights. He suggested that the word "law" should be defined as "law conforming to the principles of the United Nations".

General ROMULO (Philippine Republic) supported this proposal. The suggestion was for a transposition of the text of Article 38 rather than an amendment. Article 38 should either be introduced before Article 8 or combined with it. His Delegation had made a similar suggestion at a meeting of the Working Group on the

Declaration on which no vote had been taken.

The CHAIRMAN said that it had been decided to follow the text Article by Article, and that the present proposal was a change of procedure which could not be accepted. The RAPPORTEUR could, at the appropriate time, be instructed to transpose Article 38.

Mr. BOGOMOLOV (U.S.S.R.) observed that Article 8 of the Convention proclaimed in paragraph 1 the essential right of inviolability which was written in all democratic constitutions. The remainder of the Article specified the exceptions to the general rule. Those exceptions were the subject of different legislation in each country. Those nations which wished to conclude a Convention would only accept the limitations which were imposed by their respective legislatures. He considered that the Commission should take note only of paragraph 1 of the Article, as it was not empowered to take any decision on the second paragraph. The opinions of the majority of the Working Group on the Declaration could be recorded as a footnote.

Lord DUKESTON (United Kingdom) moved the deletion of Article 9 of the Convention on the grounds that it was merely a repetition of parts of Articles 7 and 8.

The CHAIRMAN after discussion, put to the vote a motion that Article 8 of the Declaration should be considered before Article 9 of the Convention which was adopted by 9 votes to 1 with 4 abstentions.

Mr. MALIK (Lebanon), commenting on the statement of the representative of the World Jewish Congress, said that there was no doubt that Article 38 of the Declaration had a direct bearing on Article 8. He felt that it would be necessary to qualify the word "law" in the Declaration. Whilst he concurred with the CHAIRMAN's ruling, it was a matter of convenience to take the two Articles together. Two points of importance were raised in considering the documents as a whole. The order in which Articles

had been presented in the Declaration, with which he was not satisfied. The logical grouping could be improved, he thought. Secondly, many Articles were related. He suggested that a general Article, similar to that appearing at the end of the Convention, should be inserted to cover all Articles relating to each other. In that connection he drew attention to the text of a United States proposal (Document E/CN.4/59) which read:

"In construing the Articles of this Bill of Rights, the several Articles shall be regarded in their relation to each other."

The CHAIRMAN replied that the Working Group on the Declaration had recognized that there would have to be regrouping of Articles but had preferred to leave that to the Rapporteur.

Mr. C.H. WU (China), whilst agreeing with the views of the Representative of the World Jewish Congress, thought that Article 38 should remain at the end of the Declaration.

Mr. CASSIN (France) supported the remarks of the representative for Lebanon. It had been understood that Article 8 should be construed in a general sense. It should therefore be interpreted through Article 38.

Colonel W.R. HODGSON (Australia) commented on the confusion of thought which was apparent in the Declaration. Some Articles took the form of affirmations of a general character; such as Article 8 which read "no-one shall be deprived". In contrast, Article 38 required that every affirmation in the Declaration should be incorporated in the internal laws of the signatories. The document was therefore a combination of simple affirmations with a mandatory "shall" for domestic law.

In reply to a question to the CHAIRMAN, the representative of Australia said that he was commenting on both Articles 8 and 38.

The CHAIRMAN then put Article 8 of the Declaration (Document E/CN.4/57) to the vote which was adopted by 11 votes to none with 6 abstentions.

Colonel W.R. HODGSON (Australia), in explanation of his vote, said that he approved of the principle set out in Article 8. He had abstained from voting on account of the drafting which was in mandatory language applicable to a convention. That consideration would govern his subsequent votes.

The CHAIRMAN said that all explanations regarding voting would be included in the records if passed to the Secretariat in writing. She would now pass to Article 8 of the Convention. The suggestions of the Soviet Union representative could be inserted as a footnote or voted upon if he wished.

Mr. BOGOMOLOV (U.S.S.R.) said that in the present state of the Commission's work he did not wish to insist on the point.

Mr. CASSIN (France) wished to reassure those representatives who had voted in favour of Article 8 of the Declaration. In doing so they had voted for a text which was embodied in the constitutions of most nations. The case of Article 8 of the Convention was different and it would require careful scrutiny. He would suggest two amendments. Firstly, in 2(a) the substitution of the words "criminal offence" for "crime" to cover minor offences. Secondly, in paragraph 5, whilst he agreed that compensation was the ideal solution, he found that this was not provided for by the laws of many States. He suggested that the sense should be moderated by altering the word "shall" to "should" in that paragraph.

Mr. E. Cruz COKE (Chile) felt that it was necessary to protect the rights of human beings from arbitrary acts by the State. The words "criminal offence" were too wide and laid the paragraph open to the Nazi interpretation of arrest for any offence. He did not consider it wise to make too many exceptions which might render the text valueless.

Colonel W.R. HODGSON (Australia) agreed that it was always dangerous to enumerate and asked if this text was intended to be

exhaustive. The language of Article 8 of the Convention was mandatory and, in order to be consistent, the wording of paragraph 3 should be changed in two places from "has the right to" to "shall".

Mr. MALIK (Lebanon), in reply, said that the text of paragraph 2 of Article 8 of the Convention was certainly not intended to be exhaustive. It represented the restrictions which had occurred to members of the Working Group, and representatives were free to suggest others based on the internal laws of their countries. The greatest precision, however, was essential in drafting the Convention in order to render it acceptable to Member Governments. He accepted the amendment suggested by the Australian representative.

The CHAIRMAN said that the United States delegation agreed to the text of the Article, with the insertion of the following footnotes:

to paragraph 2(b) - "The United States does not think that this covers adequately all cases of civil arrest."

to paragraph 3 - "It is not clear that adequate safeguards have been given to insane persons, aliens and possibly others."

The CHAIRMAN then put the Australian amendment to the vote which was adopted by 11 votes to none with 4 abstentions.

Mr. CASSIN (France) proposed that in paragraph 5 the word "shall" should be replaced by the word "should".

The CHAIRMAN put to the vote the amendment proposed by the representative of France which was rejected by 8 votes to 2 with 7 abstentions.

Mr. MALIK (Lebanon) said that he had only received three written comments on the Article which had been proposed by the representative of the United States of America. He asked that all Members should submit to him their comments in writing; he said

that he would only include in the Report such comments as were submitted in writing and whose inclusion had been expressly requested.

The CHAIRMAN put to the vote Article 8 of the Convention which was adopted by 11 votes to 0 with 7 abstentions.

Article 9 of Convention

Lord DUKESTON (United Kingdom) said that he had proposed the deletion of Article 9 because, in his opinion, the first part had already been covered by Article 8 and by the identical wording of Article 7.

Mr. VICTORICA (Uruguay) said that it was a fundamental principle that there should be no imprisonment for failure of contractual obligations, for example, for debt. He considered that the Article ought to be retained, although the substance had already been covered by implication in other Articles.

The CHAIRMAN put to the vote the deletion of Article 9 of the Convention, which was rejected by 9 votes to 7 with 1 abstention.

Article 9 of Declaration and Article 12 of the Convention

Lord DUKESTON (United Kingdom) said that as a point of procedure, it was not possible to provide that everyone should "understand the procedure", but only to provide that the procedure should be "explained to him in a manner which he can understand". In his opinion, it was not necessary to specify "aid of counsel", which was covered by the general term "fair hearing". He added that it was not always appropriate for an individual to be represented by counsel; for example, there were many tribunals established in the United Kingdom to deal with cases of conscientious objectors, military service hardship appeals, and insurance disputes, which had been set up by a system of social service and which made decisions outside the courts.

Mr. CASSIN (France) considered that the words "fair hearing" implied that an intersted party could appear in person and with or without counsel. He pointed out that in some countries there was no right of personal appearance before all courts; for example, all pleas before the Court of Cassation in France were in writing only. For that reason, he preferred the words "independent and impartial hearing".

The CHAIRMAN pointed out that no alteration of the first sentence of Article 9 had been suggested. Referring to the second sentence, she suggested that the use of the wording of Article 12 of the Convention would clarify the text. She therefore proposed that the following words be used: "he shall be entitled to a fair hearing of his case and to the aid of a qualified representative of his own choice."

Mr. DEHOUSSE (Belgium) supported the first part of the amendment proposed by the Representative of the United Kingdom. He said that he could not support the second part because experience in Belgian litigation had shown that the use of one language was adequate, although two languages were in common use.

Lord DUKESTON (United Kingdom) said that he did not object to the alteration of the first part of his amendment. Referring to the second part, he accepted the alternative proposed by the Representative of the United States of America of the words "a qualified representative of his own choice". He repeated his objection to the inclusion of the words "aid of counsel" and gave as an example the practice in England of Military Service Hardship Tribunals.

He said that, in these tribunals, young men had the right of appeal against military call-up for reasons of hardship to their families. These tribunals were composed of laymen appointed from lists of government nominees and were assisted by a legal adviser. He said that in England the whole system of social services was similar, and had been built up throughout the country on 36 years

experience and a basis of case law. He added that the presence of counsel before such tribunals would increase litigation costs out of proportion to the value of the consideration involved.

The CHAIRMAN suggested that Members would be able to accept part 1 of the proposed amendment, and that a vote could be taken on the inclusion of the original text or of the United Kingdom amendment in part 2 of the Article. Voting on the Article would therefore be in three parts.

Dr. WU (China) said that he accepted the wording proposed by the Chairman because the Working Group on the Convention had discussed and agreed upon such a text.

Colonel HODGSON (Australia), referring to the first sentence of Article 9 of the Declaration, said that he was fully aware of the need to harmonise the Article with Article 12 of the Convention. For that reason, he proposed the very important and wide field of "criminal cases", for example, charges of sabotage against the State, should be included with "rights and obligations". He accordingly proposed that the words "of any criminal charge against him" should be added after the word "determination".

Mr. CASSIN (France) supported the proposal made by the Representative of Australia, because he also considered that Article 9 of the Declaration was in general terms and should be made to harmonise with Article 12 of the Convention. He said that, in his opinion, the wording of the Article should not be too precise, but should be sufficiently flexible to cover all systems. He also proposed that the words "as a general rule" be added after the words "of his case and".

The CHAIRMAN put to the vote the amendment proposed to the first sentence by the Representative for Australia, which was adopted by 12 votes to 0 with 5 abstentions.

The CHAIRMAN said that two amendments had been proposed to paragraph 2. First, the addition proposed by the Representative of the United Kingdom of the words "a qualified representative of his own choice" after the words "entitled to aid of". Secondly, the amendment proposed by the Representative of France to amend the second paragraph as follows: "he shall be entitled to a fair hearing of his case and, as a general rule, to the aid of qualified Counsel".

The CHAIRMAN put to the vote the amendment proposed by the Representative of the United Kingdom. This was adopted by 7 votes to 6 with 3 abstentions.

She said that the proposal of the Representative for Belgium to retain the original text would no longer be effective.

The CHAIRMAN put to the vote the third part of Article 9 with the amendment proposed by the Representative of the United Kingdom, which was adopted by 7 votes to 6 with 4 abstentions.

The CHAIRMAN put to the vote Article 12 of the Convention, which was adopted by 10 votes to 1 with 4 abstentions.

Mr. VICTORICA (Uruguay) felt that the hearing of all criminal offences, and not only of crimes, should be in public.

Mr. CASSIN (France), explaining his voting on Article 12, said that according to French Law, it would be absurd to include provisions for the appearance of counsel on all occasions.

Article 10 of Declaration and Articles 12 and 13 of the Convention

The CHAIRMAN, referring to Article 10, pointed out that paragraph 1 corresponded to Articles 12 and 13 of the Convention, and paragraph 2, to Article 6 of the Convention. She referred to three amendments proposed for Article 10 from the Representatives of the Philippines, United Kingdom and Belgium (E/CN.4/58).

General ROMULO (Philippines) said that his proposed amendment was almost the same as that presented by the Representative of

Belgium. It was specially concerned with the Nuremburg War Crimes Trial and with all major War Crimes Trials, which, according to the original text of Article 10, would be illegal. It should read as follows: Add to Article 10 (in Declaration) and Article 13 (of Convention): "Nothing in this Article shall prejudice the trial and punishment of any person for the commission of any act which, at the time it was committed, was criminal according to the general principles of law recognized by civilised nations".

The CHAIRMAN pointed out that the amendment proposed by the Representatives of the Philippines and of Belgium would be for inclusion after paragraph 1. She suggested that Members should vote first on the amendment to paragraph 1 proposed by the Representative of the United Kingdom.

Lord DUKESTON (United Kingdom) said his amendment was to delete the words "and which shall be pursuant .... act charged", and substitute the language of Article 13 of the Convention.

Colonel HODGSON (Australia) said that he did not agree that the original text would be improved. He pointed out that the text of the Convention was becoming identical with that of the Declaration, and that no government would be able to distinguish between them. He said that mandatory language should be reserved for the Convention, and that he was submitting a note of a general objection to that effect.

Professor CASSIN (France) said that he agreed generally with the wording of Article 10, but that he supported the objection made by the Representative of Australia.

Mr. BOGOMOLOV (Union of Soviet Socialist Republics) referred to the question of "retroactive laws" in Article 13 of the Convention. He pointed out that in the Nazi War Crimes Trials the defence had frequently been raised that the accused had been "acting according to laws existing at the time when the crimes were committed". He considered, therefore, that the text should be

exactly formulated so as to exclude such a defence.

Mr. VICTORICA (Uruguay) said that he supported Article 10 and all the arguments submitted in its favour. He considered that the Article summed up all the fundamental principles for the protection of the individual prosecuted under criminal law.

The CHAIRMAN put to the vote paragraph 1 of Article 10 as amended by the Representative of the United Kingdom, which was adopted by 7 votes to 3 with 8 abstentions.

The CHAIRMAN then referred to the proposed amendments of the Representatives of the Philippines and of Belgium to be added after paragraph 1 of Article 10.

Mr. DEHOUSSE (Belgium) explained that the purpose of his amendment was to prevent the possibility of German historians, discussing the responsibility for the war, using the wording of the original text to try and prove the illegality of the War Crimes Trials, especially at Nuremburg.

The CHAIRMAN said that the Representative of Belgium had accepted the text proposed by the Representative of the Philippines as the official English translation of his amendment.

She suggested that Members should vote on the inclusion of the amendment in Article 10 of the Declaration, and discuss later the question of its inclusion in Article 13 of the Convention.

As Representative of the United States of America, she would prefer the amendment to be included as a note, as she considered that its implication was wide and needed further study.

Dr. WU (China) said that, in his opinion, the Commission was on the horns of a dilemma. On the one hand, there was the principle that no-one should be judged guilty of an act which was not a crime at the time of its commission. On the other hand, he could understand the points of view of the Representatives of Belgium and the Philippines that the Nuremburg War Crimes Trial

should not be declared illegal. He suggested, therefore, that the words in the Philippine amendment "at the time it was committed, was criminal" should be replaced by the words "constitutes a grave crime against humanity".

Mr. DEHOUSSE (Belgium) raised a point of order. He said that the CHAIRMAN had already suggested that an amendment should be supported in discussion by the proposer only. He suggested that the proposal by the CHAIRMAN be put into force forthwith, because he considered that it was essential to maintain the proposed programme of work, so as to hold a full discussion on the fundamental issue of implementation.

The CHAIRMAN accepted the suggestion and said that she would rule that only one speech for and against each amendment should be allowed.

The meeting rose at 1.15 p.m.