

ECONOMIC AND SOCIAL COUNCIL

CONSEIL ECONOMIQUE ET SOCIAL

E/CN.4/SR.106
8 June 1949

ENGLISH
ORIGINAL: FRENCH

COMMISSION ON HUMAN RIGHTS

Fifth Session

SUMMARY RECORD OF THE HUNDRED AND SIXTH MEETING

Held at Lake Success, New York,
on Tuesday, 31 May 1949, at 2.30 p.m.

CONTENTS:

Draft International Covenant on Human Rights (E/800,
E/CN.4/215/Rev.1, E/CN.4/219, E/CN.4/253, E/CN.4/232,
E/CN.4/232/Corr.1, E/CN.4/275) (discussion continued)
Articles 11 (discussion continued), 12 and 13

<u>Chairman:</u>	Mrs. ROOSEVELT	United States of America
<u>Members:</u>	Mr. SHANN	Australia
	Mr. LEBEAU	Belgium
	Mr. SAGUES	Chile
	Mr. CHA)	China
	Mr. P.C. CHANG)	
	Mr. SOERENSEN	Denmark
	Mr. LOUTFI	Egypt
	Mr. CASSIN	France
	Mr. GARCIA BAUER	Guatemala
	Mrs. MEHTA	India
	Mr. ENTEZAM	Iran

Any corrections of this record should be submitted in writing, in either of the working languages (English or French), and within two working days, to Mr. E. Delavenay, Director, Official Records Division, Room F-852, Lake Success. Corrections should be accompanied by or incorporated in a letter, on headed notepaper, bearing the appropriate symbol number and enclosed in an envelope marked "Urgent". Corrections can be dealt with more speedily by the services concerned if delegations will be good enough also to incorporate them in a mimeographed copy of the record.

Members (Continued):

Mr. AZKOUL	Lebanon
Mr. INGLES	Philippines
Mr. KOVALENKO	Ukrainian Soviet Socialist Republic
Mr. PAVLOV	Union of Soviet Socialist Republics
Miss BOWIE	United Kingdom
Mr. FONTAINA	Uruguay
Mr. VILFAN	Yugoslavia

Representative of a specialized agency:

Mr. ARNALDO	United Nations Educational, Scientific and Cultural Organization (UNESCO)
-------------	---

Consultants from non-governmental organizations:

Category A:

Miss SENDER	American Federation of Labor
Miss STUART	World Federation of United Nations Associations

Category B:

Mrs. VERGARA	Catholic International Union for Social Service
Mr. NOLDE)	Commission of the Churches on International Affairs
Mr. STEINER)	
Mr. FRIEDMAN	Consultative Council of Jewish Organizations
Miss SCHAEFER	International Union of Catholic Women's Leagues

Secretariat:

Mr. HUMPHREY	Director of the Division of Human Rights
Mr. LAWSON	Secretary of the Commission

DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS (E/800, E/CN.4/215/Rev.1,
E/CN.4/219, E/CN.4/253, E/CN.4/232, E/CN.4/232/Corr.1, E/CN.4/275)
(discussion continued)

Article 11 (discussion continued)

Mr. SHANN (Australia) explained the reasons why his delegation
had proposed an amendment to article 11.

/In the

In the first place, restrictions on the freedom of movement of indigenous peoples were not imposed because of any desire to discriminate against them; on the contrary, such restrictions were in their interest, for the aborigines of Australia were very backward, and contacts with the white population had not always had the happiest results. The indigenous peoples could not be allowed to travel freely to urban centres, where they were prone to contract diseases to which the white population was more or less immune but which would be fatal to them. A restriction of that kind ought, no doubt, to be applied with humanity.

The second restriction proposed by the Australian amendment concerned the free movement of immigrants. Various reasons necessitated the enforcement of such a restriction. The Australian authorities had to watch over the immigrants during the period of their adjustment to life in that country; in particular, the work done by the immigrants should help to solve the two most serious problems facing the Australian economy: the supply of manpower and unemployment. For that reason immigrants had to be kept in a selected area for twelve months, after which period they had complete freedom of movement within the country. It was important to note that immigrants received the same wages as Australians doing the same work.

The Australian delegation had proposed no separate text embodying those amendments because it considered it unnecessary to include a special article to that effect in the Covenant. If the Commission decided otherwise, the Australian delegation would submit a draft article in due time.

Mr. AZKOUL (Lebanon) emphasized that his delegation's amendment differed in three ways from the original text. It referred first to reasons of security and the general interest, as logically most important. Moreover, the reservation in the original text applied only to freedom of movement within a country. The Lebanese delegation had therefore tried to draw up a general reservation which would also cover the right to leave a country.

/Lastly,

Lastly, the amendment contained a paragraph concerning the right of an individual to return to his own country, a clause which corresponded to the analogous provision in the Universal Declaration of Human Rights.

The CHAIRMAN, speaking as representative of the United States, explained that her delegation's amendment was in accordance with the provisions of the Geneva text. The United States amendment made no reference to the aims and principles of the United Nations Charter because the delegation, proceeding on the assumption that no article of the Covenant should contradict the Charter, had seen no need to mention that point in article 11. The American amendment did not repeat the reservations of paragraph 2 of the Geneva text; any possibility of abuse in that connexion must be avoided. It was especially important that no individual holding political views opposed to those of the Government should be prevented from leaving his country. Finally, Mrs. Roosevelt pointed out that the idea expressed by "or to any outstanding obligations with regard to national service" was implied in the following phrase in the United States amendment: "For specific reasons of security or in the general interest."

Mr. CASSIN (France) considered the Lebanese delegation's proposal the most satisfactory one. If reservations were to be made to the provisions of the first paragraph, the same reservations ought to apply to the second. Looking through the reservations in question, the French representative thought it inadvisable to refer to the aims and principles of the Charter in article 11 alone. Some provision, however, would have to be adopted, in order that Governmental authorities should not wield arbitrary power.

The Australian representative's observations were reasonable. Australia's requirements were, however, met by the phrase "Subject to any general law.....or in the general interest."

He emphasized that the French authorities subjected immigrants to a probationary period of one year. Immigrants were obliged to live in a specified departement so as to keep them from crowding into the cities and adding to the number of unemployed there. After the period of

probation, they were free to travel anywhere in the country. The French representative thought that the procedure he had just discussed would be covered by the phrase "for specific reasons of security or in the general interest." He added that, even though French legislation might not agree exactly with the terms of the Universal Declaration of Human Rights, the authorities of his country would not for that reason try to make use of article 23 of the Declaration as an escape clause.

Mr. Cassin thought that the reservations should cover paragraphs 1 and 2, as in the Lebanese amendment, but not paragraph 3, which had to do with a fundamental right.

Mr. AZKOUL (Lebanon) stated that his delegation did not press for the retention of the reference to the purposes and principles of the Charter; obviously the legislative measures taken in application of the Covenant must not be contrary to those purposes and principles. With regard to the right of an individual to return to his country, he would accept a wording omitting all reference to any restriction of that right.

The CHAIRMAN, speaking as representative of the United States, stated that the principal objection of the United States delegation to the Lebanese amendment was that it followed the Geneva text too closely. In the draft which it had submitted, her delegation had endeavoured to take into consideration the objections that had been raised to the Geneva text.

Referring to the third paragraph of the Lebanese amendment, Mrs. Roosevelt emphasized that the right of an individual to return to his country did not prejudice the right of a Government to consider a national as a foreigner if he returned to his country after having renounced his citizenship.

With regard to the statement of the Australian representative, she stressed the difficulty of having confidence in the authorities of a country when they took certain steps; nevertheless, the insertion of such a provision in the Covenant would involve the risk of creating a general limitation, which would be inadvisable.

Referring to the Indian amendment, Mrs. Roosevelt considered that its terms were of too restrictive a nature. There were cases in which a country limited freedom of movement from considerations of military security, and not only to guarantee order in time of disaster or epidemic.

With reference to the Danish amendment, Mrs. Roosevelt observed that it gave each State free scope to determine the extent of restrictions upon freedom of movement. She concluded by saying that the United States amendment appeared to be the clearest and the most concise.

Miss BOWIE (United Kingdom) preferred the Lebanese suggestion. She held that paragraphs 1, 2 and 3 should be subject to a general limitation. If each country were granted complete latitude to impose restrictions upon freedom of movement, the rights of individuals would be extremely restricted.

Mr. FONTAINA (Uruguay) supported the Lebanese amendment, but shared the views of the French representative with regard to paragraph 3, upon which he did not think that any limitation whatsoever should be placed.

Mr. SOERENSEN (Denmark) withdrew his amendment. If the Commission decided to adopt an article which, in a few words, would cover a certain number of cases, the Lebanese and United States amendments seemed to be appropriate. He emphasized nevertheless that his amendment had been intended to restrict a State's power to limit freedom of movement. The legislative power referred to in the Lebanese and United States amendments could limit freedom of movement as it saw fit. He had never known any law which had not been adopted in the general interest.

Mr. PAVLOV (Union of Soviet Socialist Republics) recalled that during the discussion on that article the previous year, two tendencies had shown themselves: one envisaged absolute freedom of movement, while the other, and the more realistic, recognized that freedom of movement must in certain cases be limited by legislative measures.

The legislation in force in the various countries must in fact be borne in mind. He quoted a number of cases illustrating his point: in particular, that of two members of the Commission whose entry into the United States had been delayed, the year before, by abusive action taken by the Government of the United States in violation of international agreements. He also recalled the recent case of Gerhart Eisler; certain members of the United States Government had behaved quite scandalously in that affair. Lastly, he pointed out that persons wishing to enter the United States were subjected to an extremely severe investigation, which in itself constituted a limitation of freedom of movement.

Broaching the substance of the matter, he observed that fourteen limitations on freedom of movement had been proposed, or a list of two pages for an eight line article. In those circumstances, it might be asked whether the article really dealt with freedom of movement at all.

He proposed that the following phrase should be added at the end of the first paragraph of the Geneva text: "subject to the legislation of his own country". He also suggested that the following phrase should be added at the end of the second paragraph of that text: "in accordance with the conditions established by the law of the country". The reference to a country's legislation in no way signified that such legislation could be arbitrary in character; such an inference would be an insult to the dignity of any State Member of the Organization. In the USSR, there was a clear distinction between the law and arbitrary procedure. That was perhaps not so in other countries.

The USSR delegation could accept either the Lebanese amendment or the United States amendment, on condition that they included the phrase proposed by the USSR delegation for the second paragraph of the Geneva text: "in accordance with the conditions established by the law of the country".

With regard to the third paragraph of the Lebanese amendment, he thought that either its terms should be defined or else it should be deleted entirely. That paragraph would give stateless persons an unconditional right to return to their country of origin; the insertion of such a clause in the article was inadvisable.

The CHAIRMAN recalled that the phrase proposed by the USSR representative had already been the subject of a lengthy discussion, during which it had been pointed out that a country's legislation could make it impossible for a national to leave his own country.

The USSR representative had suggested the addition of those words to several articles, and the members of the Commission had not shared his point of view because they considered that it was sometimes possible for a law to have certain flaws.

Mrs. MEHTA (India) recalled that when she had submitted her amendment, she had pointed out that the words "in the general interest" were at once too wide in scope and too vague. That was why her delegation had been anxious to be more precise and to replace that expression by two specific reasons, security in the case of an emergency and public health. With regard to the USSR amendment, she remarked that there was at least one State in the United Nations in which the law restricted the individual's freedom of movement. The Indian delegation shared the views of the United States delegation with regard to the Australian amendment.

With the agreement of the Indian delegation, the CHAIRMAN proposed to incorporate that country's amendment in the United States amendment. The first sentence would therefore run as follows: "subject to any general law adopted for specific reasons of national security, order, public health or morality..."

Mr. AZKOUL (Lebanon) accepted the United States amendment as modified by India, on condition that the word "morality" was deleted.

Mrs. MEHTA (India) agreed.

It was so decided.

Mr. SHANN (Australia) withdrew his amendment, in view of the modifications made in the Lebanese amendment.

Mr. CASSIN (France) would have liked the meaning of sub-paragraph 3 of the Lebanese amendment to be more closely defined. He therefore proposed to add at the end of that sub-paragraph the words "of which he is a national". Moreover, in view of the fact that the right to return to one's own country was a fundamental human right, it was

impossible to make it subject to the reservations expressed in the first sentence. He therefore proposed that it should be made an independent paragraph.

Mr. AZKOUL (Lebanon) accepted the amendments proposed by France.

Miss BOWIE (United Kingdom) re-proposed on her own account the original wording of the first sentence of the Lebanese amendment, because, as modified, in place of the expression "in the general interest" it mentioned only two reasons, whereas there were many others which should be mentioned. She asked for a vote to be taken on that sentence.

The CHAIRMAN proposed that a vote should be taken on the alternative to the original Geneva text, on the various amendments and lastly on the original Geneva text.

Mr. AZKOUL (Lebanon) wished the alternative text to be voted on last. In addition, he requested that his amendment should be voted on point by point.

It was so decided.

The CHAIRMAN put to the vote the USSR amendment to the Lebanese amendment, proposing the addition of the words "in accordance with the conditions established by the law of the country".

The USSR amendment was rejected by 9 votes to 2, with 3 abstentions.

The CHAIRMAN put to the vote the United Kingdom amendment, which re-proposed the original text of the first sentence of the Lebanese amendment.

The United Kingdom amendment was not adopted, 5 votes being cast in favour and 5 against, with 5 abstentions.

The CHAIRMAN put to the vote the first sentence of the Lebanese amendment as amended by India and the United States.
The sentence was adopted by 9 votes to none, with

The CHAIRMAN put to the vote sub-paragraph 1 of the amendment.

Sub-paragraph 1 was adopted by 9 votes to none, with 6 abstentions.

The CHAIRMAN put to the vote the first part of paragraph 2, beginning with "who is not subject to..." as far as military service".

The first part was not adopted, 4 votes being cast in favour and 4 against with 7 abstentions.

The CHAIRMAN put to the vote the second part of paragraph 2.

The second part was adopted by 8 votes to none.

The CHAIRMAN put to the vote the former paragraph 3 as amended by France.

The paragraph was adopted by 12 votes to none.

The CHAIRMAN accepted a Lebanese proposal. The text of article 11 would then read as follows:

"1. Subject to any general law, adopted for reasons of national security, order or public health,

"(a) Everyone has the right to liberty of movement and is free to choose his residence within the territory of each State;

"(b) Everyone shall be free to leave any State, including his own.

"2. Everyone is free to return to the country of which he is a national."

Mr. PAVLOV (Union of Soviet Socialist Republics) expressed the opinion that the change in numbering altered the meaning of the article. The last paragraph was no longer subject to the restrictions mentioned in the new paragraph 1.

Mr. CASSIN (France), supported by Mr. AZKOUL (Lebanon), thought on the contrary that a country was not entitled to foist its nationals on to other countries, particularly on grounds of disease, as the USSR representative seemed to think was proper.

The CHAIRMAN put the whole of article 11 to the vote.
Article 11 was adopted by 7 votes to none, with 8 abstentions.

Mr. SOERENSEN (Denmark) explained that he had abstained from voting because he thought that article 11, as it had been adopted, was not precise enough to form a part of the Covenant. He was sure that it would be necessary to re-examine it in the light of the observations of Governments.

Mr. KOVALENKO (Ukrainian Soviet Socialist Republic) asked whether the Commission could next examine the text of a new article proposed by the USSR delegation (E/CN.4/218) affirming the human right to take part in the government of the State.

He deplored a certain tendency which seemed to have arisen towards the a priori postponement of the consideration of USSR proposals.

The CHAIRMAN explained that the Commission was always entitled to decide when it would examine the drafts of new articles submitted to it. In general, those drafts were examined at the end, after all the texts submitted by the Drafting Committee had been examined.

Mr. PAVLOV (Union of Soviet Socialist Republics) pointed out that the text in question was to be included in the second part of the Covenant. It should normally, therefore, be examined at the same time as that part or immediately after it. The Commission could of course decide later where to insert the article; personally,

The CHAIRMAN asked the members of the Commission whether they wished to study the USSR proposal after completing the examination of the second part of the Covenant.

It was so decided.

Article 12 (E/CN.4/219)

The CHAIRMAN, speaking on behalf of the delegation of the United States of America, said that she had no objection to make to the original text of the article, nor to the United Kingdom amendment, which, without departing from that text, guaranteed greater protection to aliens.

Miss BOWIE (United Kingdom) explained that her delegation had submitted the amendment because it thought it was neither sound nor logical to state that an alien could only be expelled from a given territory in accordance with the procedure prescribed by law if it was not also stated that the grounds for expulsion must themselves have a legal basis.

Mr. CASSIN (France) remarked that most of the legislative systems in force authorized the State to expel aliens residing on its territory, regardless of the grounds for expulsion. In France, as in other countries, an effort was being made to correct the arbitrariness of such laws. Nevertheless, though he was in favour of the United Kingdom amendment, he thought that its application might present difficulties.

Mr. AZKOUK (Lebanon) thought that if the mention of the grounds for expulsion was deleted from article 12, it would lose all its meaning and would appear to authorize States to expel aliens without any legal basis.

Mr. ENTIZAM (Iran) wondered what was the exact significance of the words "except in accordance with procedure prescribed by law". Would it not be clearer to say simply "except in accordance with the law"?

The CHAIRMAN explained that, in her opinion the text meant that no alien could be expelled from a given territory without having appeared before an impartial court.

Mr. GARCIA BAUER (Guatemala) shared the opinion of the French representative. In Guatemala also, the laws relating to the expulsion of aliens did not take account of the grounds for expulsion. It was difficult to define the many and very various reasons which might compel a Government to issue an order for expulsion. It would therefore be preferable not to introduce that concept into the Covenant.

Mr. CASSIN (France) recalled that at the time when the Commission had started drafting the article, the French delegation had proposed the following formula: "The expulsion of aliens legally admitted into a country shall be subject to the procedure and guarantees determined by law".

While not precisely defining what guarantees were to be furnished, that text had nevertheless indicated to Governments what course they should follow.

Mr. PAVLOV (Union of Soviet Socialist Republics) preferred the United Kingdom amendment to the original text since it seemed to rule out any possibility of arbitrary expulsion.

It sometimes happened that the expulsion itself was justified, but that the procedure adopted was not in conformity with the law; on the contrary, aliens were expelled sometimes in a regular manner but without valid reason. In order to suppress all possibility of abuse, it was necessary to state that when an alien was expelled, a State must have good grounds and be acting in complete legality.

Mr. ENTEZAM (Iran) proposed the use of the words "except on such grounds and according to such procedure and guarantees as are provided by law", which would clarify the meaning of the word "procedure". Such a definition seemed necessary, in view of the fact that a Government could always, if it so wished, find grounds on which to expel an alien.

Mr. LEBEAU (Belgium) felt that it would be preferable to say "according to such procedure and with such guarantees ... "

Mr. LOUTFI (Egypt) said that as a general rule it had always been the State's prerogative to decide whether or not an alien should be expelled. The Egyptian delegation would prefer the version submitted earlier by France to the current texts, but wondered whether many States would agree to amend their legislation in the direction suggested by that text.

Miss BOWIE (United Kingdom) recalled that the article 11 just adopted by the Commission sanctioned freedom of movement. The United Kingdom delegation had abstained from voting on that article, the meaning of which appeared to it to be too wide. Nevertheless, since the Commission had sanctioned the right of the individual to freedom of movement, it must, if it did not want to contradict itself, also guarantee the right of the individual not to be expelled from a given State. She thought that unless article 11 mentioned grounds for expulsion, it would lose all significance; she had no objection to the oral amendment submitted by Iran.

Mr. AZKOUL (Lebanon) thought that the difficulty pointed out by the United Kingdom representative was only apparent. In point of fact, an alien lost the right to freedom of movement as soon as he transgressed the established laws, and he could then be the subject of an order for expulsion. There was therefore no contradiction between articles 11 and 12.

Mr. CASSIN (France) thought that the matter could be viewed in two ways only: that indicated in the United Kingdom amendment, or that of the former French text, which went further than that amendment by ensuring to aliens guarantees "to be determined by law". No intermediate solution was possible.

The CHAIRMAN read out the text of article 12 as amended by the delegations of the United Kingdom and Iran.

"No alien legally admitted to the territory of a State shall be expelled therefrom except on such grounds, according to such procedure and with such guarantees as are provided by law".

Article 12 as amended was adopted by 12 votes to none, with 3 abstentions.

Article 13 (E/CN.4/253, E/CN.4/232 and E/CN.4/232/Corr.1)

Mr. INGLES (Philippines) presented his delegation's amendment to article 13 (E/CN.4/232/Corr.1).

That amendment would replace paragraph 1 of the text adopted by the Drafting Committee by article 10 of the Declaration of Human Rights, followed directly by a slightly modified version of paragraph 2, sub-paragraph (a) of the original text. The Philippine delegation considered that everyone should be entitled to a public trial, whether the case came under civil or criminal law.

The Philippine amendment consisted in inserting in paragraph 2 the beginning of article 11 of the Declaration of Human Rights: "Everyone charged with a penal offence has the right to be presumed innocent ..."

Mr. Ingles recalled that article 9 provided that any person who was arrested should be informed promptly of the grounds for his arrest and of the charges against him. The representative of the USSR had pointed out that no provision had been made for the case of defendants who were not under arrest. It was with a view to filling that gap that paragraph 2, sub-paragraph (a) of the Philippine amendment stated that everyone charged with a penal offence would be entitled to be informed of the nature and cause of the accusation against him.

Sub-paragraphs (b) and (c) of paragraph 2 gave a defendant new and necessary guarantees: the right to defend himself, to examine the witnesses against him and to have compulsory process to secure the attendance of witnesses on his behalf. Mr. Ingles realized that the latter provision would no doubt give rise to discussions in view of the differences in legal proceedings under the different legislations. Sub-paragraph (d) reproduced paragraph (c) of the original text.

Paragraph 3 of the Philippine amendment introduced an entirely new concept; it provided that everyone who had undergone punishment as a result of an erroneous conviction of crime should have an enforceable right to compensation.

Article 9, paragraph 6 already stated that every person who had been the victim of unlawful arrest should have an enforceable right to compensation. The Philippine delegation considered it necessary to extend that right to victims of miscarriages of justice.

He requested that his delegation's proposed amendment should be examined paragraph by paragraph.

Proposal for a Press Conference

The CHAIRMAN announced that the Department of Public Information had requested the members of the Commission to meet the representatives of the press at the end of the morning of Friday, 3 June.

Mr. PAVLOV (Union of Soviet Socialist Republics) said that there was perhaps reason for rejoicing at the belated interest of the press in the Commission's work. The progress achieved, however, was not sufficient for its results to be published. It would be well to wait at least until the second part of the covenant had been adopted before rousing public interest. Only five articles had been approved so far; consequently it would be wise to postpone the proposed conference until a later date.

Mr. LEBEAU (Belgium) pointed out that as the Commission's meetings were always held in public, the representatives of the press should normally be well informed of the progress of the work. If, however, they required additional information, could they not simply get in touch with the Chairman, who enjoyed the full confidence of all the members? Mr. Lebeau felt that a conference of the kind proposed would serve no purpose whatever.

The CHAIRMAN recalled that the members of the Commission had taken an active part in the press conferences which had been held in Paris. If, however, the delegations decided not to attend the conference, she would transmit their refusal to the Department of Public Information.

The meeting rose at 5.40 p. m.