

**ECONOMIC
AND
SOCIAL COUNCIL****CONSEIL
ECONOMIQUE
ET SOCIAL**E/CN.4/SR.55
15 June 1948
ENGLISH
ORIGINAL: FRENCH

COMMISSION ON HUMAN RIGHTS

Third Session

SUMMARY RECORD OF THE FIFTY-FIFTH MEETING

Held at Lake Success, New York,
on Wednesday, 2 June 1948, at 11 a.m.

<u>Chairman:</u>	Mrs. Franklin D. ROOSEVELT	United States of America
<u>Vice-Chairmen:</u>	Mr. P. C. CHANG WU	China
	Mr. R. CASSIN	France
<u>Rapporteur:</u>	Mr. C. MALIK	Lebanon
<u>Members:</u>	Mr. HOOD	Australia
	Mr. LEHEAU	Belgium
	Mr. A. STEPANENKO	Byelorussian Soviet Socialist Republic
	Mr. LARRAIN	Chile
	Mr. O. LOUTFI	Egypt
	Mrs. H. MEHTA	India
	Mr. M. de J. 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. VILFAN	Yugoslavia
<u>Also Present:</u>	Mrs. LEDON	Commission on the Status of Women
<u>Specialized Agencies:</u>		
	Mr. R. W. COX	International Labour Organization (ILO)
	Mr. LEBAR	United Nations Educational, Scientific and Cultural Organization (UNESCO)

Any corrections of this record should be submitted in writing, in either of the working languages (English or French), and within twenty-four hours, to Mr. E. Delavenay, Director, Official Records Division, Room CC-119, 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.

Non-governmental Organizations:

Miss Toni SENDER

American Federation of Labour
(AF of L)

Mr. VANISTENDAEL

International Federation of Chris-
tian Trade Unions (IFCTU)

Secretariat:

Mr. J. HUMPHREY

Director, Division of Human Rights

Mr. E. LAWSON

Secretary of the Commission

CONTINUATION OF THE CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE TO THE COMMISSION ON HUMAN RIGHTS (Document E/CN.4/95); CONSIDERATION OF THE ARTICLES OF THE DECLARATION AND THE AMENDMENTS PRESENTED BY VARIOUS DELEGATIONS (Documents E/CN.4/82/Add.8; E/CN.4/99; E/CN.4/102)

Article 9

The CHAIRMAN read the Drafting Committee's text and the variants submitted by the delegations of China, France, and India and the United Kingdom.

Mr. CASSIN (France) said the French delegation was in full agreement with the Drafting Committee's text and consequently would withdraw its own text (document E/CN.4/88/Add.8, paragraph 8).

Speaking as representative of the United States of America, the CHAIRMAN said she supported the United Kingdom-India text; she did not consider it necessary to specify the legal nature of protection, since equal protection under the law was already guaranteed to all by article 3, which had been adopted.

Mr. WILSON (United Kingdom) observed that apart from the point made by the Chairman, protection could be granted by other means beside the purely legal; hence the specification "under the law" was not merely unnecessary, but undesirable.

Mr. CHANG (China) drew attention to the negative form in which article 9 was worded in the text proposed by his delegation. The wording

/"No one

"No one shall be subjected to unreasonable interference..." affirmed implicitly everyone's right to protection under the law and avoided the ambiguity which might arise as a result of the deletion of the words "under the law" from the Drafting Committee's text.

He thought, moreover, that the order of presentation of the provisions was more logical in his delegation's text beginning as it did with interference with the individual and from there going on to cover interference with his family, home, correspondence and reputation.

Mr. VILFAN (Yugoslavia) preferred the Drafting Committee's text. The provisions of article 3 were not applicable to the cases covered by article 9; paragraph 2 of article 3 provided for the protection of the law against arbitrary discrimination, whereas article 9 dealt with the protection of the individual, his family and home, and it was important that such values should be protected by law.

Mr. PAVLOV (Union of Soviet Socialist Republics) agreed with Mr. Vilfan that the provisions of article 3 were not sufficient to cover cases under article 9. Furthermore, he felt it was indispensable to ensure recourse to legal protection in cases of unreasonable interference in order to avoid possible recourse to protection outside the law. Deletion of the words "under the law" might allow of too wide or arbitrary an interpretation of the rights guaranteed under article 9.

He could not, therefore, accept the amendment proposed by the delegations of India and the United Kingdom, and would vote for the text drafted in Geneva, which had been respected by the Drafting Committee.

Mrs. MEHTA (India) pointed out that the Commission had not deemed it necessary to specify in article 4, which guaranteed to everyone the right to life, liberty and security of person, that these rights would enjoy the protection of the law, which was self-evident. What was

true of one article was true of the others, and the Commission should try to achieve a certain uniformity of presentation in its drafting of the Declaration. However, if the majority of the Commission thought that the United Kingdom and Indian draft was not entirely satisfactory, the Indian delegation would be ready to support the Chinese draft.

Mr. WILSON (United Kingdom) said his delegation also accepted the Chinese text and would withdraw its own proposal.

The CHAIRMAN put to the vote the Chinese draft of article 9 of the Draft Declaration.

Draft article 9 proposed by China was adopted by 9 votes to 3, with 4 abstentions.

/Article 10

Article 10

The CHAIRMAN read out the drafts of article 10 proposed by the Drafting Committee and by the French delegation.

Replying to a question of the USSR representative, Mr. CASSIN (France) pointed out that his delegation's draft followed very closely the wording of the text drawn up at Geneva. The difference, marked by punctuation, was that in the French text the words

"Subject to any general law not contrary to the purposes and principles of the United Nations Charter adopted for specific reasons of security or in the general interest"

applied not only to movement within the borders of a given country, but also to the right to leave that country.

The text suggested by the Drafting Committee narrowed the scope of the original Geneva text, for it retained neither the reservation "Subject to any general law etc." nor the provision on the right to acquire a nationality.

As regards that right, the French delegation felt it was not directly connected with the problem of movement, and agreed to delete from its text all the part relating to nationality. It could not, however, ignore the very serious difference between the two texts as regards the general powers of governments to control movement, even movement from one country to another.

Some representatives had argued that article 2 restricted human rights within the framework of the general well-being and just requirements of the democratic State, and that this restriction applied to rights in general. If the Commission agreed that the provisions of article 10 fully safeguarded the general prerogatives of the community and of the State (even if the article did not make any specific reservations to that effect), then, and then only would the French delegation vote for the Drafting Committee's text, interpreted in accordance with article 2.

/Mrs. MEHTA

Mrs. MEHTA (India) said that article 10 aimed at establishing the principle of freedom of movement, which, like freedom of speech, freedom of meeting, etc., was a fundamental human right. The Drafting Committee had not deemed it necessary to restrict that freedom as it was already subject to the general limitation contained in article 2, and as it was for the Covenant to specify what definite measures should limit that right in certain cases.

The right to a nationality was covered by article 15. Measures relating to the acquisition of a new nationality should come under article 15 rather than article 10.

The Indian delegation would vote for the text proposed by the Drafting Committee.

The CHAIRMAN said article 2 was clearly worded and afforded adequate safeguard for the State rights mentioned by the French representative. If each article of the Declaration were to contain reservations for every possible case, the document would become unnecessarily long.

Mr. LEBEAU (Belgium) said his delegation would stand by the original text drafted at Geneva. It contained the reservation concerning any general law, but, unlike the French proposal, did not extend it to the right to leave a country. Moreover, the original text contained the provision for the right to a nationality, which the French representative had renounced on behalf of his delegation.

Owing to those two appreciable differences between the Geneva and the French texts, he asked for a vote to be taken on both.

The CHAIRMAN put to the vote the text proposed by the French delegation.

The text of the French delegation was rejected by 9 votes to 6, with 2 abstentions.

The CHAIRMAN

The CHAIRMAN then put to the vote the original Geneva text formally submitted by the Belgian representative.

The text was rejected by 11 votes to 2, with 4 abstentions.

Mr. PAVLOV (Union of Soviet Socialist Republics) said in explanation of his vote that he had been in favour of the French text, which his delegation considered as the best draft for article 10, but since that text had been rejected, he had voted for the Geneva text, which he thought acceptable, though not as satisfactory.

The only text remaining before the Commission was that submitted by the Drafting Committee. The USSR delegation would vote in its favour only if the following two amendments were accepted:

(1) The words "in accordance with the laws of that country" to be added at the end of the first paragraph;

(2) The words "in accordance with the procedure established by law" to be inserted at the beginning of the second paragraph.

The USSR delegation thought it natural that every sovereign State should have the right to establish whatever rules it considered necessary to regulate movement on its territory and across its borders. Recognition of that right was based on respect for the principle of national sovereignty embodied in the United Nations Charter.

Besides rights, people had certain obligations which they had to fulfil. That was a fact which article 10 could not leave out of account; to encourage tendencies towards total independence at the cost of the common good would be to distort the normal relations between the citizen and the State. The responsibility of ensuring collective security borne by the State gave it the right to impose certain restrictions on liberty of movement. That was true of all countries and not merely of the USSR, as had been implied in certain quarters.

To sum up, the USSR delegation was of the opinion that article 10 should recognize the sovereignty of States in accordance with the principles of the

Charter, establish the obligations of citizens as opposed to their rights, and formulate the principle of liberty of movement on those lines.

The CHAIRMAN pointed out to the USSR representative that article 10 did not deal with immigration. As for general reservations in respect of legislation, the Commission had only just formally rejected the two texts containing those reservations. She feared that to vote on the USSR amendments would mean reconsidering a decision already taken.

Mr. WILSON (United Kingdom) wished to know whether, under the terms of the amendments to paragraph 2 of article 10 proposed by the USSR representative, an individual would automatically receive permission to leave his country if he conformed to the procedure established by law, or whether it was left to the discretion of the authorities to grant such permission.

Mr. PAVLOV (Union of Soviet Socialist Republics) replied that permission to leave any given country would be granted in accordance with the legislation in force in that country.

Mr. LEBEAU (Belgium) stated he would be unable to vote for the USSR amendments, since he believed they deprived the two provisions of article 10 of part of their meaning. He would therefore vote in favour of the text submitted by the Drafting Committee subject to the same reservation as Mr. Cassin's, i.e. provided it was clearly understood that the article would be interpreted in the light of article 2.

Mr. LOPEZ (Philippines) stated he had voted in favour of the text

/ proposed by the

proposed by the French delegation and later in favour of the Geneva text. He would vote against the text submitted by the Drafting Committee because the liberty of movement and residence guaranteed under article 10 should be specifically subjected to the laws of the State. The general limitation embodied in article 2, concerning the just requirements of a democratic society, seemed to his Government insufficient in that particular case and should be repeated in article 10.

Mr. LARRAIN (Chile) stated that his delegation's position was well known and perfectly clear: it thought the Declaration should proclaim the fundamental human rights in forceful terms, and that article 10 embodied one of those rights. It could not therefore agree to the inclusion of any limitations to that right.

It had been stated that the provisions of article 10, unless accompanied by certain reservations, would encroach upon the sovereignty of States. He would observe in that connection that while the Charter recognized the principle of national sovereignty, it subordinated that principle to superior interests such as the maintenance of peace and international co-operation founded on friendly relations among nations.

The Chilean delegation realized that owing to circumstances of a temporary nature, it might sometimes be necessary to impose certain limitations, but such limitations should not be set forth in the Declaration, which was designed to proclaim the principles of human rights and to preserve their full force and philosophical significance. Moreover, article 2 contained a general limitation applicable to the body of rights proclaimed in the other articles of the Declaration.

The Chilean delegation would therefore support the Drafting Committee's text, which was the product of long and thorough discussion by that Committee.

/Mr. LOUFI

Mr. LOULFI (Egypt) announced that his delegation was in favour of the text submitted by the Drafting Committee subject to the reservations outlined by the French and Belgian representatives.

Mr. STEPANENKO (Byelorussian Soviet Socialist Republic) emphasized that the Declaration on Human Rights would have to be equally valid for all States Members of the United Nations, not just for some of them, and he appealed to the members of the Commission to draw up article 10 in a way acceptable to all.

For his part, the Byelorussian delegation would not be able to accept the Drafting Committee's text because it considered that text to be inconsistent with the Charter. While the Charter stated explicitly that the United Nations were not authorized to intervene in matters essentially within the domestic jurisdiction of any State, article 10, by acknowledging without reservation the right of individuals to move freely and to leave their own country, would impair the national sovereignty of States, in whose interests it might be to control the movement of their citizens and traffic in and out of the country.

He wished to point out that the only citizens of the Byelorussian SSR who had left their country or who wished to do so were those who had collaborated with Nazi Germany and who were attempting thus to escape from the punishment they deserved. The adoption of article 10 as drawn up by the Drafting Committee would enable such traitors to go unpunished and to continue their nefarious activities both against their own country and against the United Nations.

He supported the two amendments proposed by the representative of the USSR, which clearly stated that the movements of citizens inside a country as well as into and out of that country were regulated by the legislation of each State.

/The CHAIRMAN

The CHAIRMAN reiterated that article 10 did not deal with the question of immigration, which was necessarily subject to the national legislation of each State.

Speaking as the representative of the United States of America, Mrs. Roosevelt stated that while it was true that the Charter prohibited the United Nations from interfering in the internal affairs of States, it was none the less true that one of the essential aims of the Charter was to develop and encourage respect for the rights of man and his fundamental liberties. It was for the United Nations to proclaim the principles which they believed would ensure that respect.

It was quite possible that certain persons wished to leave their country to escape the punishment that awaited them, but before they were deprived of their freedom of movement they must be proved to be traitors. Many people who were not traitors to their country preferred to live in another country than their own; their right freely to leave their country should be guaranteed.

Mr. HOOD (Australia) fully concurred in the remarks of the Chilean representative. He pointed out that the Declaration which the Commission would adopt should lay down the essential rights and fundamental liberties of man in general terms, and it should not include provisions regulating the relations between the individual and the State. Freedom of movement was unquestionably one of the fundamental rights of man, and it should form the subject of a statement of principle. To subject it to reservations would be to deprive the Declaration of all its force.

His delegation would vote for the text drawn up by the Drafting Committee.

Mr. CASSIN (France) announced that he would vote against the amendments proposed by the USSR representative, as he was satisfied with the Drafting Committee's text, interpreted in accordance with article 2.

/He wished

He wished to point out that the question of emigration should be dealt with on a much wider plane. When the United Nations made a practical study of the problems of emigration and immigration, it would have to take account on the one hand of the relations between the individual and the State, and on the other of the relations between the individual and the community of States which constituted society.

The CHAIRMAN put to the vote the two amendments to article 10 proposed by the representative of the USSR.

The Commission rejected the first amendment by 11 votes to 5, and the second amendment by 12 votes to 4.

The CHAIRMAN then put to the vote the text of article 10 drawn up by the Drafting Committee.

The draft of article 10 drawn up by the Drafting Committee was adopted by 11 votes to 1, with 4 abstentions.

Article 8

The CHAIRMAN read the draft of article 8 prepared by the Sub-Committee set up for the purpose on the previous day, the text of which had just been distributed:

"1. Everyone is presumed to be innocent until proved guilty according to law (in a public trial at which he has had all guarantees necessary for his defence).

"2. No one shall be held guilty of any offence on account of any act or omission which did not constitute an offence, under national or international law, at the time when it was committed."

Mr. CHANG (China) explained on behalf of the Sub-Committee that the phrase "in a public trial at which he has had all guarantees necessary for his defence" had been placed in brackets to indicate that there had been a difference of opinion on the subject in the Sub-Committee. The Sub-Committee reached a unanimous decision with regard to the first part of paragraph 1 only. He therefore suggested that first the clause in brackets be put to the vote.

Mr. WILSON (United Kingdom) pointed out a divergence between the English and the French texts of article 8. The English text read: "Everyone is presumed to be innocent..." while the French text read: "Toute personne accusée est présumée innocente..." The French representative had insisted that the word "accusée" should appear in the French text.

Mr. Wilson observed that although the two texts were not quite identical, they had exactly the same meaning.

Mr. CASSIN (France) explained that he had wished to make it clear that they were treating of criminal law. He considered the word "accusée" to be absolutely indispensable.

/Mr. WILSON

Mr. WILSON (United Kingdom), supported by the representative of the United States of America, suggested, in order to obtain complete agreement in the French and English texts, that the latter should read: "Everyone charged with a penal offence is presumed to be innocent..."

Mr. FONTAINA (Uruguay) remarked that the Spanish text of the analogous article approved by the Inter-American Conference at Bogota corresponded exactly with the formula proposed by the United Kingdom representative.

Mr. PAVLOV (Union of Soviet Socialist Republics) pointed out that although the principle of the publicity of judicial proceedings was a progressive and democratic principle, it was not always possible to put it into practice. In fact there were cases where in the interests of public morals or national security it was necessary to administer justice in camera. It should therefore be stated that exceptions would be made to the principle of public trial in the cases prescribed by the law.

Moreover, in its present form paragraph 1 of article 8 implied that the accused would be entitled to the guarantees necessary for his defence only when his trial was public. It was essential to state unequivocally that the accused had that right in any case, whether his trial was public or in camera. The part of the sentence in parentheses should specify that the trial would be public except in cases prescribed by law and that steps would be taken to ensure that the accused was given all guarantees necessary for his defence.

Mr. VILFAN (Yugoslavia) explained that in the opinion of the Sub-Committee the reservations contained in article 2 of the Declaration would cover cases in which justice could not be administered publicly. All the members of the Sub-Committee had agreed that in certain circumstances trial in camera was essential.

Mr. MALIK (Lebanon), Rapporteur, suggested an explicit enumeration of cases, prescribed by law, in which it could not be guaranteed that the hearings would be public.

Mr. WILSON (United Kingdom) recalled that under article 7 of the Declaration every one would be "entitled to a fair hearing of his case"; that included the guarantees necessary for his defence. If there were no such guarantees, the case would not be conducted fairly. He was therefore opposed to the insertion in article 8 of the part of the sentence in parentheses.

As regards the suggestions of the USSR and Lebanese representatives, Mr. Wilson observed that the Commission had several times decided that the Declaration should not list exceptions to the principles it set forth. That decision should be followed in connection with article 8.

Mr. LOUTFI (Egypt) supported Mr. Wilson. He thought that if the Commission decided to keep the part of the sentence in parentheses, the word "public" should be deleted, for by retaining it, the Commission would be endorsing a principle contrary to the codes of several countries.

Mr. PAVLOV (Union of Soviet Socialist Republics) stressed the importance of the principle of public hearings, which would afford the accused a greater guarantee of fair treatment through the force of public opinion.

Mr. CASSIN (France) admitted that the Sub-Committee's text was ambiguous in regard to the right of the accused to the guarantees necessary for his defence. From the text, it did seem that the accused would have a right to those guarantees only if his trial was public. The text might be modified as follows:

"Every one charged with a penal offence is presumed to
/be innocent

be innocent until his guilt has been legally proved at a public trial. He shall have the right in every case to all guarantees necessary for his defence."

He pointed out moreover that there were two tendencies in the Commission: one towards shortening the text of the articles of the Declaration as much as possible, even at the cost of an occasional small sacrifice of principle; the other toward adding details which, in general, would be more appropriate in the Covenant that the Commission was planning to draw up. He thought the Sub-Committee's formula the golden mean between the two tendencies. Article 8 laid down the principle of public hearings; article 2 covered cases in camera.

The French delegation did not think the words in parentheses superfluous. There had unfortunately been so many abuses under criminal law that it would be wrong not to specify that the accused had a right to the guarantees necessary for his defence.

The CHAIRMAN put to the vote the retention or deletion of the part of the sentence in parentheses.

It was decided by eight votes to six, with two abstentions, to delete the part of the sentence in parentheses from the first paragraph of article 8.

Mr. PAVLOV (Union of Soviet Socialist Republics) stressed the necessity of making paragraph 1 of article 8 more complete, and formally proposed the following amendment which took into account the suggestion of the Lebanese representative: to add at the end of the paragraph: "in a public trial subject to exceptions prescribed by law in the interests of public morals or
/national

national security and under conditions which ensure him in every case the guarantees necessary for his defence."

Mr. CASSIN (France) proposed that the USSR amendment should be changed to read as follows: "...in a trial at which he will have all the guarantees necessary for his defence. The trial shall be public, subject to exceptions made in the interests of public morals or national security."

The CHAIRMAN asked the representatives of France, Lebanon, and the USSR to prepare for the afternoon meeting a joint text, in both working languages, for the first paragraph of article 8.

The meeting rose at 1.15 p.m.