

COMMISSION ON HUMAN RIGHTS

SUMMARY RECORD OF THE FIFTY-SIXTH MEETING

Held at Lake Success, New York
Wednesday, 2 June 1948, at 2:30 p.m.

Chairman: Mrs. Franklin D. ROOSEVELT United States of America

Vice-Chairman: Mr. P.C. CHANG China

Rapporteur: Mr. AZKOUL Lebanon

Members:

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| Mr. HOOD | Australia |
| Mr. R. LEBEAU | Belgium |
| Mr. A. S. STEPANENKO | Byelorussian Soviet Socialist Republic |
| Mr. LARRAIN | Chile |
| Mr. O. LOUTFI | Egypt |
| Mr. R. CASSIN | France |
| Mrs. H. MEHTA | India |
| Mr. M. de J. QUIJANA | Panama |
| Mr. LOPEZ | Philippines |
| Mr. KLEKOVKIN | Ukrainian Soviet Socialist Republ |
| Mr. PAVLOV | Union of Soviet Socialist Republi |
| Mr. WILSON | United Kingdom |
| Mr. R. FONTAINA | Uruguay |
| Mr. MOFA | Venezuela |
| Mr. VILFAN | Yugoslavia |

Also present:

Mrs. LEDON Representative of the Commission
on the Status of Women

Representatives of Specialized Agencies:

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| Mr. R. W. COX | International Labour Organization |
| Mr. LEBAR | United Nations Educational Scientific and Cultural Organization |

Consultants from Non-Governmental Organizations:

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| Miss Toni SEEDER | American Federation of Labor |
| Mr. A. J. VANISTENDAEL | International Federation of Christian Trade Unions |
| Mr. BIENENFELD | World Jewish Congress |

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Secretariat:

Mr. J. HUMPHREY

Director of the Human Rights
Division

Mr. E. LAWSON

Secretary of the Commission

CONTINUATION OF THE DISCUSSION OF THE DRAFT DECLARATION OF HUMAN RIGHTS
(DOCUMENT E/CN.4/95)

Article 8, paragraph 1

The CHAIRMAN read out the following text prepared by the drafting sub-committee:

"Everyone charged with a penal offence is presumed to be innocent until proved guilty in a trial at which he will have had all the guarantees necessary to his defence. Trials shall be public subject to exceptions made in the interests of public morals or security."

Speaking as the representative of the United States, she suggested that the second part of the second sentence beginning with the word "subject" should be deleted. It was unwise to enumerate exceptions, for there were cases not covered by the interests of morality or security which should not be heard in public trials. Moreover, justifiable exceptions could be made under article 2 of the Declaration.

Mr. CHANG (China) proposed to replace the sub-committee's text by the following:

"Everyone charged with a penal offence is presumed to be innocent until proved guilty according to law."

The phrase "according to law" had been inadvertently omitted in the English translation.

Mr. WILSON (United Kingdom) supported the Chinese amendment.

The Chinese amendment was rejected by a vote of seven to six, with two abstentions.

/The CHAIRMAN

The CHAIRMAN then suggested that the paragraph should be voted in four parts. A vote was first taken on the first part of the first sentence ending with the words "according to law" which had been inserted after the word "guilty".

The first part of the first sentence was unanimously adopted.

A vote was next taken on the second part of the first sentence beginning with the words "in a trial" to the end of the sentence.

The second part of the first sentence was adopted by a vote of ten to three, with three abstentions.

The Commission proceed to vote on the first part of the second sentence: "Trials shall be public."

The first part of the second sentence was adopted by a vote of ten to one, with five abstentions.

A vote was then taken on the remainder of the second sentence beginning with the words "subject to exceptions."

The second part of the second sentence was rejected by a vote of seven to four, with five abstentions.

After a brief exchange of views concerning an improvement in the drafting, it was decided to maintain the second sentence in the form in which it had been adopted.

Paragraph 1 of article 8 was adopted as amended by a vote of seven to four with five abstentions.

Article 8, paragraph 2

The CHAIRMAN read out the text of paragraph 2 prepared by the drafting sub-committee, as follows:

/"No one

"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. LOUTFI (Egypt) felt that reference should be made to the principle of retroactivity by the addition of the following clause:

"nor shall he be liable to any greater punishment than that prescribed for the offence by the law in force at the time it was committed."

However, he agreed not to press his suggestion in the form of an amendment.

Mr. LEBEAU (Belgium) wished to amend the sub-committee's text by inserting the words "the general principles of" before "international law". His amendment was intended to broaden the concept of international law to include unwritten as well as written law. He pointed out that the general principles of international law were invoked at the Nuremberg and Tokyo trials. The simple phrase "international law" might be interpreted to mean only written law laid down in conventions.

Mr. CASSIN (France) supported the Belgian amendment. The principles of international law could be derived from various sources such as national conventions, the application of national law by national tribunals and special circumstances. The Nuremberg and Tokyo tribunals were instituted by the victors in the last war to repress attempted violations of international law. Mr. Cassin emphasized the importance of preserving those elements of law

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which were common to the law of most nations, and therefore favoured the broader formulation suggested by the representative of Belgium.

Mr. WILSON (United Kingdom) thought that reference to the "general principles of international law" was too vague and could hardly be said to constitute a less ambiguous formulation than the term "international law". The general principles of English law were very different from English law itself; the same was true of most other nations. He therefore preferred to retain the term used in the sub-committee's text.

In the light of the remarks made by the representative of the United Kingdom, Mr. LEBEAU (Belgium) expressed readiness to modify his amendment in conformity with the wording of the original Geneva text. It would then read: "the general principles of law recognized by civilized nations."

Mr. PAVLOV (Union of Soviet Socialist Republics) objected to restoring that unhappy formulation which seemed to distinguish between civilized and uncivilized nations. Deletion of that wording had been a positive achievement of the drafting committee.

On the other hand, if the position taken by the representative of the United Kingdom could be interpreted to mean that he considered that the principle of punishing fascists and nazis for war crimes had been made part of international law by the very fact that the Nuremberg trials had been held, Mr. Pavlov might vote in favour of paragraph 2 in its original form.

/Mr. WILSON

Mr. WILSON (United Kingdom) tended to favour reverting to the Geneva text, as suggested by the representative of Belgium. He was strengthened in that view by the fact that Article 38 of the Statute of the International Court of Justice included as one of the criteria of international law "the general principles of law recognized by civilized nations". The USSR which was a signatory of that Statute, as well as of the Charter, should logically favour that wording.

However, international law as defined in the Statute was not confined to written instruments. It was based on international conventions, international custom, recognized principles, judicial decisions and the teachings of the most highly qualified publicists of the various nations. In view of the fact that the Belgian representative had proposed a much narrower definition, and provided the term were interpreted as defined in the Statute of the International Court, Mr. Wilson would vote to retain it.

The CHAIRMAN, speaking as the representative of the United States, recalled that the Geneva text cast doubt upon the validity of the Nuremberg judgment. She supported retention of the broader term "international law".

Mr. LOUTFI (Egypt) recalled that, during the second part of the first session of the General Assembly, the Legal Committee had proposed that in the light of the Nuremberg trials, the International Penal Code of Law should be revised to cover war criminals.

Mr. LEBEAU (Belgium) stressed that the term should be interpreted in accordance with the provisions of Article 38 of the Statute of the International Court and withdrew his amendment.

/Mr. PAVLOV

Mr. PAVLOV (Union of Soviet Socialist Republics), while he thought that the Commission could improve the definition given in the Statute, was ready to accept the sub-committee's text.

Paragraph 2 of article 8 was adopted by a vote of twelve to none, with three abstentions.

Article 8, as a whole, was adopted.

Article 11 (documents E/CN.4/104, E/CN.4/102, E/CN.4/99, E/CN.4/97)

Miss SENDER (American Federation of Labor) felt that the wording proposed by the drafting group was highly unsatisfactory. The permissive character of the phrase "may be granted asylum" deprived the article of any real value. Both article 11 of the Geneva Draft and the French proposal were more acceptable. The right to asylum from persecution was a natural corollary to the right to hold or change one's beliefs, which was mentioned more than once in the draft Declaration. The USSR proposal was too limited in scope, for persons could be persecuted for philosophical as well as for political reasons.

Mr. BIENENFELD (World Jewish Congress) stated that the right to asylum was implicit in the concept of the right to life. In demanding the right to asylum, refugees were not asking for permanent homes but for temporary safety from persecution. The Governments of the United Kingdom, the United States, France and the USSR had been generous in providing homes for many Jewish refugees before and during the last war. For that reason, it was difficult to believe that their representatives in the Commission would oppose the inclusion of the right to asylum.

In order to meet the objections expressed by the United Kingdom and French representatives, he suggested that an explanatory sentence should be included in the article, to the effect that

the obligation of the United Nations or of any Member State was to secure the right to asylum and that the limitations of that obligation would be laid down in conventions established under the auspices of the United Nations.

The Economic and Social Council had already recognized the importance of this principle in instructing the Commission to collect documentation on the subject of the right to asylum. The right had been observed in Europe in the Middle Ages and was being observed now in the Mohammedan countries. The Bill of Human Rights would mean little to those who most eagerly awaited it, if the right to asylum, in principle, was not included.

Mr. CASSIN (France) agreed with the importance of the principle and pointed out that it had been written into the constitutions of most countries. However, experience had shown that there were great difficulties to its implementation. The Geneva text was impractical because it did not solve the problem of who would be responsible for ensuring that the right to asylum would be granted. The responsibility rested with the whole world and not just with the State which happened to be in close geographical proximity to another in which persecution was being practised. It would be useless merely to state the principle, however magnificent; the practical question of responsibility would have to be worked out in a series of agreements between the United Nations and Member States.

In reply to the Chairman, Dr. CHANG (China) agreed to amend his proposal to read as follows: "Everyone has a right to seek and shall be granted temporary asylum from persecution in other countries."

/In connection

In connection with the remarks of the representative of the Jewish World Congress, the CHAIRMAN drew attention to the difficulties which had had to be faced in Congress and because of existing laws, before the Nazi-persecuted Jews had been allowed to enter the United States.

It did not seem possible to include the French proposal, particularly as the Council had asked the Commission to make a study on the right to asylum. In view of that study, she would prefer to adopt the more general principle incorporated in the amended Chinese proposal, with the deletion of the second paragraph.

Mr. LEBEAU (Belgium) supported the French proposal because it introduced the idea of international responsibility with respect to the right to asylum. He also agreed to the deletion of the second paragraph.

Mr. AZKOUL (Lebanon) also supported the French proposal, on the grounds that it proclaimed the right to asylum and at the same time safeguarded the interests of States who would have to receive refugees. Should the French proposal not be accepted, he would vote for the amended Chinese text. He objected to the word "temporary", however, and felt that a sentence should be added to the effect that the period of asylum would have to last as long as there was still threat of persecution.

Mr. STEPANENKO (Byelorussian Soviet Socialist Republic) was unable to accept the drafting group's proposal for article 11 because of the deletion of the second paragraph.

The people of Byelorussia had suffered greatly during the war and its horrors were still fresh in their minds. In Minsk, the Germans had established a ghetto where Byelorussian Jews and those of Western European countries had been subjected to torture. Bearing that in

mind, he could not accept a text which would grant to war criminals the right to asylum.

Mr. VILFAN (Yugoslavia) said that he would vote for the USSR proposal because its terms were similar to those of Article 31 of the Constitution of the Federated People's Republic of Yugoslavia. That Article had been drafted as a result of the Yugoslav peoples' experience during the war. The second paragraph of the Geneva text of article 11 met his point of view to a certain extent, but because of the experience of the war the right to asylum could not be allowed to be too freely interpreted. One of the most famous Yugoslav war criminals was wandering freely around Europe at this moment.

Mr. LOPEZ (Philippines) supported the view that the right to seek asylum had to be balanced by the right to be granted it. He was in favour of stating the broad principle set forth in the amended Chinese proposal, leaving the future implementation of it to the appropriate United Nations organ.

Mr. WILSON (United Kingdom) was not in favour of the USSR proposal because of its restrictive character, while the French proposal might prejudice the results of the study on the right to asylum. He had been impressed with the arguments against the text proposed by the drafting group, but pointed out that one of the most jealously guarded rights of a State was the right to prevent foreigners from crossing its border. He proposed that a small drafting committee should be appointed to find a formula which would be acceptable to all.

Mr. KLEKOVKIN (Ukrainian Soviet Socialist Republic) asked the Chinese representative if the Chinese people would be prepared to grant asylum to Japanese war criminals. In his opinion, the attempt to word the Declaration in the most general terms would make for unsatisfactory results. The proposals which had been made were

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similar to the declarations on justice which had appeared in the nineteenth century and which had failed, perhaps because of their too general character. It was impossible to avoid reference to activities against the United Nations and against democracy.

Mr. PAVLOV (Union of Soviet Socialist Republics) emphasized the impossibility of granting the right to asylum to war criminals. The United Kingdom representative could suggest further categories of persons which should be included, but the USSR proposal would have to be taken as a basis for agreement. In respect to the drafting group's proposal, he remarked that the right to seek asylum was meaningless without the right to be granted it.

Dr. CHANG (China) said that the question of Japanese war criminals in China did not arise, because article 11 dealt with refugees from persecution. The Commission was attempting to draft a declaration of aspirations and therefore no qualifications should be introduced into the text.

The CHAIRMAN was even more convinced of the fact that the Declaration should be made up of general principles. Anything more complicated would have to be determined by international agreement, in the form of extradition or asylum conventions, or by the appropriate United Nations organ.

She called for a vote on the USSR proposal.

It was rejected by nine votes to four with two abstentions.

Mr. CASSIN (France) urged the adoption of his proposal and expressed the hope that the Commission on Human Rights would not be more timid than the Council which, at least, had instructed the former to study the question of the right to asylum.

The French proposal was rejected by six votes to five with five abstentions.

Mr. PAVLOV (Union of Soviet Socialist Republics) announced that he would vote for the retention of the second paragraph of article 11, although it was not entirely acceptable to him, because without it the article would have no value whatsoever.

The motion to delete the second paragraph was defeated by eight votes to eight.

Appointment of Sub-Committees

The following sub-committees were appointed:

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| Sub-Committee on article 11: | France United Kingdom China India United States of America |
| Sub-Committee on the Report of the Second Session of the Sub-Commission on Freedom of Information and the Press: | Philippines Uruguay Australia USSR |
| Sub-Committee on the Terms of Reference of the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities: | United Kingdom Ukrainian SSR United States of America India |
| Sub-Committee on the Convention on the Crime of Genocide: | Egypt France Lebanon |
| Sub-Committee on the Functions of Information Groups and Local Information Committees: | Byelorussian SSR Chile |
| Sub-Committee on Rules of Procedure | China Yugoslavia |

The meeting rose at 5:20 p.m.