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COMMISSION ON HUMAN RIGHTS

Fifteenth Session

SUMMARY RECORD OF THE SIX HUNDRED AND TWENTY-SECOND MEETING

Held at Headquarters, New York,  
on Wednesday, 25 March 1959, at 10.50 a.m.

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Study of the right of everyone to be free from arbitrary arrest, detention and exile: progress report of the Committee (E/CN.4/779 and Add.1)

PRESENT:

<u>Chairman:</u>	Mr. GUNewardENE	Ceylon
<u>Rapporteur:</u>	Mr. KITTANI	Iraq
<u>Members:</u>	Mr. QUIJANO	Argentina
	Mr. BASYN	Belgium
	Mr. WIJEGONAWARDENA	Ceylon
	Mr. CHENG	China
	Mr. CASSIN	France
	Mr. JHA	India
	Mr. ADAMIYAT	Iran
	Mr. COHN	Israel
	Mr. DOMINEDO	Italy
	Mr. HAKIM	Lebanon
	Mr. CAMPOS ORTIZ	Mexico
	Mr. DELGADO	Philippines
	Mrs. WASILKOWSKA	Poland
	Mr. NEDBAILLO	Ukrainian Soviet Socialist Republic
	Mr. SAPOZHNIKOV	Union of Soviet Socialist Republics
	Sir Samuel HOARE	United Kingdom of Great Britain and Northern Ireland
	Mrs. LORD	United States of America
<u>Also present:</u>	Mr. HEIBLÉ	Austria
	Mr. PINOCHET	Chile
	Mr. LECHUGA	Cuba
	Mr. De MARCHENA	Dominican Republic
	Mr. NAGASHIMA	Japan
	Miss PELT	Netherlands
	Mr. OPPEscU	Romania

PRESENT (continued):

Representative of a specialized agency:

Mr. BLAMONT

International Labour  
Organisation

Representative of the High Commissioner for Refugees:

Mr. WEIS

Secretariat:

Mr. HUMPHREY

Director, Division of  
Human Rights

Mr. YAP

Secretary of  
the Commission

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RIGHT OF ASYLUM (E/CN.4/L.454/Rev.1, L.459; E/CN.4/781 and Add.1 and 2, 785; L.517, L.518, L.519) (continued)

Mr. CASSIN (France) presented a draft resolution (E/CN.4/L.519) relating to the preliminary draft declaration on the right of asylum (E/CN.4/L.454/Rev.1) submitted by France and the revised version thereof (E/CN.4/L.517).

Mr. QUIJANO (Argentina) said that his delegation accepted in principle the idea of a declaration on the right of asylum, provided that more time was devoted to studying the question and elaborating a text. He would accordingly vote for the French draft resolution.

Mr. BASYN (Belgium) said he was prepared to support the draft resolution provided that that did not imply a commitment to the text of the draft declaration (E/CN.4/L.517) as it stood. His delegation would have no objection to further study of the subject on the basis of the text proposed by France.

Mrs. WASILKOWSKA (Poland), referring to the revised version of the draft declaration (E/CN.4/L.517), expressed appreciation of France's effort to meet the objections of certain delegations, including her own, and said that the preamble and article 1 of the revised draft declaration constituted a considerable improvement on the original draft.

Unfortunately the same did not apply to the rest of the text, which failed to meet the objections she had raised at the 619th meeting. She agreed with the objections made to article 4 of the revised draft by the Philippine representative at the previous meeting, and said that she did not consider articles 2, 3 and 4 of the revised draft to be in accordance with the definition of the right of asylum given in article 14 of the Universal Declaration of Human Rights. She would therefore be unable to support the revised draft declaration.

She regretted that the Commission had not accepted her suggestion that it should consult the International Law Commission, and reserved her right to raise the matter again at the next session.

/...

(Mrs. Wasilkowska, Poland)

In view of the Polish delegation's serious reservations about the revised text, it could not undertake the commitment in the French draft resolution (E/CN.4/L.519) to transmit a draft declaration to the General Assembly. It was not possible to decide whether or not there should be a draft declaration without knowing what its substance would be and how it would be drafted. She accordingly suggested that it would be preferable to defer further consideration of the matter to the next session, without deciding at the present stage whether or not the Commission desired such a declaration in principle.

Mr. JHA (India) said that there was much force in the Polish representative's comments on the first operative paragraph of the draft resolution. In view of some of the objections raised, he feared that the Commission might find itself at the next session faced with the same divisions of opinion on the draft declaration and the same arguments as before. He had prepared an alternative text of the draft declaration which he felt would be more likely to win general agreement, and he wanted to consult other delegations about it. He therefore proposed that the meeting should be suspended.

The meeting was suspended at 11.10 a.m. and resumed at 11.30 a.m.

Mr. JHA (India) said that his and the French delegation had been unable to agree on a combined text. He did not, however, wish the amendment he had put forward to be circulated to Governments as a separate text with the documents to be transmitted under draft resolution E/CN.4/L.519, as he did not wish it to appear as a rival text to the one proposed by France (E/CN.4/L.517).

Sir Samuel HOARE (United Kingdom) suggested that, as the summary records were to be communicated to Governments, it might be sufficient to insert the Indian amendment in the record.

Mr. JHA (India) said that his delegation had no objection to article 1, as it appeared in document E/CN.4/L.517. It would, however, like to replace the present article 2 by the following text:

"Every State,

"Recalling the Preamble to the Charter of the United Nations affirming faith in fundamental human rights,

/...

(Mr. Jha, India)

"Remembering article 14 of the Universal Declaration of Human Rights,  
"Mindful of the practice since time immemorial of nations to grant asylum  
from persecution,

"Taking note of the fact that many nations have voluntarily undertaken,  
in their national Constitutions, the obligation to grant asylum,

"Shall, in taking decisions for requests for grant of asylum by persons  
subjected to persecution on account of race, religion, nationality, membership  
of a particular social group or political party, be governed by the highest  
humanitarian considerations."

The following words might perhaps be added to that paragraph:

"and subject to over-riding considerations of security and social and  
economic well-being, shall desist from taking action which might result in the  
re-exposure of persons seeking asylum to danger to their life."

The last paragraph of the new article 2 would read:

"States have the right to seek the assistance of other States and of the  
United Nations in solving the problems arising from requests for asylum. The  
United Nations and its Members have a responsibility for taking separate and  
collective action, as may be appropriate, and as envisaged in Article 56 of  
the Charter of the United Nations."

The CHAIRMAN invited the Commission to consider the French draft  
resolution (E/CN.4/L.519).

Mr. JHA (India) proposed that the beginning of the first operative  
paragraph should be reworded to read: "Decides to consider the preparation, at its  
next session, of a draft declaration ...".

Mr. CASSIN (France) said that, although he understood the Indian  
representative's objection to adopting a decision of principle before Governments  
had made their comments, he was unable to accept the amendment. He held no brief  
for his delegation's text as it stood, but he wished it to be clear that the  
Commission was envisaging a declaration of the right of asylum in terms which would  
be acceptable to Governments.

Mr. SAPOZHNIKOV (Union of Soviet Socialist Republics) supported the Indian amendment. The Commission obviously could not commit itself to a course of action before the question had been thoroughly considered.

Mr. KITTANI (Iraq) also supported the Indian amendment.

Sir Samuel HOARE (United Kingdom) pointed out that the amendment would not affect the action the Commission would take at its next session.

Mr. CHENG (China) proposed that, as a compromise, the beginning of the first operative paragraph should be amended to read: "Decides to undertake at its next session the drafting of a declaration....".

Mr. CASSIN (France) accepted the Chinese amendment pointing out that it did not commit the Commission to the adoption of a declaration on the right of asylum but merely recorded the Commission's decision to begin work on the draft declaration.

Mr. JHA (India) said that the wording now proposed covered his point. He therefore withdrew his own amendment.

Mrs. WASILKOWSKA (Poland) proposed that the words "which shall be transmitted to the General Assembly", at the end of the first operative paragraph, should be deleted. The Commission might wish to take other action and should not commit itself to any specific course.

Mr. DELGADO (Philippines) proposed that the words "and international non-governmental organizations in consultative status with the Economic and Social Council" should be inserted after the words "specialized agencies," in the second operative paragraph.

Mr. CASSIN (France) accepted the Polish and Philippine amendments.

Mr. COHN (Israel) asked for a separate vote on the preamble and each of the operative paragraphs of the draft resolution.

Mr. DOMINEDO (Italy) said that he would vote for the draft resolution, as he felt that the Commission should state its determination to take some action with regard to the draft declaration. His vote, however, was not to be interpreted as a vote in favour of the present text of the draft declaration (E/CN.4/L.517), with regard to which his delegation had certain reservations.

The CHAIRMAN invited the Commission to vote on the draft resolution (E/CN.4/L.519) as amended.

The preamble was adopted by 15 votes to none, with 2 abstentions.

The first operative paragraph, as amended, was adopted by 14 votes to 2, with 1 abstention.

The second operative paragraph, as amended, was adopted by 14 votes to 2, with 1 abstention.

The draft resolution (E/CN.4/L.519) as a whole, as amended, was adopted by 15 votes to 2, with 1 abstention.

Mr. COHN (Israel), explaining his vote, said that his delegation had been opposed to any further delay in the drafting of a declaration on the right of asylum but since, by adopting the French draft resolution, the Commission had committed itself to such an undertaking at its next session, he had not voted against the resolution. Nonetheless, he regretted that the task had not been completed during the current session, since Israel's term of office might not be further extended.

Mr. KITTANI (Iraq) said that his delegation had submitted an amendment (E/CN.4/L.518) to the revised draft declaration because it felt that articles 2 and 4 of that text might both be interpreted as ignoring the basic right of the individual who had left his own country for the reasons referred to in the declaration to return to his homeland. It had therefore wished to make it quite clear that that was not the intent.

Mr. SAPOZHNIKOV (Union of Soviet Socialist Republics) said his delegation had voted against the draft resolution for reasons of principle. In the general debate he had made it clear that the Soviet Union considered that the best way to solve the problems connected with the right of asylum would be to include an article on the question in the draft International Covenants on Human Rights. His views were not reflected in the draft resolution, the first operative paragraph of which he felt prejudged the issue.



Mr. NEDBALLO (Ukrainian Soviet Socialist Republic) said that his delegation had voted in favour of the inclusion of the item "Right of asylum" in the Commission's agenda. In doing so, it had not envisaged that the scope of the item would be extended to include such questions as the resettlement of refugees, which could be more properly dealt with in the draft Covenants on Human Rights. In any case, it did not feel that a special declaration on the right of asylum was necessary and it had therefore voted against the draft resolution.

STUDY OF THE RIGHT OF EVERYONE TO BE FREE FROM ARBITRARY ARREST, DETENTION AND EXILE: PROGRESS REPORT OF THE COMMITTEE (E/CN.4/779 and Add.1)

Mr. DELGADO (Philippines), introducing the Committee's report, explained that, since its last progress report had been submitted to the Commission, the Committee had continued to prepare country monographs on the status of the right of everyone to be free from arbitrary arrest, detention and exile. When ready, the monographs were transmitted to the countries concerned for their observations. So far thirty-two such monographs had been completed and sent to the Governments concerned.

He drew attention to paragraph 3 of document E/CN.4/779/Add.1 and observed that a similar procedure had been adopted in regard to the studies made by the Sub-Commission on Prevention of Discrimination and Protection of Minorities. Paragraph 4 of the same document set out a provisional time-table for the Committee's future work.

Mr. QUIJANO (Argentina) congratulated the Chairman-Rapporteur on the report and expressed appreciation of the Secretariat's work in the preparation of the monographs. He hoped the Committee would find it possible to keep to the provisional time-table.

Mrs. LORD (United States of America) also felt that the Committee was to be congratulated on its work to date and on being able to foresee a date for the preparation of its final report. She wished to draw its attention to the definitions of the terms "illegal arrest" and "arbitrary arrest" on page 9 of the report of the 1958 Seminar on the Protection of Human Rights in Criminal Law and Procedure (ST/TAA/HR/2), which she had found very helpful.

Mr. CASSIN (France) also expressed appreciation of the Committee's work. He thought the Commission would be interested to know of a recent reform of the French penal code which strengthened the position of counsel for the defence. He had accordingly asked that copies of the new penal code and of the instructions issued by the Minister of Justice concerning its implementation, which showed where the Napoleonic Code previously in force had been greatly modified, should be made available to its members.

Mr. DOMINEDO (Italy) said that in Italy too there had recently been reforms in the penal code designed to prevent miscarriages of justice in the form of arbitrary arrest or detention. The reforms were evidence of Italy's desire to co-operate with the United Nations in its work in the field in question.

The CHAIRMAN, speaking as the representative of Ceylon, also extended congratulations to the Chairman and the members of the Committee and the Secretariat on the excellent work which they had done.

Sir Samuel HOARE (United Kingdom) said he was happy to learn that there was a prospect that the Committee would be in a position to submit its final report to the Commission at its 1961 session. The subject was extremely complex and he fully appreciated how much work was entailed. The material which had been collected in the country monographs was extremely valuable, but he felt that the Committee still had before it a most difficult task, namely, finding a satisfactory definition of the word "arbitrary". The action so far taken in the Third Committee of the Assembly did not, in his view, give any assistance in that direction. Unless it solved that problem, the Committee's final report would not be as valuable as it might be.

He did not feel that it would serve any useful purpose for the Committee to submit further progress reports now that its work had reached an advanced stage.

Mr. SAPOZHNIKOV (Union of Soviet Socialist Republics) stated that on many previous occasions his delegation had explained that the Soviet Union did not consider that studies on the individual human rights were necessary. It took the same attitude towards the Committee's present work. In preparing the draft Covenants on Human Rights the Commission had already had

(Mr. Sapozhnikov, USSR)

occasion to study broad questions relating to human rights and had formulated recommendations dealing, inter alia, with the subject currently under consideration. Further studies could only divert attention from the basic objective in the field of human rights, namely, the adoption of the draft Covenants.

The meeting rose at 12.50 p.m.