

DOCUMENTS
INDEX UNIT



16 JUN 1952

GENERAL

E/CN.4/SR.315
17 June 1952

ENGLISH

ORIGINAL: FRENCH

COMMISSION ON HUMAN RIGHTS

Eighth Session

SUMMARY RECORD OF THE THREE HUNDRED AND FIFTEENTH MEETING

Held at Headquarters, New York,
on Thursday, 29 May 1952, at 10.15 a.m.

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article 8

<u>Chairman:</u>	Mr. MALIK	(Lebanon)
<u>Rapporteur:</u>	Mr. WHITLAM	Australia
<u>Members:</u>	Mr. NISOT	Belgium
	Mr. SANTA CRUZ)	Chile
	Mr. VALENZUELA)	
	Mr. CHENG PAONAN	China
	AZMI Bey	Egypt
	Mr. CASSIN	France

Members (continued):

Mr. KYROU	Greece
Mrs. MEHTA	India
Mr. AZKOUL	Lebanon
Mr. WAHIED	Pakistan
Mr. BORATYNSKI	Poland
Mrs. ROSSEL	Sweden
Mr. KOVALENKO	Ukrainian Soviet Socialist Republic
Mr. MOROZOV	Union of Soviet Socialist Republics
Mr. HOARE	United Kingdom of Great Britain and Northern Ireland
Mrs. ROOSEVELT	United States of America
Mr. BRACCO	Uruguay
Mr. JEVREMOVIC	Yugoslavia

Also present:

Mr. DOYLE	Office of the High Commissioner for Refugees
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Representative of a specialized agency:

Mr. PICKFORD	International Labour Organisation (ILO)
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Representatives of non-governmental organizations:

<u>Category B:</u>	Mrs. de BROECK	Catholic International Union for Social Service
	Mr. NOLDE	Commission of the Churches on International Affairs
	Mr. MOSKOWITZ	Consultative Council of Jewish Organizations
	Mr. MANUIIA	International Association of Penal Law
	Mrs. SOUDAN	International Federation of Business and Professional Women
	Mr. JACCOBY	World Jewish Congress
	Mr. FENCE	World's Alliance of Young Men's Christian Associations
	Mrs. POLSTEIN) Mrs. FARRER)	World Union for Progressive Judaism

Secretariat:

Mr. HUMPHREY	Director, Division of Human Rights
Mr. DAS) Miss KITCHEN)	Secretaries of the Commission

DRAFT INTERNATIONAL COVENANTS ON HUMAN RIGHTS AND MEASURES OF IMPLEMENTATION:
(E/1992; E/CN.4/528, E/CN.4/528/Add.1; E/CN.4/L.123, E/CN.4/L.132,
E/CN.4/L.132/Rev.1, E/CN.4/L.149, E/CN.4/L.149/Rev.1, E/CN.4/L.152,
E/CN.4/L.185, E/CN.4/L.186, E/CN.4/L.189) (continued)

Article 8

Mrs. ROOSEVELT (United States of America) said that the purpose of her amendment (E/CN.4/L.132) was to introduce in article 8 the same limitations as those contained in articles 13, 14 and 15. Paragraph 1 of article 8 was ambiguous since it could be interpreted as either prohibiting or permitting all limitation of the right to liberty of movement; since neither of those extreme interpretations was desirable, the United States delegation had thought it advisable to work out a foolproof text. Her amendment was very close to the Indian and French amendments (E/CN.4/L.149 and E/CN.4/L.152), and there should be no difficulty in agreeing on a joint text. The USSR amendment (E/CN.4/L.123) which seemed to imply that account should be taken of only those laws which were currently in force was in her opinion neither necessary nor desirable.

Mrs. MEHTA (India) said that the Indian and United States amendments could be combined into a single text provided the United States representative agreed to the inclusion of the words "imposing reasonable restrictions on the rights set forth in the present article" after the words "general law". She shared the United States representative's view concerning the USSR amendment. She could not support paragraph 2 (b) which was at variance with the existing passport regulations of various countries.

Mr. CASSIN (France) said that he would drop his amendment if the United States representative agreed to include in her text the limitations contained in article 29, paragraph 2, of the Universal Declaration of Human Rights, on which the French amendment was based. To make it clear that the reservation in paragraph 1 of article 8 applied to the entire article, the figure "1" should be inserted before "(a)".

Mr. DOYLE (Office of the High Commissioner for Refugees) said that the High Commissioner's Office was of the opinion that article 8, and in particular sub-paragraph 2(b), was not sufficiently explicit; he thought that the right of every person to enter and stay in the country of which he was a national should not be subject to any reservation.

Mr. KYROU (Greece) disagreed. Interests of national security might require certain restrictions to be imposed.

AZMI Bey (Egypt) objected to the word "arbitrary" in sub-paragraph 2(a); there should be no exile in a liberal and democratic society. The deletion of the word "arbitrary" would naturally require the deletion of the first part of sub-paragraph 2(b): "subject to the preceding sub-paragraph". He asked that separate votes should be taken on the word "arbitrary" and on that phrase.

Mr. NISOT (Belgium) wondered whether it was sufficiently clear that the word "exile" related to the expulsion of a person from the country of which he was a national.

The CHAIRMAN stated that there could be no doubt on that point.

Mr. MOROZOV (Union of Soviet Socialist Republics) was prepared to accept the Indian amendment (E/CN.4/L.149), but was opposed to the French and United States amendments (E/CN.4/L.152 and E/CN.4/L.13), the second of which seriously limited the right to liberty of movement by making it subject to the "rights and freedoms of others". A provision of that nature would legalize malpractices such as those in the United States with regard to persons not belonging to the white race.

It had just come to his attention that the translation of his amendment (E/CN.4/L.123) was not exact; the Russian text proposed the inclusion of the words "of the State concerned" only. That error in the translation was probably the reason for the United States and Indian representatives' opposition, which he had been unable to understand at first, to what was merely a drafting change.

/Mr. HOARE

Mr. HOARE (United Kingdom) said that his delegation found it extremely difficult to draft an article which would at once safeguard the right of liberty of movement and provide for the necessary and adequate limitations. He was not certain whether that right was a basic one, but in any event, if it were defined in general terms, such a definition might have more far-reaching consequences than the Commission intended. On the other hand the legitimate restrictions on that right were so many and so varied in the different circumstances of different countries that it was difficult to formulate them with the necessary comprehensiveness. The existing text of article 8 seemed to his delegation unsatisfactory from both points of view and he would therefore vote against it.

In the event that the Commission decided to retain the article, he would like to submit amendments to the French and United States amendments (E/CN.4/L.152 and E/CN.4/L.132). States should be left greater freedom as regards the limitation of the right to liberty of movement, and the United States and French amendments were not sufficiently far-reaching in that respect; the general provision proposed by India (E/CN.4/L.149) was more satisfactory though it might be criticized for allowing too great a limitation of that right. He therefore proposed introducing in the United States text the idea of economic and social well-being -- which would justify some restrictions which were necessary and which did not come within any of the categories specified in the United States text -- as well as that of prevention of crime and disorder. Those, of course, were very extensive limitations, but which nonetheless were essential if the Commission decided to maintain article 8.

Mr. CASSIN (France) said that in order to simplify the Commission's work, he would agree to taking the United States amendment as a working test if the main idea of the Indian amendment and the concepts of general security and well-being were included in it. He considered that the USSR representative's criticism of the reservation in regard to the rights and freedoms of others was justified, and he hoped that the United States representative would omit that reference, especially since the point was fully covered by the concept of public order. The United Kingdom amendment was essentially a recapitulation of the ideas in article 29 of the Universal Declaration of Human Rights, and that being the case it would be better if the exact words of the article were repeated.

Mrs. MEHTA (India) did not agree with the United Kingdom representative who had always opposed the article on the right to liberty of movement; in fact, she thought that, if freedom of speech and the right of association were human rights, then the right to liberty of movement was equally a human right.

Mr. WHITLAM (Australia) stated that article 8 might give rise to serious difficulties for it did not take into account the de facto situation existing in certain countries; for instance, in certain territories under Australian jurisdiction, the Government had to restrict to a certain extent the right of certain indigenous tribes to liberty of movement, in the interest of the tribes themselves and in full agreement with the Trusteeship Council. That article should therefore be deleted; if the majority of the Commission objected he would support the Indian amendment which made the article more realistic by better adapting it to existing circumstances. The amendments proposed by the United Kingdom representative would in that case also be essential.

It was also difficult for the Australian delegation to accept paragraph 2(b). It had already made its views on that point known at the sixth session of the Commission. It could accept the paragraph only if the idea of "permanent residence" was introduced; the expression "national" was inadequate as far as Australia was concerned.

Mrs. ROOSEVELT (United States of America) said that her delegation would vote in favour of maintaining article 8. She agreed to introduce into her delegation's amendment (E/CN.4/L.132) the idea of general well-being, but she was not sure that the idea of "economic and social well-being" was desirable and she would ask for a separate vote on those words.

Mr. KYROU (Greece) suggested that the authors of the various amendments and sub-amendments should meet to draft a joint text; in the meantime the Commission could begin consideration of article 9.

Mrs. ROOSEVELT (United States of America) thought the Commission ought first to decide whether it wished to maintain paragraph 2(a) of article 8. It would be difficult to vote on the text if the word "arbitrary" were removed.

Mr. MOROZOV (Union of Soviet Socialist Republics) indicated that he maintained his amendment (E/CN.4/L.123) and that it was intended to apply to all the amendments to the initial text of paragraph 1.

/Mr. HOARE

Mr. HOARE (United Kingdom) thought that paragraph 1(a) should confine itself to protecting against State interference each individual's right to liberty of movement and freedom to choose his residence. Any attempt to protect that right against other individuals would involve listing an endless number of exceptions, since the exercise of the right was necessarily limited by all sorts of material factors. He therefore proposed an amendment to paragraph 1(a) stating that everyone legally within the territory of a State should be protected against any interference by the State in so far as his right to liberty of movement and freedom to choose his residence within its territory were concerned.

Mrs. ROOSEVELT (United States of America) thought that individuals should be protected not only against the State but against any other private individuals or groups.

Mr. CASSIN (France) shared the United States delegation's view. It might be made clear that the paragraph was concerned with the general interest, by deleting the reference to the rights and freedoms of others, as the USSR delegation had requested; but it was essential to safeguard the right, not only against the State but also against private individuals and groups.

Mrs. ROSSEL (Sweden) pointed out that the importance of article 8 was manifest not only in the light of the events in the Union of South Africa. Mention should also be made of the deplorable situation of thousands of Hungarians who had been deprived of free choice of residence and liberty of movement and also been refused the right to leave their country and settle elsewhere.

She found it difficult to accept the words "legally" in paragraph 1(a). There were some 100,000 foreign refugees in Sweden upon whom Swedish legislation imposed certain residence restrictions, but whose presence in Sweden was legal. The Swedish delegation was in favour of the Indian amendment and the United States amendment (E/CN.4/L.149 and E/CN.4/L.132).

Mr. AZKOUL (Lebanon) recognized that the right referred to in article 8 might be subject to a very large number of limitations which it would be difficult to enumerate in the covenant. However, deprivation of that right would

/considerably

considerably limit the exercise of all the other human rights. The Lebanese delegation was therefore in favour of maintaining the initial text of article 8 and did not see the necessity of enumerating in detail the limitations which would have to be applied to the exercise of the right. It would be enough to state that they must be consistent with the other rights recognized in the covenant. Specifying limitations which States might impose would amount to granting them an almost arbitrary power, which they might use on the pretext of the general welfare, to justify all infringements of the exercise of the right.

The Lebanese delegation would vote in favour of the present text of article 8 and the USSR amendment (E/CN.4/L.123), but against all the other amendments.

Concerning paragraph 2(a) he agreed with the Egyptian representative that the word "arbitrary" should be deleted. The covenant should not affirm the right of States to exile their citizens. Moreover, the practice had almost fallen into disuse and it was important to remove the last vestiges of it.

Mr. MOROZOV (Union of Soviet Socialist Republics) contested the Swedish representative's remarks concerning Hungarian nationals.

Referring to the United Kingdom amendment (E/CN.4/L.186), he thought it proposed much too broad a formula which might result in limitations inconsistent with the other rights recognized in the covenant. Like the United States amendment (E/CN.4/L.132), it did not provide that the limitations imposed by States should be consistent with the rights recognized in the covenant. The Indian amendment (E/CN.4/L.149) might constitute a compromise solution if it contained such a provision.

Mr. SANTA CRUZ (Chile) pointed out that in some countries, for instance Chile, the penal code provided for the penalty of exile. Consequently, he was opposed to deletion of the word "arbitrary" in paragraph 2(a) of article 8.

As to the right to liberty of movement and freedom of choice of residence, article 13 of the Universal Declaration of Human Rights mentioned it among the fundamental human rights. The Chilean delegation was therefore opposed to the deletion of article 8, proposed by the United Kingdom. On the other hand, the United States and United Kingdom amendment (E/CN.4/L.132 and E/CN.4/L.186)

/provided

provided for limitations of a general nature to which the Chilean delegation had no objection. However, it agreed with the Lebanese delegation that it was sufficient to specify that such limitations must be consistent with the rights recognized in the covenant.

The USSR amendment (E/CN.4/L.123) might be interpreted as authorizing States to impose any limitations they wished; that would be contrary to the aims of the covenant, which was intended to raise national legislation to the level of the Universal Declaration of Human Rights.

With regard to everyone's right to leave his country, to limit the exercise of that right would be to jeopardize good international relations. The Indian amendment (E/CN.4/L.149) could be combined with the United States amendment (E/CN.4/L.132) and would be acceptable provided it mentioned reasonable restrictions. In that connexion, he thought it dangerous to introduce notions of national security and public safety, as States could invoke them to justify abuses of authority.

Mrs. MEHTA (India) announced that she had combined her amendment with that of the United States with the result that the phrase "consistent with the rights recognized in this Covenant" were re-introduced (E/CN.4/L.149/Rev.1).

The expression "any general law" was much too wide if it was not specified that it meant such laws as might be necessary to protect national security, public safety, health or morals.

Mr. CASSIN (France) explained that he had offered to withdraw his amendment in the hope that the words "general well-being" would figure in the revised United States amendment (E/CN.4/L.132/Rev.1). He thought the latter amendment and the Indian amendment (E/CN.4/L.149/Rev.1) might be combined in a single text. He was not prepared to accept the United Kingdom amendment (E/CN.4/L.186), for the idea of "public order" alone applied to all the other notions enumerated in that amendment.

Concerning the right of States to exile their citizens he pointed out that since the 1948 Declaration his country had abolished the last vestiges of exile which remained in force, but that it was sometimes more humane to condemn a person to exile than to sentence him to detention in a concentration camp or complete deprivation of liberty in his own country.

/Mr. WAHEED

Mr. WAHIED (Pakistan) was opposed to adding new restrictions to article 8. He emphasized the importance of the right recognized in that article, particularly in view of the great human migrations that had recently taken place. The delegation of Pakistan was prepared to accept the Indian amendment if it stated that the limitations imposed by States must be consistent with the rights recognized in the covenant.

AZMI Bey (Egypt) observed that the restrictions proposed in the various amendments could apply to paragraph 1, but he did not agree that they applied to paragraph 2. The right not to be exiled and the right to enter one's country could not be limited by the State. He therefore asked the Indian representative to substitute in her amendment the words "in this paragraph" for the words "in this Covenant".

He agreed with the representative of France that it was sometimes better to leave one's country but in that case the question of free choice was not involved.

Mr. WHITLAM (Australia) proposed an amendment substituting the words "of which he is a citizen or national and in which he has his permanent home" for the words "of which he is a national" in paragraph 2(b).

Mr. NISOT (Belgium) asked the United States representative whether paragraph 1(b) was applicable in the case of common criminals.

Mr. JEVREMOVIC (Yugoslavia) favoured the text of article 8 as it stood but he was prepared to support the Indian amendment (E/CN.4/L.149/Rev.1) and the Egyptian proposal to delete the word "arbitrary".

Mrs. ROOSEVELT (United States of America) pointed out that the United States amendment (E/CN.4/L.132/Rev.1) applied only to paragraph 1 while the Indian amendment (E/CN.4/L.149/Rev.1) concerned the article as a whole. The United States delegation opposed the United Kingdom amendments (E/CN.4/L.185 and E/CN.4/L.186). The words "general well-being" proposed by the French representative should be voted upon separately.

Mr. CASSIN (France) supported the United States representative's proposal.

Mr. HOARE (United Kingdom), in reply to the representative of Lebanon, pointed out that the existing text of paragraph 1 was completely circular, since the right in that article was itself one of the rights recognized in the Covenant. The result was that the limiting words at the beginning of the paragraph effected no limitation at all on the laws which might be passed to restrict the right. Even if the reference was intended to be to laws which were consistent with the other rights recognized in that Covenant, that expression also had no limitative effect because none of the other rights had any relevance to the right under discussion. It was illusory to suppose that those general expressions gave any protection against restriction of the right.

With regard to paragraph 2, the United Kingdom representative thought that it would be better to adhere to the language of the Universal Declaration of Human Rights.

Mrs. MEHTA (India) called the United Kingdom representative's attention to the fact that article 17 of the draft covenant dealt with non-discrimination and therefore affected the right to liberty of movement. The reference to "other rights" was therefore not without significance.

Mr. MOROZOV (Union of Soviet Socialist Republics) agreed with that statement. His delegation would support the Indian amendment (E/CN.4/L.149/Rev.1) provided that it was not further amended.

Mrs. ROSSEL (Sweden) would support the Indian amendment (E/CN.4/L.149/Rev.1) as well as the USSR amendment (E/CN.4/L.123) provided that it was modified to include the words "consistent with the rights recognized in this Covenant".

Mr. KOVALENKO (Ukrainian Soviet Socialist Republic) stated that his delegation could not support the United States amendment (E/CN.4/L.132/Rev.1) and the United Kingdom amendments (E/CN.4/L.185 and E/CN.4/L.186) because they opened the door to discrimination and anticipated article 15. The Ukrainian delegation would support the USSR amendment (E/CN.4/L.123).

/The CHAIRMAN

The CHAIRMAN thought that the inclusion of the words "consistent with the rights recognized in this Covenant" would meet the objections raised by the representative of the United Kingdom.

Mr. HOARE (United Kingdom) called the Indian representative's attention to the fact that non-discrimination was not a right but a requirement which was already applied by article 1 to article 8 and to all the other articles recognizing rights. Replying to the Chairman's suggestion, he said he preferred the words "other rights".

Mrs. ROOSEVELT (United States of America), replying to the question of the Belgian representative, said that paragraph 1 (b) was no more applicable to a criminal seeking to leave his country than it was for example to a national who had evaded military service or the payment of taxes, both of which were requirements that in many countries had to be met before permission could be obtained to leave the country.

She did not think there was any reason for mentioning residence as suggested in the Australian amendment (E/CN.4/L.189) and her delegation would not be able to vote for that amendment.

Mrs. MEHTA (India), replying to the United Kingdom representative, said that, though non-discrimination as such was not a right, it came under the right of "equality under law".

Mr. SANTA CRUZ (Chile) agreed with the United States representative's observation concerning the Australian amendment (E/CN.4/L.189) and considered it necessary to reproduce the language of the Universal Declaration of Human Rights. He asked the Australian representative whether he had intended to alter the substance of paragraph 2 (b) by introducing the reference to a permanent home.

Mr. WHITIAM (Australia) replied that in his country citizenship and nationality were not the final determinants of a right to enter Australia. The final determinant was whether Australia was the permanent home.

Mr. CASSIN (France) thought that the French word "ressortissant" met the point of the Australian representative. He pointed out that the legal notion of "permanent residence" did not exist in France.

/Mr. HOARE

Mr. HOARE (United Kingdom) agreed with the representative of France and thought that the best way of dealing with the problem would be to use the language of article 13, paragraph 2 of the Universal Declaration of Human Rights.

AZMI Bey (Egypt) was against mentioning residence because he felt that national legislation should be able to provide for the expulsion of aliens even if they were permanent residents. He agreed with the representatives of France and the United Kingdom.

Mr. SANTA CRUZ (Chile) supported that view but did not think that the word "ressortissant" a satisfactory solution. He preferred to keep the language of the Universal Declaration of Human Rights.

Mrs. ROOSEVELT (United States of America) suggested that the words "a citizen or national" should be retained in the English text and that residence should not be mentioned.

Mr. WHITLAM (Australia) agreed that in French the word "ressortissant" corresponded to "citizen or national" in English. He would accept the language of the Universal Declaration of Human Rights.

The CHAIRMAN thought that the clause in question could be made to read "everyone has the right to return to his country".

Mr. CHENG PAONAN (China) drew attention to paragraph 136 of document E/CN.4/528 and observed that the proposed wording did not allow for stateless persons.

Mr. HOARE (United Kingdom) did not think that stateless persons should be mentioned in article 8 as the article dealt only with nationals. He approved the Chairman's suggestion.

/Mr. WHITLAM

Mr. WHITLAM (Australia) also agreed with the wording proposed by the Chairman and stated that his delegation's amendment would therefore be to replace the words "the country of which he is a national" in paragraph 2 with the words "his own country".

Mr. MOROZOV (Union of Soviet Socialist Republics) did not think it was necessary to amend paragraph 2 (b).

The CHAIRMAN proposed that the Commission should declare the new Australian amendment in order.

It was so agreed.

Mr. MOROZOV (Union of Soviet Socialist Republics) asked that the voting should be deferred to the afternoon meeting so as to give his delegation an opportunity to study the various texts before the Commission.

The CHAIRMAN noted that Mr. Pickford, representative of the International Labour Organisation was about to return to ILO Headquarters. He thanked him on behalf of the Commission for his participation in its work and asked him to convey that statement to the Director-General of the ILO.

Mr. PICKFORD (International Labour Organisation) thanked the Chairman and the members of the Commission and added that he would not fail to inform the Director-General of the ILO of the Chairman's kind words.

The meeting rose at 1 p.m.