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Fifth Session

SUMMARY RECORD OF THE ONE HUNDRED AND FIRST MEETING

Held at Lake Success, New York,  
on Thursday, 26 May 1949, at 11.40 a.m.

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<u>Chairman:</u>	Mrs. Franklin D. ROOSEVELT	United States of America
<u>Rapporteur:</u>	Mr. AZKOUT	Lebanon
<u>Members:</u>	Mr. SHANN	Australia
	Mr. Roland LEBEAU	Belgium
	Mr. SAGUES	Chile
	Mr. CHA	China
	Mr. SCERENSEN	Denmark
	Mr. LOUTFI	Egypt
	Mr. CASSIN	France

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<u>Members: (Cont.)</u>	Mr. GARCIA BAUER	Guatemala
	Mrs. MEENA	India
	Mr. ENTEZAM	Iran
	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

Consultants from Non-Governmental Organizations:

<u>Category A</u>	Miss SENDER	American Federation of Labor
<u>Category B</u>	Mrs. VERGARA	Catholic International Union for Social Service
	Mr. MCSKOWITZ	Consultative Council of Jewish Organizations
	Mr. CRUICKSHANK	Inter-American Council of Commerce and Production
	Mr. NOLDE	Commission of the Churches on International Affairs
	Mrs. PARSONS	International Council of Women
	Miss SCHAEFFER	International Union of Catholic Women's Leagues
	Mr. McARTHUR	World's Alliance of Young Men's Christian Associations
	Mrs. FOX	

PROGRAMME OF WORK OF THE COMMISSION

1950 session

The CHAIRMAN informed the Commission of the various possibilities with regard to the date of its 1950 session.

The Commission could meet during the last fortnight in April or the first fortnight in January: the first date seemed too remote; the second would be unsuitable as the Economic and Social Council would be convening on 6 February 1950. As it would be impossible for both those bodies to meet at the same time, the Commission's session would be limited to five weeks only.

The most satisfactory solution seemed to be to hold a six weeks' session from the middle of March to the end of April. The Commission would thus be able to complete the second reading of the draft covenant in time to submit it to the Economic and Social Council's July session. The Commission could, if it thought necessary, meet again two weeks before the Fifth Session of the General Assembly to complete its consideration of the other questions on its agenda.

/Any members

Any members with comments or suggestions to make on that point should communicate them to the Secretary of the Commission, Mr. Humphrey.

Mr. CASSIN (France) approved of the date contemplated by the Chairman. Since members of the Commission would be obliged to spend many months of 1949-50 in the United States, the next session should be held in Europe and his delegation submitted a formal proposal to that effect.

Mr. PAVLOV (Union of Soviet Socialist Republics) supported that proposal. The Commission's work was not given all the publicity it deserved in the United States. Public opinion should be informed on questions which were of paramount importance to it. The session held in Geneva had been much more satisfactory from that point of view.

The CHAIRMAN pointed out that the Commission could not take any decision on that subject, but could make a recommendation to the Economic and Social Council in the form of a resolution. Under rule 24 of the rules of procedure of the functional commissions of the Economic and Social Council, the Secretary-General should first be consulted on the financial implications of such a proposal.

Mr. ENTEZAM (Iran) drew the Commission's attention to the fact that, unless otherwise decided, the Economic and Social Council would hold its tenth and eleventh sessions (February and July 1950) at Lake Success. As some of the members of the Commission on Human Rights were also members of the Council it would be difficult to ask them to go to Europe in March for a period of six weeks.

Mr. PAVLOV (Union of Soviet Socialist Republics) emphasized the desirability of having a comparative statement of the expenses entailed in either case, and asked the Secretary-General's representative to have such a statement drawn up as soon as possible.

The CHAIRMAN suggested that the Commission defer taking a vote on the French delegation's proposal until it had received information on the financial implications.

Current session

The CHAIRMAN reminded the Commission that it had decided to take up the consideration of measures of implementation as from 31 May 1949. That question should, therefore, be placed on the agenda of the meeting to be held on Tuesday, 31 May.

The Commission should, at the same time, examine the draft covenant. In order to arrange its work and to carry out successfully both the studies at the same time, the Commission should deal with them alternately in such a way as to devote an entire day (or two consecutive meetings) to each of them.

Mr. PAVLOV (Union of Soviet Socialist Republics) did not think that work on the draft covenant should be slackened at that stage. He therefore suggested that the examination of the measures of implementation should be postponed until Tuesday, 7 June.

Mr. CASSIN (France) did not think that the Commission should risk ending its session without completing its consideration of the measures of implementation, which had been referred to it by the General Assembly and the Economic and Social Council on the same terms as the draft covenant.

The Commission should consider every day (perhaps alternately in the morning and the afternoon) the draft covenant and the measures of implementation.

Mr. PAVLOV (Union of Soviet Socialist Republics) pointed out that if the procedure suggested by the Chairman were followed, the resulting lack of continuity would be detrimental to the Commission's work and he pressed for the adoption of his proposal.

The CHAIRMAN put to the vote the USSR delegation's proposal to postpone the examination of measures of implementation until Tuesday, 7 June.

The proposal was rejected by 6 votes to 3, with 6 abstentions.

The CHAIRMAN then put to the vote the proposal to devote entire days, beginning on Tuesday, 31 May, to the consideration of the draft covenant and to the consideration of measures of implementation alternately.

The proposal was adopted by 11 votes to none, with 4 abstentions.

/The CHAIRMAN

The CHAIRMAN stated that the Commission would therefore begin to consider measures of implementation on Tuesday, 31 May.

DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS (E/800, E/CN.4/212 and E/CN.4/251) (discussion continued)

Article 5 (continued): explanation of vote

Mr. FONTAINA (Uruguay) recalled that he had repeatedly stated that his Government was opposed to the death penalty in principle and that his delegation would therefore vote against the adoption of article 5, paragraph 2. He regretted that he had been prevented by illness from taking part in the vote on that question to which his delegation attached great importance.

Article 9 (continued)

Mr. SAGUES (Chile) stated that his delegation had voted for the United Kingdom amendment to article 9, paragraph 3, because that amendment referred to the principle of habeas corpus which was an essential principle in the defence of the rights of the human person.

The Chilean delegation nevertheless considered that the form in which those provisions had been expressed was not acceptable; they were too restrictive; the provisions of the corresponding articles of the penal code in Chile were much wider and more liberal than those contained in paragraph 3 as adopted.

The Chilean delegation therefore considered the United Kingdom draft which had finally been adopted to be a minimum only and that its provisions would not affect penal legislation in Chile since the latter was much further advanced in that field.

The CHAIRMAN stated that the agenda called for the consideration of the last sentence of article 9, paragraph 3.

Speaking as the representative of the United States of America, she announced that the United States and French delegations had reached agreement on one text as follows: "pending trial, release may be conditioned by bail or any guarantees to ensure appearance for trial".

Mr. PAVLOV (Union of Soviet Socialist Republics) thought that it was not advisable to draw up provisions on the release of arrested or detained persons, pending or during their trial, in such detail.

Miss BOWIE (United Kingdom) agreed with the representative of the USSR; she thought that it was unnecessary in the covenant to mention procedural details relating to the implementation of rules laid down since every country had its own procedure with regard to release.

The CHAIRMAN, speaking as representative of the United States of America, thought that the words "or any guarantees" obviously included the various types of procedure in different countries.

Mr. FONTAINA (Uruguay) thought that it would be preferable to delete the word "bail" and to use a more general term which could be applied to all the different legal systems in existence.

The CHAIRMAN, speaking as representative of the United States of America, suggested that, in view of the comments of the representative of Uruguay, the words "may be conditioned by any guarantees..." might be used and the word "bail" deleted.

Mr. CASSIN (France) and Mr. FONTAINA (Uruguay) agreed to that proposal.

Mrs. MEHTA (India) thought that in that particular case it was not merely a question of determining certain procedure. A trial might be delayed for various reasons and, consequently, the persons concerned might be kept under arrest for some time on false charges. Provisions specifying that release might be granted under certain conditions were therefore important. The word "may" was necessary because, under the legislation of some countries, including India, in certain cases conditional release could not be granted.

Mr. CASSIN (France) felt that the real question was whether it was advisable to specify the conditions in which release was possible.

The French delegation considered that in article 9 it was essential to recall the necessity for safeguarding and guaranteeing freedom of the human person; the attention of all Governments should therefore be drawn to that point.

Mr. SOENENSEN (Denmark) thought that the text proposed by the United States and France was actually a suggestion to the various Governments.

Such suggestions made in the form of general principles and without being categorical had been included in the Declaration of Human Rights.

Furthermore, the International Covenant on Human Rights was intended to impose specific obligations.

When drawing up the draft covenant the Commission on Human Rights should therefore refrain from including in the text provisions which were tantamount to suggestions.

He therefore shared the opinion of the USSR and United Kingdom representatives.

Speaking as the representative of the United States of America, the CHAIRMAN felt that in that instance something more than suggestions addressed to the various Governments was involved.

It was a question of making release compulsory whenever, under local legislation, the guarantees required to ensure the appearance of the person concerned at the trial could be obtained.

Moreover, the provisions in question meant that it was essential to establish a procedure which would guarantee every individual's right to freedom and to defend himself against any abuse. The Commission had already adopted a text, the beginning of paragraph 3, stating that everyone should be entitled to trial within a reasonable time or to release. It was therefore logical to provide that, when a trial was delayed for any reason, inter alia to enable the prosecutor to prepare his case and the defendant to prepare his plea, the person accused or detained should be released on certain conditions. If it was impossible to grant release because the said conditions had not been fulfilled or because the law did not provide for conditional release for the crime or offence in question, the accused or detained person should be tried immediately. The United States delegation therefore hoped that the other delegations would appreciate the necessity for including in the text of paragraph 3 the provisions proposed by the United States and France.

/Mr. FONTAINA

Mr. FONTAINA (Uruguay) thought that the criticisms which had been made were directed mainly against the new text of the United States amendment and did not affect the substance of the matter. The original text of that amendment laid the stress on the need for release; the new text was merely a suggestion, and simply stated that the person concerned might be released. If the Commission adopted the second version, it must frame it in more mandatory terms.

Mr. AZKOUL (Lebanon) remarked that the Commission was faced with three clearly distinct concepts; a choice must be made before paragraph 3 was adopted. The release of the defendant was considered, according to each case, to be compulsory, optional or conditioned by certain guarantees: the last concept was embodied in the new text of the United States amendment. The delegation of Lebanon thought that the right of the individual to release should be guaranteed, and would therefore favour the original text of the United States amendment. However, it should be indicated that it was for the legal authority to decide whether, considering the seriousness of the crime committed, the guarantees offered by the accused were sufficient to justify his release. It would therefore be preferable to make it clear that release was compulsory only when adequate guarantees were offered.

Mr. CASSIN (France) explained that in drafting their amendment the United States and French delegations had wished to take into account the provision adopted by the Commission at its previous meeting.

The French delegation found it natural to include the idea of the need for bail or a similar form of guarantee usually required when, for instance, a court wanted to ensure that an arrested person whom it wished to release should not take to flight.

The delegations of the United States and France had therefore endeavoured to draft a broad formula capable of meeting the requirements of countries with widely differing legal systems.

Miss BOWIE (United Kingdom) did not think that juridical concepts peculiar to any country should be introduced into a general convention. However, if the Commission felt obliged to do so, it should adopt a more general formula and say, for instance, that every State must release persons under arrest when circumstances permitted and when sufficient guarantees had been offered.



Mr. PAVLOV (Union of Soviet Socialist Republics) remarked that the various attempts at improvement had made it more difficult for the Commission to reach agreement. Thus, the wording suggested by the representative of Lebanon implied that the release of arrested persons was compulsory on the sole condition that the accused provided bail. That would make it possible for dangerous individuals who had been released to carry out the criminal intentions which they had been unable to bring to fruition before their arrest. He would therefore prefer the second text submitted by the United States and France, which stated that release might be conditioned by certain guarantees.

Mr. Pavlov thought, however, that bail should not be mentioned in paragraph 3, and stressed that the system of bail as applied in certain countries was not a sufficient means of protecting society against its enemies.

Mr. VILFAN (Yugoslavia) remarked that the delegations of the United States and France seemed not to have been prompted by the same motives in submitting their amendment. The United States delegation appeared to have wanted to prevent the State from placing an excessively narrow interpretation on the covenant, whereby conditional release would be unacceptable. The French delegation had mainly endeavoured to protect individual freedom by advocating that release should be granted whenever possible.

Like the Danish and other delegations, Mr. Vilfan thought that, since it was a covenant that was being drafted, categorical terms should be used.

Mr. AZKOUL (Lebanon) wondered whether the USSR representative had not confused the Lebanese amendment with the original text of the United States amendment, according to which it was sufficient for the accused person to offer guarantees in order to be released. The Lebanese amendment, Mr. Azkoul recalled, left it to the legal authorities to determine whether moral guarantees or cash bail offered by the arrested person were sufficient. Mr. Azkoul did not therefore think that his amendment entailed the risk referred to by the representative of the USSR.

Mr. LOUFI (Egypt) supported the amendment submitted by the United States and France, which was based on a principle embodied in most legislations, namely, that the judge could decide whether the

guarantees offered by the accused should or should not be accepted. That amendment took into account the seriousness of the charge. It should be noted that release was not granted in cases of murder or of crimes punishable by hard labour for instance.

Release was not always an advantage for the accused: if he was sentenced later, the time spent in detention between his arrest and the verdict was deducted from the length of the sentence.

On a motion for adjournment by Mr. KOVALENKO (Ukrainian Soviet Socialist Republic), seconded by Mr. AZKOUL (Lebanon), it was decided to adjourn the meeting and to postpone until the afternoon meeting the vote on paragraph 3 and the amendments thereto.

The meeting rose at 1.20 p.m.