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Fifth Session

SUMMARY RECORD OF THE ONE HUNDRED AND SECOND MEETING

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CONTENTS: Draft International Covenant on Human Rights (E/800, E/CN.4/212, E/CN.4/266, E/CN.4/219) Articles 6 (discussion continued), 9 (discussion continued), 10 and 11.

Chairman:	Mrs. ROOSEVELT	United States of America
Members:	Mr. SHANN	Australia
	Mr. LEBEAU	Belgium
	Mr. SAGUES	Chile
	Mr. P. C. CHANG	China
	Mr. SOERENSEN	Denmark
	Mr. LOUTFI	Egypt
	Mr. CASSIN	France
	Mr. GARCIA BAUER	Guatemala
	Mrs. MEHTA	India
	Mr. ENTEZAM	Iran
	Mr. AZKOUL	Lebanon
	Mr. INGLES	Philippines
	Mr. KOVALENKO	Ukrainian Soviet Socialist Republic
	Mr. PAVLOV	Union of Soviet Socialist Republics

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Members: (continued)	Miss BOWIE	United Kingdom
	Mr. FONTAINA	Uruguay
	Mr. VILFAN	Yugoslavia
Consultants from Non-Governmental Organizations:		
Category A:	Miss SENDER	American Federation of Labor (AFofL)
	Miss STEWART	World Federation of United Nations Associations (WFUNA)
Category B:	Mrs. VERGARA	Catholic International Union for Social Service
	Mr. NOLDE Mr. STEINER	Commission of the Churches on International Affairs (CCIA)
	Mr. MOSKOWITZ	Co-ordinating Board of Jewish Organizations for Consultation with the Economic and Social Council of the United Nations
	Mr. FRIEDMAN	Consultative Council of Jewish Organizations (CCJO)
	Miss SCHAEFER	International Union of Catholic Women's Leagues (IUCWL)
	Mr. PERLZWEIG	World Jewish Congress
	Mrs. AMERMAN	World Alliance of Young Men's Christian Associations
Secretariat:	Mr. HUMPHREY	Director, Division of Human Rights
	Mr. LAWSON	Secretary of the Commission

DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS (E/800, E/CN.4/212, E/CN.4/266, E/CN.4/219)

Article 6 (discussion continued):

The CHAIRMAN read out a letter from the Assistant Secretary-General in charge of Social Affairs asking the Secretariat of WHO for its comments on the text of article 6.

In reply to Mr. PAVLOV (Union of Soviet Socialist Republics), who stated that he was against referring the article to WHO, the CHAIRMAN pointed out that the members of the Commission would be under no obligation to agree with the views of that organization.

The text of the letter was approved subject to the above reservation.

Article 9 (discussion continued):

The CHAIRMAN then turned to the joint French and United States amendment to article 9 of the draft Covenant (E/CN.4/266).

Mr. SAGUES (Chile) remarked that the amendment concerned a most important question; how much respect was due to individual freedom in various countries of the world. The system applied in Chile rested, as did the United States proposal, on the principle that the accused should remain free. The French-United States proposal, however, suffered from two defects: instead of starting from the general principle that the accused should remain free, it merely stated that he might be released; furthermore, it provided for release only against bail.

Chilean legislation laid down that any person who was arrested should be brought immediately before a judge, who decided whether he should be released immediately and unconditionally or whether he should be brought to trial.

The judge was under the obligation to release the accused unconditionally in the following cases:

(1) if the act committed did not constitute a definite offence;

(2) if the accused was recognized as being innocent;

(3) in the absence of sufficient proof regarding the existence of the offence;

(4) in the absence of sufficient proof regarding the guilt of the accused.

In the first two cases, the release had to be accompanied by a declaration dismissing all charges against the person detained; in the other two cases, the investigation took its course and, if the offence was not serious, the person detained could be released even without making any request to that effect provided he did not move away from the place of the forthcoming trial or provided

someone put up bail for him. If the person detained was charged with a serious offence, he still had to be released by the judge, if he so requested, unless his detention was necessary for the protection of another person.

If the detention of the accused was essential for the conduct of the investigation during the procedure, he had to be release against bail. He could be refused release against bail only if he was guilty of offences such as distrubing public order, counterfeiting or embezzling public funds. If the verdict was favourable to the accused, he had to be released before the verdict had been approved by a higher court. Only an accused who had escaped and had been recaptured could not be released in any circumstances.

The CHAIRMAN put the joint French-United States amendment (E/CN.4/266) to the vote.

The amendment was adopted by 9 votes to none, with 6 abstentions.

The CHAIRMAN turned to the United States amendment proposing the addition of the following sentence to former paragraph 4:

'This remedy may not be suspended unless when in cases of rebellion or invasion the public safety may require it."

Speaking as representative of the United States, the Chairman explained that the aim of the amendment was to emphasize that restrictions to remedies of the nature of habeas corpus in time of crisis would be lesser than in other cases. Thus, fear of danger alone would not justify the suppression of that remedy. Even in times of crisis, the suppression would be valid only in the case of an invasion or a revolt.

Miss BOWIE (United Kingdom) thought that the United States proposal would be welcomed by a certain number of delegations. She pointed out, however, that it had been decided previously to include in the Covenant a general clause applying to all provisions to which no exceptions could be made except in times of war or crisis. She felt that the Commission should decide on the United States amendment when discussing that clause.

/ Mr. PAVLOV

Mr. PAVLOV (Union of Soviet Socialist Republics) also stressed that article 4 should deal with the suspension of the rights established in the other articles, in cases when the State was obliged to take exceptional measures.

He proposed that the United States amendment should not be voted on until the discussion on article 4 had been concluded.

The CHAIRMAN, speaking as representative of the United States of America, explained that the proposed restriction was far less stringent than those which article 4 should provide. Her delegation believed that the case was a special one. That fact could be emphasized only by providing for an exception in the actual text of the article.

Mr. CASSIN (France) believed that by endorsing the proposal made by the representative of the USSR, the United States representative would in no sense endanger her own amendment. Article 4 should in fact cover three broad categories: (1) rules which should not be suspended even in time of war; (2) rules which might be suspended; and (3) rules which might be relaxed.

The United States amendment fell into the third category.

The CHAIRMAN, speaking as representative of the United States of America, said that she would prefer the question to be decided by an immediate vote on the United States amendment.

Mr. PAVLOV (Union of Soviet Socialist Republics) said that in that case he would oppose the amendment. He proposed, however, that no vote should be taken on article 9 as a whole until article 4 had been adopted. If that article failed to be revised in the sense of the United States amendment, the United States delegation would be able to submit its amendment to article 9 without reopening the discussion by a two-thirds majority vote.

The CHAIRMAN accepted the USSR representative's proposal.

It was decided that no vote should be taken on article 9 as a whole until article 4 had been adopted.

./ The CHAIRMAN

The CHAIRMAN called upon the Commission to consider paragraph 5 of article 9, the original text of which read as follows:

'Every person shall have an enforceable right to compensation in respect of any unlawful arrest or deprivation of liberty.'

France had submitted the following new draft:

'Every person who has been unlawfully arrested or deprived of liberty shall have an enforceable right to compensation."

The United States had proposed the deletion of paragraph 5. Mrs. Roosevelt, speaking as representative of the United States of America, explained that, in her country, neither federal law nor any state law contained any general provisions which might permit the implementation of that paragraph.

Mr. LOUTFI (Egypt) stated that, according to Egyptian legislation, the State was not held responsible in cases where an action of the judiciary resulted in a violation of the rights of the individual.

Mr. INGLES (Philippines) thought that the wording proposed by the French delegation was better than the original draft, since it stated more clearly that an individual unlawfully deprived of his freedom had a right to compensation.

Mr. CASSIN (France) recalled that it was the Drafting Committee which had taken the initiative of proposing the adoption of the principle set forth in the paragraph concerned.

French law, like Egyptian law, did not hold the State responsible for errors committed by the judiciary; the responsibility of the State was engaged only when the error had been committed by the administration. Nevertheless, France accepted the new principle proposed for inclusion in the Covenant, on the understanding that the wording would not be too drastic in character and would leave some scope for further development.

Mr. LEBEAU (Belgium) also declared himself in favour of the introduction of the new principle, which was not yet embodied in the laws of his country. As regards the question of drafting, Mr. Lebeau remarked that the English translation did not follow the French text

/ closely enough

closely enough. He suggested that, in the interests of concordance, the English text should be altered to read as follows:

"Every person who has been the victim of unlawful arrest or deprivation of liberty shall be entitled to compensation."

The new English translation of the French text of paragraph 5, as proposed by Mr. Lebeau, was accepted.

Mr. PAVLOV (Union of Soviet Socialist Republics) emphasized that it was essential to specify the means by which the individual might obtain compensation, as was done in the original text submitted by the Drafting Committee, since otherwise the right proclaimed would become merely illusive.

Mr. Pavlov expressed surprise at the fact that the French delegation had so long delayed proposing an amendment to the Committee's text. If the French proposal was adopted, some more exact formula should be used, such as "right to compensation obtained as a result of court proceedings."

The CHAIRMAN asked the French representative whether he agreed to alter his text as suggested by Mr. Pavlov.

Mr. CASSIN (France), preferred his text. He said that in some cases the individual could obtain compensation by means other than court proceedings, for instance by friendly negotiation. Furthermore, an individual who had suffered an unlawful penalty might have been at fault himself; he might, for example, have refused to disclose his exact identity. The Commission should not adopt a text which would result in having compensation dealt out indiscriminately. The Covenant should open the way to progress by proclaiming the principle involved, while leaving to individual countries the option of progressively adapting their own legislation to the implementation of that principle.

Mr. Cassin said, in reply to the USSR representative, that in cases where French law provided for the payment of damages in compensation for a measure unlawfully taken by the administration, that provision was scrupulously carried out and hence the State was obliged to pay out sums which were often considerable.

/ Mr. CHANG

Mr. CHANG (China) believed that agreement might perhaps be reached on a text combining the original wording and that proposed by the French delegation. The English version of that text would read as follows:

"Every person who has been the victim of unlawful arrest or deprivation of liberty shall have an enforceable right to compensation."

Mr. CASSIN (France) accepted the new English translation of his text. He stressed the fact that no stronger term existed in French than "droit a reparation" (right to compensation) because to grant an individual a right was to give him the faculty to defend that right before the courts. If therefore the Commission accepted the French proposal, the present French text of the paragraph would not have to be modified and there would be no need to find an adequate translation for the English term "enforceable".

Mr. PAVLOV (Union of Soviet Socialist Republics) pointed out that the paragraph had been originally submitted by his delegation and that the English expression "enforceable right to compensation" had been translated into French in document E/800, page 16, paragraph 5, by "droit d'obtenir des reparations en justice."

He stressed the necessity for the individual to have the right to appeal before the courts.

Mr. CASSIN (France), after summarizing the explanation he had already given with regard to the meaning of the word "droit" (right) in French, added that he could not agree to the addition to that word of a qualifying adjective which would not only be useless as to substance but would set a precedent which would have to be taken into account every time that the right of an individual was referred to in the Covenant.

Mr. FONTAINA (Uruguay) said that the Commission appeared to be in agreement on the substance of the question and that it had only to come to a decision on the text of paragraph 5, the English drafting of which had been proposed by Mr. Chang.

Mr. GARCIA BAUER (Guatemala) endorsed the remarks of the representative of Uruguay.

/The CHAIRMAN

The CHAIRMAN put to the vote the text proposed by the French representative, it being understood that the English translation would be the text drawn up by Mr. Chang.

The text of paragraph 5 proposed by France was adopted on that understanding by 11 votes to 1, with 4 abstentions.

Mr. VILFAN (Yugoslavia) said that he had voted in favour of the French text because, in his opinion, the expression "enforceable right" adopted for the English translation accurately reflected the idea expressed on that point in the original Russian text.

Mr. PAVLOV (Union of Soviet Socialist Republics) asked that, when preparing the final draft in Russian of the text which had just been adopted, the Commission should retain the words used in the original Russian text to express the idea of "enforceable right" instead of re-translating that expression in any other way.

Article 10

The CHAIRMAN, speaking as the United States representative, said that the new text which she had proposed for article 10 (E/CN.4/212) seemed to have the advantage of being more precise than the original text. The drafting submitted to the Commission by Mrs. Roosevelt envisaged that "no State shall imprison any one solely on the ground of inability to pay a contractual debt", while the original text referred to the individual's "inability to fulfil a contractual obligation".

The United States delegation accepted the Philippine amendment to the United States amendment proposing the deletion of the word "solely".

Mr. LEBEAU (Belgium) said that the United States amendment would have the effect of restricting the scope of the original text. It contained only the obligation to pay, whereas a contract could also cover "obligations to fulfil", for instance to deliver merchandise in accordance with certain requirements. It seemed therefore that the United States text envisaged a prison sentence only for debts incurred.

Miss BOWIE (United Kingdom) preferred the original text. A person who did not pay a contractual debt when he had the means of doing so committed a crime by the very fact that he did not fulfil an obligation.

Mr. PAVLOV (Union of Soviet Socialist Republics) refused to accept the text proposed by the United States of America, which dealt only with financial obligations, as if those obligations alone were important in human relations. A worker might perhaps not be in a position to fulfil a contractual obligation which was not a debt and yet, if the United States views were adopted, the Covenant would not prohibit his imprisonment for that reason. In the opinion of Mr. Pavlov, therefore, the United States text was contrary to the interests of the worker and the Commission could in no case adopt it.

Mr. ENTEZAM (Iran) felt that it might happen that a Government made a contract with an individual, for example, for the delivery of essential foodstuffs for the population. The obligation so contracted would be of so vital a nature that the State must retain the right to imprison an individual who did not fulfil it.

Mr. INGLES (Philippines) stated that the amendment which he had proposed applied to the original text as well as to the text proposed by the United States of America: in the original text the word "merely" and in the United States text the word "solely" should be deleted.

Mr. LEBEAU (Belgium) commented that there was a connexion between the ideas which had just been expressed by the representatives of the United Kingdom and of Iran. In the cases referred to, the individual was sentenced to a term of imprisonment, not because he had been unable to pay a debt but because he had not fulfilled a contractual obligation.

Mr. SOERENSEN (Denmark) stressed the importance of the word "inability" which appeared in all the proposed texts. It was not a question of unwillingness on the part of the individual.

Miss BOWIE (United Kingdom) proposed that whichever text was adopted, and which would in any case be very brief, should be added to article 9 instead of forming a separate article.

Mr. GARCIA BAUER (Guatemala) supported the proposal of the United Kingdom representative.

Mr. AZKOUL (Lebanon), replying to the comments of the representative of the Philippines, stated that if the United States text was adopted the word "solely" should be deleted, but that if the original text was approved the word "merely" should be retained.

Mr. INGLES (Philippines) stated that he was unconvinced by Mr. Azkoul's explanation.

Mr. LOUTFI (Egypt) indicated that the obligations arising from marriage which had been referred to in the course of the debate were legal rather than contractual obligations in Egypt and in certain other countries.

Mr. CASSIN (France) stated that in his opinion the best text was the original text with the amendment proposed by the representative of the Philippines.

Mr. PAVLOV (Union of Soviet Socialist Republics) pressed for the adoption of the original text as it stood. He cited the following hypothetical case: an individual who fraudulently created a situation enabling him to claim that he was unable to fulfil a contractual obligation was obviously committing a crime.

Mr. INGLES (Philippines) pointed out that in the case which had just been cited it was the fraud and not the inability to pay which constituted the crime. That was why it was so important to adopt a clear text.

Mr. GARCIA BAUER (Guatemala) requested the retention of the word "merely".

The CHAIRMAN put to the vote the Philippine amendment to delete the word "merely" from the original text.

The Philippine amendment was rejected by 8 votes to 5, with 2 abstentions.

The original text of article 10 was adopted by 14 votes to none, with 2 abstentions.

Mr. ENTEZAM (Iran) stated that while he had abstained from voting on the original text, he was nevertheless pleased that his comments had helped to draw the attention of the representatives to the importance of the expression "merely".

The CHAIRMAN stated that the Commission would now consider the proposal of the United Kingdom to combine article 9 and article 10.

Mr. SOERENSEN (Denmark) supported the United Kingdom proposal and suggested that the text of article 10 should be inserted between paragraphs 2 and 3 of article 9.

Miss BOWIE (United Kingdom) approved the proposal of the representative of Denmark.

Mr. CHANG (China) was of the opinion that since the Commission had not yet taken a vote on the entire text of article 9, the only point on which a decision could be taken at that stage was the principle of combining articles 9 and 10.

Mr. PAVLOV (Union of Soviet Socialist Republics) expressed the view that it was logical to combine articles 9 and 10, but approved the views of the representative of China with regard to the final drafting.

Mr. INGLES (Philippines) stated that the ideas expressed in articles 9 and 10 were different: the former dealt with arrest or arbitrary detention, while the latter dealt with prison sentences.

Mr. AZKOUL (Lebanon) pointed out that article 9 referred to procedure for arrest, and not imprisonment, and that confusion would arise if article 10 was made into a paragraph of article 9.

The CHAIRMAN pointed out that, according to established precedent, the drafting committee would finally decide on the arrangement of the texts adopted, and that it would be best to follow that custom.

Article 11

The CHAIRMAN drew the Commission's attention to document E/CN.4/219, which included the various amendments to article 11, and asked their authors to present them.

Mr. HOOD (Australia) and Mr. AZKOUL (Lebanon) said that they would present their amendments at the next meeting.

Mr. SOERENSEN (Denmark) read his amendment, which he preferred to the original text.

Mrs. MEHTA (India) felt that individual freedom of movement was extremely important, and expressed the opinion that the words "for specific reasons of security or in the general interest", in the original text, were too general. She emphasized the disadvantage of allowing various interpretations which might result in unduly restricting freedom of movement, although there was no reason for doing so in normal times. She therefore asked the Commission to define the circumstances in which freedom of movement might have to be restricted, and proposed the words: "For the specific purpose of security in a state of emergency, or for the prevention of epidemics". In India, only the occurrence of an epidemic could make necessary any restriction of freedom of movement in the general interest. Moreover, reasons of security ought not to be used except in a real state of emergency.

Mr. PAVLOV (Union of Soviet Socialist Republics) explained that the text submitted by his delegation as article 11 did not deal with the same subject as the existing article 11. The USSR delegation had proposed it as an article 11 merely because it ought to be placed between articles 10 and 12.

The new article submitted by the USSR, which corresponded to article 21 of the Declaration of Human Rights, concerned the general right of every citizen to elect and be elected, to occupy any State or public office, and to take part generally in the government of the State. Thus far the draft Covenant had been limited to negative provisions showing what impairments of the right to life and liberty were not to be allowed. Henceforth, however, it concerned the specific application of the principles enunciated in the Declaration of Human Rights, and that part of the Covenant would have to begin by stating

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the broadest right which all human beings ought to enjoy. The insertion of the proposed USSR amendment between articles 10 and 11, moreover, would correct the mistake which had been made when the corresponding article in the Universal Declaration of Human Rights was placed much too far back.

Mr. Pavlov asked the Commission to consider his new draft article first, even though it was conceded to be the furthest removed of the proposed amendments to article 11.

The CHAIRMAN pointed out that the Commission usually considered new draft articles only after having adopted those which it already had before it, but that it would be for the Commission itself to determine the procedure to follow in the circumstances.

The meeting rose at 5.30 p.m.