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COMMISSION ON HUMAN RIGHTS

Sixth Session

SUMMARY RECORD OF THE HUNDRED AND THIRTY-NINTH MEETING

Held at Lake Success, New York,
on Thursday, 30 March 1950, at 11 a.m.

CONTENTS:

Chairman: Mrs. ROOSEVELT United States of America

Members:	Mr. WHITLAM	Australia
	Mr. STEYAERT	Belgium
	Mr. SANTA CRUZ	Chile
	Mr. CHANG	China
	Mrs. WRIGHT	Denmark
	Mr. RAMADAN	Egypt
	Mr. ORDONNEAU	France
	Mr. KYROU	Greece
	Mrs. MEHTA	India
	Mr. AZKOUL	Lebanon
	Mr. MENDEZ	Philippines
	Mr. HOARE	United Kingdom of Great Britain and Northern Ireland
	Mr. RODRIGUEZ FABREGAT	Uruguay
	Mr. JEVREMOVIC	Yugoslavia
Also present:		
	Mrs. CASTILLO LEDON	Commission on the Status of Women
Representative of a non-governmental organization (category A):		
	Miss SENDER	International Confederation of Free Trade Unions (ICFTU)
Representatives of non-governmental organizations (category B):		
	Mr. NOLDE Mrs. NULDE	Commission of Churches on International Affairs
	Mr. MOSKOWITZ	Consultative Council of Jewish Organizations
	Mr. BERNSTEIN	Co-ordinating Board of Jewish Organizations
	Mr. CRUICKSHANK	Inter-American Council of Commerce and Production
	Mrs. PARSONS	International Council of Women
	Miss TOMLINSON	International Federation of Business and Professional Women
	Miss ROBB	International Federation of University Women
	Miss SCHAEFER	International Union of Catholic Women's Leagues

/Secretariat:

Secretariat: Mr. HUMPHREY — Director of the Human Rights Division
Mr. LIN MOUSHENG)
Mr. DAS) — Secretary of the Commission

DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS, AND MEASURES OF IMPLEMENTATION (E/CN.4/365, E/CN.4/353/Add.10, E/CN.4/371, E/CN.4/378, E/1371) (continued)

Article 5

1. The CHAIRMAN recalled that the Commission had decided to examine on an equal basis the comments sent in by the various Governments and the amendments or proposals submitted by the members of the Commission. She proposed that before a vote was taken, each member of the Commission should indicate whether or not he supported the comments of his Government, if such comments had been made.

2. Mr. SANTA CRUZ (Chile) recalled that the members of the Commission were there as experts and not as official representatives of their Governments. For that reason it was important that the distinction between the observations and proposals of the Governments and those made by members of the Commission should be maintained, and that each member of the Commission should state clearly whether or not he endorsed the observations or proposals of his Government.

3. Mr. MENDEZ (Philippines), supporting the opinion of Mr. Santa Cruz, felt that the remarks or proposals submitted by the several Governments, as reproduced in the documents, should not be considered as final. The members of the Commission might put forward what they considered to be the essential points in the observations of their respective Governments, without necessarily ruling out any possibility of discussion or compromise.

4. Mrs. WRIGHT (Denmark) would have made certain reservations with regard to paragraphs 1 and 2 of the text of article 5 as drafted by the Commission at its fifth session, but she felt that the text submitted by the United Kingdom delegation obviated the objections which she might have had; consequently, she would vote in favour of that text.

/ 5. Mr. ORDONNEAU

5. Mr. ORDONNEAU (France) accepted the text of the article as agreed upon by the Commission at its preceding session. He would prefer, however, that paragraph 1 should be re-drafted in order to take into account the limitations of the general rule laid down in the paragraph, and in that connexion he presented the text proposed by France (E/CN.4/365, page 24). He stressed, in particular, the third exception mentioned in that text, namely, the "case of enforcement measures authorized by the Charter".

6. Mrs. MEHTA (India) supported the text prepared by the Commission, but pointed out that paragraph 1 contained a categorical affirmation which was contradicted by paragraph 2. She would accept any formula which would avoid such a contradiction.

7. The CHAIRMAN, speaking as the representative of the United States, recalled that during its fourth and fifth sessions, the Commission in view of the provision in paragraph 1, had discussed the possibility of enumerating the various exceptions which might prove acceptable. However, it had taken no decision because it feared that all possible exceptions could not be enumerated in detail and that the result would be to make the article far too complex as a whole.

8. The United States proposed that paragraph 1 should be drafted as follows: "No one shall be arbitrarily deprived of his life". Mrs. Roosevelt felt that the meaning of the term "arbitrarily" was clear enough in international law to justify its use in the covenant. As the Commission intended to include implementation measures in the covenant, it would provide for an international body to focus world public opinion on the acts of countries signatories to the covenant. That international body and public opinion would easily judge what was arbitrary and what was not. Chile had also suggested the same wording.

9. In no event could Mrs. Roosevelt agree to a list of exceptions such as that proposed by the United Kingdom, for an article drafted in those terms seemed intended rather to authorize killing than to safeguard the right to life. For example, the article might be interpreted as authorizing the killing of persons "for the purpose of quelling a riot", an interpretation which would be most unfortunate.

/10. Mrs. ROOSEVELT

10. Mrs. Roosevelt considered it impracticable to undertake the codification of criminal law as proposed by the United Kingdom. She cited the following cases which were not mentioned in the United Kingdom draft and in which it could conceivably be argued that death had not been caused intentionally if it resulted from the use of force: ejection of an intruder from private property, prevention of trespassing on private property, prevention of wilful arson, prevention of attempted burglary, avenging of insult to honour in adultery cases, defence of the home and, in cases of extreme urgency, the killing of a few people to save the lives of many.

11. If those seven exceptions were added to the three proposed by the United Kingdom, the resulting text of the article would provide that everyone had the right to life and would forthwith list ten exceptions. Besides, even then, the text would not be complete because it was extremely difficult to foresee all possible exceptions. In May 1948, the Drafting Committee of the Commission on Human Rights had listed twelve exceptions (E/800).

12. Moreover, Mrs. Roosevelt thought that the negative character of such an approach to article 5 was unfortunate. The United States and Chile were proposing a positive text and Mrs. Roosevelt thought the Commission should adopt it.

13. Mr. HOARE (United Kingdom) observed that Mrs. Roosevelt's remarks on the United Kingdom proposal revealed a basic difference in the approach to the problem.

14. As the representative of China had stated, the Universal Declaration of Human Rights was a document of the greatest significance and the fact that agreement had been reached on it should be a source of gratification. But the task now before the Commission was much more detailed and concrete: it was to draft an international instrument which would be mandatory upon signatory States and which would place upon them definite obligations in respect of human rights.

15. In that task the Commission's aim should be precision and clarity. Definite texts should be agreed upon and care taken to see that the provisions of the covenant were not subordinated to certain laws or practices. It was not a matter of laying down principles or defining aims but rather of establishing clearly and in detail the obligations to be incurred by the signatory States. For that reason the United Kingdom text for article 5 was couched in terms as

/accurate

accurate and precise as possible. The text of the first paragraph, as adopted by the Commission at its fifth session was practically meaningless from a legal point of view, and the United Kingdom was opposed to it since it was much too vague for an instrument such as the covenant. It was a fact that some persons were deprived of their life. That fact should be recognized and a definition given of those cases in which it would not constitute a criminal offence.

16. The United States itself recognized that the text adopted by the Commission was inadequate as it was proposing an amendment which, although a considerable improvement, failed to solve the difficulty completely, the word "arbitrarily" being too vague. It could be taken to mean that deprivation of life was the result of action taken outside the due course of law. However, that was not a clear-cut interpretation and so vague a term could not be used in a legal document. "Arbitrarily" might also mean an action taken in a frivolous or casual manner. No such interpretation could be admitted in that provision of the covenant.

17. An important and useful restriction was introduced in the first paragraph of article 5 as proposed jointly by Australia, Denmark, France, Lebanon and the United Kingdom. The comments accompanying that text indicated clearly that the covenant did not cover cases of accidental deprivation of life but dealt merely with those instances where intentional deprivation of life constituted a criminal offence; the word "intentional" was in itself, clear and accurate.

18. The Chairman had said that any attempt to make that point clear would compel the Commission to draw up a very long list of exceptions. The Commission had considered that argument at its fifth session. The purpose of the text proposed by the United Kingdom was to include, in one short article, all the exceptions considered necessary on account of the principle set forth in paragraph 1.

19. It should not prove too difficult to give a general definition of the range of exceptions which might be admitted to the principle set forth in paragraph 1.

20. There were cases where it was necessary to resort to force, but all civilized States recognized that there should be some control over the amount of force to be used. The general concept was, therefore, that no more force should

/be used

be used than was absolutely necessary in taking action authorized by law and requiring the use of force. That general concept covered all cases where the use of force might result in death without, however, giving rise to a criminal charge.

21. The Chairman had mentioned several cases which, in her opinion, would not be covered by the terms of paragraph 3 of the United Kingdom text. At the fifth session of the Commission it had been suggested that article 5 should cover cases where death resulted from the use of force for the protection of private property. While the United Kingdom would have no objection to this, the proposal did not meet with the Commission's approval. It had therefore not been included in the United Kingdom text. But paragraph 3 of the United Kingdom text dealt with such cases since it stipulated that trespassing on private property could entail arrest. As to death inflicted in consequence of a violation of honour, and the case of adultery had been mentioned, Mr. Hoare felt that Mrs. Roosevelt was confusing the question whether killing in such circumstances should be a crime with the question how it should be punished. It could not be the intention in an international convention to declare that the taking of life in those circumstances was not an offence.

22. The Chairman had further observed that the exceptions included in the United Kingdom text might be taken to mean that, in certain specific cases, deprivation of life was permissible. That argument was wholly unfounded as the United Kingdom text defined the cases where deprivation of life should not be regarded as intentional. Such exceptions were recognized in every code of law. Moreover, even the exceptions listed in paragraph 3 were governed by the general provision that it was unlawful to use force which was no more than absolutely necessary.

23. For instance, in the case of the quelling of a riot or insurrection, deprivation of life resulting from the use of force which was no more than absolutely necessary would not be regarded as intentional and would not give rise to a criminal charge. That was perfectly reasonable and a provision to that effect could not be considered as authorizing anyone to behave with complete disregard for human life.

24. The United Kingdom representative wished to emphasize once again that, for the covenant to be given effect, the Commission should clearly define the obligations of States parties thereto and, in particular, the exceptions which might be authorized.

/He recognized

He recognized that it might perhaps be necessary to enlarge the scope of paragraph 3 of the United Kingdom text, but he did not think that the Commission should change course or give up the idea of establishing specific obligations and exceptions.

25. In conclusion, he recalled that the matter had been discussed at length. All the exceptions had probably been established, and, in any case, it was better to run the risk of omitting an exception than to be satisfied with an article couched in vague terms and liable to interpretations which might render the other provisions of the Covenant valueless.

26. Mr. RODRIGUEZ FABREGAT (Uruguay) also emphasized the great importance of article 5. From the outset of the Commission's work, the Uruguayan delegation had stressed the exceptional importance of article 5 because of its direct connexion with the most fundamental of human rights, the right to life.

27. The right to life and the right of the individual not to be deprived of his life were at the very foundation of moral thought in Uruguay and since 1905 they had found expression in Uruguay's legal system. Article 25 of the Constitution of Uruguay expressly stipulated that "the penalty of death shall not be inflicted on any person " (A nadie se le aplicera la pena de muerte). He could not, therefore, share the view of some delegations that the first paragraph of article 5, in the concise form adopted by the Commission at its fifth session (E/1371), would be without legal value because it did not establish any precise obligation and would be difficult to convert into a rule of law. The Commandments' "Thou shalt not kill" remained -- and must remain -- the supreme commandment for the conscience of mankind. Uruguay was proud of the evolution in its philosophy which had brought it over the years to the abolition of capital punishment, and it would be glad to see that principle adopted by all the nations of the world.

28. His delegation had had the honour of submitting to the Commission on Human Rights a draft article in which Dr. Ramirez, the distinguished professor of public law, had sought to reflect the constitutional precept to which the

Government and people of Uruguay were so deeply attached. The Commission had not found it possible to adopt that text, because most national legislations made provision for the death penalty. He understood the necessity of bowing before that practical consideration. He had nevertheless wished to state once more the basic principles of philosophical, moral and legal thought in his country, and he took the opportunity of expressing the hope that, if the Commission thought it necessary to retain a provision regarding capital punishment in the Covenant, it would make every effort to limit its application.

29. Replying to the United Kingdom representative, Mr. Rodriguez Fabregat observed that death inflicted so to speak accidentally -- in cases of self-defence, for example -- must not be confused with the death penalty. He recognized that the reservation "no more than absolutely necessary", introduced into the United Kingdom text in connexion with the use of force, was an appreciable safeguard. However, the Uruguayan delegation hoped that in its final version of article 5, the Commission would explicitly lay down what limitations it wished to impose on the application of the death penalty, particularly with regard to children, pregnant women and women in general, in order as far as possible to satisfy the highest aspirations of the human conscience.

30. Mr. RAMADAN (Egypt) said that article 166 of the Egyptian Penal Code laid down that the death penalty and life sentences to forced labour could not be imposed on offenders between 15 and 17 years of age. The judge had first to decide what sentence would have been pronounced if that provision had not existed, any mitigating circumstances being taken into account. If he decided that the crime called for the death sentence or for forced labour, he would impose a sentence of at least ten years' imprisonment. Mr. Ramadan had thought it useful to submit that interesting provision to the consideration of the members of the Commission and he would be glad to know their opinion of it.

31. Commenting next on the text of article 5 in the version adopted by the Commission's fifth session, he said that the insertion of the word "arbitrarily" in the first paragraph was necessary in order to avoid a contradiction between it and paragraph 2, which took the existence of capital punishment in certain countries into account.

/32. The Egyptian

32. The Egyptian delegation felt that paragraph 3 should make it clear that the death penalty could be imposed only in virtue of the verdict of a competent court, "acting as the court of last instance", so as to cover the various procedures of appeal in most juridical systems.

33. Turning to paragraph 4, Mr. Ramadan pointed out that procedures relating to pardon or amnesty varied from one country to another. He therefore proposed to complete the provision by adding: "In conformity with the established procedure in each country."

34. Mr. WHITLAM (Australia) paid a tribute to the United Kingdom representative's eloquent explanation. He had clearly and forcefully explained the principles of Anglo-Saxon jurisprudence. The Australian delegation could only associate itself whole-heartedly with his statement.

35. The United Kingdom representative had rightly emphasized the fundamental importance of article 5. At the same time, he had pointed out the different interpretation to which it might give rise; that was clearly illustrated by the different conceptions apparent in the drafts submitted by the United Kingdom and the United States respectively. Yet there undoubtedly was a common ground and to find it should be the aim of the Commission's work. It was important not to take a vote before a satisfactory solution had been reached.

36. It was true that the United States representative's arguments could be justified in the case of his own country, whose considerable population raised specially complex administrative problems. The text proposed by the United States, however, indicated more than a different approach to the problem. Indeed, it seemed that there was some uncertainty regarding the aim to be sought and that no clear distinction had been made between the creation of some international law of homicide with that of some international law regulating processes of criminal courts.

37. The discussion had brought out differences between the legal and philosophical ideas of various States. The Uruguayan representative, for instance, had upheld a principle which could not be admitted under the legal system of the United Kingdom and Australia. In Australia, for example, capital

punishment was prohibited neither by the Constitution nor by any constitutional text. That, however, did not prevent human life from being safeguarded in Australia as much as anywhere else, such protection being assured by traditions which Australia was proud to have inherited from Great Britain. Under those traditions, which had to some extent become part of the moral code of the country, there was in Australia a broad protection for human life without any discrimination.

38. In the circumstances, it was clear that the Australian Government could not agree to a formula like that proposed by the United States, not only on purely juridical grounds but also because it was devoid of practical value.

39. On the other hand, he supported the Philippine representative's proposal that the first paragraph of article 5 should simply be deleted; its aim was fully covered by the following paragraphs.

40. Mr. Whitlam emphasized the fundamental difference between the Universal Declaration of Human Rights and the Covenant; the nature and the aims of the two instruments were different. The Declaration was a solemn expression of the natural rights of man and expressed the common ideal to be attained by the whole of mankind. The Covenant, on the other hand, was destined to lay down rules for the behaviour of man in organized society. Despite their obvious relationship, the two aims were completely distinct. Attempts to change the ideas set forth in the Declaration into legal formulae would inevitably diminish both the value of the ideas and the efficacy of the Covenant. The principle of article 3 of the Declaration should not therefore be reproduced in article 5 of the Covenant.

41. However, in order to take account of the wishes of delegations which would like to see the connexion between the two instruments emphasized, it would be enough to include a reference in the preamble to the Covenant, and for that purpose the proposal which the Lebanese representative had made at the previous meeting should be retained. If the preamble were suitably drafted it could not fail to exercise a moral and persuasive influence on the interpretation of the Covenant.

42. Mr. Whitlam admitted that there were two concepts of article 5. He, personally, preferred that advocated by the United Kingdom representative because he thought that it was quite possible to draw up a complete list of exceptions. In any event, the Commission should try to find a compromise with a view to achieving a satisfactory text.

43. Mr. CHANG (China) thought that there was no conflict between national interests in the Commission, but rather an opposition between two or three legal systems. As the Commission was working on behalf of the United Nations, in which all the legal systems and philosophical ideas of the world were represented, it must try to reconcile those different systems. The best solution would therefore be to combine the various proposals relating to article 5 in such a way as to achieve as large a measure of agreement as possible and to reconcile the different viewpoints on the subject.

44. He therefore proposed that the first paragraph of the original draft article 5 should be retained in its absolute form, omitting any idea of intention or arbitrariness, which would considerably diminish its significance. In order, however, to satisfy States whose legislation provided for the death penalty, the text might be followed by a second paragraph drafted as follows:

> "In countries where capital punishment exists, a sentence of death may be imposed only as a penalty for the most serious crimes pursuant to sentence by a competent court and in accordance with the law. Anyone sentenced to death may be granted amnesty or pardon or commutation of the sentence."

45. Mr. Chang thought that only an article so drafted could obtain general support at the present stage in the evolution of international law. It would not be advisable at that time to include in article 5 too many detailed provisions, such as those which appeared in the third paragraph of the United Kingdom proposal, however important they might be. Any provisions of that sort would certainly create confusion and the Commission must at all costs avoid doing that when it was drafting the first covenant on human rights.

/In time

In time a sort of jurisprudence on the subject would certainly be established, based on the comments of governments, and it would subsequently be possible to supplement the covenant in the light of that jurisprudence. So far as article 5 was concerned, the United Kingdom contribution, to which he paid tribute, was extremely important and would form one of the basic elements in any jurisprudence of that sort.

The meeting rose at 1 p.m.