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Sixth Session

SUMMARY RECORD OF THE HUNDRED AND FORTY-FIRST MEETING

Held at Lake Success, New York,
on Friday, 31 March 1950, at 11 a. m.

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<u>Chairman:</u>	Mrs. ROOSEVELT	United States of America
<u>Members:</u>	Mr. WHITIAM	Australia
	Mr. STEYAERT	Belgium
	Mrs. FIGUEROA	Chile
	Mr. TSAO	China
	Mrs. WRIGHT	Denmark
	Mr. RAMADAN	Egypt
	Mr. LEROY-BEAULIEU	France
	Mr. KYROU	Greece
	Mrs. MEHTA	India
	Mr. MALIK	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 specialized agency:

Mr. KAUL World Health Organization (WHO)

Representative of a non-governmental organization, Category A:

Miss GENDER International Confederation of Free
Trade Unions (ICFTU)

Representatives of non-governmental organizations; Category B:

Mrs. MOIDE Commission of the Churches on
International Affairs

Mr. BERNSTEIN Co-ordinating Board of Jewish
Organizations

Mr. HUNTINGTON Friends World Committee for
Consultation

Mr. CRUICKSHANK Inter-American Council of Commerce and
Production

Mrs. CARTER }
Mrs. PARSONS } International Council of Women

Miss TOMLINSON International Federation of Business
and Professional Women

Miss ROBB International Federation of University
Women

Mr. HEER International League for the Rights of
Man

Miss SCHAEFFER International Union of Catholic Women's
Leagues

Secretariat:

Mr. HUMPHREY Director of the Human Rights Division

Mr. LIN MOU-SHENG }
Mr. LAS } Secretaries of the Commission

DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS (ANNEXES I AND II OF THE REPORT
OF THE FIFTH SESSION OF THE COMMISSION ON HUMAN RIGHTS, DOCUMENT E/1371)

Article 6

1. Mr. MENDEZ (Philippines) recalled his Government's proposal that the word "inhuman" should be replaced by the word "unusual"; in its opinion, the adjectives "cruel" and "inhuman" were almost synonymous, so that the insertion of the word "unusual" would make it possible to cover certain acts which should not be tolerated, although they were neither cruel nor inhuman.

/2. "Unusual"

2. "Unusual" was a historic word which had been used in many declarations of rights, in particular in article 18 of the Declaration of Rights of the Philippines.

3. Furthermore, the Philippines proposed the insertion in the article of a second paragraph, also taken from the Declaration of Rights of the Philippines.

4. Mr. RAMADAN (Egypt) said that his amendment (E/CN.4/381) had been prompted by a trial held in Paris two years previously. On that occasion the plaintiff had sued auxiliary judiciary departments for the injury caused as a result of the injection of "truth serum". It was necessary specifically to prohibit and denounce certain forms of moral torture which were becoming generally used for the purpose of paralyzing the individual's will and causing an accused person to confess crimes he had never committed.

5. Mr. WHITLAM (Australia) thought that the word "degrading" was too vague to be satisfactory. The same was true of the word "unusual" proposed by the Philippines. He would be prepared, however, to reconsider his position if he could be shown any satisfactory arguments based on discussions at previous meetings of the Commission.

6. The CHAIRMAN, speaking as representative of the United States of America, recalled that her delegation had proposed the deletion of the words "treatment or" because the word "treatment" covered a wide range of actions. She doubted whether it would be wise to include all degrees of degrading treatment, for then the article might be interpreted as applying to mere humiliation. What might be regarded as degrading treatment by some, might not be so regarded by others living in different countries with a different social structure and different customs. The difficulty seemed to lie in the fact that there were no tangible and universally accepted standards of degrading treatment. Such a loose concept did not, therefore, lend itself to inclusion in the Covenant.

7. With regard to the Egyptian proposal for the prohibition of the use of penthol to drug an accused and produce a confession, she thought that the purpose was praiseworthy. The text of the amendment, however, seemed to permit the use of penthol in certain circumstances, as well as the use of other
/drugs

drugs, for purposes which its author had sought to prohibit. In her opinion, there was so little information on the subject that it seemed unwise to adopt such a text. It was quite possible that, in adopting the Egyptian amendment, the Commission might be authorizing the very thing it sought to prohibit.

8. Mr. KYRIOU (Greece) said that he would support the United States text, which he considered to be a great improvement on the original. He appreciated the lofty ideals which had led the Egyptian representative to submit his amendment but he pointed out that the text of the amendment in its existing form might seem to authorize the use of other products.

9. Mr. LEROY-BEAULIEU (France) remarked that Mrs. Roosevelt had seemed to be opposing the retention of the word "degrading", while her proposal was in fact for the deletion of the word "treatment". He admitted that some other word might be preferred to "degrading", but was opposed to the deletion of the word "treatment". The latter word did not have the same meaning as the word "punishment" and expressed a wider idea, which it was necessary to retain in the text. If it was absolutely essential to delete one of the two words, he would prefer the deletion of the word "punishment" to that of the word "treatment".

10. The CHAIRMAN drew attention to the comments made by WHO on the word "treatment" in connexion with article 7 (E/CN.4/359).

11. Mr. MENDEZ (Philippines) pointed out that the use of pentothol and similar products came under the term "unusual" treatment. He favoured the retention of the word "treatment", for it was the Commission's concern to safeguard the dignity of the human person and it was not only punishment which could be degrading. The word "treatment" was far more general.

12. Mr. RAMADAN (Egypt) pointed out that the use of pentothol was liable to spread and it would then no longer be an "unusual" treatment. The purpose of his amendment was to make it impossible to use any drug.

13. Mr. HOARE (United Kingdom) remarked that he had not submitted any amendments to article 6. He noted with satisfaction that Mrs. Roosevelt had said it was desirable to make the text of the Covenant as clear as possible. Nevertheless, there was no hope of reaching a very precise definition in the case of article 6. It was true that the word "treatment" was rather vague, but the same could be said of the words "cruel", "inhuman" and "degrading".

/14. He agreed

14. He agreed with Mrs. Roosevelt about the Egyptian amendment. Its aim was good, but he did not think it was justified; it mentioned only one product, and others might quite well be discovered in the future. The amendment should, moreover, go further and also take account of the other and more subtle methods used to undermine a prisoner's resistance. Article 6 should therefore be limited to the evils which could be defined in simple language. It would in practice be impossible to contemplate listing all the methods used to extract confessions.

15. Mr. Hoare agreed with Mr. Mendez on the meaning of "treatment". The Commission was concerned not only with the fate of prisoners, but also with the dignity of all human beings. Deletion of the word "treatment" would restrict the scope of article 6 to prisoners.

16. Article 6 mentioned four different types of treatment: torture and cruel, inhuman and degrading treatment. If the last adjective was rather vague, it was none the less true that the idea as a whole was coherent and he thought that, unless a better term were found, it would be better to retain the word "treatment" as well as the original text.

17. Mr. MALIK (Lebanon) recalled that article 6 already had a long history and that all the proposals currently before the Commission had already been made, discussed and rejected. He fully shared Mr. Hoare's view, and, like him, recognized that each of the terms used in the article could be criticized as being somewhat vague.

18. With regard to the United States amendment, Mr. Malik said he agreed with Mr. Leroy-Beaulieu and Mr. Hoare that deletion of the word "treatment" would have grave consequences. The Commission's purpose was to draft an article which would encompass all human beings, and not only prisoners. He was not in a position to vote for any of the proposed amendments to article 6.

19. Speaking as the representative of the United States, the CHAIRMAN withdrew the United States amendment.

20. In order to meet criticism of his proposal, Mr. RAMADAN (Egypt) revised the text of his amendment as follows: "The use of products of any kind intended to extract a confession from the accused shall be limited to cases..."

/s/ 21. Mr. MENDEZ

21. Mr. MENDEZ (Philippines) observed that the Egyptian representative's new proposal was still open to criticism. When a new subject was introduced, it was impossible to foresee all possible infringements of any text worked out.

22. Mr. MALIK (Lebanon) pointed out that the purpose of the Philippine proposal was to introduce a neutral term unrelated to human dignity, which was not the case with the other terms used in the article. The introduction of the adjective "unusual" could be interpreted as authorizing certain forms of inhuman, but not unusual, treatment. The new term would not replace the old, but would introduce quite a different idea.

23. Mr. HOARE (United Kingdom) agreed with Mr. Mendez about the Egyptian proposal, but could not accept the word "unusual." He agreed with Mr. Malik on the latter point. Even if the adjective "unusual" were added to the existing text of article 6, no one would know what it meant. There were no criteria for deciding whether an act was unusual or not.

24. Mr. Hoare thought the Commission should reserve its position on the Egyptian amendment; the question it raised was very complex.

25. Mr. KYROU (Greece) thought that the methods mentioned in the Egyptian amendment could no longer even be considered "unusual."

26. Mr. MENDEZ (Philippines) explained that he had not in fact intended to substitute "unusual" for "inhuman" because he thought that "cruel" gave the same idea as "inhuman."

27. With regard to the Egyptian amendment, Mr. Mendez pointed out that provision should be made for future discoveries in advance.

28. To meet criticisms of his amendment, Mr. RAMADAN (Egypt) revised it as follows: "The use of products which are not scientifically sure to elicit the truth shall be limited".

29. Mrs. MEHTA (India) said she was opposed to the inclusion of the word "unusual", for what was unusual was not necessarily an evil in itself. She was also opposed to the Egyptian amendment and preferred the text which the Commission had drawn up at its fifth session.

30. Mr. HOARE (United Kingdom) feared the new drafting proposed by the Egyptian representative might introduce into the text a restriction which would prove dangerous in the future. As soon as it was scientifically established that a drug was such as to bring out the truth it would not be subject to the prohibition the Egyptian amendment sought to establish, whether or not its use was reprehensible. It appeared preferable to keep to a general text, and in that matter Mr. Hoare associated himself with the Indian representative's remarks.

31. Mr. WHITLAM (Australia) said that, after hearing the Lebanese representative recapitulate the background of article 6, his doubts had been cleared up. He was now convinced that the word "degrading" in the article corresponded to a definite idea, and he was therefore inclined to accept the article as originally drafted.

32. Mr. MENDEZ (Philippines) observed that the word "unusual" in his delegation's amendment was not intended to replace the word "inhuman", as certain representatives seemed mistakenly to have understood. His delegation had proposed to delete the word "inhuman" because it thought it duplicated the word "cruel"; in his opinion there was little difference between these two ideas.

33. Mr. RAMADAN (Egypt) stated that, in the hope of obtaining the support of the majority of the Commission, he would give up the text he had proposed in favour of the insertion of the words "physical and mental" before the word "torture". The precision of the term "mental" to a certain extent fulfilled his intentions.

34. The CHAIRMAN put to the vote the first part of the Philippine amendment, to delete the word "inhuman" and substitute the word "unusual".

The amendment was rejected by ten votes to two.

35. Mr. MALIK (Lebanon) thought the Egyptian representative's last suggestion was important and deserved the Commission's attention.

36. Mr. RAMADAN (Egypt) said that the use of drugs to extract confessions might become general and form a part of trial procedure in the future. As that practice was cruel and dangerous to the human personality, as well as to a healthy and equitable administration of justice, he thought it should be expressly forbidden.

37. Mr. MENDEZ (Philippines) remarked that torture might take other forms. He wished to know whether, in the Egyptian representative's opinion, the term "mental" could also be applied to moral, psychological and spiritual ways of torturing human beings.

38. Mr. RAMADAN (Egypt) replied that the term certainly covered all sorts of moral pressures. It was, moreover, that used by David Rousset in his book "The Other Kingdom" in which he described all the kinds of torture which had been inflicted on thousands of people in concentration camps.

39. The CHAIRMAN, speaking as representative of the United States of America, emphasized the need to use the broadest formula in the case under consideration. The word "torture" undoubtedly applied to every form of torture; if it were defined, its scope would be limited.

40. Mr. HOARE (United Kingdom) and Mr. WHITLAM (Australia) associated themselves with the United States representative's remark. They could not vote for the Egyptian amendment because of its restrictive nature.

41. Mr. MALIK (Lebanon) pointed out that the discussion aroused by the Egyptian amendment had brought out the fact that all members of the Commission were unanimous in thinking that, for the requirements of article 6, the word "torture" should be taken in its broadest meaning. The Egyptian representative should therefore be quite satisfied on that score.

42. Mr. RAMADAN (Egypt) said that in the circumstances he would not press for a vote on his amendment. It was still understood, however, that the Commission condemned practices of the kind covered by his text, and considered that article 6 implicitly forbade them.

/ 43. The CHAIRMAN

43. The CHAIRMAN invited the Commission to take a decision on the second part of the Philippine delegation's proposal, to add to article 6 a second paragraph reading: "No excessive fines shall be imposed".

44. Mr. MENDEZ (Philippines) explained that the amendment covered a certain kind of torture which might be called "financial torture". It consisted in imposing on an accused person the obligation of depositing an excessively large security, and thus hindering him in the preparation of his defence. That idea was not included in the word "torture" as it had just been defined.

45. Mr. KYROU (Greece) stressed that the term "excessive" had too relative a meaning. Moreover, the Philippine proposal would only introduce a provision of detail in an article which the Commission had unanimously recognized as being in the nature of a general principle when dealing with the Egyptian amendment.

46. Mr. WHITLAM (Australia), Mrs. MEHTA (India) and Mr. RAMADAN (Egypt) said that they would vote against the provision for the reasons just given by the Greek representative.

47. Mr. MALIK (Lebanon) hoped the Philippine representative would not press his proposal. It would be more in place in one of the articles of the draft covenant dealing with legal procedure.

48. Mr. MENDEZ (Philippines) accepted the suggestion and agreed to withdraw his amendment. He reserved the right to submit it again, probably when the Commission examined article 9.

49. The CHAIRMAN put to the vote article 6 as adopted by the Commission's fifth session (E/1371).

The article was unanimously adopted.

Article 7

50. The CHAIRMAN read the reply from the Director-General of the World Health Organization (E/CN.4/359) to the Commission's request for an advisory opinion on the text of article 7 and the related proposals and amendments.

51. Speaking as the representative of the United States, Mrs. ROOSEVELT added that the United States delegation unreservedly supported the recommendation of the Director-General of WHO that the article in question should be purely and simply deleted.

52. Mr. RAMADAN (Egypt), Mr. LEROY-BEAULIEU (France) and Mrs. WRIGHT (Denmark) also supported the recommendation from WHO.

53. Mr. JEVREMOVIC (Yugoslavia) said that his delegation could not agree with the view of the Director-General of WHO that the provisions of article 7 were superfluous because they were already implicit in article 6. If article 6 in fact covered physical mutilation, it was hard to see why WHO should speak of the difficulties inherent in framing an article which would prohibit abuses in that field.

54. The Yugoslav delegation thought that article 7 was of great importance. However, it was not enough to make physical mutilation dependent solely upon the consent of the party concerned. It must also be stipulated that no such mutilation could be carried out without the previous consent of an authoritative medical organization, as proposed in the Yugoslav amendment. That amendment was designed to prevent unscrupulous persons from exploiting the poverty of anyone in order to obtain his consent to physical mutilation in return for payment in cash or kind. He cited the case of a rich and elderly business man, who took advantage of a young man's extreme poverty to obtain his consent to a serious operation which had caused him permanent mutilation. The operation had been carried out by an unscrupulous doctor who had been generously paid for his services. The Commission should see that similar cases -- for unfortunately it was not an isolated instance -- did not recur.

55. Mr. MALIK

55. Mr. MALIK (Lebanon) recalled that article 7 had been initiated by the French representative, Mr. Cassin, who had pointed out during the fifth session the advantages of introducing into the Covenant a provision prohibiting physical mutilation so as to prevent any return of the abuses and atrocities committed in Germany during the war. Because of the difficulties of the problem, the Commission had decided to ask the WHO experts for an advisory opinion. Unfortunately they had been unable to find a solution and recommended that the article in question should simply be deleted.

56. Although he realized that it would be difficult for a commission of non-expert members to agree on a satisfactory text, he would nevertheless like the vote on the article to be postponed in the hope that in the interval a solution could be found to a problem which had arisen with particular acuteness in the still recent past.

57. The CHAIRMAN, while not objecting to postponement of the vote, pointed out the danger of making such a procedure common practice.

58. Mr. KYROU (Greece) recalled that at the preceding meeting the Commission had decided that members would have an opportunity of making suggestions during the second reading of the draft Covenant. He wondered whether in the circumstances the Lebanese representative might not agree to the votes being taken, subject to a re-opening of the question during the second reading.

59. Mr. MALIK (Lebanon) replied that he would willingly accept that suggestion, if a two-thirds majority was not required for the reconsideration of any question already been voted upon.

60. Mr. HUMPHREY (Secretariat) explained that the new rules of procedure of the Commission did not mention procedure regarding reconsideration of decisions. That was one of the reasons why the Commission had decided at the preceding meeting to allow new proposals to be submitted on second reading.

/61. Mr. MALIK

61. Mr. MALIK (Lebanon) said he would not insist upon postponement of the vote if it was understood that the two-thirds majority rule would not apply.

62. The CHAIRMAN doubted whether the Commission's decision could be interpreted as permitting its members to go back on questions the substance of which had already been voted upon.

63. Mr. KYROU (Greece) recalled that notwithstanding the General Assembly rule of procedure requiring a two-thirds majority for the reconsideration of any decision, the Fifth Committee was used to amending the budget on second reading, without applying that rule.

64. The CHAIRMAN thought that no advantage was to be gained by voting immediately on a question which one member of the Commission considered to be of outstanding importance and which he intended to raise again.

65. Mr. HOARE (United Kingdom) felt that an immediate vote would have the advantage of indicating the Commission's general opinion.

66. Mr. MENDEZ (Philippines) stated that his delegation, while vigorously opposed to any provision permitting physical mutilation of any sort, even with the consent of the subject, held the view that the remainder of article 7 should be retained in anticipation of the moment when the legal character of medical experimentation would be recognized.

67. Mr. WHITLAM (Australia) was also in favour of an immediate vote which would indicate the general opinion of the Commission on the question, even if only provisionally.

68. Mr. RAMADAN (Egypt) declared that in the opinion of his delegation, any attack on the integrity of the human person was a flagrant violation of the Universal Declaration of Human Rights and should be strictly forbidden. Furthermore, he felt that if a first vote were taken on article 7, the vote could not fail to create a trend of opinion which would influence the second vote.