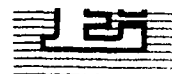


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COMMISSION ON HUMAN RIGHTS

Sixth Session

SUMMARY RECORD OF THE HUNDRED AND FORTY-SECOND MEETING

Held at Lake Success, New York,
on Friday, 31 March 1950, at 2.30 p.m.

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<u>Chairman:</u>	Mrs. F. D. ROOSEVELT	United States of America
<u>Members:</u>	Mr. WHITLAM	Australia
	Mr. STEYAERT	Belgium
	Mrs. FIJEROA	Chile
	Mr. CHANG	China
	Mrs. WRIGHT	Denmark
	Mr. RAMANDAN	Egypt
	Mr. LEROY-BEAULIEU	France
	Mr. KYROU	Greece

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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

Representative of the Commission on the Status of Women:

Mrs. CASTILLO-LEDON

Representatives of specialized agencies:

Mr. KAUL	World Health Organization (WHO)
Mr. EVANS	International Labour Organisation (ILO)

Representatives of non-governmental organizations:

<u>Category A:</u>	Miss SENDER	International Confederation of Free Trade Unions
<u>Category B:</u>	Mr. BERNSTEIN	Co-ordinating Board of Jewish Organizations
	Mrs. CARTER	Liaison Committee of Women's International Organizations
	Mrs. NOLDE	Commission of Churches on International Affairs
	Mr. PERLZWEIG	World Jewish Congress
	Miss SCHAEFER	International Union of Catholic Women's Leagues
	Miss TOMLINSON	International Federation of Busine- and Professional Women
	Miss BAER	Women's International League for Peace and Freedom
	Miss ROBB	International Federation of University Women
	Mrs. PARSONS	International Council of Women
	Mrs. VERGARA	Catholic International Union for Social Service
	Mrs. FOX	World's YMCA
	Mr. HUNTINGTON	Friends World Committee for Consultation
<u>Secretariat:</u>	Mr. HUMPHREY	Director of the Division of Human Rights
	Mr. LIN MOUSHENG	Secretary of the Commission

DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS (E/1341, E/CN.4/365, E/CN.4/353/Add.X, E/CN.4/388, E/CN.4/390, E/CN.4.391) (continued).

Article 7 (continued)

1. The CHAIRMAN invited the representative of the International Union of Catholic Women's Leagues to make a statement to the Commission.
2. Miss SCHAEFER (International Union of Catholic Women's Leagues) stated that, in view of the long discussion devoted in the past to article 7, deletion of that article might be regarded as a tacit permission by the United Nations to engage illegally in the mutilation or experimentation to which the article referred.
3. The right to bodily integrity was so fundamental to the dignity of the human person that the Commission should make a serious effort to ensure that it was guaranteed and respected through positive action by the international community. Mutilation and scientific experimentation should be permitted only when they were needed to save a person's life. While it was difficult to formulate such cases, her organization had made the attempt, and wished to submit a tentative text for article 7 containing what it believed to be the essential ideas:

"No one shall be subjected to medical or scientific experimentation or to physical mutilation against his will, except when the experimentation or mutilation required for his physical health is made in his own interest and is urgent at a time when the interested party is not in a condition to give his consent.

"in this case the practitioner must obtain the prior authorization of the spouse of the interested party, or lacking that, that of the nearest relative of the latter or in case of a number of relatives of equal degree, of the one who can be notified in the shortest time possible.

"The practitioner can be dispensed from obtaining this authorization only in case of absolute urgency and of the impossibility of reaching in sufficient time the persons referred to above.

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"Any experiment or mutilation having as purpose or effect the impairment of the physical or moral integrity of the human person is prohibited, even with the consent of the interested party, when it is not judged indispensable by competent medical authority to the recovery or the preservation of the patient's health."

4. Important as it was to have the right guaranteed positively in international law, it would be preferable to leave the formulation to a more enlightened conscience in the future than to adopt an article or to permit reservations which would have the effect of sanctioning violations of that fundamental right.

5. Mr. MALIK (Lebanon) hoped that whatever action the Commission might currently take with respect to article 7, it would leave the door open for the consideration of a new draft which he intended to submit at a later time.

6. If the WHO had no objection, he would request the Secretariat to circulate to the Commission the WHO document EB.5/62, which cast a new light on the WHO's recommendation that article 7 should be deleted. As the document showed, before arriving at that opinion, the WHO had consulted two international organizations of high standing -- the World Medical Association and the International Council of Nurses -- both of which had felt that an article dealing with mutilation and scientific experimentation should be included, and had in fact suggested tentative texts. The text proposed by the World Medical Association read: "No one shall be subjected without his free consent either to medical or scientific experimentation, or to physical mutilation except in his own interests in case of emergency and when unconscious." The International Council of Nurses had suggested the following text: "No one shall be subjected against his will to physical mutilation or medical or scientific experiment not required by his state of health, both physical and mental."

7. Consequently, the organizations which the WHO had consulted had made an earnest effort to draft suitable texts for article 7. The matter was a very complex one, and in view of the intense interest which the Commission had shown in it in the past it would be a pity to drop the subject without thorough consideration. He therefore hoped that the Commission would re-examine the article in the light of the information contained in the WHO document and of such texts as he himself might later present.

8. Mr. KAUL (World Health Organization) was certain that the Director-General of the WHO would have no objection to the circulation of document EB.5/62.

9. The main reasons why the Director-General had suggested the deletion of article 7 were that, in his view, the texts suggested by the two organizations did not provide for all the aspects of the situation, and that article 6 amply covered what the Commission appeared to have in mind for article 7.

The Commission decided to consider article 7 at a later time.

Article 8

10. The CHAIRMAN drew attention to article 8 and to the comments on it contained in documents E/CN.365 and E/CN.353/Add.10.

11. Mr. RAMANDAN (Egypt) wished to state, in connexion with an account which had recently appeared in the United States press, that slavery had been abolished in Egypt in 1870, only a few years after its abolition in the United States. In 1877 Egypt had ratified a convention forbidding the slave trade. Shortly after, Egyptian troops had undertaken several expeditions into Central Africa, and in particular, Eritrea, to combat the slave trade in that region.

12. Mr. WHITLAM (Australia) remarked that his delegation had submitted amendments to article 8 on the basis of certain assumptions. Before he pressed those amendments, however, he wished to know whether the article had been referred to the ILO, and if so, with what results.

13. Mr. HUMPHREY (Secretariat) recalled that the text of article 8 had been discussed on several occasions, in particular at the third session of the Commission and by the Drafting Committee. The ILO had been duly consulted, and had suggested inclusion in the article, among the exceptions to what was to be regarded as forced labour, of the following text:

"Minor communal services of a kind which, being performed by the members of the community in the direct interest of the said community, can therefore be considered as normal civic obligations incumbent upon the members of the community, provided that the members of the community or their direct representatives shall have the right to be consulted in regard to the need for such services."

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That text had been based on a provision in the ILO Forced Labour Convention of 1930; it had since been amended by the Commission.

14. Mr. LEROY-BEAULIEU (France) said, with ^{respect} to paragraph 4 (d) which had replaced the ILO text, that the French Government had no desire to reopen earlier discussions, but wished to make it clear that its acceptance of the current text should not be construed as implying approval of the principle that the spirit or scope of collective international conventions, whether or not concluded under the auspices of the specialized agencies, could be modified in covenants dealing with human rights by means other than those available under the normal rules for revision provided for in those conventions.

15. He thought that paragraph 4 (b) would be simpler and clearer if it were amended to read as follows:

"Any service of a military character or exacted, in countries where conscientious objectors are recognized, in virtue of laws requiring compulsory national service".

16. Mr. HOARE (United Kingdom) agreed with the French representative that paragraph 4 (b) was badly drafted, but felt that the French amendment altered the substance and was therefore unsatisfactory.

17. The text as it stood provided that service exacted from conscientious objectors in countries in which they were recognized did not constitute forced or compulsory labour. Under the French amendment, however, any compulsory service exacted in virtue of a law from any person whatsoever would be permitted. The article might thus provide a loophole for any State wishing to introduce forced labour for any category of its citizens.

18. Mr. LEROY-BEAULIEU (France) thereupon suggested the following ^{redraft,} which would not confer a special privilege on conscientious objectors, and which he hoped the United Kingdom representative would find acceptable:

"Any service exacted by virtue of laws requiring military service including any service required of conscientious objectors in countries where they are recognized."

19. Mr. MENDEZ (Philippines) introduced his delegation's amendments to article 8 (E/CN.4/365). Paragraphs 1 and 2 should be merged into a single paragraph, for reasons of brevity and convenience. The words "to such punishment" should be eliminated from paragraph 3 -- as also suggested by the United States -- because the conception of punishment had been abandoned by modern criminology. The proposed new paragraph to be added at the end of the article contained the just and humane provision that prison labour should be paid for by the State.

20. Mr. RAMANDAN (Egypt) inquired whether martial law, which superseded ordinary laws, would apply to the provisions of article 8.

21. He suggested that in paragraph 3 of the article the word "final" should be inserted before the word "sentence".

22. Paragraph 4 (a) appeared ambiguous; he would prefer the phrase "the order of a competent court" to "the lawful order of a court", which gave the impression that a court might issue lawful and unlawful orders.

23. The CHAIRMAN remarked that the Egyptian representative's question concerning the effect of martial law was for the Commission itself to answer; article 4 seemed, however, to provide for just such a contingency.

24. Mr. MALIK (Lebanon) stated that any derogation from any article under part II of the draft covenant would fall under the purviews of article 4. He felt that the case of martial law would be covered by article 4.

25. Mr. HOARE (United Kingdom) thought that the case referred to by the Egyptian representative would be covered by article 8, paragraph 4 (c).

26. Mr. RAMANDAN (Egypt) thought that his case would be covered by article 4, paragraph 1, rather than by article 8, paragraph 4 (c).

27. Mrs. MEHTA (India) recalled that article 8 had been adopted after a lengthy discussion. Paragraph 4, in particular, was based on the ILO Forced Labour Convention of 1930. She herself had been instrumental in bringing

about the deletion of the clause dealing with minor communal services; the ILO representative had not wished that clause to be retained, feeling that it might be abused. Consequently, since the text of the article had been determined with the agreement of the ILO and after thorough consideration, the Indian delegation wished it to remain unaltered.

28. Mr. EVANS (International Labour Organisation) recalled that immediately before the fifth session of the Commission, the Governing Body of the ILO had considered the provisions of article 8. It was appreciated that the list of exceptions to forced labour included in the 1930 Convention was too lengthy for inclusion in the covenant. The ILO had therefore suggested that the original paragraph dealing with minor communal services might be replaced by the following text: "In communities in which it is traditional to perform local services in the interest of the community, such as services on minor public works or for transport of public officials and stores, these services shall be permitted but they shall be abolished in the shortest time possible." He pointed out that most of the exceptions permitted by the 1930 Convention had been intended for a transitional period following ratification and had never been considered permanent.

29. Mr. LEROY-BEAULIEU (France) ^{remarked} that the communal services of the kind referred to by the ILO existed in the metropolitan countries as well as in colonial territories and thought that they were covered by the provision concerning normal civic obligations in paragraph 4 (d).

30. Mr. MENDEZ (Philippines) observed that the provision concerning conscientious objectors might be taken up in connexion with article 16, which dealt with the freedom of thought, conscience and religion.

31. Miss SENDER (International Confederation of Free Trade Unions) wished to make two suggestions on behalf of her organization. It would be advisable to include in article 8 a definition of forced labour based on that of the ILO Convention. Moreover, in order to guard against the possibility that a person was ordered to do forced labour by an administrative board before which he never appeared, by which he was not informed of his crime and given no opportunity to
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defend himself, paragraphs 3 and 4(a) should contain the idea that forced or compulsory labour could be prescribed only by an independent court and that the judgment was to be given by due process of law. She urged the Commission to consider those two points.

32. The CHAIRMAN, speaking as representative of the United States, introduced the amendments to article 8 submitted by her delegation (E/CN.4/365).

33. The transposition of the phrase "in all their forms" in paragraph 1 was a minor drafting change in the interest of clarity.

34. In paragraph 2, the word "servitude" should be replaced by "peonage or serfdom". The discussion at the fifth session had shown that the Commission had intended to deal with those forms of domination rather than with servitude as such, since the latter concept was closely related to forced labour which was covered in paragraph 3.

35. In paragraph 3, the United States delegation wished to insert a reference to involuntary servitude and to amend the latter part along the lines of the language used in the ILO Convention of 1930; however, the United States draft would permit the imposition of forced labour only as a consequence of a conviction of a crime. Prison management in the United States had been put largely on a modern basis, and great efforts had been made to rehabilitate prisoners by means of suitable work. The question of the work to be performed was settled by prison boards and administrators, rather than judges, for the reason that the former were in a better position to study actual conditions in the prisons. That system would be crippled if it were left to judges to impose work sentences. She pointed out that the word "involuntary" before "servitude" had been inserted to permit the conclusion of voluntary contracts for services.

36. With respect to paragraph 4, the United States suggested only the deletion of sub-paragraph (a), also recommended by the Australian delegation. While the United States sympathized with the aims of that sub-paragraph, the reference to hard labour was far from clear, since what might be regarded as hard labour for some persons would not be so for others. Furthermore, under that provision, such labour might be imposed on persons not convicted of a crime but merely imprisoned for a minor offence or detained by the order of a court. Finally, it was obvious that what might be described as ordinary "housekeeping"

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work should not be prohibited; for that reason, it did not appear in the ILO list of exemptions. Such work might be required to be performed not only in prisons but in various other institutions and should not be referred to in the covenant, which could not be expected to cover all possible situations.

37. She was prepared to accept the French representative's latest redraft of paragraph 4(b).

38. She did not think that the definition of forced labour contained in the ILO Convention should be inserted in article 8, as it would unduly restrict the scope of the article.

39. Mr. HOARE (United Kingdom) invited the Commission's attention to the amendment (E/CN.4/388) to article 8, paragraph 4(a), which his delegation had submitted.

40. Concerning the Australian suggestion, he noted that the text of article 8 was substantially in accordance with the International Labour Organisation's Forced Labour Convention of 1930, so that in that respect the article appeared to be acceptable as currently drafted.

41. He wished to comment briefly upon the amendments submitted by the United States delegation (E/CN.4/365, pages 27 and 28). The amendment to paragraph 1 was a drafting change and, as such, was acceptable to his delegation. He could not, however, support the suggested substitution of the words "peonage or serfdom" for the word "servitude" in paragraph 2. It was the intention of the paragraph to pass from slavery to a different objectionable type of human relationship, namely the complete domination of one individual by another. While "servitude" might not be the most apposite term, "peonage and serfdom" were too limited in scope. The word "peonage" had no precise connotation in European countries; it might be possible to include it in paragraph 2, but it should not be substituted for "servitude". As for the word "serfdom", it was a concept dating back to the feudal system and could not properly reflect the realities of the modern era. Unless therefore a better word could be found for the word "servitude", he favoured the retention of that word and was opposed to the substitution of the words "peonage and serfdom".

42. Mr. LEROY-BEAULIEU (France) shared the views just expressed by the United Kingdom representative. He had been glad to note that the latter seemed to favour a broader and less specific term. The word "servitude" had the advantage of not implying any limits either in time or space, whereas the words "serfdom" and "peonage" implied forms of personal dependence closely associated with specific periods of history or parts of the world.

/43. Mr. HOARE

43. Mr. HOARE (United Kingdom) while appreciating the French representative's support, explained that he preferred the word "servitude", not because it appeared to him to be broader in meaning, but because the meaning of the substituted suggested was not very clear. It was for the sake of clarity that he favoured the retention of the word "servitude".

44. Article 8, paragraph 3 presented certain difficulties. It envisaged that forced or compulsory labour could be imposed upon a person pursuant to a sentence to such punishment by a competent court. His delegation was opposed to that proviso and suggested the deletion of the clause in question, namely, the deletion of the words beginning with "except pursuant..." and ending with "...a competent court". If, however, the majority of members felt that the deletion would present serious difficulties and consequently supported the retention of the entire paragraph, his delegation could accept the paragraph as it stood. He feared that the United States amendment to the paragraph would further weaken the already attenuated safeguards it contained and might thus render anyone under any prison sentence liable to forced or compulsory labour, whereas the present wording required a specific sentence to such labour. The United States amendment did not therefore appear to be an improvement, and his delegation was opposed to it. He formally moved his delegation's amendment to delete the part of the paragraph to which he had referred.

45. The United States criticism of article 8, paragraph 4(a) seemed to be justified to some extent: routine prison and institution work -- what the United States delegation had described as "housekeeping" work -- was certainly not within the framework of the article. It was the purpose of the United Kingdom amendment (E/CN.4/388) to make that point clear.

46. His delegation would accept article 8, with the amendments to it which it had made, and with the United States amendment to paragraph 1, as well as with the French amendment to article 8, paragraph 4(a) (E/CN.4/365, page 29), as verbally amended by the French delegation during the present meeting.

47. Mr. WHITLAM (Australia) stated that the discussion had been helpful to his delegation. He regarded the United States amendment to paragraph 1 as an important clarification.

48. Paragraph 2 offered certain difficulties to his delegation. Taken literally, it might be construed as providing a basis for a claim to immunity by a servant under an ordinary master-and-servant contract, although that obviously was not the intention of the paragraph. The aim of the paragraph was to avoid bondage. The United States amendment to the paragraph was an improvement and his delegation was ready to support it.

49. He agreed with the United Kingdom representative on paragraph 3 and supported the latter's amendment thereto.

50. He also supported the United Kingdom amendment to paragraph 4 (a). As for paragraph 4 (b) he noted that the word "service" which had been included in the original draft, reproduced in document E/800, had been omitted, presumably as a result of a typographical error. At any rate he considered that the word should be restored.

51. Since the discussion had shown that the ILO had been fully consulted and that its views had been borne in mind, his delegation would not press its own previous proposals.

52. Mr. EVANS (International Labour Organisation) wished to remind the Commission that article 2, paragraph (c) of the Forced Labour Convention of 1930 excluded from the term "forced or compulsory labour" inter alia "any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations." He also wished to make it clear that his previous reference to a "transitional period" (Forced Labour Convention, article 1) had not been intended to refer to the kinds of work or service which were excluded from the definition of forced or compulsory labour, such as military service or normal civic obligations.

53. Mr. MALIK (Lebanon) supported the United States amendment to article 8, paragraph 1. He also considered it preferable not to merge paragraphs 1 and 2, since they dealt with two different levels of domination of man by man. Paragraph 2 dealt with a more general form of such domination. While it was purely a drafting matter, he would prefer, for the sake of form, to keep the two paragraphs separate.

/54. He would

54. He would also prefer to retain the word "servitude" for the sake of eliminating all forms of domination contrary to the dignity of man.

55. The United Kingdom representative had suggested the deletion of the exemption clause in paragraph 3, and Mr. Malik agreed with him. He noted, however, that some States still imposed hard or forced labour. Since it was desirable to obtain the adherence of as many States as possible to the draft covenant, it might be well to facilitate the adherence of such States by the retention of the clause in question. He wished however to make it clear that he entirely shared the opinion of the United Kingdom representative that it would be desirable if the penal laws of the nations were to eliminate completely the possibility of requiring anyone to perform forced or compulsory labour.

56. He shared the fears of the United Kingdom representative concerning the United States amendment to paragraph 2 and stated that he could not support that amendment for the reasons given by the United Kingdom representative.

57. He welcomed the suggestion made by the representative of the International Confederation of Free Trade Unions (ICFTU) that the words "and independent" should be inserted after the word "competent" in paragraph 3. He moved the insertion of the two words as an amendment to the paragraph.

58. Turning to paragraph 4, he stated that he favoured the deletion of sub-paragraph (a). If it were decided to retain that article, he would favour the United Kingdom amendment (E/CN.4/388), provided that the United Kingdom representative were prepared to accept the insertion of the word "routine" before the word "work", an insertion which would more nearly align the sub-paragraph with the other paragraphs of article 8.

59. He agreed with the Philippine representative that part of the substance covered by article 4 (b) should be considered in connexion with article 16. It would therefore be well to regard the decision on article 4 (b) as tentative, pending consideration of article 16.

60. In connexion with the question of conscientious objectors, he noted that the Service civil international had submitted an interesting document giving details of the legislative and administrative legal provisions regarding the situation of conscientious objectors in 34 countries. That document had been referred to in document E/CN.4/NGO.1, in a footnote on page 2. He suggested that the Commission should request the Secretariat to distribute it.

61. While reserving final judgment on the revised French proposal, Mr. Malik was inclined to regard it as acceptable.

62. Finally sub-paragraphs (c) and (d) were acceptable to his delegation as currently drafted.

63. The CHAIRMAN asked whether there were any objections to the suggestion of the Lebanese representative concerning the distribution of the document submitted by the Service civil international.

There being no objections, it was decided to request the Secretariat to distribute the document in question.

64. Mr. HOARE (United Kingdom) did not think that he could accept the Lebanese representative's suggestion concerning the insertion of the word "routine", although that suggestion appeared most attractive at first sight. Paragraphs 3 and paragraph 4 (a) must be considered together. His amendment to paragraph 4 (a) had been designed to eliminate forced or compulsory labour without however interfering with the normal detention requirements. It was not only a question of what the United States delegation had called "housekeeping" tasks but also of reformatory and rehabilitation measures such as might occur, for example, in the case of prisoners assigned to farm and forestation work. There should be no interference with salutary attempts of that kind to reclaim a prisoner as a member of society, and his amendment sought to bear that in mind by using the words "in the ordinary course of detention". It would therefore be better to avoid using the word "routine". Paragraphs 3 and 4 (a) appeared to involve an inconsistency which could be avoided if the exemption clause in paragraph 3 were omitted, as proposed by his delegation. He wondered whether any court would really impose what the draft covenant itself termed forced or compulsory labour.

65. The CHAIRMAN, speaking as the representative of the United States of America, said that her delegation could agree to the deletion in paragraph 3 suggested by the United Kingdom representative, as well as to the latter's amendment to paragraph 4 (a).

66. Mr. WHITLAM (Australia) thought that article 8 as emerging from the present discussion was more or less acceptable to his delegation with the exception of paragraph 2, in connexion with which there continued to be an uncertainty regarding the most apposite words to be used. It was his opinion that the article as such was aimed at the prevention of bondage in any form. While slavery was the best known and worst form of such bondage, there continued to exist in modern society other forms of bondage tending to reduce the dignity of man. It had been said that the words "peonage and serfdom" constituted an inexhaustive particularization, while the word "servitude" carried a sinister connotation for some but not for all delegations. He wondered whether the problem could not be solved by the insertion of the word "involuntary" before the word "servitude". He would be glad to know if that possibility had been previously discussed.

67. Mr. MALIK (Lebanon) recalled that the exemption clause now included in paragraph 3 had originally figured among the exceptions listed under paragraph 4. It had however been rightly pointed out that paragraph 3 dealt with certain penal systems under which forced and compulsory labour could be imposed and that a distinction should be made from other forms of involuntary labour which were not regarded as forced or compulsory. Paragraph 3 specifically and admittedly dealt with forced or compulsory labour, and the exception should be contained in that paragraph. The activities contemplated in paragraph 4 on the other hand were not called forced labour nor were they that in fact. The article dealt with ordinary prison routine. Viewed in that light it became clear that paragraph 4 did not deal with exceptions to the principles prescribed in paragraphs 1, 2 and 3 and that the activities it dealt with were not to be subsumed under the category of forced labour. The exemption clause should therefore be retained in paragraph 3. However desirable its total deletion might be, it was to be feared that such a deletion would make it difficult for certain countries to adhere to the draft covenant.

68. If the word "involuntary" were to be inserted in paragraph 2, as had been suggested by the Australian representative, it would enable people to sell themselves deliberately into servitude. Such a provision would be wrong in itself, quite apart from the fact that it would open the door to abuse. The draft

covenant should set up objective standards of human dignity which could not be violated even by the people themselves. It was therefore preferable to retain the word "servitude" without qualifications.

69. Mr. RAMANDAN (Egypt) pointed out that in the French text of article 8, paragraph 4 (c), the word "crimes" should read "crises".

70. He recalled that, as previously stated, his Government did not recognize "conscientious objectors".

71. Mr. WHITLAM (Australia) was disposed to accept the word "servitude" in view of the explanation given by the Lebanese representative. He thought that the discussion had tended to give to the term "servitude" a connotation different from any normal contractual obligations between persons competent to contract such obligations. He understood that the records of previous discussions on that subject as well as the record of the present discussion made that point clear. He would consequently withdraw his suggestion to insert the word "involuntary", and was disposed to accept the unqualified word "servitude". He wondered, however, whether it would not be wise to insert the words "or servitude" in paragraph 1 to make it clear beyond doubt that the word was considered inapplicable to voluntary contractual engagements by competent persons.

72. The CHAIRMAN noted that a similar suggestion had been made by the Philippine delegation (E/CN.4/365, page 28).

73. Mr. CHANG (China) supported the remarks of the Lebanese representative concerning paragraphs 2 and 3. He referred to article 4 of the Universal Declaration of Human Rights in connexion with the use of the word "servitude" and concluded that there was no need to qualify the word "servitude" at the present late stage.

74. Mr. LEROY-BEAULIEU (France) maintained that the original text was preferable to that proposed by the Australian and Philippine delegations, because, although servitude and slavery were frequently confused, there was a clear distinction in law: slavery implied the destruction of the juridical personality, whereas servitude, in the strict meaning of the word, implied only a state of complete personal dependence. The Commission had had adequate reasons for separating the two paragraphs; that separation should be retained.

/75. Mr. MALIK

75. Mr. MALIK (Lebanon) supported the French representative's view. The Commission had originally agreed with the Australian representative's view that the text of the Universal Declaration should be reproduced, but had subsequently come to the conclusion that in a legal document each separate idea should be embodied in a separate paragraph.

76. Mr. RAMANDAN (Egypt) agreed with the French representative. Slavery had been abolished in the legal systems of many countries which, however, permitted various forms of servitude.

77. Mr. MENDEZ (Philippines) objected that the prohibition of servitude was not sufficiently emphasized in the existing text. Furthermore, the combination of the two ideas in one paragraph would make it clear that the prohibition extended to the slave and the person held in servitude as well as to the owner or master; no one should be permitted to affront human dignity by acquiescing in his own servitude. In the existing text of paragraph 2, moreover, there was nothing suggesting legal measures to prevent servitude; such a form of language was improper to an international instrument.

78. Mr. WHITLAM (Australia) said that the Commission should hesitate to question the value of any form of words sanctioned in the Universal Declaration. He would therefore formally propose that the text of the Declaration should be reproduced in paragraphs 1 and 2. If that proposal was rejected, he would vote for the Philippine amendment (E/CN.4/365); and, if that were not adopted, he would abstain from voting on paragraph 2.

79. Mr. MALIK (Lebanon) deprecated the observation of the Australian representative. The wish to depart from the text of the Declaration implied no lack of regard for that document. Various instruments, however, had various purposes and forms; moreover, if the Commission followed the Australian representative's line of reasoning, paragraphs 3 and 4 would have to be deleted. The Commission had felt that the ideas embodied in the Declaration should be expressed in greater detail for the purposes of the covenant, and had therefore separated the paragraph dealing with slavery from that referring to servitude.

Slavery was a relatively limited and technical notion, whereas servitude was a more general idea covering all possible forms of man's domination by man. If both ideas were combined in a single paragraph, the notion of slavery would predominate and the prohibition of servitude would thus be weakened.

80. The CHAIRMAN called for the vote on article 8, paragraph 1 and the amendments thereto.

The United States amendment to paragraph 1 (E/CN.4/365) was adopted unanimously.

The Australian amendment (E/CN.4/353/Add.10) to paragraph 1, thus amended, was rejected by 4 votes to 2, with 6 abstentions.

The Philippine amendment (E/CN.4/365) to paragraph 1 as amended was rejected by 4 votes to 2, with 7 abstentions.

The original text of paragraph 1 (E/1371), as amended, was adopted by 12 votes to none, with 1 abstention.

81. The CHAIRMAN called for the vote on article 8, paragraph 2 and the amendment thereto.

The United States amendment (E/CN.4/365) to paragraph 2 was rejected by 8 votes to 1, with 4 abstentions.

The original text (E/1371) of paragraph 2 was adopted by 12 votes to none, with 1 abstention.

82. Mr. KYROU (Greece) explained that he had voted for paragraph 2 on the understanding that, in the light of the discussion, the word "servitude" would be taken to mean "peonage or serfdom" and be interpreted within the framework of article 4 of the Universal Declaration of Human Rights.

83. Mr. RAMANDAN (Egypt) thought that the wording of the exemption clause in paragraph 3 was vague. He therefore proposed the insertion of the word "final" between the words "pursuant to a" and the word "sentence" (E/CN.4/390).

84. He wished to ask the representative of Lebanon the precise meaning of his amendment to paragraph 3 to the effect that the words "and independent" should be inserted after the word "competent"; it implied that some tribunals were not independent.

/85. Mr. MALIK

85. Mr. MALIK (Lebanon) observed that those words appeared in article 10 of the Universal Declaration and in article 13 of the draft covenant. The Commission wished to emphasize its belief that tribunals which were not independent unfortunately existed in some countries.

86. Mr. RAMANDAN (Egypt) drew a distinction between the statement of general principles embodied in the Declaration and the strictly legal provisions of the covenant. It would be most improper to suggest to courts in a strictly legal document that they might be partial or not independent.

87. The CHAIRMAN called for the vote on paragraph 3 and the amendments thereto. The United Kingdom amendment was for the deletion of the exception laid down in that paragraph.

The United Kingdom amendment to paragraph 3 was adopted by 7 votes to 2, with 4 abstentions.

Paragraph 3, as amended, was adopted by 10 votes to 1, with 1 abstention.

88. Mr. MENDEZ (Philippines) said that he had abstained from voting in the expectation that the vote would be taken upon the United States amendment (E/CN.4/365).

89. The CHAIRMAN pointed out that the adoption of the United Kingdom amendment had eliminated the other amendments to paragraph 3.

90. Mr. LEROY-BEAULIEU (France) observed that it was very hard for his delegation to accept the deletion of the exemption clause in paragraph 3, because his Government recognized the imposition of hard labour as a sentence and although it was of course opposed to forced labour, there was, as the text stood, no means of distinguishing clearly "hard labour" imposed as a sentence from "forced labour". The only place at which that exception had been appropriately expressed had been in the exemption clause in paragraph 3. Since the Commission was voting on both the French and the English text, he had been placed in a virtually impossible position with regard to the vote on paragraph 4.

/91. Mr. RAMANDAN

91. Mr. RAMANDAN (Egypt) moved the adjournment in order to give time for further reflection upon that difficulty.

The motion for adjournment was rejected.

92. Mr. HOARE (United Kingdom) thought that the French representative's objection was covered by the United Kingdom amendment to sub-paragraph (a) of paragraph 4 (E/CN.4/388). The adoption of the United Kingdom amendment to paragraph 3 had implied the complete prohibition of forced and compulsory labour, but that to paragraph 4 (a) would provide the requisite exception covering sentences to hard labour.

93. Mr. LEROY-BEAULIEU (France) wondered ^{whether} / the vote on paragraph 3 might not be reconsidered, in view of the close connexion between it and paragraph 4.

94. The CHAIRMAN thought that paragraph 3 could be more appropriately reconsidered during the second reading.

95. She requested the Commission to take action on paragraph 4, and announced that the United States delegation had withdrawn its amendment to sub-paragraph (a) (E/CN.4/365) in favour of the United Kingdom amendment (E/CN.4/388).

96. Mr. MALIK (Lebanon) observed that the effect of the United Kingdom amendments would be the deletion of the exemption clause from paragraph 3 and its reintroduction in paragraph 4. That was undesirable, since the imposition of compulsory labour would be left to the prison authorities rather than to the competent courts and the way would thus be opened to arbitrary action. Furthermore, an idea would be introduced into paragraph 4 which had never been intended. He had suggested to the United Kingdom representative that that could be avoided by the insertion of the word "routine" into his amendment but that suggestion had not been accepted. The considerations at issue were so vital that the Commission should be given more time to reflect upon them.

/97. The CHAIRMAN

97. The CHAIRMAN agreed with the Lebanese representative's request for maturer consideration.

98. At the suggestion of the Australian representative, she proposed that the three committees suggested by the Secretary-General in his note (E/CN.4/373) should be set up at the following meeting.

It was so decided.

The meeting rose at 5.45 p.m.