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Sixth Session

SUMMARY RECORD OF THE ONE HUNDRED AND FORTY-FOURTH MEETING

Held at Lake Success, New York,
on Monday, 3 April 1950, at 11 a.m.

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<u>Chairman:</u>	Mrs. ROOSEVELT	United States of America
<u>Members:</u>	Mr. WHITLAM	Australia
	Mr. STEYAERT	Belgium
	Mr. SANTA CRUZ	Chile
	Mr. CHANG	China
	Mr. SORENSON	Denmark
	Mr. RAMADAN	Egypt
	Mr. ORDONNEAU	France
	Mr. KYROU	Greece
	Mrs. MEHTA	India
	Mr. MALIK	Lebanon
	Mr. MENDEZ	Philippines

Members (contd.):

Mr. HOARE	United Kingdom of Great Britain and Northern Ireland
Mr. ORIBE	Uruguay
Mr. JEVREMOVIC	Yugoslavia

Also present: Mrs. CASTILLO LEDON Commission on the Status of Women

Representatives of non-governmental organizations:

<u>Category A:</u>	Mrs. BERG	World Federation of United Nations Associations (WFUNA)
	Miss SENDER	International Confederation of Free Trade Unions (ICFTU)
<u>Category B:</u>	Mrs. VERGARA	Catholic International Union for Social Service
	Mr. NOLDE	Commission of Churches on International Affairs
	Mr. BERNSTEIN	Co-ordinating Board of Jewish Organizations
	Miss SCHAEFER	International Union of Catholic Women's Leagues
	Mr. SCHMIDT	Pax Romana Organization - International Movement of Catholic Students
<u>Secretariat:</u>	Mr. HUMPHREY	Director of the Division of Human Rights
	Mr. LIN MOUSHENG	Secretaries of the Commission
	Mr. DAS	

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

Article 5 (E/CN.4/387 E/CN.4/398) (continued)

1. The CHAIRMAN, speaking as the representative of the United States of America, stated that after careful consideration of the proposals submitted with regard to article 5, she had come to the conclusion that the text submitted by the United States and Chilean delegations provided the best solution. She would, therefore, vote for that text and against all the other proposals submitted.

2. The French proposal was not satisfactory; its first sentence was far too general and the second, while introducing certain restrictions, was incomplete. In connexion with the United Kingdom text, she drew the Commission's attention to document E/CN.4/383, which put forward objections by the United States delegation to the adoption of that proposal. Finally, although the actual text of the Indian proposal was satisfactory as far as the Universal Declaration of Human Rights was concerned, it would not be satisfactory for the covenant.

3. In conclusion, she regretted that there was no really satisfactory solution of the problem, but thought that the text submitted by the United States and Chilean delegations provided the simplest and most practical solution.

4. Mr. ORDONNEAU (France) withdrew the first part of his amendment and accepted the substitution of the Indian version, to read: "Everyone has the right to life, to take life shall be a crime..."

5. He observed that the words "légitime défense" had been translated into English as "self-defence"; the latter term seemed to be much vaguer than the notion of "légitime défense" in French law.

6. Mrs. MEHTA (India) said that she had reproduced the text of the Declaration owing to difficulties in drafting. She requested the Chairman, in the event that the Philippine proposal was rejected, to put to the vote the question whether the Commission wished paragraph 1 to be drafted positively or negatively. If it was decided that it should be drafted positively, the Commission would then have to take action only on the French and Indian proposals. If the contrary were the case, it could confine itself to the United Kingdom proposal and that of the United States and Chile.

7. Mr. JEVREMOVIC (Yugoslavia) said that the Yugoslav amendment should be regarded as an addition to paragraph 4, not as a substitution. It was true that no form of amnesty existed in some countries while in others there were laws prohibiting amnesty for certain offenses. The Yugoslav amendment was, therefore, somewhat restricted, but it would be of some use and would satisfactorily round out paragraph 4.

/8. He supported

8. He supported the French text for paragraph 1, which he considered very satisfactory, particularly now that the French representative had himself amended it.

9. He preferred the existing text of paragraphs 2 and 3. He was in favour of the Egyptian amendment, but asked the Egyptian representative not to stipulate the exact age, since the age at which majority was attained was not the same in all countries. He suggested that the words "who have not yet attained their majority¹⁾" should be substituted for the words "under 17 years of age". Furthermore, the paragraph as a whole dealt with the death penalty; it might be inappropriate to refer in it to hard labour, although that penalty should be prohibited for offenders who were minors.

10. Mr. RAMADAN (Egypt) said that he had merely reproduced a provision which appeared in the penal code of his country. He was not opposed to the Yugoslav suggestion but must point out that the expression "who have not yet attained their majority"¹⁾ was vague.

11. Mr. HOARE (United Kingdom) reminded the Commission that he had explained why he believed that the text of article 5 should be regarded, not as a general statement of principles to be applied and aims to be achieved, but as a legal text stipulating as precisely as possible the obligations which would be incurred by the States signatories to the Convention. The United Kingdom text was the only one of all the texts proposed for that article which defined those obligations with the greatest possible precision.

12. He had done his best to reply to the United States objections (E/CN.4/383), and he had not heard any other objections of substance.

13. The purport of the Philippine amendment was to leave nothing but the question of the death penalty in article 5. That was not sufficient; the attempt should be made to decide exactly what constituted an offence and what exceptions to the general principle could be authorized. If the Commission accepted the opinion of the Secretary-General (E/CN.4/387), Mr. Hoare would have to vote against the Philippine amendment, in view of the consequences which it would entail.

1) provisional translation

14. The CHAIRMAN stated that the Philippine proposal obviously meant that article 5 dealt primarily with capital punishment. The adoption of the proposal would not, however, mean that the text in question could not subsequently be included in another article.

15. Mr. RAMADAN (Egypt) said that the declaration could contain petitiones principis, but that the covenant would be a legal instrument. It would, therefore, be better to merge the first two paragraphs, the first paragraph being, in fact, a petitio principii. He was against setting forth the cases in which the death penalty was permitted, which would be a formidable undertaking. It might well be asked, for example, if euthanasia could be permitted.

16. Mr. WHITLAM (Australia) could not see how general agreement could be reached on the text of article 5 as long as it remained in its initial form. He was not at all opposed to the provision contained in the Declaration; the problem was how to translate the general principle which appeared in the Declaration into a provision to be included in the covenant, which would thus become a provision in positive international law.

17. He would have preferred two articles to one: the first could have dealt with capital punishment, the second with the deprivation of life by the State or by an individual. If that solution were accepted, there would no longer be any divergence of opinion. In the circumstances, however, Mr. Whitlam would support the Philippine proposal which, if adopted, would make it possible to re-examine the problem on a different plane and might help to crystallize ideas. If the Philippine proposal were rejected, Mr. Whitlam would support the United Kingdom proposal.

18. Mr. MALIK (Lebanon) noted that the article under consideration presented many difficulties. Its full scope appeared not to have been understood as yet. He agreed with Mr. Hoare that in the case of a document such as the covenant, an article concerning so fundamental a right as that to life, should be drafted as precisely and fully as possible. On the other hand, it was true that there appeared to be an almost unlimited number of exceptions to such a clause.

/19. The problem

19. The problem was, therefore to reconcile those two points of view and to draft a text which would be sufficiently precise to cover all probable cases and the interpretation of which could not give rise to discussion.

20. The United Kingdom representative had raised the fundamental problem of whether the Commission was trying to protect human life against actions by the State, or against actions by private persons as well as by the State. That dilemma must be resolved. Obviously the Commission could not examine the national penal codes of every country. It was, however, true that the signatories to the covenant would formally undertake to apply the provisions contained in that instrument.

21. He thought it might be stated that it was the duty of every State to protect human life by law, without mentioning cases in which death was inflicted by a private person and without entering into details of all the cases in which life must be protected and persons violating the penal code must be punished.

22. Such a provision would oblige the signatory States to have a satisfactory penal code. The Commission would no longer have to worry about exceptions and could consider the question of capital punishment and study the specific exceptions mentioned in the United Kingdom text.

23. According to Mr. Malik, four different considerations had to be covered in the provisions of article 5:

1. The article should contain a fundamental affirmation of the sacred character of human life. The French text, as amended by Lebanon, was entirely satisfactory in that respect.

2. Article 5 should include a clause providing that each State would protect human life in its own penal code. In that connexion, Mr. Malik submitted the following text: "Everyone's right to life shall be protected by law". It would not be possible to discriminate in the application of such a clause, given the provisions of article 20 concerning non-discrimination. Consequently, the text would adequately cover all the violations of the right to life by a private person.

3. Article 5 should include a clause concerning capital punishment. Mr. Malik suggested the following text:

"Intentional deprivation of life may not be effected, save as capital punishment in countries where such punishment exists, and then only in execution of a law and in virtue of the sentence of an independent and competent court".

/4. Finally,

4. Finally, there were certain cases that might be enumerated specifically in which death would not be regarded as having been inflicted intentionally when it had been caused by State officials acting in accordance with regular orders received by them. Mr. Malik suggested the following text: "Deprivation of life by officials of the State shall not be regarded as intentional when it results from the use of force which is no more than absolutely necessary for the performance of their official duties.

"(i) in defence of any person from unlawful violence;

"(ii) in effecting a lawful arrest or to prevent an escape from lawful custody; or

"(iii) in action lawfully taken for the purpose of quelling a riot or insurrection, or for prohibiting entry to a clearly defined place to which access is forbidden on grounds of national security."

24. An article containing those four different provisions would thus cover all possible cases. Mr. Malik was in any case prepared to accept amendments which might improve his text. What mattered was to protect the life of all persons against abuse of force by the State.

25. Mr. WHITLAM (Australia) thought that the Commission would hardly be able to vote on the various texts proposed for article 5 after hearing the statement just made by Mr. Malik. He suggested that a detailed study should be made of Mr. Malik's proposal and thought that it would be a great mistake not to consider all the possibilities it offered of reaching general agreement on a text regarding a right that was as fundamental as the right to life.

26. Mr. ORIBE (Uruguay) agreed with Mr. Whitlam that the vote on article 5 should be deferred until the members of the Commission had had an opportunity to consider the Lebanese suggestion.

27. Mr. Oribe would vote in favour of the Philippine proposal to delete paragraph 1 because, in his opinion, the covenant should seek to establish definite relationships between individuals and the State. He agreed with Mr. Malik, however, that the relationships between individuals must be taken

/into account

into account. He hoped that a text could be found, based on the Lebanese proposal, which would prove satisfactory to all.

28. Mr. Oribe expressed the view that the proposal of the United States of America and Chile in connexion with paragraph 1 would in actual fact have the same effect as the Philippine proposal. The insertion of the word "arbitrarily" in paragraph 1 would limit the scope of article 5 to capital punishment alone. Prohibition of arbitrary deprivation of life would authorize deprivation which was not arbitrary. The exact meaning of "arbitrarily" must therefore be defined; in considering the draft Universal Declaration of Human Rights, the Third Committee had interpreted "arbitrarily" as the opposite of "legally".

29. Accordingly, insertion of the word "arbitrarily" in paragraph 1 would mean that deprivation of life was prohibited when such action was not legal, and death could only be inflicted legally when the death penalty had been imposed by a tribunal. The adoption of the proposal of the United States and Chile would therefore restrict the scope of article 5, as Mr. Hoare had feared.

30. The CHAIRMAN, speaking as the representative of the United States of America, stated that the word "arbitrarily" introduced in the proposal of the United States and Chile was used in its generally accepted sense. She admitted that the choice of the word was perhaps not perfect but she felt that it was the most acceptable word.

31. She considered that if the word "arbitrarily" were inserted in paragraph 1, the text of that paragraph would retain its positive character while allowing of certain exceptions.

32. Mr. ORIBE (Uruguay) reminded the Commission that it was generally recognized that the law was opposed to the arbitrary. That interpretation would determine his vote.

33. Mr. HOARE (United Kingdom) noted that Mr. Malik sought to classify in four different categories the component elements of the text of paragraph 5 and had stated that the fourth category which he contemplated covered the cases listed in paragraph 3 of the United Kingdom text. That text was, however, drafted in very general terms and the acts listed in it were not necessarily

/those of

those of government officials. Thus, it was the duty of any United Kingdom citizen not only to help officials empowered to apply the law, but even in urgent cases to take the initiative and enforce the law. The fourth category mentioned by Mr. Malik could therefore be eliminated because it duplicated the second.

34. Mr. MALIK (Lebanon) did not think that the text he had proposed for article 5 made it indefinite. Mr. Hoare had pointed out that only the first three categories would be necessary and that the fourth category could be eliminated since the provisions it contained were present in the various penal codes or were already accepted practices. He was correct in that the provisions included in the fourth category should form part of a penal system. The provisions of the second category, however, applied to the penal code as a whole; on the other hand, the provisions of the fourth category sought to remove from the exclusive jurisdiction of national penal codes certain cases on which all members of the Commission could reach agreement, and to bring them within the framework of international penal law. Thus, the provisions of the fourth category sought to limit the prerogatives of the State, thereby constituting a step forward.

35. The CHAIRMAN proposed deferment of the vote on the various proposals relating to article 5, and that Tuesday afternoon should be the time limit for the submission of further amendments.

It was so decided.

Article 9

36. The CHAIRMAN invited the Commission to examine article 9. She recalled that the Commission had decided that no vote would be taken on the article as a whole until a final vote had been taken on article 4.

37. It was to be expected that the discussion on article 9 would be difficult.

38. She read out paragraphs 1 to 6 of the article and recalled that the representatives of Australia, Denmark, France, Lebanon and the United Kingdom had proposed the insertion in that article of a list of exceptions to the principle that no one could be deprived of his liberty.

39. Mr. RAMADAN (Egypt) thought that the French text of paragraph 2 of article 9 was badly worded and that paragraphs 3, 4 and 5 were lacking in precision. For example, paragraph 4 provided that anyone arrested or detained on the charge of having committed a crime or of preparing to commit a crime was to be entitled to trial within a "reasonable time". He asked what criterion was to be used in determining that time. Similarly, paragraph 5 provided that everyone who was deprived of his liberty by arrest or detention should be entitled to take proceedings by which the lawfulness of his detention would be decided "speedily". There again, the exact time ought to be specified, for the covenant was a legal convention which must be drafted in very precise terms.

40. Speaking in her capacity as representative of the United States of America, the CHAIRMAN said that in her view article 9 should be examined paragraph by paragraph. Paragraphs 1 and 2, however, should be examined together.

41. The United States delegation was in favour of the existing text of paragraphs 1 and 2. The Commission had already decided at its sessions in 1947, 1948 and 1949 to incorporate those texts in the covenant. It could hardly do otherwise than confirm its preceding decisions.

42. The Drafting Committee had made a detailed study of the text of the first part of article 9. In the course of its examination of the United Kingdom proposal to insert a list of exceptions to the principles stated in the article, it had drawn up a list of about forty exceptions and had concluded that if a complete list of all exceptions were to be drawn up, the number would be greater still. When, at its session in 1949, the Commission had examined the list prepared by the Drafting Committee and the proposal of the United Kingdom reducing that list to five cases, it had rejected the proposal to include those exceptions in article 9. The United Kingdom was now reintroducing its proposal, and she thought that the Commission should again reject it. If a list of exceptions were incorporated in article 9, that would be tantamount to making the Covenant a restrictive document. She thought therefore that the existing text of paragraphs 1 and 2 was much to be preferred to the one proposed by the representative of the United Kingdom.

/43. The list

43. The list of exceptions to article 9 proposed by the United Kingdom representative raised the same difficulties as the exceptions proposed for article 5. It was possible to quote as examples many exceptions not envisaged by the United Kingdom representative, such as: 1. the detention of a minor by his parents, not by lawful order for the purpose of educational surveillance; 2. the detention of a person in order to protect him against attack; 3. the detention of a person under a quarantine regulation; 4. accidental or involuntary detention; 5. the detention of a witness in order to ensure his appearance before a court or for his protection; 6. the detention of an accused person in order to bring an action for some offence before a civil court; 7. the constraint exercised over members of a legislature by parliamentary ushers in order to obtain a quorum; 8. the arrest and detention of a person on the order of the President of a legislative assembly for contempt of that assembly; 9. the detention of a seaman for insubordination on the order of a ship's master; 10. under British legislation the voluntary detention with full consent of inveterate drunkards; 11. under the same legislation, the detention of paupers until they were authorized to leave an institution.

44. Even if all those exceptions were incorporated into article 9, the list would still be incomplete. She did not think, therefore, that the United Kingdom representative's views should be adopted, but that on the contrary the existing text of paragraphs 1 and 2 should be retained.

45. Mr. HOARE (United Kingdom) said that after the statement of the United States representative he found it rather difficult to speak in favour of incorporating a list of exceptions in article 9. However, he was not the only one to advocate such an insertion. His proposal had been approved by the representatives of Australia, Denmark, France and Lebanon, and the Egyptian representative had just made a speech in favour of the proposal.

46. He agreed with the representative of the United States that the Commission was faced with the same difficulties as had arisen in the case of article 5. Nevertheless, it was essential to draft provisions which

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would be as precise as possible. If provision was to be made for all exceptions the number would certainly exceed forty, but he felt certain that the number could be reduced to the five cases listed in the joint draft. In his opinion those five cases included all the legitimate exceptions to the principle proclaimed in paragraph 1 of that article. No doubt some of the cases cited by the United States representative were not included in that list but they were cases of infringements of the liberty of individuals by other individuals and if all the forms which such infringements of individual liberty could assume were to be listed, the enumeration would prove endless. On the other hand, it was possible and essential to define and to limit the cases where the State could legally infringe individual liberty. That was precisely the purpose of the joint draft of article 9 which was, consequently, very important and should be retained by the Commission.

47. With regard to paragraphs 1 and 2 of the existing text of article 9, should they be considered as independent or complementary? Was the first line of paragraph 2 a definition or a new interpretation of what was arbitrary? If a definition, what was the meaning of "arbitrary" in paragraph 1? In any case, the Commission could not retain the existing text of those paragraphs. The draft proposed by the United Kingdom was preferable by far, for it was an effort to prevent illegal infringements of individual liberty by the State.

48. The CHAIRMAN pointed out that paragraph 1 of article 9 dealt with arbitrary and illegal arrests and detentions whereas paragraph 2 referred to lawful detentions.

49. Mr. MALIK (Lebanon) wished to make two general remarks. The first concerned the scope of article 9. The text of that article had been drafted two years ago. Later, the Universal Declaration of Human Rights, which extended its protection to exiles, had been adopted and proclaimed. Consequently, the Declaration did not agree with article 9 of the draft covenant. The Commission should therefore consider whether the Declaration and the draft covenant should not be brought into line on that point.

50. The second

50. The second matter concerned the statements he had made in connexion with article 5. A distinction should be drawn between the protective measures to be taken against arbitrary actions by Governments and those to be provided for against arbitrary actions by individuals. Mr. Malik agreed with the United Kingdom representative that those two types of measure should be incorporated in separate paragraphs. Any infringement of liberty by individuals should be brought within the scope of national legislations by incorporating a provision in article 9 stating, for example, that every one was entitled to the protection of the law. The main purpose of the covenant however, should be to protect individual liberty against the arbitrary actions of Governments, and the remainder of the article should be devoted to that aspect of the problem. In that way the views of the United Kingdom representative and the United States representative would be reconciled.

51. The CHAIRMAN recalled that the text of article 9 had been very carefully drafted by the Commission at its last session.

52. Mrs. MEHTA (India) pointed out that the Commission had adopted article paragraph by paragraph but not as a whole, since its fate depended on that of article 4. The debate on that point should not be re-opened. Article 9 dealt with individual liberty. Paragraph 1 was based on the Universal Declaration of Human Rights but it did not mention exile. Paragraph 2 of the article was concerned with the deprivation of the liberty of individuals which could be justified only on grounds prescribed by law and in accordance with national procedures. Paragraphs 3, 4 and 5 seemed acceptable to the United Kingdom representative. Thus paragraph 1 was the only one on which there was disagreement. India had always been opposed to the introduction of a list of exceptions in the draft of article 9. It would have no objection, however, if that list was only given as an example and did not claim to be complete and restrictive.

53. In conclusion, she proposed that article 9 should be voted upon paragraph by paragraph, so that a decision could be taken as soon as possible.

54. Mr. SANTA CRUZ (Chile) said his delegation had repeatedly emphasized that it was impossible to draw up a complete and exact list of all exceptions

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to the principle set forth in paragraph 2 of article 9. While it was difficult to list all the cases when a person could be lawfully deprived of his life, it was even more difficult to list the cases when a person could be deprived of his liberty, which were more numerous still. The list of exceptions envisaged by the United Kingdom was incomplete since it failed to cover numerous cases when a person was deprived of his liberty not only through the action of an individual but also through that of the State. It did not, for instance, include deprivation of liberty on account of insubordination, desertion or other infringements of military regulations, provision for which was made in most military codes. Yet no country would be prepared to regard deprivation of liberty for such motives as being contrary to fundamental human rights.

55. Considering that the eighteen members of the Commission had found some forty exceptions to the principle set forth in article 9, it was reasonable to suppose that the General Assembly, which was composed of fifty-nine Member States, would find many more.

56. Mr. Santa Cruz agreed with the United Kingdom representative that the Covenant should be as explicit as possible. Nonetheless, if faced with the choice between a covenant that did not list any exceptions and one that listed only some, he would prefer the former. He would, therefore, vote for the text of the article proposed by the Commission and against any text containing a list of exceptions.

57. With regard to the word "arbitrary", he did not think it was synonymous with the expression "contrary to the law" but rather with the word "unjust". "Arbitrary" was undoubtedly a vague word but should be retained for want of a more exact term.

58. Turning to the Egyptian amendment which proposed that the words "in accordance with such procedure" should be replaced by the words "in accordance with the provisions of the criminal law" (E/CN.4/400), he pointed out that in some countries, not all the laws concerning deprivation of liberty formed part of the penal code. In Chile, for instance, laws concerning individual liberty were part of the civil code of procedure and not of the penal code.

59. Mr. RAMADAN (Egypt) said that, to meet the views of the countries where laws on individual liberty were not part of the penal code, he would be prepared to amend his proposal by adding the words "and of procedure" after the words "criminal law".

/60. With regard

60. With regard to the advisability of introducing the notion of exile into the article so as to bring it into line with the Universal Declaration of Human Rights, he emphasized that exile was a political measure which should not be placed on the same footing as judiciary measures, such as detention or arrest.

61. Lastly, the Egyptian representative objected to the enumeration of exceptions to the rule set forth in article 9, because any such list was bound to be incomplete.

62. Mr. ORDONNEAU (France) thought that the Egyptian amendment was not in keeping with the spirit of article 9; it might fail to cover several cases for which no provision was made in penal codes in the strict sense of the term, for example, the deprivation of liberty of members of the armed forces mentioned by the Chilean representative and the internment of the insane.

63. Mr. KYROU (Greece) associated himself with the remarks made by the Egyptian representative and said that in his opinion the words "in accordance with such procedure" referred implicitly to penal procedure.

64. Mr. RAMADAN (Egypt) said he was prepared not to press his amendment if the words "on such grounds" were replaced by a clearer expression.

65. The CHAIRMAN observed that the English text of paragraph 2 was perfectly clear and requested French-speaking delegates to agree on a satisfactory text.

66. Mr. ORDONNEAU (France) admitted that the expression "pour des motifs" was not a very good translation of the expression "on the grounds". That point deserved careful consideration. Nonetheless, it would be possible to improve the text forthwith by changing the word "prévues" into "prévus" so that it referred to the word "motifs".

67. Mr. SORENSON (Denmark) recalled that there had been much divergence of opinion on paragraph 1 of article 9 at the previous session. The Danish delegation had then supported the position of the United Kingdom and continued

/to believe

to believe with the latter that the paragraph should be so worded as to avoid any possible misunderstanding. Considering, however, that the views of the minority had met with little response from Governments, the Danish delegation thought that it might be better to seek a means of reconciling the differences of opinion rather than to continue to uphold opposite views. For that reason, he would be prepared to support a text similar to that which had already been approved by the majority, provided that paragraphs 1 and 2 merged into the following paragraph:

"No one shall be subjected to arbitrary arrest or detention or otherwise deprived of his liberty except on such grounds and in accordance with such procedure as established by law."

68. Mrs. MEHTA (India) recalled that the original text of paragraph 2 proposed by the Drafting Committee had begun with the words "In consequence", because the Committee wanted those two paragraphs to be organically linked.

69. Mr. WHITLAM (Australia) stated that the Australian delegation had supported the United Kingdom viewpoint at the previous session and continued to support it because it felt that the exceptions listed in the United Kingdom proposal were both necessary and sufficient so far as the purposes of the covenant were concerned. Individual liberty was an old and clearly-defined concept, and it would be dangerous to leave out definitions which were the fruit of long experience from a legal instrument which had binding force.

70. The Australian delegation was consequently unable to support the present text proposed by the Commission; it would prefer the first two paragraphs of that text to be amalgamated and to be followed by the exceptions contained in the text which appeared in annex II of document E/1371.

71. Mr. ORIBE (Uruguay) stated that article 9 raised the same fundamental problem as article 5. A State could have two sorts of obligations, the obligation to respect individual rights and the obligation to guarantee them. The Commission must decide whether the covenant should lay down one or both of those obligations. That was the only point of difference between the United Kingdom and the delegations which took an opposite view.

/72. The principle

72. The principle of the legality of deprivation of liberty raised important problems, since that legality must be ensured internationally as well as nationally. It was not enough to state that no one could be deprived of his liberty except in accordance with the national legislation of each country since certain legal codes might be too severe and might, in some cases, constitute a negation of the minimum standards of justice. To be legal, any infringement of individual liberty must therefore be in conformity with the principles of the Universal Declaration of Human Rights and of the United Nations Charter.

73. In conclusion, the law under which deprivation of liberty must be considered legal should be determined. There too, the Commission should be guided by the solution found for article 5, namely, that no one should be deprived of his liberty save in virtue of a law already in force. That was the application of the fundamental principle nullum crimen, nulla poena, sine lege.

74. The CHAIRMAN requested the members of the Commission to submit their amendments to article 9 by mid-day on 4 April so that the Commission could take a decision on that article at the afternoon meeting of that day.

75. She informed the Commission of a letter from the Department of Public Information asking whether, in view of the interest which the Commission's work aroused, it would not be possible for it to meet in the Economic and Social Council Chamber. She personally considered that the Commission felt more at ease in one of the conference rooms, but that was no reason why it should not meet in the Economic and Social Council Chamber from time to time.

76. Mr. SANTA CRUZ (Chile) and Mr. MALIK (Lebanon) thought that the Commission should meet in the Economic and Social Council Chamber. That would not impede the Commission's work in any way and would enable more members of the public to attend meetings.

77. Mr. KYROU (Greece) considered that the Commission should not create the impression that it was trying to give too much publicity to its work.

78. The CHAIRMAN put to the vote the question of where the Commission should meet.

The Commission decided by 7 votes to 2, with 3 abstentions, that it would meet in the Economic and Social Council Chamber only as an exception.

12/4 a.m.

The meeting rose at 5.30 p.m.