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Sixth Session

SUMMARY RECORD OF THE HUNDRED AND FORTY-EIGHTY MEETING

Held at Lake Success, New York,  
on Thursday, 6 April 1950, at 11 a.m.

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E/CN.4/353/Add.10, E/CN.4/394, E/CN.4/404, E/CN.4/408) (continued):  
Article 9 (continued)  
Article 8 (continued).

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

Miss BOWIE

United Kingdom of Great Britain and  
Northern Ireland

Mr. ORIBE

Uruguay

Mr. JEVREMOVIC

Yugoslavia

Also present:

Miss CASTILLO-LEDON

Representative of the Commission on  
the Status of WomenRepresentative of a specialized agency:

Mr. EVANS

International Labour Organisation (ILO)

Representatives of non-governmental organizations:Category A:

Miss BENDER

International Confederation of Free  
Trade Unions (ICFTU)Category B:Mrs. NOLDE )  
Mr. EASTMAN )Commission of Churches on International  
Affairs

Mr. BERNSTEIN

Co-ordinating Board of Jewish  
Organizations

Mr. HUNTINGTON

Friends World Committee for Consulta-  
tion

Miss BENDER

International Co-operative Women's  
Guild

Mrs. CARTER

International Council of Women

Miss TOMLINSON

International Federation of Business  
and Professional Women

Miss SCHAEFER

International Union of Catholic  
Women's Leagues

Mrs. FREEMAN

Liaison Committee of Women's  
International OrganizationsSecretariat:

Mr. HUMPHREY

Director, Division of Human Rights

Mr. LIN MOUSHENG

Secretary of the Commission

DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS (E/1371, E/CN.4/365, E/CN.4/353/Add.10,  
E/CN.4/394, E/CN.4/404, E/CN.4/408) (continued)

Article 9 (continued)

1. The CHAIRMAN stated that, since the Drafting Committee had not completed its examination of paragraph 4 of article 9, the Commission might proceed to deal with paragraph 6.

/2. Speaking

2. Speaking as the United States representative, she said that in the light of the discussion which had taken place in the Commission, the United States was withdrawing its proposal to delete paragraph 6 and was suggesting another text for that paragraph (E/CN.4/394).
3. In the opinion of her delegation, the liability imposed by the paragraph as it stood was so sweeping and absolute as to put officers of the law in the position of being penalized for every mistake made in the performance of their duties, whether it was due to malicious intent, gross negligence, an honest error of judgment or simply an accident. It was necessary to draw a distinction, and to hold officials accountable for malicious or grossly negligent conduct but not for unfortunate accidents or mistaken judgment. To do otherwise might discourage them from performing their duties with the necessary zeal.
4. In the United States the rules of liability in the cases of unlawful arrest were not nearly so onerous as paragraph 6 proposed. That paragraph should be so drafted as to be acceptable to various legal systems. That was the reason for the United States amendment, under which the individual would be enabled to seek redress in court and to receive compensation if he had been the victim of unlawful arrest effected by persons acting in a wanton fashion.
5. Mr. ORDONNEAU (France) was unable to accept the United States amendment because it permitted compensation to be granted only at the expense of officials who had carried out an unlawful arrest with malice or gross negligence. Under a number of legal systems, including the French, the public department concerned or the State itself could be held accountable for an unlawful arrest or detention. The United States amendment was inadequate, since it dealt with only a minor part of the problem. He therefore supported the original text of paragraph 6.
6. Mr. KYROU (Greece) suggested the French representative's objections might be partly met if the word "individual" in the United States amendment were replaced by "official".
7. The CHAIRMAN, speaking as the United States representative, accepted that change; in order to meet the French representative's views, she suggested the deletion of the phrase "by his malicious or grossly negligent conduct".

8. Mr. ORDONNEAU (France) replied that the deletion would represent a considerable improvement; the text would still be imperfect, however, since it would allow compensation to be sought from an individual but not from the State.

9. Mr. WHITLAM (Australia) preferred the original text of paragraph 6. Under a number of legal systems the State as well as officials of the State could be held accountable, and the provision written into the covenant should not represent a lessening in international law of existing civil rights.

10. He was somewhat troubled by the word "enforceable" in the original text; since it did not appear in other paragraphs, the inference might be drawn that the rights in those paragraphs were not as forcefully guaranteed.

11. The CHAIRMAN, speaking as the United States representative, said that her country did not have that complete system of State liability which the French and Australian representatives appeared to regard as prevalent. One reason for the United States amendment had been that the text of paragraph 6 as it stood granted not the right to action to determine whether or not a person was entitled to compensation, but unequivocally the right to compensation.

12. Mr. WHITLAM (Australia) thought that the right to compensation meant simply the right to come before a court which would determine whether or not compensation would be granted in any given case.

13. Mr. MALIK (Lebanon) agreed with the Chairman's interpretation; if the fact that there had been unlawful arrest or detention were established by due process of law, under the original text the victim would have an automatic right to compensation. Such a provision was no more than just.

14. The United States had advanced the argument that officers of the law might be discouraged from the fearless performance of their duties if they knew that they would be held accountable for every mistake. There was, however, the opposite danger to be guarded against: officers of the law should not be encouraged to take their responsibilities too lightly. The United States text would give them far too much liberty, whereas the original text would make it important for them to exercise due care. In any case, the victim of an unlawful arrest -- for whatever reason that arrest was effected -- was entitled to

15. Mr. ORDONNEAU (France) remarked that the experience of his country, which for half a century had had a system of complete liability, had been that officers of the law had performed their duties with undiminished zeal.

16. He drew attention to the fact that the word "enforceable" in the original text of paragraph 6 had no counterpart in the French text.

17. Mr. ORIBE (Uruguay) congratulated the United States delegation on its good will in withdrawing its original proposal to delete paragraph 6 and submitting an amendment which recognized the principle of responsibility for unlawful arrest or detention.

18. The problem of drafting an article acceptable to various legal systems was most complex. The constitution of his own country fully recognized the liability of both State officials and the State itself for acts committed by them. He suggested the appointment of a small committee to discuss the existing text of paragraph 6 and the United States amendment, and to clarify the various points on which differences of opinion had become manifest in the Commission. If the committee was unable to reach agreement, it might submit two alternative texts for the Commission to choose between.

19. Several points in the United States amendment presented definite problems. The committee might decide whether the word "individual" should apply only to State officials or to private individuals as well -- such as those who might have volunteered information leading directly to an arrest. It might decide whether any reference should be made to arrests resulting from accidental mistakes or errors of judgment, and determine the precise meaning of the phrase "directly caused the unlawful arrest or detention".

20. Mr. RAMADAN (Egypt) recognized the complexity of the problem; some countries did not recognize the right to compensation if the officer effecting the arrest had been acting in the execution of his duties. He therefore supported the Uruguayan representative's suggestion.

21. Mr. ORDONNEAU (France) did not think <sup>that</sup> a drafting committee could settle the question, inasmuch as a matter of substance rather than mere drafting was involved. The Commission itself should discuss the principles at stake, and should agree on some simple formula which made no reference to particular cases.

22. Miss BOWEN (United Kingdom) also supported the suggestion that a small committee should deal with the matter. Her delegation had been prepared to support the original text of paragraph 6, which it interpreted in the same manner as the Lebanese representative; the debate had shown, however, that the paragraph as drafted could give rise to different interpretations. It would therefore be advisable for a small committee to frame a less ambiguous text.

23. Mr. KYROU (Greece) agreed with the French representative that the question was one for the Commission itself to resolve, and that the best solution might be a general formula, possibly along the following lines: "The right to compensation for an unlawful arrest or deprivation of liberty is recognized".

24. Mr. SORENSON (Denmark) agreed with the representatives of Greece and France. The issue before the Commission was clear. It was whether the victims of unlawful arrest should have the right to compensation only if the responsibility could be laid at the door of a single person, whether a private individual or an officer of the State, or also in cases when no single person could be held responsible. The Commission had considered the question at its previous session and had reached the decision that paragraph 6 should reflect the progressive point of view that the individual had the right to compensation for unlawful arrest, no matter who was responsible for it or for what reasons it had been effected. He thought the Commission should be prepared to vote on the issue without preliminary consideration by a committee.

25. Mr. CHANG (China) suggested that the United States amendment (E/CN.4/394) should be voted on in two parts, a first vote to be taken up to and including the word "compensation", and a second vote on the remainder. He was making that suggestion because he felt that the first part of the United States amendment was really all that was necessary, and that the second half dealt with matters that need not enter into the picture at all. He concluded from a comparison of the first part of the United States amendment with the text of paragraph 6, as worded in the draft covenant, that both versions were almost identical, but that the United States draft had the merit of greater clarity.

26. He agreed with those who had held that the question was not one which could be resolved in a drafting committee.

27. Mr. DAMADAN (Egypt) feared that a drafting committee would, in the present case, only accentuate the differences of opinion. He favoured the retention of paragraph 6 as currently drafted.

28. Mr. ORIBE (Uruguay) explained that what he had had in mind was not a drafting committee but rather a small group which would attempt to crystallize the principal issues involved, and to define them technically in order to submit to the Commission concrete alternative formulations. Although he thought that his proposal would save time, he would not press it if the members were not in favour thereof.

29. He did not think that the Chinese proposal could resolve the issue before the Commission.

30. The CHAIRMAN concluded from the exchange of views that the Commission did not favour referring the matter to a drafting committee, but wanted the problem to be resolved in plenary meeting.

31. Speaking as the representative of the United States of America, she said her delegation was willing to withdraw the second half of its proposal, beginning with the word "against" and ending with the word "detention", so that the United States amendment would read as follows: "Every person who has been the victim of unlawful arrest or detention shall have a right of action for compensation".

32. Mr. MALIK (Lebanon) thought that the revised United States amendment was still open to the same objections as the original United States proposal: it would still recognize merely the right to action, a right which existed in any case, whereas the draft convention recognized the right to compensation, once it had been ascertained by due process of law that a person had been the victim of unlawful arrest or deprivation. He therefore continued to support article 9, paragraph 6, as drafted.

33. Mr. ORDONNEAU (France) wondered what the difference between paragraph 6 and the revised United States amendment was. In France the right of action for compensation meant the right to go to court, and it further meant that the court was obliged to grant compensation if it found that a real case existed. There was, therefore, from the point of view of French legal practice, no difference between the United States text and the present text of paragraph 6. It could not, however, be stated that a court would be free to declare itself incompetent in such a case, as had been mentioned by the Egyptian representative, since such a possibility would nullify the right of action for compensation.

34. The CHAIRMAN, speaking as the representative of the United States of America, agreed with the French representative that the latter was not the intention of the United States amendment: the courts could not declare themselves to be incompetent. A court should, however, be free to grant or withhold compensation, depending upon the merits of the case. The objection of her delegation to the original text was that the latter would make compensation automatic,

35. Mr. ORDONNEAU (France) concluded from the United States representative's remarks that there appeared to be a difference of attitude regarding the substance of the issue involved. He feared that without an explicit reference to the right of compensation, courts might declare themselves incompetent, thus nullifying the intended objective. In the circumstances, he preferred the original wording of paragraph 6.

36. Mr. WHITLAM (Australia) thought that the revised United States amendment was a clearer statement of the real intent of paragraph 6 than the present wording of that paragraph. What the Commission wished to recognize was the right of action for compensation, leaving to the discretion of the court the determination of the amount of compensation, etc. It would, however, be going too far to state that the granting of compensation must be automatic: questions of fact must be considered, including the situation surrounding the arrest, the conduct of the person arrested, the context of the entire situation, all of which must be determined by the court. He supported the revised United States amendment.



37. Mr. RAMADAN (Egypt) recalled that he had previously stated that the word "compensation" did not appear to be a completely satisfactory term. The victim of unlawful arrest or deprivation of liberty frequently suffered not only material but also moral damages. He would not, however, suggest an alteration in the text if the records of the Commission would show that the term was intended to <sup>cover</sup> both moral and material damages.

38. The CHAIRMAN stated that the record would show that such was the case. The revised United States amendment to article 9, paragraph 6, was rejected by 6 votes to 1, with 3 abstentions.

Paragraph 6 as drafted was adopted by 9 votes to one, with 3 abstentions.

39. Mr. KYROU (Greece) recalled that the word "enforceable" which appeared in the English text of paragraph 6, did not appear in the French version thereof. He regarded the French text as correct.

40. Mr. ORDONNEAU (France) stated that if the English and French forms of paragraph 6 did actually differ, the matter might be taken up during the second reading.

41. Mr. SORENSON (Denmark) thought that the records of the Commission's Fourth Session would show that it had been agreed that the French word "droit" was more precise in meaning than the English word "right", and that "enforceable right" constituted an acceptable equivalent of the word "droit". He suggested that the records of the Fourth Session should be examined and that the matter should be taken up, if need be, during the second reading.

42. Mr. ORDONNEAU (France) called the attention of the Secretariat to the fact that in the French text of article 9, plurals should be used for the word "arbitraire" in the first paragraph, "prévue" in the second paragraph, and "illégal" in the sixth paragraph.

43. The CHAIRMAN stated that the Commission could not complete consideration of article 9 pending the receipt of the report of the Drafting Group on paragraph 4.

Article 8 (continued)

44. The CHAIRMAN invited the representative of Lebanon to comment upon the report of the Drafting Group (E/CN.4/404) in his capacity as Chairman of that body.

45. Mr. MALIK (Lebanon) stated that the Drafting Group had attempted to cast the portions of the article assigned to it for consideration into a completely logical structure. It had merged the former paragraphs 3 and 4 into a single paragraph (3), subdivided into three sub-paragraphs, each of which dealt with a separate subject: paragraph 3(a) dealt with forced or compulsory labour, paragraph 3(b) stated that "hard labour" was not precluded from being imposed as a punishment for a crime pursuant to a sentence to such punishment by a competent court in countries where imprisonment with "hard labour" could be imposed, while paragraph 3(c) stated explicitly what was not included in the term "forced or compulsory labour". The Drafting Group had reached agreement on everything except sub-paragraph (b) of the original paragraph 4, which would become paragraph 3(c)(11).

46. For the sake of clarity he suggested that commas be inserted in paragraph 3(c)(1) after the words "service" and "hard labour" respectively.

47. In reply to a question asked by Mr. KYROU (Greece), Mr. MALIK (Lebanon) stated that failure to reach agreement on the sub-paragraph concerned had been due to lack of time; the matter could be settled either in the Commission or in the Drafting Group.

48. Mr. ORDONNEAU (France) suggested that the consideration of paragraph 4, sub-paragraph (b) of the original text (E/1371) should be deferred for some time, as the Drafting Group had entertained some doubts about the precise interpretation of the compromise text submitted to it; some delegations might wish to consult their Governments before they voted.

49. Mr. ORIBE (Uruguay) said that he had submitted his proposal for the insertion of a new paragraph between paragraphs 2 and 3 (E/CN.4/408) in order that the distinction between forced or compulsory labour and "hard labour" should be emphasized by placing two separate ideas in two separate paragraphs, as had been done in the case of paragraphs 1 and 2. The same distinction had been made in the text submitted by the Drafting Group; there was no difference in substance, but the Drafting Group's text seemed somewhat cumbersome. If the Commission did not accept his view, he was prepared to withdraw his proposal.

50. Mr. ORDONNEAU (France) pointed out that the insertion of the paragraph proposed by the Uruguayan representative would require the deletion of sub-paragraph (b) of paragraph 3 in the Drafting Group's text. The Drafting Group had studied that text carefully and exhaustively; it would be wiser not to alter it again, as that might lead to a re-opening of the debate.

51. In the French text of sub-paragraph (1) of paragraph 3 (c) in the Drafting Group's text (E/CN.4/404) the words "autre que les travaux forcés" should be inserted after the word "service" to make it concord with the English text.

52. Mrs. MEHTA (India) objected that the Uruguayan amendment would imply that all forms of hard labour, such as that in factories, would be forbidden, whereas the Commission was concerned only with prohibiting forced and compulsory labour, except in cases where "hard labour" was performed in pursuance of a sentence by a competent court.

53. Mr. WHITLAM (Australia) agreed with the Indian representative. The question had been fully discussed by the Drafting Group, and the resulting text was clearly drafted. He could not, therefore, support the Uruguayan amendment.

54. The CHAIRMAN observed that the substance of the Uruguayan amendment was very similar to that of paragraph 3, sub-paragraph (b) of the Drafting Group's text. Furthermore, the reference to existing legislation was covered by article 14 of the draft covenant.

55. Mr. ORIBE (Uruguay) withdrew his amendment, but suggested that it should be reconsidered during the second reading.

56. The CHAIRMAN reminded the Commission that it had been decided that only matters of great importance would be re-introduced at the second reading. She was not sure whether the Uruguayan amendment came into that category, as it hardly differed in substance from sub-paragraph (b) of the Drafting Group's text.

57. Mr. MALIK (Lebanon) wished to know the precise meaning, in United States legal language, of the words "in pursuance of". He assumed that it meant not merely "in consequence of", but implied that the matter was contained in the sentence itself and that it therefore meant "in execution of what had been stated explicitly in the sentence".

58. The CHAIRMAN agreed with the Lebanese representative's interpretation.

59. Mr. JEVREMOVIC (Yugoslavia) objected that sub-paragraph (a) in the Drafting Group's text might be interpreted as prohibiting any kind of forced labour, including any imposed by the sentence of a court. Sub-paragraph (b) appeared to omit the consideration of sentences to light labour without imprisonment, which were imposed by courts in some countries. That form of punishment was eminently humane, since the person sentenced lived at home and worked only at certain hours. That type of sentence was far more humanitarian and showed greater faith in human perfectibility than sentences to hard labour; the Commission should take that into account.

60. Mr. CHANG (China) felt some misgivings about the wisdom of drafting the article in too great detail, because that method might logically have to be extended to other articles. The Drafting Group had successfully solved the problems which had arisen as a result of the original separation of paragraphs 3 and 4, but he was not convinced that stipulation in detail was a wholly desirable method.

61. At the invitation of the CHAIRMAN, Miss SENDER (International Confederation of Free Trade Unions) said that it had formerly been the custom to make a distinction between political and common law criminals. Political prisoners had not been forced to work in prison. She had been informed that millions of persons were currently undergoing hard, compulsory or forced labour on account of opinions which they were alleged to hold. It should therefore be specified in article 8 that political prisoners should be exempted from such labour.
62. Mr. WHITIAM (Australia) doubted the feasibility of inserting any such stipulation, because currently there were few or no political prisoners; persons who might be regarded as such had been sentenced formally as offenders against the common law.
63. Mr. RAMADAN (Egypt) thought that that suggestion merited consideration, but that such protection should be extended to cover press offences, which in some countries were punished by sentences of hard labour.
64. Mrs. MEHTA (India) observed that a similar proposal had been made at the fifth session of the Commission on Human Rights. The Indian delegation had wished to make such a distinction and had submitted an amendment to that effect, but it had been rejected. If the Commission had changed its view, the stipulation could be made by the insertion of the word "non-political" before the word "crime" in paragraph 3, sub-paragraph (b) of the Drafting Group's text.
65. Mr. ORDONNEAU (France) found Miss SENDER's suggestion interesting, but thought that it would require far more careful consideration. He suggested that it should be submitted in writing and should be discussed at the second reading.
66. Mr. ORIBE (Uruguay) agreed with the suggestion of the French representative.
67. The CHAIRMAN said that a member of the Commission would have to sponsor Miss SENDER's suggestion, which could then be considered during the second reading.

/A political

A political prisoner would have to be very carefully defined; the Indian amendment on that question had been rejected by the Commission at its fifth session principally because of the difficulty of making such a definition.

68. She put to the vote the text of paragraph 3 submitted by the Drafting Group (E/CN.4/404), with the understanding that sub-paragraph (b) of paragraph 4 of the original text (A/1374) would be considered subsequently and the text adopted would be inserted in the new version of paragraph 3.

The text of paragraph 3 submitted by the Drafting Group (E/CN.4/404) was adopted by 22 votes to none, with 2 abstentions.

69. Mr. CHANG (China) explained that he had abstained from voting because he doubted the wisdom of making the article so detailed. He hoped that a precedent would not be set for the inclusion of excessive detail in other articles.

The meeting rose at 1 p.m.