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COMMISSION ON HUMAN RIGHTS

Sixth Session

SUMMARY RECORD OF THE HUNDRED AND FIFTY-FOURTH MEETING

Held at Lake Success, New York,
on Friday, 14 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. CEANG | China |
| | Mr. SORENSON | Denmark |
| | Mr. RAMADAN | Egypt |

Note: Document E/CN.4/SR.155 is issued in two parts. Part I, summary record of a closed meeting, has not been published.

Members (continued):

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| Mr. ORDONNEAU | France |
| Mr. KYROU | Greece |
| Mrs. MEHTA | India |
| Mr. MALIK | Lebanon |
| Mr. MENDEZ | Philippines |
| Miss BOWIE | United Kingdom of Great Britain and Northern Ireland |
| Mr. ORIBE | Uruguay |
| Mr. JEVREMOVIC | Yugoslavia |

Representatives of specialized agencies:

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| Mr. EVANS | International Labour Organisation (ILO) |
| Mr. WEIS | International Refugee Organization (IRO) |

Representative of a non-governmental organization, Category A:

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| Miss SENDER | International Confederation of Free Trade Unions (ICFTU) |
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Representatives of non-governmental organizations, Category B:

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|------------------------------|--|
| Mr. PASEMAN } Mr. NOBLE } | Commission of the Churches on International Affairs |
| Mr. HUNTINGTON | Friends World Committee for Consultation |
| Miss TOMLINSON | International Federation of Business and Professional Women |
| Miss ROBB | International Federation of University Women |
| Mr. BEER | International League for the Rights of Man |
| Miss SCHAEFER | International Union of Catholic Women's Leagues |
| Mr. GROSSMAN | World Jewish Congress |

Secretariat:

| | |
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| Mr. HUMPHREY | Director, Division of Human Rights |
| Mr. SCHWELB | Assistant Director, Division of Human Rights |
| Mr. LIN MOUSHENG } Mr. DAS } | Secretaries of the Commission |

ORGANIZATION OF THE WORK OF THE COMMISSION

1. The CHAIRMAN said that several members of the Commission had requested that consideration of the question of implementation of human rights should be postponed for a further week. She suggested that the consideration should begin on Tuesday, 25 April.

2. Mr. MALIK (Lebanon) hoped that that postponement would be the last, and that the Commission would not be obliged to study the question too hastily, as had been the case at the preceding session.

The Chairman's proposal was adopted.

3. The CHAIRMAN requested, for personal reasons, that the Commission should hold a private meeting of a quarter of an hour on 14 April at 12.45 p.m.

The Chairman's proposal was adopted.

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

(continued)

Article 8 (E/CN.4/L.2)

4. The CHAIRMAN recalled that the only point remaining to be settled with regard to article 8 was paragraph 4(b) of the original text, which had become sub-paragraph (ii) of paragraph 3(c) of the new text of article 8. The Australian representative had proposed that the word "service" should be inserted before "exacted" in the English text.

5. Speaking as representative of the United States, the Chairman said that she would vote for the original text as amended by the representative of Australia.

6. Mr. MALIK (Lebanon) recalled that the joint amendment of France and the United Kingdom to article 8 had been withdrawn. He believed that the United Kingdom representative supported the original text, but he was anxious to learn the French representative's position.

7. Mr. ORDONNEAU (France) said that he was satisfied with the original text although he was not making any final decision on it.

8. The CHAIRMAN put the text of the sub-paragraph as amended by Australia to the vote.

The text was adopted by 11 votes to none, with 2 abstentions.

9. Mr. KYROU (Greece) recalled that the representative of the International Confederation of Free Trade Unions had suggested an amendment to article 8 regarding the case of political prisoners which simply recapitulated what had become international practice. He reserved the right to return to that amendment on second reading.

Article 8 as a whole was adopted by 12 votes to none, with 1 abstention.

10. Mr. JEMERMOVIC (Yugoslavia) said that he had abstained from voting on article 8 because it did not seem to him essential to define the meaning of paragraph 3(a) and he thought that paragraph 3(b) had no point. In his opinion, the text of paragraph 3(a) did not raise any special difficulty.

Article 9 (E/CN.4/421, E/CN.4/L.2) (continued)

11. The CHAIRMAN explained that only paragraph 4 of the article had not yet been adopted.

12. Miss BOWIE (United Kingdom) commented that the word "such" before "guarantees" in the next to the last line of paragraph 4 should be deleted.

13. Mr. MALIK (Lebanon) thought that the wording of paragraph 4 could be improved by placing a full stop after the words "within a reasonable time or to release". The phrase "which may be conditioned by guarantees to appear for trial" could then be deleted, as the same idea was repeated twice in the one paragraph.

14. Mr. MENDEZ (Philippines) suggested putting a full stop after the words "reasonable time" and deleting the rest of the sentence.

/15. Mr. WHITLAM

15. Mr. WHITIAM (Australia) supported the Lebanese proposal.
16. Miss BOWIE (United Kingdom) supported the Philippine proposal.
17. Mr. JEVREMOVIC (Yugoslavia) supported the Lebanese proposal and proposed that the last sentence of paragraph 4 should be worded as follows:
"Pending trial, imprisonment shall not be the general rule, but release may be subject to bail guaranteeing the appearance for trial of the person concerned." ("La détention ne sera pas de règle pendant la procédure mais la mise en liberté pourra être subordonnée à une caution assurant la parution de l'intéressé à l'audience.")
18. Mr. MALIK (Lebanon) thought it was essential to retain the words "or to release".
19. Speaking as representative of the United States, the CHAIRMAN accepted the Lebanese amendment.
20. Mr. ORDONNEAU (France) also accepted the Lebanese amendment and proposed the following text for the second sentence of paragraph 4:
"Detention under remand should not be the general rule; however, release may be subject to guarantees to appear for trial." ("La détention préventive ne doit pas être la règle; toutefois la mise en liberté peut être subordonnée à une garantie assurant la comparution de l'intéressé à l'audience.")
21. Mr. MALIK (Lebanon) suggested that the Commission should consider whether the word "imprisonment" in the English text of paragraph 4 should be replaced by "detention".
22. Mr. MENDEZ (Philippines) said that attention must be paid to the difference between the case of a person who had been detained, but who was automatically released if the charges against him proved unfounded after a preliminary investigation, and the case of a person who had been detained and indicted but was free on bail while awaiting trial.

23. Mr. RAMADAN (Egypt) agreed with the Philippine representative. It was preventive detention in the case of a person facing as yet unproved charges; imprisonment, on the other hand, was ordered by a court after sentence.

24. Mrs. MEHTA (India) shared the view of the two preceding speakers.

25. Mr. ORDONNEAU (France) thought that the best technical term should be found in each language. In French, the exact phrase was "détention préventive".

26. After a brief discussion, Mr. WHITLAM (Australia) proposed the following formula for the English text: "Pending trial, detention shall not be...".

27. The CHAIRMAN put the following text of paragraph 4 to the vote:

"Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release, which may be conditioned by guarantees to appear for trial."

Paragraph 4 was adopted unanimously.

Article 9 as a whole was adopted by 11 votes to none, with 1 abstention.

28. Mr. WHITLAM (Australia) said that he had abstained from voting on article 9 because, although he wholly approved the basic concept of that article, he could not unreservedly accept the text of certain paragraphs.

29. Mr. MALIK (Lebanon) stated that he had voted for article 9, but reserved his position with respect to paragraph 1 and reserved the right to introduce an amendment defining the word "arbitrary" in paragraph 1 on second reading.

30. Mr. MENDEZ (Philippines) recalled that the Philippine amendment, adding a paragraph which would grant the right to compensation to the heirs of a person illegally killed, had been withdrawn, but he reserved the right to submit

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it again on second reading. The last paragraph of article 13 had a different connotation; it was not a question of the heirs of the person against whom a wrong had been committed.

31. Miss BOWIE (United Kingdom) said that her delegation was not satisfied with the text of paragraph 1 of article 9, and reserved the right to propose changes in it on second reading.

Article 12

32. Miss BOWIE (United Kingdom) stated that her delegation's amendment to article 12 (E/CN.4/420) merely repeated the idea of the original text, but in a new form intended to emphasize, on the one hand, the need to make that provision binding and, on the other hand, the distinction which should be drawn between legal procedure and safeguards provided by law.

33. At the suggestion of the United States representative, Miss Bowie agreed to replace the word "must" in the English text by "shall", to conform more closely to the usual drafting of treaties.

34. The CHAIRMAN, speaking as representative of the United States of America, said that with that change, the United Kingdom amendment was entirely acceptable to her delegation.

35. Mr. SORENSON (Denmark) recalled that at an earlier meeting he had expressed a fear lest the United Kingdom amendment should be incompatible with the corresponding provision of the draft covenant on the status of refugees, prepared by the Ad Hoc Committee on Statelessness and Related Problems. As a careful comparison of the two texts had dispelled his fears, he was prepared to vote for the United Kingdom formula.

36. Mr. ORDONNEAU (France) and Mr. RAMADAN (Egypt) were also in favour of the amendment.

37. The CHAIRMAN put the amendment submitted by the United Kingdom delegation (E/CN.4/420) to the vote.

The amendment was adopted unanimously.

38. The CHAIRMAN called upon the Commission to discuss the Yugoslav proposal (E/CN.4/423) to amend the Philippine amendment to article 12 (E/CN.4/365, page 36).

39. In reply to a question from Mr. KYROU (Greece), Mr. JEVREMOVIC (Yugoslavia) stated that he maintained his proposal (E/CN.4/396) to add an article on the right of asylum to the Covenant.

40. The CHAIRMAN gave assurance that that proposal and other additional draft articles would be considered after the first reading of the draft covenant.

41. Speaking as representative of the United States of America, she said that the Covenant should not include provisions on extradition; that was an involved question, which could only be dealt with after thorough study.

42. Mrs. MEHTA (India) remarked that the Yugoslav amendment was not very happily phrased. As it stood, it seemed to imply that there were fundamental rights and freedoms contrary to the principles of the Charter and the Universal Declaration of Human Rights.

43. Mr. SORENSON (Denmark) felt that the defect in drafting could easily be remedied if the amendment were changed to the following: "Extradition shall not be applied to persons persecuted for having fought for human rights and freedoms in a way compatible with the principles proclaimed in the Charter of the United Nations and the Universal Declaration of Human Rights".

44. The Danish delegation was strongly in favour of the Yugoslav amendment. It was inspired by a very valuable idea and one worthy of the Commission's attention.

45. He admitted that the question of extradition was very involved and had been the subject of many bilateral treaties. If a provision on extradition were adopted, it would obviously be necessary to determine the relationship between the Covenant and those treaties. In any event, it would doubtless be necessary to include an article governing the relations between the covenant and any other existing international convention in order to ensure that the provisions of the covenant were permanent. His delegation considered that in the circumstances the

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Commission could adopt the Yugoslav amendment, which ensured the protection of those who had fought for human rights. Although he had not yet made a thorough study of the consequences of the amendment, he would therefore vote for it on first reading.

46. Mr. JEVREMOVIC (Yugoslavia) stressed that the purpose of article 12 was to protect foreigners who had been legally admitted to the territory of a State. The original text, however, endowed them with very few rights and left the question of their extradition entirely open. A covenant on human rights would not, however, be complete if it did not, at least, prohibit the extradition of persons persecuted for having fought for the very rights and freedoms proclaimed in the Universal Declaration, the application of which the Commission was attempting to guarantee.

47. The Philippine delegation had tried to fill that gap, but its amendment was too loosely drafted. The Yugoslav amendment tried to improve the guiding principle by specifying the categories of persons to which article 12 would apply.

48. The Yugoslav Delegation had submitted its amendment because the concept of war criminals had never been strictly defined. Many criminals who had taken part in the brutal and vandalistic acts from which Yugoslavia suffered during the Second World War had managed to escape their just retribution by claiming that they were political refugees. The Allied declaration on war criminals had never been applied in its entirety and the signatory States had not respected their undertaking to bring war criminals to trial in the countries where they had committed their crimes. Yugoslavia had suffered cruelly from invading forces. More than 1,700,000 men, women and children had been massacred within its borders and it had been destroyed and pillaged. It well knew how important it was to protect the true defenders of democracy; it also knew that a very clear distinction must be drawn between political refugees and quislings and war criminals. In proposing its amendment, the Yugoslav delegation was faithful to the principles which it had constantly defended in the General Assembly.

49. Replying next to a question from the Indian representative, Mr. Jevremovic observed that the Universal Declaration did not set forth all the human rights and freedoms. It could not possibly do so because of the constant

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development of new rights and new freedoms. That was why the Yugoslav delegation had sought the widest possible formula which would take into account all the rights and freedoms compatible with the principles of the United Nations Charter and the Universal Declaration of Human Rights.

50. Mr. MALIK (Lebanon) said that he would vote for the Philippine amendment because the extradition of political offenders could not be allowed.

51. Furthermore, Mr. Malik did not believe that the Yugoslav amendment must necessarily be considered as a substitute for the Philippine amendment; on the contrary, the two ideas were complementary and the Lebanese delegation would be glad to support the Yugoslav amendment on condition that it formed an addition to the Philippine text, as it was essential to retain the idea of political crime.

52. Finally, Mr. Malik believed, like the representative of India, that the drafting of the Yugoslav amendment left something to be desired. In his opinion the text would lose none of its force if it ended with the words "human rights and freedoms"; it was obvious that fundamental rights and freedoms could not be other than in accordance with the principles of the Charter and the Universal Declaration. Nevertheless, if the representative of Yugoslavia wished to qualify those rights, he could, in the interest of clarity, adopt some such positive formula as human rights and freedoms "flowing from the Charter" or "founded on the Charter" or "guaranteed by the Charter".

53. Mr. JEVREMOVIC (Yugoslavia) declared that the Yugoslav delegation had not the least intention of eliminating the idea of "political crime" in the Philippine amendment. The Yugoslav amendment aimed exclusively at defining a special category of political crimes which it was particularly important to exempt from extradition. If that was understood, the Yugoslav delegation would readily agree that its amendment should be added to, rather than substituted for, the Philippine amendment.

54. Miss BOWIE (United Kingdom) said that, in spite of the sympathy she felt for the basic idea of the Yugoslav amendment, she would be obliged to vote against it in the interest of the covenant itself. It was impossible to deal in a single paragraph with a problem as complicated as extradition, which was the subject of many bilateral agreements as well as of an abundance of law. The inclusion of such provisions as those envisaged by the Philippine and Yugoslav delegations in the covenant would prevent States from ratifying it. Miss Bowie believed that extradition should be the subject of a special convention taking existing agreements and jurisprudence into consideration. The covenant should be limited to laying down fundamental human rights and not rights which were, so to speak, the corollaries thereof.

55. Mr. MENDEZ (Philippines) explained that his amendment did no more than state formally a principle recognized in all extradition treaties. Everyone knew that a political refugee was a person who had fled his country because of persecution to which he had been subjected as a result of a change of political regime, or because of fear of such persecution. He could therefore see no disadvantage in introducing into the covenant a very general provision such as that he had proposed, without prejudice to the later elaboration of bilateral or other conventions.

56. Mrs. MEHTA (India) said she would vote for the principle of the Yugoslav amendment and against the Philippine amendment, because she believed that the concept of "political crime" covered too wide a field and was very difficult to define.

57. Mr. RAMADAN (Egypt) opposed the inclusion of any provision relating to extradition in the covenant; that question raised extremely delicate problems, most of which were dealt with by treaty. Any provision of that kind risked creating a serious conflict between the covenant and extradition treaties already in force.

58. The CHAIRMAN, speaking as representative of the United States, understood the aims of the Yugoslav and Philippine delegations, but believed that it
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was scarcely possible to define the expression "political crime" and deal in a single paragraph with a problem as complex as extradition. Extradition treaties defined with great care not only the offences subject to extradition, but also the procedures to be followed. The question could be dealt with only in a special and very carefully drafted convention.

59. On the other hand, she found the Philippine amendment unacceptable because it was drafted in too general terms. It would save from extradition a person who had "fought for human rights and freedoms" -- incidentally, a rather vague expression -- even though, in so doing, he had committed crimes or offences which rendered him liable to extradition.

60. For the foregoing reasons the United States delegation would vote against both amendments.

61. Mr. JEVREMOVIC (Yugoslavia) again emphasized that the Yugoslav amendment was not intended to solve the problem of extradition, which everyone admitted was involved. It was intended merely to protect a specific category of persons and did not preclude the possibility of a later convention on the problem of extradition as a whole. Moreover, it did not contain any new ideas. Most States, particularly the United Kingdom and France, whose delegations objected to the Yugoslav amendment, in the course of history had offered asylum not only to political refugees, but also to victims of religious or other persecutions.

62. Mr. WHITLAM (Australia) stated that the Philippine and Yugoslav amendments reflected the need for collective international measures in the matter of extradition, which hitherto had been the subject only of bilateral treaties. It would nevertheless be very difficult to find a sufficiently precise formula which could be used in the covenant. The Australian delegation, for that reason would vote against the Philippine and Yugoslav amendments. The question as a whole warranted thorough study, however, and should perhaps be the subject of a special convention.

63. Mr. ORIBE (Uruguay) said that his delegation would support the Philippine amendment; it established a principle long recognized in the legislation and law of Uruguay.

64. "Political crime" was not as difficult to define as it was claimed to be. The question had been studied by the highest courts of every country and there was already much law on the subject. Moreover, it was easy to define by opposition to "common law crime", which was an idea recognized and defined in the legislation of every country. South American courts, particularly those in Uruguay, had never found it in the least difficult to define a "political crime". For the above reasons, he would support the Philippine amendment.

65. With regard to the Yugoslav amendment he appreciated the Yugoslav delegation's efforts to define the term "political crime" but thought that the definition was too narrow. Whether or not a refugee had committed a political crime was a matter for the courts in each state to decide. Moreover, there were persons persecuted for their religious or other beliefs who were not covered by the proposed definition. In seeking a definition, the Yugoslav delegation had restricted the concept of "political crime". That idea was well known to all courts and should be retained.

66. He would therefore vote for the Philippine amendment and against the Yugoslav amendment.

The meeting rose at 12.45 p.m.