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SUMMARY RECORD OF THE HUNDRED AND FIFTY-EIGHTH MEETING

Held at Lake Success, New York,
on Tuesday, 18 April 1950, at 11 a.m.

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<u>Chairman:</u>	Mrs. F.D. ROOSEVELT	United States of America
<u>Members:</u>	Mr. WHITLAM	Australia
	Mr. NISOT	Belgium
	Mr. VALENZUELA	Chile
	Mr. CHIANG	China
	Mr. SOREMNSEN	Denmark
	Mr. RAMADAN	Egypt
	Mr. ORDONNEAU	France
	Mr. THEODOROPoulos	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

Representative of a non-governmental organization, Category A:

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

Mr. LEWIN	Agudas Israel World Organization
Mr. NOLDE	Commission of Churches on International Affairs
Mr. MOSKOWITZ	Consultative Council of Jewish Organizations
Mr. BERNSTEIN	Co-ordinating Board of Jewish Organizations
Mr. HUNTINGTON) Mr. JACKSON)	Friends World Committee for Consultation
Mr. CRUICKSHANK	Inter-American Council of Commerce and Production
Miss TOMLINSON	International Federation of Business and Professional Women
Miss ROBB	International Federation of University Women
Miss SCHAEFER	International Union of Catholic Womens' Leagues
Mr. GROSSMAN	World Jewish Congress

Secretariat:

Mr. HUMPHREY	Director, Division of Human Rights
Mr. SCHWELB	Assistant Director, Division of Human Rights
Mr. LIN MOUSHENG	Secretary of the Commission

DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS (E/1371, E/CN.4/365)

Article 13 (continued)

1. The CHAIRMAN recalled that the United States and the United Kingdom had proposed the deletion of paragraph 3 of the article. Speaking as representative of the United States, she pointed out that the technical difficulties to which it might give rise in view of the diversity of national legislation made it inadvisable to include a provision of such minor importance in the draft covenant.
2. Mr. VALENZUELA (Chile) strongly urged the inclusion in the draft covenant of a provision safeguarding the right to compensation for erroneous conviction of crime. Member States signatories to the covenant should not only accept the fundamental principle of such compensation; they should give practical effect to it.
3. The incorporation of the right to compensation on those grounds in the covenant constituted a constructive step forward in the promotion of human rights. It was especially significant because of the basic contradiction which existed in practice between the protection of private property and the protection of the human person. The right to compensation for the loss or expropriation of property was fully safeguarded by most States; yet, when irreparable damage had been done to the human person through the deprivation of individual liberty as a result of judicial error, the State evaded all responsibility and remained impugnable. In some cases, its laws actually enforced that unjustified immunity. Thus, property and material possessions were better protected than the individual himself.
4. The State must be made to compensate for erroneous convictions; its immunity must be ended and it must assume full responsibility for damage done to the human person. There had been some progress toward that end; but it was scarcely proportionate to the damage done. In civil cases, when an accusation had been made in bad faith or on the basis of erroneous information, the defendant could bring suit for damages. However, when religious, ideological or racial prejudices or a misconstruction of substantive or procedural law had resulted in erroneous conviction of crime, the State was not bound to repair the damage done except by moral compensation. It must be made to bear full responsibility to compensate the victim monetarily for losses incurred throughout the legal process.

5. For those reasons, Mr. Valenzuela would vote against deletion of paragraph 3.

6. Mr. JEVREMOVIC (Yugoslavia) agreed that the covenant should provide for compensation for erroneous convictions. While that principle might not have been given effect, it was recognized in modern criminal law.

7. The text of paragraph 3, however, was unsatisfactory; it should specify the limitations to be placed on the right to compensation. It should, for example, stipulate that the right would be granted only to persons sentenced by a judicial decision having full force. That decision should be final; it should stand after all appeals and reviews of the case by higher courts. Moreover, caution should be exercised to ensure that the right was not granted to persons who deliberately provoked an erroneous decision in order to use it as a weapon against the State.

8. With those limitations, Mr. Jevremovic was prepared to consider the inclusion of a provision modified along the lines indicated in the French or Philippine amendments.

9. Mr. NISOT (Belgium) felt that the very purpose of the covenant would be defeated if it failed to include a provision safeguarding the right to compensation. When society had committed an error which had resulted in depriving an individual of his life or liberty, it was absolutely essential that it should repair the damage to the utmost extent that it was still possible to do so.

10. Mr. Nisot would therefore vote in favour of retaining paragraph 3.

11. Mr. WHITLAM (Australia) readily accepted the basic principle of redress of miscarriages of justice. The text of paragraph 3, however, was inadequate. Erroneous convictions of crime might include decisions which could still be appealed and the effect of the accrual of the right to compensation to the heirs of the victim seemed doubtful.

12. In Australia, the processes of criminal jurisprudence provided maximum guarantees for the protection of the individual. The courts demanded abundant proof and the jury system operated to the benefit of the accused

/persons.

persons. There was ample opportunity for appeal and review of decisions and cases of erroneous conviction were extremely rare. In those instances in which an individual became the victim of a judicial error, the proper executive or administrative department of the Government could be relied upon to redress the error in the interest of the defendant. Moreover, the press and public opinion could be expected to force the Government to compensate, even beyond monetary terms, for the damage done. If the right to compensation were enforceable only through the courts, something less than full justice might be done. Under the Australian system, the meting out of justice was more flexible and the executive or administrative department of the Government could give better care to the victims than monetary compensation alone.

13. At that stage, Mr. Whitlam was not prepared to support more than a weakened version of the French amendment. He would, however, welcome the views of the Commission and additional information regarding the actual operation of the compensation system.

14. Mr. THEODOROPOULOS (Greece) had no difficulty in accepting the original draft of paragraph 3. There seemed to be no disagreement on the principle of compensation, a principle embodied in most domestic legislation. In view of the diversity of legal systems, however, certain mechanical difficulties were blocking agreement on a text. In the circumstances, he would abstain from voting on deletion of paragraph 3. If, on the other hand, the proposal for deletion were defeated, he would prefer the more general terms of the French amendment.

15. In that connexion, it might be useful to clarify the distinction between the English phrase "enforceable right to compensation" and the French equivalent.

16. Mr. MENDEZ (Philippines) recalled that during the discussion of paragraph 6 of article 9, the Commission had not been prepared to accept the Philippine proposal to extend the right to compensation in cases of persons unlawfully killed. It had in fact been suggested that the question should be raised again under article 13. Yet the Commission now seemed to be agreed on the principle of compensation for erroneous conviction, although it had not found an acceptable text to express it.

17. Mr. Mendez could not vote in favour of paragraph 3 unless it specifically mentioned the two cases given in the Philippine amendment. Without those limitations, the provision was too vague and might be open to various interpretations.

18. On the other hand, he might not object to deletion of the paragraph if it were understood by the signatory States that compensation had to be granted not only in cases of erroneous conviction of crime, but also to the heirs of persons unlawfully killed.

19. Mr. SOREMNSEN (Denmark) said that his Government could accept either the original text of paragraph 3 or the proposed French amendment. The fundamental question, however, was whether the Commission should attempt to advance existing legislation or whether the covenant should express minimum standards acceptable to all countries, which in the case in hand would mean the deletion of paragraph 3.

20. That solution would be unsatisfactory to him, because he felt the covenant should provide for compensation in the case of erroneous convictions. He was aware, however, that the question was a difficult one and wondered whether the United Kingdom and United States objections would be met if the provision were maintained in the covenant, accompanied by a reservations clause.

21. He found the French amendment preferable to the original text and would vote for it on the understanding that those countries which encountered difficulties in carrying out its provisions at once should have the right to maintain their existing practice until the necessary changes had been made in their domestic legislation.

22. If adopted, such a procedure would enable the Commission to prescribe a high standard in matters of compensation for miscarriages of justice without making it impossible for many countries to accede to the covenant.

23. Mrs. MEHTA (India) thought that, as the principle of compensation had been retained in article 9, it would be illogical to delete paragraph 3 and she would therefore vote for its retention. As it was difficult to define the term "erroneous conviction" she preferred the French amendment, which used the term "miscarriage of justice".

24. Miss BOWIE (United Kingdom) said the Danish proposal would not meet her country's objections to paragraph 3. As it stood, the text would permit compensation to be paid in cases where the actions of an individual deliberately attempting to shield the guilty person had led to his own conviction. To give such a person an enforceable right to compensation would not, in her opinion, improve the administration of justice. She suggested, therefore, that the paragraph should be deleted and that it should be left to the administration in each country to compensate persons suffering from a miscarriage of justice.

25. Mr. MALIK (Lebanon) wondered whether some representatives were not paying undue attention to the defence of the rights of their States rather than concentrating on the advancement of human rights, which was, after all, the Commission's primary task.

26. Like the representative of Denmark, he thought the principle in paragraph 3 should be retained. It would then be for governments to take the weighty decision whether to accept that principle. In his opinion moreover it would be unfortunate if the Commission produced a covenant on which governments need take no decisions.

27. With regard to the example cited by the United Kingdom representative, he thought it was clear that a person would be compensated only to the degree to which he was innocent of the crime. The paragraph was not intended to give guilty persons a right to compensation.

28. He congratulated the United States representative on the extensive and informative data she had presented on the question, but added that neither she nor the United Kingdom representative had convinced him that paragraph 3 was unnecessary. He could see no objections to including the principle of compensation in article 13, and therefore thought that it should be retained in the covenant, perhaps in another, more flexible form on which a wider measure of agreement could be achieved.

29. He suggested that the vote on the deletion of the paragraph should be taken after it had been discussed and definitive texts prepared, taking into consideration the French and Philippine draft amendments. That procedure would enable the Commission to know exactly what it wished to delete. Moreover, as the texts were discussed many of the objections raised to the paragraph as it stood might be withdrawn.

30. Mr. CHANG (China) pointed out that the word "compensation" had not been clearly defined. The article should provide for moral as well as material compensation in cases of erroneous convictions.

31. As to the text to be adopted, he preferred the French amendment to the original draft of paragraph 3.

32. He agreed with the representative of Lebanon with regard to the procedure to be followed. He would like to study a final text before deciding whether the paragraph should be deleted.

33. Mr. SCRENSON (Denmark) thought the United Kingdom representative had raised an important point. To meet her objections, he suggested that the phrase "through no fault of the person convicted" should be inserted in the French amendment after the words "which shows conclusively that" (E/CN.4/365, page 41).

34. The CHAIRMAN thought that in accordance with rule 60 of the rules of procedure, the motion to delete paragraph 3 would have to be voted on first.

35. Mr. MALIK (Lebanon) agreed that the procedure suggested by the Chairman would be possible. The procedure he had proposed, however, would also be feasible. If the Commission were asked to vote on deletion, it should know precisely what it wished to delete. In that connexion, it should be borne in mind that the Commission had before it not only the original text, but the French and Philippine amendments as well. Moreover, if the motion to delete the paragraph were put to the vote and defeated, when the final text was put to the vote, certain members would be given a second opportunity to vote for its deletion. In his opinion, that was not advisable.

36. The CHAIRMAN thought that members who wished to retain the principle of compensation for erroneous conviction could vote against the deletion of paragraph 3. If the motion for deletion were defeated, the Commission could then discuss the original text together with its proposed amendments and work out a final text.

37. Speaking as representative of the United States of America, she said her Government felt that paragraph 3 concerned a matter which should not be included in the covenant.

38. Mr. MENDEZ (Philippines) said that, if paragraph 3 were deleted, a more adequate provision on compensation for erroneous conviction should be included elsewhere in the Covenant.

39. The CHAIRMAN put the United States proposal to delete paragraph 3 to the vote.

That proposal was rejected by 10 votes to 2, with 3 abstentions.

40. Mr. WHITLAM (Australia) explained that he had abstained from voting on deletion of paragraph 3 because, while the Australian delegation supported the principle of compensation, it was opposed to the text as it stood. The Australian delegation was, however, willing to consider alternative texts.

41. Mr. MENDEZ (Philippines) stated that he had abstained from voting because he felt that the entire question should have been more fully considered on its merits.

42. The CHAIRMAN called for discussion of the amendments proposed by the delegations of the Philippines and France. The Philippine amendment would be voted on first.

43. Mr. ORDONNEAU (France) admitted that the Philippine amendment contained interesting elements and that the two cases given were relevant. The Philippine text, however, resorted to enumeration and was therefore incomplete. The French formula, which was more general and more precise, would cover the cases cited by the Philippines as well as other possibilities. He would vote against the Philippine amendment.

44. Referring to the Australian representative's comments, Mr. Ordonneau stated that the French text took full account of cases which could be appealed.

/45. Mr. RAMADAN

45. Mr. RAMADAN (Egypt) said that the legislation of Egypt made no provision for compensation, but he felt that the covenant should encourage progress and recognize the principle of compensation. He considered that the French text adequately covered the subject.

46. Mr. MENDEZ (Philippines), referring to the statement of the representative of France, said that, although he was fully aware of the dangers of enumeration, it seemed hardly possible to find additional cases as absolute as those referred to in the Philippine text. Any other cases would be disputable.

47. Mr. NISOT (Belgium) requested clarification of the words "condamnation penale definitive". A decision was never final since it was always possible to review it. In his opinion the French amendment might be interpreted to mean that review was not possible. In order to avoid confusion, he would prefer to have the French text read "condamnation passée en force de chose jugée".

48. Mr. RAMADAN (Egypt) noted that in some instances an appellate court gave instructions for review of a decision. He pointed out, however, that that situation was covered by the French text.

49. Mr. MALIK (Lebanon) pointed out that a long time might elapse between the beginning of legal proceedings and the final decision. He wondered whether compensation would cover only the period after the final conviction or whether it would be effective from the time of arrest.

50. He also asked whether it was the intention of the French delegation to retain the second sentence of paragraph 3 as it stood.

51. Mr. ORDONNEAU (France) replied that the French text applied only to the first sentence of paragraph 3; the second sentence would remain intact. Moreover, the French delegation contemplated compensation only in cases of final conviction where no further appeal or review was possible. While damage to the individual was admittedly possible throughout the entire course of legal proceedings against him, it would not be feasible to require compensation from the time of arrest. Cases of imprisonment or detention pending final disposition of a case were covered by the provisions of article 9.

52. Referring to the Belgian representative's proposal, Mr. Ordonneau stated that he saw little difference between his text and the Belgian text. In both cases review was possible.

53. Mr. NISOT (Belgium) stated that the French text seemed to imply that final review must precede the granting of compensation.

54. Mr. ORDONNEAU (France) made it clear that final decision meant that all ordinary methods of review and appeal had been exhausted and that all waiting periods had expired. He admitted, however, that the possibility of a later review always remained.

55. Mr. ORIBE (Uruguay) could not agree with the French and Philippine delegations in their criticism of the text of paragraph 3 as it stood. In the opinion of the Uruguayan delegation, the original text was most acceptable since it recognized the principle of compensation, but omitted all qualifications which would lead to unnecessary complications. Moreover, unless the structure of article 13 were kept parallel to the structure of article 9, various interpretations might be possible and the text would be open to criticism. Accordingly he would vote in favour of the original text of the Commission and would request a separate vote on each of the two sentences in paragraph 3.

/56. It should

56. It should be noted that both the Philippine and French amendments raised new difficulties which the Uruguayan delegation had consistently sought to avoid. An attempt should be made to leave it to the domestic legislations to determine the conditions on which a decision would be considered erroneous. Moreover, adequate safeguards were provided by the requirement that national law should conform to the provisions of the Charter and the Universal Declaration of Human Rights.

57. Mr. WHITLAM (Australia) thought that the French amendment was preferable. It was much wider than the restricted Philippine text. Nevertheless, he found some difficulty in supporting the French text. The English translation of the words "condamnation pénale définitive" as "final decision" was inaccurate, as the English phraseology would indicate that the processes of appeal had not been exhausted. Moreover, the Australian delegation could not agree to the limitation of the right of compensation to judicial determination. It should be left to the discretion of each individual State to choose either executive or judicial determination, as it saw fit.

58. The CHAIRMAN put the Philippine amendment to paragraph 3 to the vote. The Philippine amendment was rejected by 10 votes to 1, with 4 abstentions.

59. Mr. SORENSON (Denmark) proposed that the words "through no fault of the person convicted" should be inserted after the words "conclusively that" in the third line of the French amendment.

60. Mr. CRDONNEAU (France) stated that, although he agreed with the intention of the Danish amendment, the text proposed might be misinterpreted so that a slight or unwitting fault on the part of the person convicted might serve to deny him the right to compensation.

61. Mr. SORENSON (Denmark) stated that his amendment was intended to relate only to faults concerning fundamental matters which had contributed to the damage suffered by an innocent person.

/62. Mr. CRDONNEAU

62. Mr. ORDONNEAU (France) suggested that the point raised by the representative of Denmark might be settled by drafting changes.

63. Referring to the Chinese representative's comment that compensation was too limited a term, Mr. Ordonneau suggested substitution of the word "reparation".

64. In reply to the representative of Australia, he said that executive determination of compensation was not the intention of the French amendment; the principle of compensation might be completely nullified by the arbitrary use of executive power.

65. In reply to a question from the CHAIRMAN regarding the use of the English word "enforceable", which did not appear in the French translation, Mr. ORDONNEAU (France) recalled the discussion of article 9 and the decision that "enforceable right" was the accepted equivalent of the French term "a droit à".

66. Mr. NISOT (Belgium) suggested that the French words "a droit à" should be replaced by "sera indemnisée". In the English text the amendment would replace "have an enforceable right to compensation" by the words "shall be compensated".

67. Mr. ORDONNEAU (France) found the Belgian suggestion unsatisfactory. It failed to make it clear that judicial determination of compensation was involved.

68. Mr. NISOT (Belgium) was unable to support the French amendment as it stood because he feared that that provision might make the convention unacceptable to those States which regulated such matters by administrative rather than judicial procedure.

69. Mr. WHITLAM (Australia) concurred in the views of the representative of Belgium and pointed out that executive action was not necessarily arbitrary, as the representative of France had implied. While in some cases tribunals might be a better source of restitution than the executive, some States preferred the executive system. Human rights were not necessarily furthered by attempting

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to impose the same machinery universally. Accordingly a flexible formula was most desirable. Unless a compromise could be reached, the Australian delegation would be compelled to vote against the French amendment.

70. Mr. MALIK (Lebanon) expressed the view that the Belgian amendment constituted a decided improvement on the original text. The French text was not as strong as the Belgian amendment which, without indicating who should determine compensation, made such compensation mandatory.

It was decided that the representatives of France, Denmark, Belgium and Australia should consult together and submit an agreed text for consideration at the next meeting of the Commission.

The meeting rose at 1 p.m.