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COMMISSION ON HUMAN RIGHTS

Fifth Session

SUMMARY RECORD OF THE NINETY-SECOND MEETING

Held at Lake Success, New York,  
on Thursday, 19 May 1949, at 11 a.m.

CONTENTS:

Draft international covenant on human rights (E/800, E/CN.4/158,  
E/CN.4/170, E/CN.4/170/Add.3, E/CN.4/188, E/CN.4/193, E/CN.4/202)  
(discussion continued).

<u>Chairman:</u>	Mrs. F. D. ROOSEVELT	United States of America
<u>Rapporteur:</u>	Mr. C. MALIK	Lebanon
<u>Members:</u>	Mr. JOCKEL	Australia
	Mr. LEBEAU	Belgium
	Mr. LARRAIN	Chile
	Mr. CHANG	China
	Mr. SOERENSEN	Denmark
	Mr. LOUFI	Egypt
	Mr. CASSIN	France
	Mr. GARCIA BAUER	Guatemala
	Mrs. MEHTA	India
	Mr. ENTEZAM	Iran
	Mr. INGLES	Philippines
	Mr. KOVALENKO	Ukrainian Soviet Socialist Republic
	Mr. PAVLOV	Union of Soviet Socialist Republics
	Miss BOWIE	United Kingdom

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Consultants from non-governmental organizations:

Category A:

Miss SENDER	American Federation of Labor (AF of L)
Mr. FISCHER	World Federation of Trade Unions (WFTU)

Category B:

Mr. HOLDE	Commission of Churches on International Affairs
Mr. MOSKOWITZ	Consultative Council of Jewish Organizations
Mr. FRIEDMAN	Co-ordinating Board of Jewish Organizations
Mr. CRUICKSHANK	Inter-American Council of Commerce and Production
Miss SCHAEFFER	International Union of Catholic Women's Leagues
Miss MILLARD	Women's International Democratic Federation
Mr. RENNIE	World Alliance of YMCA's

Secretariat:

Mr. J. P. HUMPHREY	Representative of the Secretary-General
Mr. E. LAWSON	Secretary of the Commission

DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS (E/800, E/CN.4/158, E/CN.4/170, E/CN.4/170/Add.3, E/CN.4/188, E/CN.4/193, E/CN.4/202) (discussion continued)

Article 7

The CHAIRMAN, speaking as the representative of the United States of America, stated that, in view of the sentiment expressed in the Commission the previous day that the covenant should be extended whenever possible to cover infringement of rights by individuals as well as by States, the United States wished to enter a continuing objection with respect to articles 7, 9, 10, 11, 16, 18 and 19, which imposed obligations in regard to infractions by individuals: she would not repeat that objection each time unless circumstances made it necessary. The United States would tentatively alter some of its proposed amendments to the articles in question to omit, for the purposes of the present discussion, the express limitation of those articles to State action; it would at the same time, however, reserve its position in that respect, as well as its right to re-open the question at a later time.

/With regard

With regard to article 7, the United States suggested that it might be amended to read: "No one shall be subjected to torture or to cruel or inhuman punishment or treatment."

Mr. MALIK (Lebanon) introduced his amendment to article 7 (E/CN.4/193). He wished to substitute for that article the text of article 5 of the Universal Declaration of Human Rights and to make of it paragraph 1 of article 6; he hoped that the United Kingdom representative would accept that amendment in lieu of her own.

Miss POWIE (United Kingdom) remarked that the intention of her amendment (E/CN.4/188) had been to abbreviate the original text in the interest of legal clarity; she was, however, prepared to accept the text proposed by the Lebanese representative.

Mr. CASSIN (France) agreed to the wording proposed by the Lebanese representative; he did not think, however, that it should become part of article 6, because two heterogeneous ideas, one dealing with human dignity and the other with the individual's right to dispose of his body, would then be grouped together.

Mr. MALIK (Lebanon) said that, while he would not press for his amendment to become paragraph 1 of article 6, he thought that the two ideas were closely connected, since they had in common the element of degradation. It was equally degrading for a human being to be subjected to torture or to mutilation or medical experimentation against his will.

Mr. LENEAU (Belgium) stressed the importance of the concept of cruel or inhuman treatment, contained in the Lebanese amendment. It was essential to prohibit inhuman treatment, which differed from inhuman punishment in that it was inflicted without due process of law. Persons had been interned in concentration camps not as punishment, and without trial; that constituted one example of such treatment. He therefore supported the Lebanese amendment.

The CHAIRMAN, speaking as the United States representative, <sup>said</sup> that the United States amendment differed from the Lebanese only in the omission

of the word "degrading". That word had been left out because it did not have a sufficiently precise legal meaning; it might, for example, be interpreted to mean social or economic degradation.

Mr. CASSIN (France), in reply to the Lebanese representative, said that the Lebanese amendment dealt with the principle of human dignity; article 6, however, did not. If a person submitted to medical or scientific experimentation of his own free will, no indignity was involved. The article merely proclaimed the individual's right to decide in such matters. The two ideas were therefore different, and should be stated in separate articles.

He strongly urged the retention of the word "degrading". When German Jews had been made to wear a yellow star, they had been subjected to a treatment which was degrading, rather than cruel or inhuman.

The CHAIRMAN, speaking as the United States representative, thereupon withdrew her amendment in favour of the Lebanese text.

Mr. PAVLOV (Union of Soviet Socialist Republics) agreed with the French representative that medical experiments should not normally be carried out against a person's will. Account should, however, be taken of the fact that emergency operations might have to be performed on a patient who was unconscious and could therefore not be asked for his consent and that medical treatment of an experimental nature might be given to insane persons with the consent of relatives. Such actions should not be forbidden.

He agreed that articles 6 and 7 should not be merged and thought that their original order should be preserved.

The expression "cruel or inhuman punishment" was, in his opinion, somewhat controversial. Thus, article 5 permitted capital punishment -- yet surely that punishment could not be described as other than cruel. While it was understandable that some countries found the time not yet ripe to do away with capital punishment, there surely ought to be agreement that corporal punishment must be forbidden. Yet documents examined by the Trusteeship Council had shown that corporal punishment was legal in some Trust Territories, where it was considered a normal occurrence and was defended by the Administering Authorities. Such punishment was, of course, applied only to indigenous inhabitants, with the mistaken notion that whips of hippopotamus leather would serve to keep them in subjection. The truth of the matter was that the cruel  
/physical

physical suffering inflicted upon indigenous inhabitants could only arouse racial hatred and incite to that very rebellion which some countries had such good reason to fear. It was absolutely essential that the covenant should contain an article putting an end to corporal punishment everywhere.

It was equally important to prohibit cruel, inhuman and degrading treatment or punishment; information leaked out from fascist countries to the effect that medieval tortures, frequently resulting in death, were in use both during questioning and in prisons. The Commission could do no less than condemn such practices.

Mr. Pavlov recalled that the penal system of his own country was based on the principle of rehabilitation rather than punishment of the criminal; for that reason, both capital and corporal punishment and cruel and inhuman treatment were unknown.

The CHAIRMAN drew attention to the fact that the Lebanese amendment was a total substitution for article 7.

The text of the Lebanese amendment was adopted by 12 votes to none, with 1 abstention.

The Lebanese proposal to insert that text in article 6 of the original text was rejected by 8 votes to 3, with 2 abstentions.

The proposal that it should precede article 6 and thus become the new article 6 was adopted by 11 votes to none, with 3 abstentions.

Article 8

The CHAIRMAN stated that consultants from several non-governmental organizations had asked to make statements regarding article 8. In the absence of any objection, she invited those consultants to speak.

Miss SENDER (American Federation of Labor) recalled that at the Nurnberg trials the forcing of foreign persons in Germany to perform slave labour for the Nazis had been considered a crime punishable by death. The question of forced labour was therefore one of great importance and deserved the most careful consideration.

In both the Drafting Committee's text of article 8 and the United States draft (E/CN.4/170/Add.3) it was stated in paragraph 2 that forced labour should not be imposed "except as a consequence of a

/conviction

conviction of crime by a competent court". Under that clause prisoners of any kind might be included. There was, however, a traditional and important distinction to be made between political offenders and common criminals: whereas the latter were prompted for the most part by selfish or base motives, the former were usually acting on the basis of a high conviction. Political prisoners should not be required to perform forced labour. Their rights in that respect could be safeguarded by the insertion of the words "conviction of a common crime" in article 8, paragraph 2.

Miss Sender hoped that a member of the Commission would be willing to adopt her suggestion and make a formal proposal to that effect.

Miss MILLARD (Women's International Democratic Federation) stressed the great need for a provision in article 8 concerning child labour. One of the most fundamental human rights was that every child should have an opportunity to develop normally and should not be forced to work. The WIDF was particularly interested in the question of child labour and had recently sent a commission to study conditions in the Middle East, India, Burma and Malaya. The findings of that commission might be helpful to the Commission on Human Rights in connexion with its work on article 8.

In India women and children were driven by harsh economic necessity to work under the most difficult conditions. Although it was against the law for children under twelve to work the fact was that large numbers of children from the age of six upwards worked in factories, mines or plantations, or at such tasks as clearing sewers. Their wages were one-third the amount paid to adults for the same work; child labour was, therefore, extremely profitable to employers. Miss Millard then described the terrible conditions of filth and famine that the Commission had found in Calcutta, for example, and drew attention to the fact that the life expectancy of Indians was far below that of people in more developed countries.

In Iran the Commission had found conditions frequently as bad as those in India. Women workers were not given even one day's leave for childbirth. There was a total lack of hygiene and the death rate among child workers was 80 per cent. Cheap child labour was used to ensure profits of as large as 700 per cent for the employers.

The WIDF wished to recommend to the Commission on Human Rights that article 8 should include provisions to ensure first, that no child under fourteen should be forced to labour by economic necessity; secondly, that working adults should be guaranteed an adequate wage so that their children might have a normal childhood; and thirdly, that maternity benefits and financial assistance should be granted to the mother at the birth of each child, as well as adequate children's allowances.

Mr. LEBEAU (Belgium) was always glad to hear statements by consultants from non-governmental organizations but he considered that the statement just made was not altogether relevant to the point under discussion. He hoped the Chairman would remind consultants of their duty to confine their comments to the point at issue.

The CHAIRMAN agreed with the Belgian representative.

Mr. PAVLOV (Union of Soviet Socialist Republics) thought the statement made by the consultant from the WIDF was of the greatest interest and contained facts which deserved the attention of the Commission on Human Rights. The Commission could do its work properly only by facing facts as they were. He did not agree with the position taken by the Belgian representative and the Chairman.

Mr. FISCHER (World Federation of Trade Unions) appreciated the opportunity to speak before the Commission and hoped that that body which was entrusted with the protection of human rights would always safeguard the rights of the consultants of non-governmental organizations in accordance with the status granted them by the Economic and Social Council.

He reminded the Commission that the IFTU had supported a Soviet Union proposal for investigation of forced labour made at the eighth session of the Economic and Social Council, since it believed that no constructive work could be done except on the basis of concrete data. Facts, and particularly the official records of the Trusteeship Council of the United Nations, indicated that forced labour in its most grievous form still existed in many colonial and Trust Territories. In that connexion Mr. Fischer cited a statement made before the Trusteeship Council at its third session by the special representative of the Administering Authority for Ruanda-Urundi, and a report on Ruanda-Urundi made by the United Nations Mission to East Africa. He also mentioned the French colony of Madagascar, where forced labour still existed.

Mr. LEBEAU

Mr. LEBEAU (Belgium), on a point of order, again protested against statements by consultants from non-governmental organizations which were not immediately relevant to the discussion. The consultants from non-governmental organizations should give advice on matters within their competence; they were not called upon to inform the Commission of facts of which it was already cognizant and especially of facts that had been discussed in other organs of the United Nations itself.

The CHAIRMAN asked the representative of the WFTU to confine his remarks to the article under discussion and to the specific recommendations he had to make in that regard.

Mr. FISCHER ( World Federation of Trade Unions) said he had thought that the Commission might like to hear certain concrete facts which would serve as a guide in its work.

The WFTU considered forced labour to mean labour which a person was forced to perform against his will and which he performed for wages and in conditions not commensurate with human dignity. It wished to recommend that article 8 should include a provision forbidding the use of prisoners by private employers; secondly, a provision forbidding punitive measures for breach of the work contract, which was a practice prevalent in colonial and Trust Territories; and thirdly, a provision setting forth the right to employment, since unemployment forced a man to accept employment inconsistent with his abilities and was therefore tantamount to forced labour.

The CHAIRMAN drew the Commission's attention to a letter received by the Secretary-General of the United Nations from the Director General of the International Labour Office and forwarded to the Commission by the Secretary-General (E/CN.4/158). That letter contained a revised ILO suggestion for article 8 as well as the statement that the ILO might later be in a position to furnish additional comments on the subject.

Speaking as the United States representative, she explained that her delegation considered that, for the moment, it would be preferable for the Commission to adopt for article 8 the simple statement "No one shall be held in slavery". Since both the International Labour Organization and the Secretary-General of the United Nations were, at the request of the Economic and Social Council, undertaking surveys



on the question of forced labour, the Commission should not attempt to formulate an article on that subject until the results of the surveys had been received. The United States delegation had suggested that paragraph 1 of article 8 should not, for the time being, include the word "servitude" since "servitude" was closely related to forced labour and should therefore also be considered at a later date. She stressed that her delegation strongly favoured the inclusion of a provision concerning both servitude and forced labour in article 8 and was merely suggesting that the Commission should delay its consideration of the matter in view of the important surveys to be made.

Turning to the United Kingdom draft text for article 8 (E/CN.4/202), Mrs. Roosevelt stated that paragraphs 2 and 3 (a) seemed much broader than the Drafting Committee's text. Paragraph 4 appeared too detailed for a covenant such as was being drafted.

Miss BOWJE (United Kingdom) agreed with the view advanced by the Chairman in her capacity of United States representative that the comments of the International Labour Organization would be useful, but she thought that immediate action could be taken on parts of article 8 and that the resulting text should be circulated to the Governments.

Introducing the United Kingdom proposals (E/CN.4/202), she said that paragraph 1 of the original text (E/800) had been retained. The purpose of broadening the scope of paragraph 2 had been to cover such cases as those in which a man who had been imprisoned for failing to support his family might be taught a useful trade in prison. The latter part of the original text of sub-paragraph (a) of paragraph 3 had been omitted because its detailed provisions were not appropriate to the definition of forced or compulsory labour. Her Government, however, was so far from opposing the principle there stated that it actually paid conscientious objectors at a rate higher than that paid to the lowest rank of soldier. With regard to sub-paragraph (c) of the original text, it might be preferable to place the ILO text in a separate paragraph of the article. She could accept that text provisionally, but it would probably have to be revised at the second reading in the light of further comments from the ILO or from the Economic and Social Council.

/Mrs. MEHTA

Mrs. HEMTA (India) opposed the proposal to defer the consideration of the latter part of the article. The Commission was not engaged upon the final draft of the covenant. There would therefore be time to review the ILO report before the second reading. She would support the United Kingdom text (E/CN.4/202) but a specific reference should be included in paragraph 2 to the distinction between political and criminal prisoners as proposed by the representative of the American Federation of Labor. Political prisoners should not be compelled to work if they did not wish to do so.

She was not in a position to judge the correctness of the picture of conditions in India presented by the representative of the Women's International Democratic Federation. The Indian Government, however, was fully alive to prevailing abuses and, in the two years of its existence, had begun actively to combat them. The new Indian Constitution forbade the employment of children under fourteen years of age in mines and other hazardous occupations and would enforce compulsory education up to that age, thereby automatically abolishing child labour. She felt, however, that it was unfair to present such a black picture to the Commission without due reference to its background.

Mr. CASSIN (France) said that he was opposed to the postponement of the consideration of article 8, on the same grounds as he had previously opposed the referring of article 6 to the World Health Organization. The Commission should continue drafting the covenant even in provisional terms, in order to provide a working basis for the subsequent stages in its examination.

With regard to paragraph 1, the covenant should be as strongly worded as possible. The 1926 Slavery Convention was not being fully enforced in many parts of the world. Paragraph 1 should therefore reproduce the text of article 4 of the Universal Declaration of Human Rights. The question of forced or compulsory labour raised in paragraph 2 of the United Kingdom text (E/CN.4/202) was vast and complex. The Commission on Human Rights was not qualified to undertake the requisite technical studies. That text, therefore, should be taken as a basis -- but only as a basis -- and the comments

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and conclusions of ILO should be incorporated in it at the second reading. A similar objection applied to the United States text for paragraph 3 (E/CN.4/L.10/Add.3) and to the proposals of the representative of the World Federation of Trade Unions. The definition of forced labour in the International Labour Organization's Convention on that subject was inadequate; it was the task of that organization rather than of the Commission to improve it. There would be little use in continuing the discussion on that definition at the present stage. Discussion should, however, continue on paragraph 4 of the United States text, which incorporated the substance of the United Kingdom version of that paragraph.

He was therefore provisionally in favour of paragraphs 2 and 3 in the United Kingdom text and paragraph 4 in the United States draft.

Mr. ENTEZAM (Iran) said that the representative of the Women's International Democratic Federation should have submitted the text of her survey to the Governments concerned before she had presented it to the Commission on Human Rights. The Governments would thereby have had an opportunity to prepare a survey of their own, to compare it with that compiled by that organization and to enable their representative on the Commission to give an adequate reply. He felt, however, that if representatives of that organization had visited other countries, they would have found similar conditions prevailing. His country was not perfect, admittedly; few were.

Mr. PAVLOV (Union of Soviet Socialist Republics) opposed the proposal made by the Chairman as representative of the United States to defer the consideration of the latter part of article 8. The word "servitude", moreover, should be retained in paragraph 1, to which should be added the prohibition of slavery and the slave trade. That addition would be an innovation neither in the covenant nor in history. The prohibition appeared in article 4 of the Declaration of Human Rights. The words were an almost literal repetition of a proposal moved by Thomas Jefferson in the United States Senate, where it had been rejected. The world had progressed since the time of Jefferson; such a prohibition might be entertained even by the descendants of those whom had then opposed him. If such a prohibition was not

/specified,

specified, the article might be interpreted as permitting the slave trade.

There was a historical difference between servitude and slavery which justified the addition which he had proposed. The slave-owner had disposed of the slave as his absolute property and had enjoyed the power of life and death with regard to him. The feudal lord, however, had had no such absolute power over the serf and had not been able to dispose of his life without due process of law. It might be thought that such a conception was out of date, but conditions of serfdom still existed -- even apart from the widespread peonage in Latin America. In Japan under United States military occupation, for example, there existed what he could only call slave markets. Mr. Pavlov cited a number of examples from contemporary Japan, in which he stated that girls were purchased by factory owners and forced to work in the most revolting circumstances. Impoverished families sold their children to the factories on long-term contracts or even bartered them away for bolts of cotton. Similar conditions were prevalent in parts of Africa. The proposed addition was therefore realistic. Moreover, it did not conflict with the text proposed by the United States representative.

Mr. LEBEAU (Belgium) had no objection to the proposal of the USSR representative. The distinction established by that representative between slavery and serfdom, or servitude, was most instructive; the Secretariat might be requested to go into the question more fully. He fully agreed with the suggestion made by the Chairman in her capacity as United States representative that the question of the definition of forced labour should be postponed until the conclusions of ILO had been received. The definitions contained in the ILO Convention concerning Forced or Compulsory Labour -- to which his country was a party -- were extremely complex. The Commission could not usefully discuss them until it had fuller documentation before it.

The meeting rose at 1.5 p.m.