

MASTER FILE

COMMISSION ON HUMAN RIGHTS

Fifth Session

SUMMARY RECORD OF THE NINETY-SIXTH MEETING

Held at Lake Success, New York,
on Monday, 23 May 1949, at 3 p.m.

CONTENTS:

Draft international covenant on human rights (E/800,
E/CN.4/212, E/CN.4/231, E/CN.4/235) (discussion continued)
Article 9 (discussion continued)

<u>Chairman:</u>	Mrs. ROOSEVELT	United States of America
<u>Reporteurs:</u>	Mr. AZKOUL	Lebanon
<u>Members:</u>	Mr. HOOD	Australia
	Mr. LEBEAU	Belgium
	Mr. SAGUES	Chile
	Mr. CHANG	China
	Mr. SOERENSEN	Denmark
	Mr. LOUFFI	Egypt
	Mr. CASSIN	France
	Mr. GARCIA BAUER	Guatemala
	Mrs. MEHTA	India
	Mr. ENTEZAM	Iran
	Mr. INGLES	Philippines
later	Mr. AQUINO	

Any corrections of this record should be submitted in writing, in either of the working languages (English or French), and within two working days, to Mr. E. Delavenay, Director, Official Records Division, Room F-852, Lake Success. Corrections should be accompanied by or incorporated in a letter, on headed notepaper, bearing the appropriate symbol number and enclosed in an envelope marked "Urgent". Corrections can be dealt with more speedily by the services concerned if delegations will be good enough also to incorporate them in a mimeographed copy of the record.

Mr. KOVALENKO	Ukrainian Soviet Socialist Republic
Mr. PAVLOV	Union of Soviet Socialist Republics
Miss BOWIE	United Kingdom
Mr. VILFAN	Yugoslavia

Consultants from Non-Governmental Organizations:

Category A:

Miss SENDER	American Federation of Labor
Mrs. MEAGHER	World Federation of Trade Unions

Category B:

Miss HICKEY)	International Federation of Business and Professional Women
Mrs. HIMES)	
Mrs. PARSONS	International Council of Women
Mrs. AREDA	Catholic International Union for Social Service
Miss SCHAFER	International Union of Catholic Women's Leagues.
Mr. NOIDE	Commission of the Churches on International Affairs
Miss MILLARD	Women's International Democratic Federation
Mr. RENNIE	World's Alliance of Young Men's Christian Associations
Mr. PERIZWEIG	World Jewish Congress

Secretariat:

Mr. HUMPHREY	Director, Human Rights Division
Mr. LAWSON	Secretary of the Commission

DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS (E/800, E/CN.4/212,
E/CN.4/231, E/CN.4/235) (discussion continued)

Article 9 (discussion continued)

Mrs. MEHTA (India) said that her amendment to paragraph 2 of article 9 (E/CN.4/231) was designed to guarantee the liberty of the individual in the same way as it was guaranteed in paragraphs 3, 4 and 5. In her country, liberty was a right which allowed of no exceptions.

She would be prepared to accept paragraph 2 of the United Kingdom amendment (E/CN.4/188) on condition that the list of exceptions was considered not as an exhaustive but as an illustrative list. It was, indeed, impossible to foresee all the cases which might arise and moreover, the law differed from one country to another; the list might give rise to serious difficulties.

/Mr. LEBEAU

Mr. LEBEAU (Belgium) pointed out that the Commission must know whether the paragraph 2 proposed by the Drafting Committee was to be retained in article 9. In the Universal Declaration of Human Rights the General Assembly had adopted principles and objectives which were now to be developed, applied and enforced. The Commission might succeed in drawing up more specific provisions than had the Drafting Committee. The United Kingdom amendment constituted an attempt in that direction.

He thought, furthermore, that a solution was to be found in the continuity between paragraph 1 and paragraph 2 of the article, and he wondered whether it would not be preferable to start from the word "arbitrary" and to say, for example: "No one shall be subjected to arbitrary arrest or detention. The following shall be deemed to be arbitrary...: the arrest...". The series of arbitrary cases mentioned in the United Kingdom amendment would follow.

He was not, however, presenting any formal proposal on the subject, but merely making a suggestion.

Mr. PAVLOV (Union of Soviet Socialist Republics) considered that article 9 only developed the principle of individual liberty which was already contained in the Declaration. The article gave rise, however, to several difficulties. The first arose from the list of exceptions in paragraph 2, which might have the result of depriving the principle it was intended to state of any value. It would be dangerous to visualize the problem from that angle.

He wondered whether paragraph 3 could not become paragraph 2, by deleting the existing paragraph 2 and by making slight changes in the drafting so that it would read, for example: "Any person who is arrested shall be informed promptly of the charges against him. Any person who is arrested for having committed a crime or to prevent his committing a crime shall be brought promptly before a judge...". The long list of exceptions would thus become unnecessary. If the Commission should decide otherwise, he reserved the right to present comments on each of the cases mentioned in the list.

Concerning paragraph 4, he thought it was preferable not to mention "habeas corpus", since that institution was scarcely known except to the Anglo Saxon public.

With regard to paragraph 5, he said that the right to compensation in respect of unlawful deprivation of liberty was an additional guarantee of human rights; the United States proposal (E/CN.4/170), which did not mention that right, should not therefore be adopted.

/Mr. CASSIN

Mr. CASSIN (France) thought that paragraphs 1 and 2 should be amalgamated. He asked the Commission to adopt the United Kingdom proposal provisionally, in order to present something positive to Governments and to enable them to weigh the advantages and disadvantages of the two methods of general and particular limitation. Although the last paragraph of that article went further than French law, which provided compensation for the victims of unlawful administrative arrest only, he would nevertheless vote in its favour as evidence of good will and in the conviction that the article was a step forward. Although in the majority of cases the covenant reproduced the Declaration, in the case under consideration it went further.

Mr. HOOD (Australia) supported the Belgian representative's suggestion to set out in a negative form the cases visualized in the United Kingdom proposal.

Mr. AQUINO (Philippines) thought that it was not possible to discuss paragraph 2 without taking into consideration the principle on which article 9 was based, namely, protection of the individual against the arbitrary decision of a single person or group of persons. The United Kingdom amendment deviated from that principle and instead of granting greater protection, it limited protection. Expressions such as "on a reasonable suspicion of having committed a crime" and "where such arrest is reasonably considered to be necessary" might prevent an arrested person from being presumed to be innocent and were therefore inconsistent with the principles of a progressive jurisprudence.

With regard to the Belgian representative's suggestion that a list of cases of arbitrary arrests should be inserted, he feared that such a list might be interpreted in a different sense from that which was intended by the Commission.

He was in favour of paragraph 4 of the United Kingdom amendment, which provided for compensation in respect of any unlawful deprivation of liberty.

The CHAIRMAN, speaking as the representative of the United States, felt that it would be a very serious mistake to include a list of exceptions. In the opinion of her delegation, paragraph 1 was sufficient. The United Kingdom proposal, moreover, failed to cover all the exceptions submitted by Governments and published in document E/CN.4/170.

/She considered

She considered that the Belgian representative's suggestion should be borne in mind; it might provide the means of finding a solution.

Mr. GARCIA BAUER (Guatemala) thought that it would be dangerous to insert a list of exceptions after the word "arbitrary", especially since that list was far from exhaustive. It would be better to retain paragraph 1 and delete paragraph 2.

In his opinion paragraph 3 should be retained, with a few drafting changes which the deletion of paragraph 2 would necessitate.

With regard to paragraph 4, he favoured the United Kingdom wording, which did not refer to "habeas corpus".

Mr. KOVALENKO (Ukrainian Soviet Socialist Republic) felt that the individual should be protected against arbitrary action both before and after arrest. The arrested person should be brought promptly before a court, tried without delay and released forthwith if not found guilty.

He objected to the United States proposal, since it failed to provide for the right to compensation in the event of unlawful arrest. He thought that it would be extremely difficult to insert a detailed list of exceptions, and although the list had been considerably shortened in the United Kingdom proposal, it would be better to delete it and to adopt the amendment proposed by India (E/CN.4/231).

Miss BOWIE (United Kingdom) drew the attention of the United States representative to the fact that the exceptions listed in document E/CN.4/170 were covered in the various sub-paragraphs of the United Kingdom proposal, more particularly in sub-paragraph (b). Article 9 would not be complete without a full list of exceptions.

She wished to inform the representative of the Philippines that the exceptions provided in sub-paragraphs (a) and (c) of the United Kingdom proposal had been taken from the text drawn up by the Drafting Committee and that she had not pressed for the exception with regard to the detention of minors.

/Habeas corpus

Habeas corpus had not been mentioned in the United Kingdom proposal in view of the fact that it did not exist in every country.

Mr. SAGUES (Chile) shared the view of the representative of Guatemala that paragraph 1 was sufficient. He stressed that any person who was arrested should be informed promptly of the reasons therefor and tried as soon as possible.

Mr. LOUFI (Egypt) shared the French representative's view that when the United Kingdom and United States proposals had been considered by the Drafting Committee, they should be sent to Governments. If a vote had to be taken first, any proposal that was rejected could be submitted to Governments as a minority opinion.

With regard to an representative's proposal, he remarked that in so important a question mere examples were scarcely adequate.

Mr. CHANG (China) thought that the Commission should avoid putting into the covenant provisions which were peculiar to the laws of any one country, such as those dealing with arrest of minors and breaches of the peace. The legal system of the United Kingdom was peculiar to that country; no attempt should be made to impose it on other countries.

He reminded the Commission that there were only four weeks left before the close of the session; it would be better to agree on general principles rather than to try to reach agreement on questions of detail on which it would be more to the point to seek the advice of legal experts. The list of exceptions might provide a loophole and make it possible to disregard the covenant on the grounds that its provisions were difficult to put into effect.

Mr. VILFAN (Yugoslavia) thought it preferable to maintain the word "arbitrary" without adding a definition which would contain sentimental as well as legal elements. In his opinion, it would be well to retain the second paragraph. The Indian amendment presented a certain danger in that it introduced limitations and that it would be essential to illustrate it with examples. The examples given in the United Kingdom amendment, however, left out a great many cases set forth in document E/800; the case of alcoholics, for instance, was not included in sub-paragraph (b) of the United Kingdom amendment.

/He did not

He did not agree with the USSR representative that the provisions of sub-paragraphs (a) and (b) of the United Kingdom amendment should be inserted in paragraph 3 of the article. He was convinced that there were many other cases in which arrest and detention were not necessarily arbitrary.

As far as the other paragraphs were concerned, he accepted the United Kingdom amendment and was glad to note that the United Kingdom delegation had not based its proposals exclusively on the legislation of its own country.

Mr. LEBEAU (Belgium) explained his proposal: paragraph 1 would remain unaltered; paragraph 2 would begin by a definition of arbitrary arrest or detention and would then cite a certain number of cases couched in negative form and constituting not examples but an exhaustive list.

He submitted a text for article 9 drafted on those lines (E/CN.4/235).

Mr. PAVLOV (Union of Soviet Socialist Republics) found the proposal interesting; he suggested that the Belgian representative might insert the words "in particular" before the list of the various cases, so that it might not be considered as including all the cases possible.

Mr. LEBEAU (Belgium) remarked that, on the contrary, the list should be an exhaustive one. If it merely contained examples, the covenant might give rise to disputes between Member States or between individuals and their Governments.

The CHAIRMAN suggested that the various proposals and amendments relating to article 9 should be put to the vote in the following order:

1. The Indian amendment (E/CN.4/231);
2. The Lebanese amendment (E/CN.4/206);
3. The United Kingdom amendment (E/CN.4/188);
4. The Egyptian amendment (E/CN.4/203);
5. The original text (E/800).

/Mr. CASSIN

Mr. CASSIN (France) did not consider the Indian amendment and the United Kingdom amendment incompatible one with another. He thought that the two texts could be amalgamated.

Mr. PAVLOV (Union of Soviet Socialist Republics) felt that the text presented by India was incomplete in that it referred only to the procedure established by law for arrest and not to the legal grounds for the arrest. That was a hiatus that would have to be filled.

Mr. INGLES (Philippines) proposed the following wording for the Indian amendment: "No one shall be deprived of his liberty except with reason and according to procedure established by law."

Mrs. MEHTA (India) accepted that amendment.

In reply to a remark by the representative of Denmark, Mr. LEBEAU (Belgium) proposed the addition of the word "soit" in the French text before each sub-paragraph of paragraph 2 of the text which he had submitted (E/CN.4/235).

Mr. GARCIA BAUER (Guatemala) proposed that paragraph 2 should be entirely deleted.

The CHAIRMAN pointed out that there was no need to put the Guatemalan proposal to a vote, since those in favour of the proposal had only to vote against all the other proposals concerning that paragraph.

She put to the vote the Indian amendment, as amended by the Philippines, that being the farthest removed from the original text.

Miss BOWIE (United Kingdom) asked for a roll-call vote on that amendment.

Mr. AZKOUL (Lebanon) considered that any clause which invoked the law as a safeguard of individual liberty was not satisfactory, since there were laws which restricted that liberty. Such a clause could be used for the purpose of depriving the individual of all the other liberties provided by the covenant.

/Mr. INGLES

Mr. INGLES (Philippines) pointed out that paragraph 2 was connected with paragraph 1, which prohibited arbitrary arrest and detention.

Mr. PAVLOV (Union of Soviet Socialist Republics) felt that the insertion of a list of exceptions opened the door to arbitrary judgment, as it was impossible in practice to determine, for example, whether a person intended to commit a crime.

A vote on the Indian amendment, as amended by the Philippines, was taken by roll-call, as follows:

In favour: Chile, China, Guatemala, India, Iran, Philippines, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United States of America, Yugoslavia.

Against: Australia, Belgium, Denmark, Egypt, France, United Kingdom.

The amendment was adopted by 10 votes to 6.

Mr. LOUFI (Egypt) formally proposed that the various proposals and suggestions made by the minority should be inserted in the report.

Miss BOWIE (United Kingdom) supported that proposal: the question of principle raised by article 9 had been discussed at such length that any solution that had been contemplated should be submitted to Governments as a matter of course.

Mr. ENTEZAM (Iran) proposed that at the close of the discussion the members forming the minority should meet as a committee to draft a text representing the minority point of view for inclusion in the report.

The CHAIRMAN accepted that proposal.

The meeting rose at 5.30 p.m.