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Fifth Session

SUMMARY RECORD OF THE NINETY-SEVENTH MEETING

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CONTENTS: Draft International Covenant on Human Rights (E/800, E/CN.4/188, E/CN.4/239, E/CN.4/W. 21, E/CN.4/W. 22, E/CN.4/W. 23, E/CN.4/170/Add.5, E/CN.4/241) (discussion continued):

Article 5 (discussion continued)

Chairman:	Mrs. ROOSEVELT	United States of America
Members:	Mr. HOOD	Australia
	Mr. LEBEAU	Belgium
	Mr. SAGUES	Chile
	Mr. CHANG	China
	Mr. SOERENSEN	Denmark
	Mr. LOUTFI	Egypt
	Mr. CASSIN	France
	Mr. GARCIA BAUER	Guatemala
	Mrs. MEHTA	India
	Mr. ENTEZAM	Iran
	Mr. AZKOUL	Lebanon
	Mr. INGLES	Philippines

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Members: (continued)

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 (AF of L)
Mr.	FISHER	World Federation of Trade Unions (WFTU)

Category B

Mr.	FRIEDMAN	Co-ordinating Board of Jewish Organizations
Mr.	MOSKOWITZ	Consultative Council of Jewish Organizations
Mrs.	VERGARA) ARETA)	Catholic International Union for Social Services
Miss	SCHAEFER	International Union of Catholic Women's Leagues
Mr.	STEINER	Commission of the Churches on International Affairs
Mr.	CRUICKSHANK	Inter-American Council of Commerce and Production

Secretariat:

Mr.	HUMPHREY	Representative of the Secretary-General
Mr.	LAWSON	Secretary of the Commission

DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS (E/800, E/CN.4/188, E/CN.4/239, E/CN.4/W. 21, E/CN.4/W. 22, E/CN.4/W. 23, E/CN.4/170/Add.5, E/CN.4/241) (discussion continued)

Article 5 (discussion continued)

The CHAIRMAN stated that the Drafting Sub-Committee on article 5 had been unable to submit a single text; the Commission was therefore faced with a certain number of different proposals submitted respectively by the delegations of the United Kingdom (E/CN.4/W. 21), Chile (E/CN.4/W. 22), the United States of America (E/CN.4/170/Add.5), France (E/CN.4/W. 23) and the Union of Soviet Socialist Republics (E/CN.4/241).

/The new draft

The new draft proposed by the United Kingdom was almost identical to the original proposal submitted by that delegation (E/CN.4/188).

The Chilean amendment reproduced the substance of the United Kingdom proposal in a slightly different form; the last paragraph, however, introduced an entirely new concept: namely that of amnesty and the commutation of the death sentence. A separate vote would therefore have to be taken to ascertain whether that paragraph was admissible and could be included in the rest of the amendment.

The United States proposal was that the whole of article 5 should be replaced by the first paragraph of the Chilean amendment: "No one may deprive another person of his life arbitrarily".

Mr. PAVLOV (Union of Soviet Socialist Republics) stated that his delegation was not submitting its amendment formally and would not ask for a vote on it. He pointed out that the amendment repeated the formula already used in article 9, sub-paragraph 2 which had been adopted by the Commission on the previous day: "No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as established by law (E/CN.4/239)."

He agreed that the last paragraph of the Chilean amendment introduced a completely new substantive question. Nevertheless, although the time limit laid down for the presentation of substantive amendments had expired, it was difficult for the Commission to reject for purely formal reasons a proposal the effect of which would be to protect the individual's existence and which was therefore of undoubted humanitarian value.

Mr. CASSIN (France) remarked that the French delegation had taken the text of the United Kingdom proposal as the basis for its

/amendment and

amendment and had incorporated certain of the arguments put forward by the Chilean delegation during the debates in the Drafting Sub-Committee. It had not retained sub-paragraph (c) of the proposal, however, since it thought that the acts of war referred to in that sub-paragraph did not come within the framework of article 5. Apart from that the French amendment was in complete conformity, as far as substance was concerned, with the United Kingdom proposal.

Mrs. MEHTA (India) thought that the question of amnesty was out of place in article 5, since the purpose of that article was to define the various cases in which an individual could be deprived of his life.

Mr. AZKOUL (Lebanon) drew attention to the fact that the second paragraph of the Chilean amendment also introduced a conception which had not hitherto appeared in the various proposals; according to that paragraph, sentence of death could be imposed only as a penalty for the most serious crimes under ordinary law and never for political offences. The concept of the political crime was therefore eliminated.

He suggested that a separate vote should be taken on the admissibility of that paragraph.

Mr. SAGUES (Chile) withdrew the last phrase of the paragraph in question stating that sentence of death could not be imposed for political offences; he pointed out, however, that that idea was already implied in the first part of the same paragraph which stated that sentence of death could be imposed only for crimes under ordinary law.

The CHAIRMAN stated that the Commission would vote first on the admissibility of the last paragraph of the Chilean amendment (E/CN.4/W. 22).

Mr. GARCIA BAUER (Guatemala) requested a vote by roll-call.

A vote was taken by roll-call.

Australia voted first.

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

Abstaining: United Kingdom.

The last paragraph of the Chilean amendment (E/CN.4/W 22) was declared admissible by 14 votes to none, with 1 abstention.

Miss BOWIE (United Kingdom), on behalf of her delegation, accepted the amendment submitted by the French delegation (E/CN.4/W 23) subject to two reservations: she would prefer to retain the expression "national security" and she was opposed to the deletion of sub-paragraph (c) of the United Kingdom text.

Mr. ENTEZAM (Iran) proposed that, in the circumstances the French amendment should be taken as the basis for discussion. The two points on which the United Kingdom delegation had made reservations could be voted on separately.

Mrs. MEHTA (India) stated that generally speaking her delegation shared the viewpoint of the United Kingdom delegation except with regard to sub-paragraph (c), which it would prefer to delete.

With regard to the USSR representative's suggestion, she recalled that her delegation had voted against the inclusion of a list of exceptions in article 9 because it had realized that it was impossible to draw up a completely satisfactory list; that was not so in the present case where the list proposed by the United Kingdom and French delegations was both accurate and complete.

Mr CASSIN (France) explained the reasons for which his delegation could not agree to the word "arbitrarily" and proposed that the word "intentionally" should be substituted.

/ The principle

The principle which it was important to proclaim in article 5 was that no one could be deprived of his life, except for extremely serious offences. That principle should be expressed in simple terms because, as soon as that rule was deviated from, there was the risk of creating a doubt in people's minds and uncertainty in the interpretation of the law. The protection of human life could not be left to the law. On the contrary, the task of the Commission was to promote the progress of mankind and to assist governments to control the forces which might induce them to abuse their power: the Declaration was the first step towards that objective; the Covenant should be the second.

The CHAIRMAN, speaking as the representative of the United States, said her delegation preferred the word "arbitrarily" which had in it the idea of intention and obviated the need for a list of exceptions which might always give rise to discussion or prove incomplete.

Miss BOWIE (United Kingdom) on the contrary thought like Mr. Cassin that the word "intentionally" should be retained as it was of the utmost importance that the principle proclaimed should be based on humanitarian considerations. Thus, the first paragraph of article 5 should be drafted in such a way that no State would be able to invoke laws it had decreed in order to justify the sentencing of political adversaries to death.

Miss Bowie explained that her delegation's preference for the expression "national security" stemmed from the same concern: the United Kingdom delegation thought that the use of force resulting in loss of life could be permitted only when the security of the State was at stake.

Miss Bowie recognized, however, that the reference to lawful acts of war might seem out of place in article 5. Consequently, the United Kingdom delegation was prepared to suppress sub-paragraph (c) if it was assured that in another article of a more general nature,

/ article 4

article 4, for example, the Commission would insert a provision stating that in the event of war, none of the articles of the Covenant could be interpreted as authorizing the disregard of international conventions on war. Miss Bowie stressed the necessity of being realistic, in view of the present world situation: the draft Covenant under consideration would be incomplete if it did not contain a reference to The Hague international conventions on the laws and customs of war.

Mr. LEBEAU (Belgium) shared the views of the representatives of France and the United Kingdom on the word "intentionally".

He preferred the French version of sub-paragraph (b) (iii) because, in the United Kingdom text, killing would be lawful only if the State itself were endangered, whereas there were numerous instances where the defence of the commonweal could justify a resort to force, for example in the case of the protection of a dam or arsenal.

Mr. Lebeau regretted that the United Kingdom delegation had withdrawn sub-paragraph (c) and hoped that the idea it contained would be introduced in another article of the Covenant. That idea strengthened the generally held opinion that war was subject to a certain number of rules, the infringement of which should be punished.

Mr. CASSIN (France) reminded the Commission that the representative of the United Kingdom had withdrawn sub-paragraph (c) only on the condition that the idea it contained should be incorporated in another article of the Covenant. The representative of Belgium had just supported that point of view; he had not, however, dealt with the whole of the problem.

Quoting Article 42 of the Charter which enabled the Security Council to use armed force for international police operations, Mr. Cassin pointed out that those actions would not constitute acts of war properly speaking, but that they would fall under the exceptions to the right proclaimed in article 5. The problem therefore concerned international law, not war.

/ Mr. INGLES

Mr. INGLES (Philippines) favoured the deletion of sub-paragraph (c) from the United Kingdom's draft proposal (E/CN.4/W.21). The representative of the United Kingdom had stated, among other things, that lawful acts of war derived from the provisions of The Hague International Convention. The Commission, however, could not, either directly or indirectly, alter the laws of war in any way whatsoever. It would therefore be advisable to make no mention whatever of acts of war in an international covenant on human rights.

Even if that paragraph were deleted, however, the Philippine delegation could not accept the United Kingdom draft proposal, any more than it could the French draft; those proposals were too restrictive and at the same time too broad, too restrictive because they did not include a sufficiently complete list of the diverse situations which could arise, and too broad because they included certain exceptions which could not really be considered as such.

With regard to paragraph 2 (b) (ii) of the United Kingdom draft proposal, if that sub-paragraph meant more than the concept contained in the text of sub-paragraph (b) (i), the Philippines delegation would be opposed to that provision; life was too precious to be left at the mercy of ordinary policemen. It was therefore sufficient to provide for the protection of persons from all unlawful violence.

With regard to the other amendments, the Philippine delegation preferred the draft proposed by the Chilean delegation (E/CN.4/W.22) to the shorter texts proposed by the United States of America and the USSR, provided a few changes were made in it. In the first place the Philippine delegation thought that, if the phrase concerning "political offences" were omitted, the words "under ordinary law" would also have to be deleted; according to Philippine law, all crimes and offences were considered to come under ordinary law, including, inter alia, the crimes of treason, sedition, and offences against law and order.

Mr. Ingles drew the attention of the representative of Chile to the fact that the principle that laws were not retroactive, contained in the third paragraph of the Chilean proposal, had already been stated in article 14 of the draft Covenant and that mention of that principle in article 5 might make it appear that it only applied in the case of persons sentenced to death.

/Mr. HOOD

Mr. HOOD (Australia) recalled that during the consideration of article 9, the United Kingdom delegation had submitted a draft text which could be considered satisfactory as it was a comprehensive summary, in four or five points, of a certain number of limitations.

That was not the case with the United Kingdom draft for article 5; indeed, Mr. Hood shared the Philippine representative's view that the draft was at the same time too narrow and too broad.

He therefore wished to know whether the United Kingdom delegation would agree to retain only the first sentence of sub-paragraph (b) of its draft. The sub-paragraph would then contain only the words: "from the use of force which is no more than absolutely necessary in case of danger to human life".

Miss BOWIE (United Kingdom) could not accept the Australian representative's proposal; her delegation had explained on numerous occasions why the national legislations of States could not be left to determine the conditions for the implementation of the general provisions of an international convention.

Mr. ENTEZAM (Iran) asked the representative of France whether he would be prepared to modify paragraph 2, sub-paragraph (b) (iii) of his draft so as to read "or for prohibiting entry to a clearly defined place to which access is forbidden on pain of death on grounds of general security". He preferred the expression "general security" to "national security"; the former seemed more appropriate for the reasons given by the representative of France.

Mr. CASSIN (France) accepted the change proposed by the representative of Iran.

The CHAIRMAN, speaking as representative of the United States, said her delegation shared the Philippine delegation's view that the third paragraph of the Chilean proposal was unnecessary as its provisions were already contained in article 14 of the draft Convention.

Mr. SAGUES (Chile) saw no objection to the deletion of the third paragraph of his draft, as the idea it expressed was already contained in article 14 of the draft Convention.

As regards the deletion of the expression "ordinary law", however, he wished to reflect over the matter before agreeing, so that he could find an alternative expression which would clearly show that non-political crimes were being referred to. He would also like the text to conform with Chilean law.

The CHAIRMAN, speaking as representative of the United States, stated that, in the circumstances, her delegation accepted the text proposed by Chile as amended.

The meeting rose at 1.10 p.m.