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COMMISSION ON HUMAN RIGHTS

Fifth Session

SUMMARY RECORD OF THE ONE HUNDREDTH MEETING

Held at Lake Success, New York,
on Wednesday, 25 May 1949, at 2.30 p.m.

CONTENTS: Draft international covenant on human rights (E/800,
E/CN.4/170/Add.4, E/CN.4/200, E/CN.4/212, E/CN.4/250,
E/CN.4/252, E/CN.4/259, E/CN.4/260)(continued):
Article 9, paragraphs 3 and 4 (discussion continued)

<u>Chairmen:</u>	Mr. P.C. CHANG	China
	later Mrs. ROC WELF	United States of America
<u>Rapporteur:</u>	Mr. AZKOUL	Lebanon
<u>Members:</u>	Mr. SHANN	Australia
	Mr. LEBEAU	Belgium
	Mr. SAGUES	Chile
	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
	Mr. FONTAINA	Uruguay
	Mr. VELFAN	Yugoslavia

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Consultants from non-governmental organizations:

Category A:

Miss BENDER American Federation of Labor
(A F of L)

Category B:

Mr. LEWIN Agudas Israel World
Organization

Mr. NOLDE)
Mr. STEINER) Commission of the Churches o
International Affairs

Mr. MOSKOWITZ Consultative Council of
Jewish Organizations

Mr. FRIEDMAN Co-ordinating Board of
Jewish Organizations

Miss ROBB International Federation
of University Women

Miss SCHAEFER International Union of
Catholic Women's Leagues

Miss FREEMAN Liaison Committee of Women's
International Organizations
and International Council o
Women

Mr. RENNIE)
Mr. BARNETT) World's Alliance of Young
Men's Christian Organizatio

Secretariat:

Mr. HUMPHREY Director of the Human Rights
Division

Mr. LAWSON Secretary of the Commission

DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS (E/800, E/CN.4/170/Add.4,
E/CN.4/200, E/CN.4/212, E/CN.4/250, E/CN.4/252, E/CN.4/259, E/CN.4/260)
(continued)

Article 9, paragraph 3 (discussion continued)

The CHAIRMAN recalled that the Commission had before it
the original text prepared by the Drafting Committee (E/800, E/CN.4/212),
the text proposed by the United States of America (E/CN.4/170/Add.4),
the text proposed by the United Kingdom, and the amendments proposed
by the USSR (E/CN.4/250), France (E/CN.4/259), and Lebanon (E/CN.4/260).

Mrs. ROOSEVELT (United States of America) did not
understand the precise meaning of the words "whether he is arrested
or not" in the French proposal.

/Mr. CASSIN

Mr. CASSIN (France), fearing that those words might give rise to difficulties, withdrew them.

Mr. GARCIA BAUER (Guatemala) had some hesitation in accepting the word "charges" in article 9, paragraph 3, which, he felt, had too wide a meaning.

He preferred the French text to the one submitted by the United States, but suggested that the word "accused" should be replaced by "arrested" or "detained".

Mr. PAVLOV (Union of Soviet Socialist Republics) found the French proposal acceptable. Replying to the representative of Lebanon, he observed that it might be to the advantage of anyone who had not been arrested to be brought before a judge, for if he was accused, his reputation might suffer and he would naturally wish to have recourse to a court in order to exonerate himself.

The essential question connected with paragraph 3 was whether it was concerned with human rights in general or merely with those of arrested persons. In his opinion, anyone, whether he was arrested or not, should be granted the right of access to a court.

That being so, Mr. Pavlov proposed that the first line of the French proposal should be amended to read "Anyone arrested or accused of having committed a crime...."

Mr. CASSIN (France) remarked that the wording proposed by the representative of the USSR did not fulfil his own conditions. He recalled that an amendment had been adopted to add the words "if under arrest" at the end of the first sentence of the text proposed by the United States.

Mr. FONTAINA (Uruguay) observed that there were two distinct questions which the Commission should not try to settle at one and the same time. On the one hand, there was the question of the precise meaning of the words "accused" and "arrested", and, on the other, the question whether the concept of crime prevention should be introduced into that paragraph of article 9. The first question could be solved by inserting the words "accused" or "arrested" in the United States text. With regard to the second problem, Mr. Fontaina agreed with the representative of France that a real danger would arise if a universal legal weapon for the prevention of crime were created.

/Mr. SOERENSEN

Mr. SOERENSEN (Denmark) supported the Lebanese representative's statement at the preceding meeting that, in dealing with the article in question, the Commission should concern itself solely with protecting the freedom of the individual. In his opinion, the Commission should not deal with different problems simultaneously: article 13 of the covenant dealt with safeguards for accused persons; it would therefore be preferable if article 9 were to deal only with the case of persons under arrest. The representative of the USSR had been right to submit an amendment (E/CN.4/250) dealing exclusively with persons under arrest.

Mr. AZKOUL (Lebanon) agreed with the representative of Uruguay. Like the representative of Denmark, he was aware that the Drafting Committee had wished to mention in article 9 only charges involving arrest. That being so, the wording proposed by Lebanon should satisfy the members of the Commission.

Mr. VILFAN (Yugoslavia) recognized that the Commission was faced with two problems: in the first place, the meaning of the expression "the accused in a criminal charge" in the United States text, in other words whether that expression covered both preparation and commission of the crime; in the second place, whether the case of a person who was accused but not yet under arrest was considered.

The first question was a delicate one because a crime might embody three punishable elements: preparation, attempt and commission. He thought that the United States text was satisfactory.

With regard to the second question, Mr. Vilfan agreed with the representative of Denmark that the case in question should be dealt with in article 13.

Mrs. ROOSEVELT (United States of America) accepted the United Kingdom amendment to replace the first words of paragraph 3 of the United States text by the words: "Anyone arrested and accused....".

Mr. CASSIN (France) stated that he had submitted his amendment for the sole purpose of bringing about agreement in the

Commission. As that had not been achieved, he withdrew the amendment.

Mr. GARCIA BAUER (Guatemala) said that, in that case, his amendment would apply to the United States text.

Mr. AZKOUL (Lebanon) felt that the Guatemalan amendment covered all difficulties, and withdrew his own amendment.

Mr. PAVLOV (Union of Soviet Socialist Republics) re-introduced the French amendment incorporating the wording which he himself had proposed.

Mr. GARCIA BAUER (Guatemala) stated that, since the French amendment had been re-introduced by the representative of the USSR, he would prefer his own amendment to apply to the new USSR text.

Mr. PAVLOV (Union of Soviet Socialist Republics) accepted the Guatemalan amendment to his amendment. The final text of the USSR amendment would therefore read: "Any person arrested or detained on the charge of having committed a crime or of preparing to commit a crime shall be brought promptly..."

Mr. GARCIA BAUER (Guatemala) requested a vote in parts.

The CHAIRMAN put to the vote the words "Any person arrested or detained..."

Those words were adopted by 11 votes to 1, with 4 abstentions.

The CHAIRMAN put to the vote the rest of the amendment.

The rest of the amendment was adopted by 8 votes to 6, with 2 abstentions.

The USSR amendment as a whole was adopted by 10 votes to 5, with 1 abstention.

Mr. FONTAINA (Uruguay) stated that he had abstained on the first vote because he did not understand the difference between "arrested" and "detained". He had voted against the second part of

the amendment because he thought that the mention of preparing to commit a crime constituted a very dangerous precedent.

Mr. INGLES (Philippines) explained that he had voted for the first part of the amendment but against the second part and against the amendment as a whole because he preferred the shorter United States and United Kingdom text.

Mr. CASSIN (France) stated that he had voted for the amendment because he considered that it might thereby be possible to retain the idea of a rather vague indictment. It was a question of a judicial directive before the actual perpetration of the crime had been established. Furthermore the adoption of the amendment would make it possible to accept the rest of the United States text as there could be no question of releasing a person if that person had not been arrested.

The CHAIRMAN put to the vote the first part of the United States proposal as amended.

The United States text, as amended, was adopted by 13 votes to none, with 3 abstentions.

Mrs. ROOSEVELT (United States of America) resumed the Chair.

The CHAIRMAN opened the discussion on the last sentence of the United States amendment to paragraph 3.

Mr. CASSIN (France) stated that he was in complete agreement with the idea underlying the United States amendment. He had, however, submitted an amendment (E/CN.4/252) to it because it seemed to him too categorical. Payment of bail should not mean the absolute right to release. The person arrested might be too dangerous to be released. Consequently, the French amendment to the United States text was intended to facilitate provisional release without, however, making it compulsory.

Mrs. ROOSEVELT (United States of America) declared her willingness to accept the French modification.

Mr. PAVLOV (Union of Soviet Socialist Republics) pointed out that the regulations governing release varied from country to country. In certain countries release was granted on bail and that was in conformity with the spirit of the legislation in those countries. As far as the USSR was concerned the individual's worth was not measured in money. Mr. Pavlov could not, therefore, accept that provision.

Mrs. ROOSEVELT (United States of America) replied that it was wrong to state that in the United States the value of the individual was assessed on a material basis alone. In order to realize that, however, it was necessary to understand the principles on which the laws of the United States of America were based.

The phrase which the Commission was studying had been introduced into the text in order to supplement the preceding phrase and to indicate that a person could be released on payment of bail.

Mr. LEBEAU (Belgium) pointed out that there was a fundamental difference between the French modification and the text as it had been drafted by the United States.

The French amendment made release on bail a matter for the discretion of the judge, whereas the United States text regarded the payment of bail as sufficient.

Mr. ENTEZAM (Iran) stated that he would vote for the French amendment to the amendment but drew attention to the fact that there was a very clear distinction between the French text and the English translation. He felt that the French text was more precise.

Any difficulty was due to the fact that the French translation of the United States text had not entirely corresponded to the original and Mr. Cassin had taken the translation as the basis on which he had drafted his modification.

The CHAIRMAN suggested putting to the vote the French text of the French modification of the United States amendment with the understanding that she and Mr. Cassin would later agree on an English translation.

Mr. SAGUES (Chile) stated that the French text emphasized the idea that provisional release was something optional. In order to stress that idea still further the word "ordonné" in the French text should be replaced by the word "accepté".

The CHAIRMAN, supported by Miss BOWIE (United Kingdom), pointed out that if the optional nature of ^{provisional} release were stressed that would contradict the preceding phrase. She therefore proposed postponing the vote on that sentence; thus Mr. Cassin and she would be able to draft a text which would be in keeping with paragraph 3.

Mr. SOERENSEN (Denmark) did not think it necessary to include such a sentence in paragraph 3. He therefore asked for an immediate vote on the sentence because, if it were rejected, the drafting work which the Chairman had just mentioned would be to no purpose.

Mr. CASSIN (France) was ready to consider the proposals put forward by other delegations to clarify his own text in order to remove any doubt on the matter. The idea of facilitating a person's release during his trial was very praiseworthy, however, and should not be rejected.

Only one question was involved: whether the accused person had the absolute right to provisional release. Mr. Cassin did not think so and that was why he suggested that the text should be amended.

He felt that the objections put forward by the representative of the USSR were completely covered by the expression "or other condition" in his amendment.

Mrs. ROOSEVELT (United States of America) explained that even in the United States of America release on bail was not necessarily compulsory.

Her amendment was therefore in no way categorical and was simply intended to define the procedure to be followed. Consequently, in order to satisfy Mr. Cassin and to bring her text into conformity with the preceding sentence she proposed the following draft: "Pending trial, the requirements of release may be satisfied by release on bail."

Mr. FONTAINE (Uruguay) said that the Commission's aim was to facilitate the release of the accused. The provision in question applied only in certain countries and did not exist in others. The words "release on bail" should, therefore, be deleted in order to make the text more general.

On the Chairman's suggestion it was decided to defer consideration of the last sentence of paragraph 3 till the following day.

Article 9, paragraph 4

Mr. SHANN (Australia) withdrew his amendment (E/CN.4/212).

Miss BOWIE (United Kingdom) said that her amendment was to replace "habeas corpus", which was a very special procedure, by definite guarantees in more general terms.

Mr. SOERENSEN (Denmark) felt that United Kingdom legislation afforded the individual the best possible guarantees against unlawful detention. However, the wording proposed by the United Kingdom did not fit in very well with the legislation of other countries. It laid down the right of the individual, even if of unsound mind or suffering from an infectious disease, to be brought before a tribunal which would decide whether his detention was lawful. In Denmark, for example, the Minister of Justice alone could decide in such cases.

The purpose of the Danish sub-amendment was to amend the United Kingdom wording to make it clear that in certain specific cases the right to decide such questions should belong to the executive power only.

Another solution would be to indicate that States, which did not recognize the competence of the courts in the matter, were entitled to state their reservations when they ratified the Covenant. If such a solution were adopted, his country would be prepared to withdraw its sub-amendment.

Mr. CASSIN (France) thought the United Kingdom wording excellent. He would vote for it and would withdraw his own amendment.

He could not accept the Danish sub-amendment, nor could Mr. SAGUES (Chile).

/Mr. LOUFI

Mr. LOUFI (Egypt) also supported the United Kingdom proposal, and was opposed to the Danish sub-amendment. No one could prevent that country from stating its reservations when it ratified the Covenant.

Mrs. ROOSEVELT (United States of America) wished to have the words "in the nature of habeas corpus" retained. The sentence in no way suggested that countries in which that institution did not exist would be obliged to introduce it. There might be other ways of protecting the individual's rights. Nevertheless that sentence expressed the essential idea that a hearing by an independent court should be a guarantee against administrative abuses.

Mr. PAVLOV (Union of Soviet Socialist Republics) thought that there was no need to include that conception, or rather that expression, in an international covenant. It would amount to imposing upon other countries particularly Anglo-Saxon conceptions. The United Kingdom wording therefore seemed more acceptable.

He asked Mrs. Roosevelt whether she would agree to delete the last sentence of the United States amendment. There was no need to provide for the event of war in that context.

Mrs. ROOSEVELT (United States of America) said she would be prepared to accept the United Kingdom draft if Miss Bowie would agree to amend it by adding, at the beginning, the following sentence contained in document E/CN.4/170/Add.4 submitted by the United States: "Any one who is deprived of his liberty by arrest or detention, by a person or in a place under the jurisdiction of a State signatory to the Covenant, shall be entitled.....".

Miss BOWIE (United Kingdom) did not think that that amendment would serve any useful purpose.

Mrs. ROOSEVELT (United States of America) explained that the purpose of her amendment was to make clear that a person summoned by an international tribunal, for example, should not be entitled to habeas corpus in the country in which he was detained.

Mr. LEBEAU (Belgium) said that he would be unable to vote for the United States amendment. Indeed, without Mrs. Roosevelt's oral explanation the text would have been very obscure.

Mr. AZKOUL (Lebanon) and Mr. INGLES (Philippines) asked Mrs. Roosevelt to delete from her text the words "signatories to the present covenant".

Mrs. ROOSEVELT (United States of America) agreed to do so.

The United States amendment to the United Kingdom text of paragraph 4 was rejected by 3 votes to 7.

The Danish sub-amendment to the same text was rejected by 3 votes to 1, with 5 abstentions.

The CHAIRMAN opened discussion on the United Kingdom text.

Mr. CASSIN (France) asked Miss Bowie to amend her wording as follows:

Replace the word "court" by the expression "judicial or administrative court".

Substitute the word "recourse" for the word "proceedings" and the expression "as soon as possible" for the word "speedily".

Miss BOWIE (United Kingdom) agreed to those amendments.

Mr. VILFAN (Yugoslavia) drew the Commission's attention to the fact that it had adopted the expression "arrested or detained" for paragraph 3 of that article. The same wording should therefore be used in paragraph 4.

Mr. ENTEZAM (Iran) disagreed, as, in order to be entitled to go before a court, a person should have been detained for a certain time, while arrest might last a few hours only.

Mr. PAVLOV (Union of Soviet Socialist Republics) pointed out some inaccuracies in the Russian interpretation. The word "detention" was translated into Russian sometimes by a word meaning "arrest" and sometimes by one meaning "imprisonment".

The text before the Commission should apply to all cases of deprivation of liberty.

Mrs. ROOSEVELT (United States of America) explained that habeas corpus applied only in cases of somewhat prolonged detention.

Miss BOWIE (United Kingdom) saw no reason for adopting the Yugoslav suggestion.

The United Kingdom wording of paragraph 4, as amended by the French representative, was adopted by 12 votes to none, with 3 abstentions.

The meeting rose at 5.45 p.m.