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Fifth Session

SUMMARY RECORD OF THE ONE HUNDRED AND TWENTY-SIXTH MEETING

Held at Lake Success, New York,  
on Tuesday, 14 June 1949, at 10.30 a.m.

CONTENTS: Consideration of the draft international Covenant on  
human rights: Article 4 (E/800, E/CN.4/319, E/CN.4/324,  
E/CN.4/325)

<u>Chairman:</u>	Mr. CHANG	China
<u>Rapporteur:</u>	Mr. MALIK	Lebanon
<u>Members:</u>	Mr. SHANN	Australia
	Mr. STEYAERT	Belgium
	Mr. SAGUES	Chile
	Mr. SOERENSEN	Denmark
	Mr. LOUEFI	Egypt
	Mr. CASSIN	France
	Mr. GARCIA BAUER	Guatemala
	Mrs. MEHTA	India
	Mr. ENTEZAM	Iran

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Members: (continued)

Mr. INGLES	Philippines
Mr. KOVALENKO	Ukrainian Soviet Socialist Republic
Mr. PAVLOV	Union of Soviet Socialist Republics
Miss BOWIE	United Kingdom
Mr. SIMSARIAN /	United States of America
Mr. MORA	Uruguay
Mr. VILFAN	Yugoslavia

Representatives of Specialized Agencies:

Mr. ARNALDO	United Nations Educational, Scientific and Cultural Organization (UNESCO)
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Consultants from Non-Governmental Organizations:

Category A

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

Category B

Mrs. ROBB	International Federation of University Women
Mr. STEINER	Commission of the Churches on International Affairs
Mrs. VERGARA	Catholic International Union for Social Service
Miss SCHAEFER	International Union of Catholic Women's Leagues
Mr. BEER	International League for the Rights of Man

Secretariat:

Mr. HUMPHREY	Representative of the Secretary-General
Miss KITCHEN	Secretary of the Commission

CONSIDERATION OF THE DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS:

ARTICLE 4 (E/800, E/CN.4/319, E/CN.4/324, E/CN.4/325)

The CHAIRMAN opened the discussion on article 4 of the draft international covenant and the amendments submitted to it by the United States of America, the United Kingdom, France, and the Union of Soviet Socialist Republics (E/CN.4/319, E/CN.4/324, E/CN.4/325).

/Mr. SIMSARIAN

Mr. SIMSARIAN (United States of America) stated that his delegation had originally proposed for article 4 a text imposing general limitations on the rights contained in the Covenant (E/CN.4/170, E/CN.4/170/Add.1). The Commission had at that time decided to postpone consideration of article 4 until part II of the draft Covenant had been completed. As a result of the discussion on part II, general limitations had been embodied in nearly all its articles. The United States delegation therefore considered its original proposal (E/CN.4/170) no longer necessary, and withdrew it.

Limitations to article 9, paragraph 5, and article 11, paragraph 2, had been proposed as an amendment to article 4 in document E/CN.4/325, since the Commission had decided to postpone consideration of limitations to the rights contained in those articles until it dealt with article 4. On reconsideration, however, his delegation had decided to withdraw that part of its amendment, since it thought it preferable to consider those limitations at the following session when the articles in question were again taken up. Moreover, in view of the adoption of article 22, his delegation no longer considered it necessary to state that other rights in the Covenant should be subject to no limitations, and it therefore withdrew the whole United States amendment in document E/CN.4/325.

In the Covenant the limitations to each right had been carefully elaborated in relation to the substantive issues involved, and if it was thought necessary to alter those limitations he felt that they should be reviewed in connexion with each article at the following session.

He did not feel that a public emergency should be allowed to derogate from the rights and freedoms contained in the Covenant; he therefore hoped that the United Kingdom would withdraw its amendment (E/CN.4/319) and agree that article 4 should be deleted from the Covenant.

/Mr. MALIK

Mr. MALIK (Lebanon) expressed satisfaction that the United States delegation had altered its previous position and no longer insisted on the incorporation of an article of general limitations but would co-operate with other representatives in elaborating a text defining the limitations permissible in each article.

Mr. CASSIN (France) said that his delegation withdrew the amendment contained in document E/CN.4/187 in view of the adoption of article 22.

The French amendment to the United Kingdom amendment (E/CN.4/324) had been submitted to fill in gaps in the original text with the numbers of articles in respect of which no derogation should be permitted from the rights they embodied, and to mark the fact that only certain rights could be abrogated at a time of national emergency.

Referring to the third paragraph of the United Kingdom amendment (E/CN.4/319), he felt that Governments should be required to inform the United Nations of any major derogation from the Covenant, although minor adjustments might be disregarded.

The French amendment was dependent on the United Kingdom amendment and would fall if the latter were withdrawn; he thought, however, that the Commission should consider the United Kingdom amendment in order to establish the position of the Covenant in the event of a war or other national crisis.

Miss BOWIE (United Kingdom) welcomed the reversal of the United States position; her delegation had always felt that the articles must contain specific provisions and that limitations should be placed against the provisions to which they referred. The United Kingdom had asked for that reason that its views and proposals on the matter should be included in the Commission's report to the Council, and she expressed the hope that in a subsequent consideration of the draft Covenant all vague limitations and provisions would be removed.

Her delegation maintained, however, its proposal contained in document E/CN.4/319, because it felt that it was necessary to envisage possible conditions of emergency in which States would be compelled to impose limitations upon certain human rights. Articles 9 and 13, for instance, contained provisions which a country in a state of war might find impossible to apply. Paragraph 1 of the United Kingdom proposal thus laid down the important principle that in certain circumstances a

State could take measures derogating from its obligations under part II of the Covenant to the extent strictly limited by the exigencies of the situation.

On the other hand, she agreed with the representative of France that there were a number of rights which must remain unimpaired in any circumstances. Paragraph 2 of her proposal stated accordingly that there should be no derogation from Articles 5, 6, 7, 8 (1) or 14 under that provision. She suggested, in that connexion, that the words "except in respect of deaths resulting from lawful acts of war" should be added after article 5 in the second paragraph of her proposal. While reference to war might seem inappropriate in a document dealing with human rights, the facts must be faced, and her delegation wished to incorporate that phrase, which had been used in the Hague Convention, in its proposal.

While the French list of articles from which there should be no derogation differed somewhat from the one presented by her delegation, it would be for the Commission to determine which of the articles mentioned should be listed.

Finally, her proposal set forth the principle that any State availing itself of the right of derogation must inform the Secretary-General of the United Nations of the measures it was enacting and the reasons therefor.

The CHAIRMAN noted three ideas in the proposal: (1) certain rights could be derogated from in certain circumstances; (2) while derogation from those rights was permissible in public emergencies, an exception should be made in respect of certain rights which must always remain unimpaired; (3) whenever there was a derogation from any rights, the Secretary-General must be informed thereof.

The first and third ideas seemed of a more general nature, whereas the second idea involved enumeration of the articles from which there should be no derogation. In view of the fact that the numerical order of the articles of the Covenant had not yet been determined and that more articles might later be included in the light of comments which would be received from Governments, he suggested that the Commission should postpone any decision in respect of paragraph 2 of the United Kingdom proposal until it had become clear what provisions Part II of the draft Covenant would contain.

Mr. PAVLOV (Union of Soviet Socialist Republics) stated, with reference to the introductory phrase of his amendment (document E/CN.4/319, page 4), that the Commission must decide what purpose the draft Covenant should serve. What was the ultimate aim of the Commission on Human Rights? Was it peace, or war, or both? The Commission must guard against giving the impression that it was obsessed by the idea of the possibility of war and that its entire work was centred round that notion.

The draft Covenant was a document which attained full meaning only in time of peace, and there was no need to envisage future emergencies at that early drafting stage. Indeed, the articles of the Covenant would seem sheer mockery to the peoples of the world if the United Kingdom suggestion concerning "lawful acts of war" were adopted.

The Commission should not become a champion of limitations of human rights. While it was easy to limit human rights, it was difficult to do so without destroying them. He was therefore in favour of the least possible limitation.

The second part of his amendment suggested that if a special general article providing for restrictions of, and derogations from, the principle of the protection of human rights under certain conditions was adopted, the words "directed against the interests of the people" should be inserted after the words "in time of war or other public emergency". That was a most important limitation clause designed to limit derogations from human rights to cases where the interests of the people were at stake. Thus it would be made clear that that was the exclusive purpose of the limitation, which must only be put into effect as a measure of defence against aggression and other acts of war directed against the interests of the people.

With regard to the second paragraph of the United Kingdom proposal, he agreed with the United Kingdom delegation that even in the case of war or other public emergencies it must be made clear to what specific rights the limitations could or could not apply. For that, however, it would be necessary to go over each article of the substantive part of the draft Covenant, which was still incomplete. He therefore proposed that the Commission should postpone consideration of article 4 until it had completed the discussion of part II of the draft Covenant and of any additional articles which might be proposed in that regard. Any decision on the article at that juncture would be premature.

In reply to a statement by the CHAIRMAN, Mr. SIMSARIAN (United States of America) stated that he had formally proposed the deletion of article 4.

Miss BOWIE (United Kingdom) maintained her position that it was of vital importance to discuss the two principles the United Kingdom delegation had advanced: (a) that derogation should be permitted only in case of emergency, and (b) that, even in such cases, the safeguarding of certain rights enumerated in the Covenant must still be guaranteed. The list of those rights need not necessarily be compiled at that moment. It might be postponed until the articles which had not yet been discussed had either been incorporated into or omitted from the Covenant.

She regretted that the USSR representative regarded the rights incorporated thus far as merely the trimmings and not the essentials. It was her belief that the human rights already approved by the Commission for inclusion in the Covenant constituted the essentials, and that the additional articles merely supplemented them.

Mr. MALIK (Lebanon) stated that there were two ideas before the Commission. One was to delete article 4 entirely, eliminating any sanction of limitation of human rights: he understood that the USSR delegation favoured that suggestion. The other idea was to postpone consideration of article 4. No one had suggested that, but it seemed to him that the USSR delegation considered that the immediate course to be followed. As the United States delegation also favoured the elimination of any general limitation clause, it might be better from a procedural point of view to vote first on the motion to delete article 4.

Mr. LOUTFI (Egypt) stated that his delegation supported the United Kingdom representative. It was his understanding that the United Kingdom delegation wanted the Commission to discuss paragraph 1 and postpone consideration of paragraph 2. He considered, however, that paragraph 3 also should be postponed, since it concerned measures of implementation.

Miss BOWIE (United Kingdom) stated that paragraphs 1 and 2 of the United Kingdom proposal must stand together. It was certainly necessary to determine which articles must not be subject to derogation under any circumstances. As for paragraph 3, that might either be discussed with the others or be postponed.

/Mr. CASSIN

Mr. CASSIN (France) agreed that a specific list of articles not subject to limitation must appear under paragraph 2. His delegation was of the opinion that article 4 should neither be deleted nor limited to time of war. There were cases when States could be in extraordinary peril or in a state of crisis, not in time of war, when such derogations were essential. In the opinion of the French delegation, there were three principles to be recognized: (1) that limitations on human rights were permissible in time of war or other emergency; (2) that certain rights were not subject to limitation under any conditions; (3) that derogation from the Covenant must be subject to a specified procedure and that such derogation, undertaken under exceptional circumstances, must accordingly be given exceptional publicity.

Mrs. MEHTA (India) stated that her delegation accepted the principles in article 4. Since it had been suggested that consideration of the details could be postponed, there was no need to postpone a vote on the whole.

She agreed that the Commission must specify the conditions under which derogation from the Covenant could take place. If the Commission did not wish to recognize the possibility of war, then there should be a reference to national or other public emergency. Her delegation agreed that certain rights were inviolable under all circumstances, and that the Secretary-General of the United Nations had to be informed whenever derogation took place under the provisions of article 4.

The CHAIRMAN, speaking as the representative of China, expressed the view that if there were to be an article containing the ideas stated in the proposed article 4, it should not appear in part I. Those ideas were linked by their nature to the terms of article 22, as adopted. The essential character of the proposed article, dealing as it did with limitations, bore a marked resemblance to the subject matter of article 22; it should therefore be placed before or after that article.

The Commission would remember the discussions that had preceded the adoption of the Universal Declaration of Human Rights. The text of the Drafting Committee which was before the Commission was of an earlier date than the Universal Declaration of Human Rights. When, in drafting the latter, the Commission had dealt with the matter of limitations,



had agreed to place them after the enumeration of rights. If the limitation clause in the Covenant were placed in part I, he would be compelled to vote against the article.

He was opposed to mentioning war as a condition permitting derogation from the Covenant. It was not that he was unrealistic so far as the possibility of future wars was concerned, but to mention war as a condition permitting derogation of certain human rights would involve recognition of the concept of rules of war, which he deemed questionable, at the very least.

With regard to the enumeration of articles the limitation of which might be permitted under certain conditions, Mr. Chang believed that that should be considered later, since the articles subject to consideration in that respect might yet be added to or subtracted from.

Mr. PAVLOV (Union of Soviet Socialist Republics) proposed the postponement of the debate on article 4 until part II of the Covenant was completed. He added, in reference to the earlier suggestion of the Lebanese representative, that it was not in order to vote first on the proposal to delete article 4, since that would eliminate any possibility of amending it. He moved that a vote should be taken on the proposal to postpone consideration of article 4 until part II had been completed. There was no reason to hurry the matter. Only those who envisaged the early possibility of war desired to hasten consideration. The USSR delegation saw no such possibility, and hence no need for hurry.

Mr. MALIK (Lebanon) explained that he had not submitted a proposal. He had simply noted that the United States delegation had felt that article 4 might well be withdrawn. He thought a vote should be taken on the USSR motion to postpone consideration of article 4.

Miss BOWIE (United Kingdom) was opposed to postponement on the ground that article 4 contained matters of principle unrelated to Part II. She protested against the suggestion that she favoured war. It was because she hated and loathed war that she desired safeguards for human rights in the event of its occurrence.

Mr. SAGUES (Chile) opposed postponement on the ground that the ideas before the Commission must be considered in the proper framework. He favoured the withdrawal of the amendments to the general limitations clause, but for reasons other than those which had been stated. It had been said that the limitations had been referred to in each article in

/ part II,

part II, and that a special article was not therefore necessary. That was not so. The limitations referred to in those articles had been given only as examples, and not as a complete list. The Chilean delegation did not believe that there was any such thing as absolute freedom or absolute rights. Freedom must be subject to certain limitations.

He could not therefore accept the USSR proposal to postpone consideration of article 4.

Mr. KOVALENKO (Ukrainian Soviet Socialist Republic) favoured postponement on the ground that it would be necessary in any case to return later to consideration of the matter as additional rights were added to part II. Article 4 was closely related to part II. It might have to be placed in that part or later in the Covenant. As for the question of priority, the statement of general rights was certainly more important than the listing of exceptions in time of war. He wondered whether the case was not that countries now limiting human freedoms, on grounds of political or other considerations, desired to find justification for their actions in a hurried passage of a list of exceptions to the obligatory observance of human rights.

The CHAIRMAN put the proposal to postpone consideration of article 4 until part II of the Covenant was completed to the vote.

The proposal was rejected by 7 votes to 2, with 6 abstentions.

The meeting rose at 1 p.m.