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Sixth Session

SUMMARY RECORD OF THE HUNDRED AND FIFTIETH MEETING

Held at Lake Success, New York,
on Monday, 10 April 1950, at 11 a. m.

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Articles 5, 10 and 11 (E/CN.4/353/Add.10, E/CN.4/365,
E/CN.4/387, E/CN.4/392, E/CN.4/393, E/CN.4/395, E/CN.4/398
and E/CN.4/407).

Chairmen:

Mrs. ROOSEVELT

United States of America

<u>Members:</u> Mr. WHITLAM	Australia
Mr. STEYAERT	Belgium
Mr. VALENZUELA	Chile
Mr. CHANG	China
Mr. SORENSON	Denmark
Mr. RAMADAN	Egypt
Mr. ORDONNEAU	France
Mr. KYROU	Greece
Mrs. MEHTA	India
Mr. MALIK	Lebanon
Mr. HOARE	United Kingdom of Great Britain and Northern Ireland
Mr. ORIBE	Uruguay
Mr. JEVREMOVIC	Yugoslavia

Representatives of non-governmental organizations:

Category A:

Miss SENDER	International Confederation of Free Trade Unions (ICFTU)
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Category B:

Mr. NOLDE	} Commission of Churches on International Affairs
Mrs. NOLDE	
Mr. MOSKOWITZ	Consultative Council of Jewish Organizations
Mr. CRUICKSHANK	Inter-American Council of Commerce and Productions
Mrs. FREEMAN	International Council of Women
Miss TOMLINSON	International Federation of Business and Professional Women
Miss ROBB	International Federation of University Women

Secretariat:

Mr. HUMPHREY	Director of the Division of Human Rights
Mr. SCHWELB	Assistant Director of the Division of Human Rights
Mr. LIN MOUSHENG	} Secretaries of the Commission
Mr. DAS	

COMPOSITION OF THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES

1. The CHAIRMAN recalled that the Commission had decided to postpone consideration of that question until the present time, so as to enable members to submit nominations for the replacement of Mr. William McNamara. It had been understood that in the absence of any such proposals, the Commission would recommend to the Economic and Social Council that the number of members of the Sub-Commission should be reduced from thirteen to twelve. The Chairman pointed out in that connexion that the Sub-Commission on Freedom of Information and the Press was composed of only twelve members.

There being no objection, it was decided to recommend to the Economic and Social Council that the number of members of the Sub-Commission on Prevention of Discrimination and Protection of Minorities should be reduced from thirteen to twelve.

MEETINGS OF THE COMMISSION AND THE COMMITTEES

2. Mr. KYROU (Greece) suggested that the Commission should not meet on Wednesday 12 April, so that the Chairman could attend the commemoration services in honour of President Roosevelt. That would also give the Commission an opportunity to pay tribute to one of the most ardent defenders of human rights.

3. The CHAIRMAN thanked the Greek representative for his consideration and said that she would in fact have to be absent on Wednesday 12 April in order to attend the ceremonies to be held at Hyde Park. The Commission could, however, meet under the chairmanship of Mr. Chang.

4. Mr. CHANG (China), although quite prepared to act as chairman if the Commission so desired, was nevertheless in favour of holding no meeting on Wednesday 12 April, for the reasons given by the Greek representative.

5. The CHAIRMAN suggested that if the Commission decided not to meet on Wednesday, the members of the Committee on Implementation should take advantage of that day to begin their work.

/6. Mr. MALIK

6. Mr. MALIK (Lebanon) thought that it was hardly advisable to refer such an important question as measures of implementation to the Committee before discussing it thoroughly in the Commission. He therefore proposed that the Commission should hold a preliminary discussion on that question in order to be able to give the Committee certain general instructions to serve as a guide.

7. Mr. ORDONNEAU (France) and Mr. KYROU (Greece) supported Mr. Malik's proposal and pointed out that the Committee could not examine the question profitably until after it had been discussed by the Commission.

8. The CHAIRMAN proposed that Wednesday, 12 April should be set aside for meetings of the other committees of the Commission, such as the Committee on the Yearbook of Human Rights and the Committee on Communications.

9. Mr. ORDONNEAU (France) stated that in view of the many functions devolving on him it was very difficult for him to follow the work of the Commission and that of its committees simultaneously. He asked whether, under the rules of procedure, it would be possible for him to appoint an alternate to vote in the committees.

10. Mr. HUMPHREY (Secretariat) replied that the Commission's rules of procedure which also applied to the committees did not allow that.

11. Mr. ORDONNEAU (France) thought that it was a pity that the rules of procedure allowed anyone to speak whereas they reserved the right to vote for principal representatives. In his opinion, exactly the opposite should apply, since it was very easy to instruct an alternate on how to vote.

12. Mr. KYROU (Greece) thought that it would be best not to hold any meeting on Wednesday, 12 April.

13. The CHAIRMAN put to the vote the Greek representative's proposal.
That proposal was adopted by 8 votes to 2, with 3 abstentions.

/14. The CHAIRMAN

14. The CHAIRMAN then proposed that Thursday, 13 April should be set aside for the work of the Committee on Prevention of Discrimination and Protection of Minorities and the Committee on the Yearbook on Human Rights which would meet in the morning and the afternoon respectively. She also proposed that Friday, 14 April, should be set aside for the general debate on measures of implementation

15. Mr. HUMPHREY (Secretariat) thought that it would be preferable for the Committee on Prevention of Discrimination and Protection of Minorities to meet in the morning so that it could, if necessary, continue its work in the afternoon.

The Commission decided by 7 votes to none, with 6 abstentions, that Thursday, 13 April, should be set aside for meetings of the Committee on Prevention of Discrimination and Protection of Minorities and the Committee on the Yearbook on Human Rights.

16. Mr. MALIK (Lebanon) proposed that the general debate on measures of implementation should be postponed until the following week in order not to delay the drafting of the covenant itself.

17. Mrs. MEHTA (India) supported that suggestion.

The Commission decided by 7 votes to none, with 6 abstentions, to postpone the general discussion on measures of implementation until the following Monday.

DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS (ANNEXES I AND II OF THE REPORT OF THE FIFTH SESSION OF THE COMMISSION ON HUMAN RIGHTS, DOCUMENT E/1371) (continued)

Article 5 (continued)

18. The CHAIRMAN proposed that consideration of article 5, paragraph 3, should be postponed in order to enable the delegations of the United States and Lebanon to agree on a joint text.

It was so decided.

/Article 10

Article 10

19. Mr. VALENZUELA (Chile) said he was in favour of the original text of the article. He could not support the amendment put forward by the Philippine delegation as the original text was expressly intended to prevent imprisonment in the case where an individual found himself unable to fulfil his contractual obligations. It was clear, moreover, that that provision would not provide immunity for dishonest persons. The Chilean delegation, therefore, would vote in favour of the original text of article 10 and against the amendment put forward by the Philippine delegation.

20. Mr. Valenzuela agreed with the reservations expressed by the Danish delegation in the first part of its comments reproduced on page 33 of document E/CN.4/365. The Chilean Government also attached the greatest importance to the punishment of the crime of abandoning a family and failing to pay maintenance allowances, a case which should be considered as outside the scope of the article.

21. Mr. KYROU (Greece) was also in favour of maintaining article 10 in its original form. All national legislations punished persons guilty of fraud.

22. He could not accept the addition to article 10 proposed by the Philippine delegation (E/CN.4/407), for the word "excessive" which was included in that amendment, had a relative meaning.

23. The CHAIRMAN, speaking as the representative of the United States of America, agreed with the representatives of Chile and Greece on their interpretation of the original text of article 10. Evidently the Commission was unanimously in favour of adopting the reservations expressed by the Danish delegation in its written comments. The United States delegation was therefore prepared to accept the existing text, provided that the Commission's documents included the correct interpretation of the text.

24. Mr. WHITLAM (Australia) was opposed to the adoption of the Philippine amendment for the reasons given by the Chilean representative.

25. As to the first part of the Danish delegation's comments, the Australian delegation was prepared to make analogous reservations. He thought, however, that it was unnecessary explicitly to mention that a person could be imprisoned for failure to pay a maintenance allowance, as those matters were within the competence of the national courts which pronounced judgment in the case of breaches of the law. He recalled that article 10 was only intended to prohibit prison sentences for debt.

26. Mr. HOARE (United Kingdom) agreed with the representatives of Australia and Chile in considering that the original text excluded the cases provided for in the reservations of the Danish delegation. The original text of the article had been drafted very carefully and it had a precise legal meaning. It was intended to prevent prison sentences for persons unable to fulfil their contractual obligations. In the case of failure to pay a maintenance allowance which a court had assessed to be paid, imprisonment (which could only be resorted to after the court had assessed the ability of the accused party to pay) was for disobedience of the court order.

27. Mr. SORENSON (Denmark) explained that his Government did not expressly wish the text of article 10 to be modified, but merely meant to clarify its scope. It was apparent from the statements which had just been made that the other delegations shared the views of the Danish delegation. In the circumstances, he was prepared to vote for article 10 as it was drafted, on the understanding that the interpretation accepted by the Commission would be noted in the summary record.

28. Mr. RAMADAN (Egypt) was also in favour of the original text of article 10. The Philippine amendment was unnecessary because it was clear that fraud invalidated the contract and that, in that case, the victim could appeal to the courts.

29. Mr. JEVREMOVIC (Yugoslavia), like the previous speakers, thought that the original text was sufficiently clear. The Philippine amendment was not only unnecessary but even legally unsound, not because fraud should not be

punished, but because in the case of fraud, it was that which constituted the grounds for arrest and not the individual's inability to fulfil his contractual obligations.

30. Mr. MALIK (Lebanon) thought that the whole meaning of article 10 depended on the phrase "merely on the grounds" which clearly expressed the author's intentions. The phrase meant that inability to fulfil contractual obligations did not constitute sufficient grounds but it did not do away with the possibility of imposing a prison sentence on other grounds. The original text, therefore, took into account the reservations expressed by the representative of Denmark and it was unnecessary to polish a text which was perfectly clear in meaning.

31. The CHAIRMAN put to the vote the Philippine amendment proposing that the words "unless he is guilty of fraud" should be added to article 10 (E/CN.4/365, page 33).

That amendment was unanimously rejected.

32. The CHAIRMAN put to the vote the proposal put forward by the Philippines to add the following paragraph to article 10: "No one shall be subjected to excessive fines." (E/CN.4/407).

That proposal was rejected by 11 votes to none, with 2 abstentions.

33. The CHAIRMAN put to the vote the original text of article 10: "No one shall be imprisoned merely on the grounds of inability to fulfil a contractual obligation." (E/CN.4/365/page 33).

Article 10 was adopted unanimously.

Additional article proposed by the Union of Soviet Socialist Republics to precede article 11 of the draft covenant (pages 28-29 of the report of the fifth session of the Commission on Human Rights (document E-1371)).

34. The CHAIRMAN recalled that at the fifth session the USSR had proposed the insertion of an additional article before article 11 of the draft covenant. A draft amendment (E/CN.4/395) to the USSR proposal had been submitted by the Yugoslav delegation.

35. She enquired

35. She enquired whether the Commission wished to begin discussing the additional articles immediately or to postpone consideration of them until it had concluded the first reading of the draft covenant.
36. Mr. KYROU (Greece) was in favour of the second solution. After completing the first reading, the members of the Commission would have a clearer conception of the covenant as a whole and would thus be in a better position to decide on the proposed additional articles.
37. Mr. WHITLAM (Australia) supported the Greek representative's view and added that no final decision had yet been taken on the order of the articles.
38. Mr. HOARE (United Kingdom) observed that some additional articles might have a direct bearing on articles of the draft covenant and in that case it would be preferable not to postpone consideration of them. A particular case in point was the proposed additional article to be inserted after article 2. He suggested that the general principle that new articles should be considered later should not preclude the consideration of a new article which was closely associated with an existing one.
39. Mr. JEVREMOVIC (Yugoslavia) felt that the Commission could not take a decision of principle to defer consideration of the additional articles until after the first reading of the draft covenant. Neither the article submitted by the USSR, nor the amendment to it proposed by the Yugoslav delegation, in any way contradicted article 11, which the Commission was about to discuss. There therefore seemed to be no reason why those proposals should not be considered forthwith.
40. The CHAIRMAN asked whether the members of the Commission agreed that the additional articles should be considered at the end of the first reading, unless they had a direct bearing on articles already included in the draft covenant.

It was so decided by 11 votes to 1, with 1 abstention.

Article 11

41. Mr. SORENSEN (Denmark) observed that his Government's reservations with regard to article 11 (E/CN.4/365, page 35) were due to the fact that the article, as originally drafted, ensured impunity to persons who wished to leave a country in order to evade obligations with which, in the public interest, it was desirable that they should be required to comply. During the previous session the Danish delegation had submitted an amendment designed to close that gap, but the Commission had not thought fit to accept it. The Danish Government, however, still had serious misgivings on the point.

42. The new text proposed by the United States delegation to some extent allayed those misgivings, but still left room for doubt.

43. The Danish delegation preferred the amendment proposed by the Netherlands (E/CN.4/365). By reason of its general nature that amendment might admit of derogations from the right stated. Such a defect was, however, difficult to avoid in an article dealing with so complex a subject. The important thing was to ensure that the general interests of the community should not be impaired in an attempt to safeguard the rights of the individual.

44. The Danish delegation would therefore vote for the Netherlands amendment; if that amendment was rejected, it would vote for the text proposed by the United States of America.

45. The CHAIRMAN, speaking as representative of the United States of America, introduced the new text of article 11 proposed by her delegation (E/CN.4/365). She pointed out that the reference to public morals and to the protection of the rights and freedoms of others had been introduced in paragraph 1 not merely because it was necessary, but also in order to ensure conformity with the drafting already adopted for the reservations in articles 16, 18 and 19.

46. In addition to the exceptions envisaged by the original text, the new text made provision for other legitimate exceptions, such as restrictions on movement for purposes of prostitution, restrictions designed to secure the settlement of tax claims before departure from a country or the legitimate detention of a witness or accused person in connexion with legal proceedings.

/47. The United States

47. The United States delegation was also proposing to limit sub-paragraph (a) of paragraph 1 to governmental interference. It was of the opinion that article 11 should be considered in the light of article 20 on non-discrimination, which prohibited all discrimination in the application of the rights set forth in the covenant. Unless article 11 was limited, there was a danger that it might be interpreted in the light of article 20 as depriving landlords of the free choice of tenants. It was the current practice to reserve certain dwellings for special categories of persons, for example, for women or for people of a particular religion. It was certainly not the Commission's intention to change that practice, but, in order to avoid any misunderstanding, the United States delegation had thought it preferable to limit the scope of sub-paragraph (a) to the exercise of public powers alone.

48. With regard to paragraph 2, the United States amendment was intended to extend the right accorded by guaranteeing to persons born abroad the right to enter the country of which they were nationals.

49. Mr. HOARE (United Kingdom) recalled that many representatives had had misgivings about the article at the fifth session of the Commission, and that the majority had abstained from approving the text under discussion. The misgivings had been caused by the difficulty incurred in drafting a text which took into account the legitimate exceptions to be laid down regarding liberty of movement. The United States representative had listed some of those exceptions; her list was far from complete. He only wished to cite as an example the problems arising in colonial and Trust Territories. In certain cases, for instance, the periodical migration of workers compelled authorities to forbid migrant workers to stay in a part of the territory on the expiration of the work contract. There was also the case of areas reserved for native occupation. Those exceptions were lawful and necessary. They did not, however, come under the text of paragraph 1 suggested by the United States delegation. In order to cover those and similar cases a wider and more general statement of exceptions would be required, and that would mean that the article would have very little real content. In the circumstances the United Kingdom thought that the preferable course was to delete the article.

50. Mr. MALIK (Lebanon) agreed that the wording of article 11 gave rise to real difficulty, but to delete would mean that a provision referring to an important right was removed from the covenant. In its comments the Australian Government asked whether freedom of movement was a right as basic or as fundamental as, for example, the right to live or the right to personal liberty, and whether it might not be preferable in the interests of speedy and widespread acceptance of a convention on fundamental rights to defer to a later convention the draft article 11.

51. Mr. Malik pointed out that, although liberty of movement was not a fundamental right, it was nonetheless an essential part of the right to personal liberty. The Commission on Human Rights had agreed, after long discussion, that article 11 should be retained. It had arrived at that conclusion as a result of the many discriminatory measures against their own nationals which some governments had taken during the past thirty or forty years. That situation, far from improving, appeared in some cases to be deteriorating.

52. He was not unaware of the difficulties which had been pointed out by the representatives of the United Kingdom, the United States of America and Australia, but those difficulties must be overcome and they could be overcome if the Commission adopted the very general formula proposed by the Netherlands delegation. That text, while proclaiming liberty of movement, subordinated it to "any general law, consistent with the rights defined in this covenant." That reservation was an appreciable safeguard. It was hardly conceivable that the signatories of the covenant would promulgate laws violating its provisions.

53. As regards sub-paragraph (a) of paragraph 1, he felt that the text proposed by the United States delegation only partly solved the problem of freedom to choose a residence. Governmental interference was no doubt one of the principal sources of abuse in that field. But Governments should also be compelled to prohibit any private initiative which might prevent the exercise of the right of all their nationals to choose their residence freely. He hoped that the text could be so revised that such an objection would be overcome while also meeting the legitimate concern of the United States Government.

54. As regards paragraph 2, the Lebanese delegation agreed with the well-founded explanations of the United States representative, and would support the text which she had proposed.

55. Mr. KYROU (Greece) fully shared the views of the United Kingdom representative and thought, as he did, that article 11 should not be retained.

56. That article simply repeated the principle laid down in article 13 of the Universal Declaration of Human Rights. It was understood that the covenant should not simply reiterate the principles already established in the Declaration. It should contain such legal provisions as to ensure the implementation of definite rights on the application of which agreement would be possible.

57. The Greek delegation would therefore vote for the deletion of article 11. If that proposal was rejected, it would vote for the United States amendment to paragraph 1 and for the French amendment to paragraph 2.

58. Mrs. MEHTA (India) recalled that it was thanks to the efforts of her delegation that the Commission had decided, at its fifth session, to include article 11 in the draft covenant. Article 11 certainly laid down a right whose implementation would be very difficult because of the large number of justified exceptions it allowed. But other rights which appeared in the draft covenant -- freedom of speech, freedom of association -- could not be granted without reservation either. They were nonetheless fundamental rights.

59. The right to personal liberty would be worthless if the individual was deprived of liberty of movement in his own country. That liberty, however, was currently denied to thousands of people. The anxiety felt at such a state of affairs explained the importance which the Indian delegation attached to article 11 and the reason why it again urged the Commission not to delete it in spite of the difficulties it involved. The problem was to find a formula which would take those difficulties into account. The Indian delegation was prepared to accept the Netherlands delegation's proposal, particularly as the Danish representative had expressed the opinion that it would allay his Government's understandable anxiety.

60. The Indian delegation could also accept the text proposed by the United States, provided that the reference to governmental interference was deleted.

61. Mr. ORDONNEAU (France) fully shared the views of the representatives of Lebanon and India. The right to liberty of movement could not be suppressed without infringing upon the physical liberty of the individual. Deletion of article 11 of the draft covenant would make one of the major provisions of the Universal Declaration of Human Rights quite impossible of application. The Commission should not be discouraged by drafting difficulties. He recognized that the objections to the original text were valid, and reserved the right to comment later upon the various amendments which had been submitted.

62. In introducing the French amendment to paragraph 2 (E/CN.4/365), Mr. Ordonneau explained that his sole aim was to ensure that that provision which, as had been rightly observed, was intended to prevent arbitrary exile, could not be invoked to prohibit justified exile; the latter, in certain cases, might be a milder measure than those to which governments would have to resort if exile were not possible. The French amendment left it to domestic legislation to determine in what cases exception could be made to the right of persons freely to enter the country of which they were nationals. The French delegation was not motivated by selfish considerations in the matter; the penalty of exile did not exist in France except in one case, that of a pretender to the throne.

63. Mr. VALENZUELA (Chile) observed that the theoretical question whether liberty of movement was a fundamental right would assume less importance if democracy really prevailed in the world. The events which had followed the Second World War, however, had shown that those whose purpose it was to deny people their fundamental rights always began by depriving them of the right to move freely through their own territory. The Commission should not run the risk of appearing tacitly to approve a state of affairs constituting a flagrant violation of the principles of the Charter.

64. The Chilean delegation well understood that the drafting of a positive text was fraught with real difficulties, but it felt that the Commission had a moral obligation to make an effort to that end, and it associated itself with the delegations of Lebanon, India and France in calling for such an effort.

65. He agreed with the Danish representative that the United States formula might be an escape clause, and he preferred the Netherlands amendment, which subjected liberty of movement only to those legislative measures consistent with the terms of the Covenant. The Chilean delegation, moreover, approved the United States text for sub-paragraph (a) of paragraph 1 and for paragraph 2.