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Sixth Session

SUMMARY RECORD OF THE ONE HUNDRED AND FIFTY-SECOND MEETING

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

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Chairman:

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. MEETA	India
	Mr. MALIK	Lebanon
	Mr. MENJEEZ	Philippines
	Miss BOWIE	United Kingdom of Great Britain and Northern Ireland
	Mr. ORIBE	Uruguay
	Mr. JEVREMOVIC	Yugoslavia

Also present:

Mrs. CASTILLO LEDON	Commission on the Status of Women
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Representatives of a specialized agency:

Mr. WEIS	International Refugee Organization (IRO)
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Representative of non-governmental organizations, Category B:

Mr. NOLDE)	Commission of the Churches on International Affairs
Mrs. NOLDE)	
Mr. MOSKOWITZ	Consultative Council of Jewish Organizations
Mr. HUNTINGTON	Friends World Advisory Committee
Miss Tomlinson	International Federation of Business and Professional Women
Miss ROBB	International Federation of University Women

Secretariat:

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

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

(continued)

Article 5 (continued) (E/CN.4/365, E/CN.4/378, E/CN.4/383, E/CN.4/384, E/CN.4/385, E/CN.4/387, E/CN.4/393, E/CN.4/398, E/CN.4/413)

1. The CHAIRMAN recalled that the Commission had adopted the text of article 5, paragraph 1, at a previous meeting, and had decided that paragraphs 2 and 3 of the article would be combined. The Commission had before it the following amendments: Lebanese amendment (E/CN.4/398, E/CN.4/413), United States amendment (E/CN.4/393), Indian amendment (E/CN.4/385), French amendment (E/CN.4/365), Philippine amendment (E/CN.4/365), and two amendments by Egypt (E/CN.4/384) and Chile (E/CN.4/378), which were only intended to modify the original text of article 5.

2. Speaking as United States representative, she considered that the two essential proposals on article 5 were the United States and Lebanese amendments. The United States amendment proposed a recasting of paragraphs 2 and 3 of the original text. It did not mention the Universal Declaration of Human Rights for she thought that document was of too general a nature to be thus ^{incorporated} in the covenant. It appeared, however, that several members of the Commission preferred that the Declaration should be mentioned in article 5 and she would therefore accept the insertion of such a reference in the United States amendment, on the understanding that that part of the text would be put to the vote separately.

3. The Lebanese proposal, on the other hand, had several new features and was not restricted to the original text of paragraphs 2 and 3. The United States delegation opposed the general formula of the Lebanese amendment, just as it had opposed the Lebanese proposal on article 9. After a very general statement, the Lebanese representative proposed that the Commission should adopt a list of exceptions (E/CN.4/398).

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4. But the Lebanese representative had in no way met the United States representative's objections to the use of a very general formula followed by a list of exceptions. The list submitted by Lebanon for article 5 was the same as that submitted by the United Kingdom. Thus the Lebanese representative did not take into account the additional exceptions to which Mrs. Roosevelt had drawn the Commission's attention (E/CN.4/383). The insertion of the words "by the State" did not solve the problem, for most of the exceptions Mrs. Roosevelt had mentioned also applied to state officials.

5. She recalled the exceptional cases she had brought to the Commission's notice, where one person might kill another without his action being considered criminal. Moreover, even if such cases were mentioned in article 5, she would not consider the article complete because the exceptions had only been cited as examples. In practice, it was almost impossible to foresee all possible exceptions and she did not see how the Lebanese representative could ask the Commission to confine itself to listing three exceptions.

6. The Lebanese representative had accepted a certain number of amendments submitted by other delegations. But that in itself did not compensate for the fundamental inadequacy of his text; that text began with a general statement, which could not be adopted without a complete enumeration of all possible exceptions. In fact, in her opinion, the original text of paragraphs 2 and 3 was better than the Lebanese text. The United States proposal followed the original text very closely and offered a practical solution of the Commission's problem.

7. Mr. ORDONNEAU (France) recalled that the first part of the French amendment had been rejected by the Commission during the vote on paragraph 1. The second part of the amendment, which related to paragraphs 2 and 3 of the original text, still remained.

8. Mr. WHITLAM (Australia) pointed out that the inclusion of a reference to the Declaration in the Lebanese amendment raised a difficult problem. The general question had been discussed in the Commission and the majority of members had expressed themselves in favour of a formula referring only to the Declaration itself, but not to its principles or provisions.

9. If the Commission were now to decide to include a specific reference to the Declaration in article 5, the question would arise whether the inclusion of such a reference in a single article would be specially significant. While he supported the Lebanese amendment as a whole, he could not vote for the inclusion of a reference to the Declaration.

10. Mrs. MEHTA (India) said that, as the first paragraph of the text she had proposed for article 5 had been rejected, she would withdraw the rest of her amendment. She agreed with the Australian representative's remarks about the difficulties which the inclusion of a reference to the Declaration in the Lebanese amendment would create. Such a reference in article 5 might give the impression that the remaining articles were not in strict conformity with the Declaration. For that reason, she asked that the Lebanese amendment should be voted upon in parts.

11. Miss BOWIE (United Kingdom) shared the Australian representative's view. She deplored the tendency of some members of the Commission to be satisfied with general statements. The covenant should clearly set forth the restrictions and conditions governing the application of the general provisions of the Declaration. She would therefore support the Lebanese amendment with the exception of the reference to the Declaration, which in her opinion should be the subject of a separate article.

12. Mr. ORDONNEAU (France) recalled his delegation's view that the word "law", as understood in the covenant, referred exclusively to laws which were not contrary to the principles of the Declaration. A precise statement to that effect should be included not in the preamble, which had no binding force, but in the body of the articles. It would suffice to introduce that definition in a special article. As, however, no such article had yet been drafted or proposed, the formula of the Lebanese amendment to article 5 was of considerable importance.

13. Unless such a formula was included, the text of article 5 would be acceptable to any dictator, as there would be nothing to prevent him from enacting laws contrary to the spirit of the Declaration. France, therefore, considered it essential that the words "not contrary to the principles expressed in the Universal Declaration of Human Rights" should be included in article 5.

14. Mr. JEVREMOVIC (Yugoslavia) agreed with the representative of France that a reference to the principles of the Declaration was necessary. There might be undemocratic laws such as those enacted by the nazi regime.

15. As regards the suggestion that there should be a reference to the principles of the Declaration in the preamble to the covenant, Mr. Jevremovic observed that the Commission had not yet adopted the preamble and that none of the texts proposed contained such a reference. On the contrary, all the texts stated that the purpose of the covenant was to give effect under certain conditions, to certain articles of the Declaration. The principles of the Declaration should, however, have binding force where article 5 was concerned, and for that reason he supported the Lebanese amendment.

16. Mr. MALIK (Lebanon) remarked that the reference to the Declaration which he had included in his amendment appeared in the original text of article 5 (paragraph 3). Consequently, he could not be accused of innovation. On the other hand, he agreed with the representative of France that from the legal point of view it did not make much difference whether a reference to the Declaration was made in a separate article of the Covenant ^{OR} in a particular article.

17. He was glad to note that Mr. Jevremovic attached so much importance to the principles of the Declaration. It was gratifying to see the change of viewpoint shown in that statement because Yugoslavia had been among the countries which abstained on the final vote on the Universal Declaration of Human Rights on 10 December 1948.

18. The United States objections to his amendment were not new. The Commission had already heard them during the discussion of article 9 and Mr. Malik thought it was rather unfair to try to link articles 5 and 9 closely together. It was true that in both cases there had been a proposal to enumerate the possible exceptions, but he pointed out that the right to
/life was

life was even more fundamental than the right to liberty. While there was an almost infinite number of cases in which deprivation of liberty was conceivable, deprivation of life was nevertheless far more serious and should be authorized only in relatively few and well defined cases.

19. The examples the United States representative had given merely illustrated her objections; they did not exhaust all the possibilities. In so far as they were individual cases, they did not come under the Lebanese text (E/CN.4/433), which dealt solely with cases where intentional deprivation of life was effected by the State. The other cases without exception fell within one of the three categories enumerated in the Lebanese text (E/CN.4/398). It was quite obvious that all cases where a person could intentionally be deprived of his life fell within one of those three categories. A reduction of the number of categories to two might even be considered, ^{as} all the cases under the first category also in fact came under the second.

20. Except for the word "intentional" and the reference to the principles of the Declaration, the Lebanese amendment was practically the same as that submitted by the United States. The Commission could therefore vote separately on those two points and it would then be unnecessary to decide on the United States amendment.

21. In conclusion, Mr. Malik recalled that the battle had been won when, in spite of fierce opposition from the United States, the Commission had decided to express the right to life in a positive form in paragraph 1.

22. Mr. KYROU (Greece) observed that the general discussion seemed to have started again with renewed vigour and proposed that the Commission should proceed to vote.

23. Mr. SORENSON (Denmark) agreed with the representative of Greece. He shared the view of the representatives of France and Yugoslavia that the Covenant should not implicitly tolerate the adoption of arbitrary laws which were contrary to the spirit of the Declaration. There were, however, certain safeguards in the covenant, particularly in articles 13 and 14. That was why he supported the representative of the United Kingdom and thought it would be better not to impair the clarity of article 5 by mentioning the principles of the Declaration.

/24. Mr. JEVREMOVIC

24. Mr. JEVREMOVIC (Yugoslavia), replying to the Lebanese representative, explained that he had not intended to express an opinion on the Declaration as a whole, but had simply pointed out that the Declaration was of particular importance with regard to article 5. Moreover, he could not formally state that his Government's attitude to article 5 of the Covenant and to the Declaration as a whole was the same as that he had expressed in his first speech.

25. Mr. ORIBE (Uruguay) stated that his delegation had always maintained that the covenant should be closely linked to the Universal Declaration of Human Rights. As the representative of France had said, it was not absolutely essential for a statement to that effect to be made in each article; it would be sufficient to state in a single article that nothing in the covenant should be contrary to the general principles laid down in the Universal Declaration of Human Rights. The Uruguayan delegation thought that article 1, or else article 22, would be an appropriate place for a provision of that kind. At all events, the importance of referring to the Universal Declaration in the covenant should not be under-estimated. Some delegations had objected to the idea on the ground that the principles laid down in the Declaration were too general and, consequently, too vague. But it was of the very essence of a declaration to be general; that in no way detracted from its usefulness and exactitude. The constitutions of many countries contained general principles, the legality or value of which were never questioned.

26. Mr. Oribe recalled, in that connexion, that at the San Francisco Conference some delegations had wished to eliminate any reference to international law from the Charter on the ground that international law was not a sufficiently exact concept. Just as the Uruguayan delegation had argued the necessity for retaining that reference then, so, both in the General Assembly and in the

Commission, it had always been of the opinion that references to the Declaration and the Charter should be included in the covenant. His delegation therefore proposed to introduce in the covenant a provision to the effect that domestic laws relating to questions covered by the covenant should be in conformity with the Declaration. That reference should even be extended to the Charter, since Article 103 of the Charter laid down that Members' obligations under it should prevail over any other international agreement. Article 29 of the Universal Declaration of Human Rights stated a similar principle.

27. He agreed with the United States delegation about the word "intentional" in the Lebanese amendment (E/CN.4/413) and would vote for its deletion. That word had a precise legal connotation; in the Uruguayan penal code an offence was called "intentional" when it exactly corresponded to the purpose of the person who committed it, and "ultra-intentional" when it went beyond that purpose. In view of its very special technical meaning, the term should not appear in the covenant.

28. With regard to paragraph 4 of the Lebanese amendment (E/CN.4/398), Mr. Oribe said that he would continue to support the principle that the covenant should not enumerate the exceptions to the rules laid down in it. He would therefore vote against the paragraph.

29. The CHAIRMAN, speaking as representative of the United States of America, remarked that her delegation was not in favour of beginning article 5, paragraph 2, with the words "No one shall be deprived of his life..." because it considered that those words were too vague for an article which should be concerned with capital punishment alone. It was for that reason that the United States delegation had proposed an amendment which was given in document E/CN.4/365.

30. Mrs. MEHTA (India) emphasized that a logical sequence of ideas between the different paragraphs of article 5 was needed. Paragraph 2 of the Lebanese amendment listed a certain number of exceptions to the rule stated in the first paragraph, which had already been adopted, and it was concerned with cases in which the State might effect "intentional" deprivation of life. If the word "intentional" were deleted, the rest of the paragraph would be devoid of any real meaning. The word

/"intentional"

"intentional" could not therefore be put to the vote separately because its deletion would upset the balance of the paragraph. In the circumstances, either the Lebanese amendment or the United States amendment should be adopted. Although she was opposed in principle to any enumeration of the exceptions to the general rules laid down in the covenant -- because such an enumeration might not be exhaustive -- she would vote for paragraph 2 of the Lebanese amendment, as she felt that it gave a complete list of exceptions and covered all the cases in which the State might deprive a person of life.

31. Mr. MALIK (Lebanon) observed that, if the Commission voted against the word "intentional", it would show that it intended to delete paragraph 4 of his amendment; that would not prevent it from adopting the rest of paragraph 2, which was almost the same as the United States amendment.

32. The CHAIRMAN put to the vote the proposal to delete the word "intentional" from paragraph 2 of the Lebanese amendment (E/CN.4/413).

The word "intentional" was deleted by 7 votes to 4 with 2 abstentions.

33. The CHAIRMAN put to the vote paragraph 2 of the Lebanese amendment, as amended.

Paragraph 2 of the Lebanese amendment was rejected by 6 votes to 5 with 2 abstentions.

34. The CHAIRMAN put to the vote the French amendment (E/CN.4/365, page 24) from the words "To take life shall be a crime...".

The French amendment was adopted by 6 votes to 3 with 4 abstentions.

35. Mr. KYROU (Greece) stated that he had abstained from voting on the French amendment because he preferred the original text.

36. Mr. MALIK (Lebanon) noted with satisfaction that the Commission had adopted the French amendment, which was inspired by the same principles and covered the same problems as the Lebanese amendment. He thought that the idea of "self-defence" ("légitime défense") in the French text was very interesting and hoped that it would be possible to complete that text by adding the provision of sub-paragraph (c) of paragraph 2 of his own amendment (E/CN.4/413). Finally, he reserved the right to raise later the question of a reference to the Universal Declaration of Human Rights in article 5.

37. Mr. RAMADAN (Egypt) explained that he had voted against the word "intentional" because he thought it was not the right word and should have been replaced by "arbitrary". He had also voted against the whole of paragraph 2 of the Lebanese amendment because of the exceptions provided for. Indeed, he considered that the expression "the most serious crimes" was not sufficiently specific, in view of the fact that the degree of gravity of a crime varied according to the various legislations; furthermore, he considered it superfluous to mention the fact that sentence must be passed by a competent court.

38. In reply to Mr. KYROU (Greece) who asked whether the Declaration would be annexed to the covenant, the CHAIRMAN stated that both the Declaration and the covenant would be included in the International Bill of Human Rights, which was to appear as a single document.

39. Miss BOWIE (United Kingdom) observed that adoption of the French amendment did not preclude the possibility of retaining the three exceptions set forth in paragraph 4 of the Lebanese amendment (E/CN.4/398). Sub-paragraphs (i), (ii) and (iii) of that amendment might be a third paragraph to be related to the text already adopted by the following sentence:

"The prohibition stated in the above paragraph shall not apply in cases of deprivation of life resulting from the use, by an agent of public authority, acting in pursuance of his lawful powers, of force which is no more than absolutely necessary."

40. Mr. MALIK (Lebanon) accepted that suggestion. He emphasized that in adopting the text proposed by the French delegation the Commission had agreed to the principles of including the exceptions in article 5. It would therefore be fully justified in completing the list of exceptions.

41. Mr. SØRENSEN (Denmark) drew attention to the fact that sub-paragraph (1) of the Lebanese amendment was concerned with self-defence, which was already provided for in the text just adopted.

42. Mr. CHANG (China) did not think it possible to combine the texts so rapidly without the danger of either repetitions or unfortunate omissions.

43. He feared that some confusion might have arisen from the fact that in voting for the deletion of the word "intentional" from the revised Lebanese amendment to paragraph 2 (E/CN.4/413), many representatives had considered that that deletion also implied the deletion of paragraph 4 of the text proposed by Lebanon for article 5 (E/CN.4/398).

44. The United Kingdom representative now expressed the opinion that there were ideas in paragraph 4 which should be kept. Mr. Chang agreed, but proposed that the vote on the question should be postponed until the Commission had a concrete proposal in writing before it.

45. Mr. MALIK (Lebanon) replied that the Chinese representative's interpretation of the deletion of the word "intentional" would have been correct if the Commission had not decided in favour of the French amendment, which also contained a list of exceptions. In the circumstances, the Commission had clearly indicated by its vote that it considered it necessary to limit the right stated in article 5. The United Kingdom representative's proposal to complete the list of exceptions was therefore fully justified and it could not be said that it would give rise to confusion.

46. Mr. ORDONNEAU (France) had no objection to the Commission voting on paragraph 4 of the Lebanese amendment in the form suggested by the United Kingdom representative.

47. He stressed

47. He stressed the fact that the text just adopted by the Commission had first been proposed as a substitute for the first paragraph of the original text. That proposal by the French delegation did not in any way exclude the remainder of the original article 5. The French delegation therefore thought that a vote should now be taken not only on the various amendments submitted, but also on paragraphs 2, 3 and 4 of the original text.

48. The CHAIRMAN recalled that at an earlier meeting the Commission had decided to combine paragraphs 2 and 3. As a result of that decision the delegations of the United States and Lebanon had submitted the proposals which were given in documents E/CN.4/393 and E/CN.4/398. There was therefore no reason to vote again on paragraphs 2 and 3 of the original text.

49. Mr. ORDONNEAU (France) urged that the vote should bear on all parts of the original text. Paragraph 2, for example, expressed an idea which the French delegation would like to see in article 5.

50. Mr. CHANG (China) supported that point of view. There was nothing to prevent the Commission from voting first on the amendment proposed by the United States as a substitute for paragraphs 2 and 3 of the original text. If the amendment was rejected, the Commission could very well decide on those two paragraphs. The essential point was that no factor which might be of importance to the article as a whole should be omitted.

51. Mrs. MEHTA (India) pointed out that if the French amendment concerned paragraph 1, it was not necessary to put it to the vote again, as the Commission had already taken a decision on that paragraph.

52. Mr. ORDONNEAU (France) explained that there was no question of a substitution, but only of an addition to paragraph 1. The French delegation had never intended to delete the remainder of the original text of article 5, which in its opinion, contained essential ideas.

53. The CHAIRMAN recalled that when the Commission had previously decided to retain the second part of the French amendment to paragraph 1, after having rejected the first part ("human life is sacred"), it had done so because it considered that the second part expressed ideas in keeping with paragraphs 2 and 3 of the original text. It was for that reason that that part of the French amendment had been put to the vote although the Commission had already gone on to consider the combined paragraphs 2 and 3.

54. Mr. MALIK (Lebanon) expressed regret that the French amendment had not been put to the vote before the Lebanese amendment, and in the form of an addition to paragraph 1. If that had been the case, the Lebanese delegation would have been happy to accept it, and would have withdrawn part of its own amendment, while reserving the right to submit some points in paragraph 4 to the Commission's vote. Such a procedure would have made it possible to avoid any confusion.

55. Mr. ORDONNEAU (France) felt that adoption of the French text was not inconsistent with a vote on the exceptions proposed by the Lebanese delegation.

56. In point of fact, the French delegation felt that those exceptions were contained, in synthetic form, in the text just adopted, but it was for the Commission to decide the question by a vote.

57. The CHAIRMAN invited the representatives of Lebanon and the United Kingdom to submit a written text of the afternoon meeting.

58. Speaking as representative of the United States of America, she withdrew the purely formal amendment to paragraph 4 (E/CN.4/365) which her delegation had submitted.

59. Mr. JEVREMOVIC (Yugoslavia) also withdrew the amendment to paragraph 4 proposed by his delegation (E/CN.4/371).

The meeting rose at 1.10 p.m.