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COMMISSION ON HUMAN RIGHTS

Eighth Session

SUMMARY RECORD OF THE THREE HUNDRED AND NINTH MEETING

Held at Headquarters, New York
on Monday, 26 May 1952, at 10.45 a.m.

CONTENTS:

Draft international covenants on human rights and measures of implementation (E/1952; E/CN.4/528, E/CN.4/528/Add.1, E/CN.4/643; E/CN.4/L.122, E/CN.4/L.130, E/CN.4/L.140, E/CN.4/L.160, E/CN.4/L.166, E/CN.4/L.176, E/CN.4/L.177, E/CN.4/L.178, E/CN.4/L.179, E/CN.4/L.180) (continued): article 3.

<u>Chairman:</u>	Mr. CASSIN	(France)
<u>Reporteur:</u>	Mr. WEITLAN	Australia
<u>Members:</u>	Mr. NISOT	Belgium
	Mr. SÁNTA CROZ	Chile
	Mr. CHENG FAGUAN	China
	Mr. GHORBAL	Egypt
	Mr. JUVIGNY	France
	Mr. KYRIG	Greece
	Mr. KAPSAMBELIS	
	Mrs. NEITA	India
	Mr. WAHEND	Pakistan
	Mr. BORYTYNSKI	Poland

Members (continued)

Mrs. BOSSEL	Sweden
Mr. KOVALENKO	Ukrainian Soviet Socialist Republic
Mr. MOROZOV	Union of Soviet Socialist Republics
Mr. HOARE	United Kingdom of Great Britain and Northern Ireland
Mrs. ROOSEVELT } Mr. SIMSARIAN }	United States of America
Mr. FORLEZA	Uruguay
Mr. JAVREMOVIC	Yugoslavia

Representatives of non-governmental organizations:

Category A:

Mr. THOMANN	International Federation of Christian Trade Unions (IFCTU)
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Category B:

Mrs. NIETA } Mr. de BEORCK }	Catholic International Union for Social Service
Mr. MANUILA	International Association of Penal Law
Mrs. GUTLAN } Miss CARMICHAEL }	International Union of Catholic Women's League
Mr. JACCOY	World Jewish Congress
Mr. RONALD } Mrs. POLSTEIN }	World Union for Progressive Judaism
Mrs. SOUDAN	International Federation of Business and Professional Women

Secretariat: Mr. HURPERY

Director, Division of Human Rights

Mr. DAS }
Miss KITCHEN }

Secretaries of the Commission

DRAFT INTERNATIONAL COVENANTS ON HUMAN RIGHTS AND MEASURES OF IMPLEMENTATION
(E/1992; E/CH.4/528, E/CH.4/528/ADD.1, E/CH.4/643; E/CH.4/L.122, E/CH.4/L.130,
E/CH.4/L.140, E/CH.4/L.140, E/CH.4/L.166, E/CH.4/L.176, E/CH.4/L.177,
E/CH.4/L.178, E/CH.4/L.179, E/CH.4/L.180)(continued)

Article 3

Mr. JEVREKOVIC (Yugoslavia) stated that his delegation's amendment (E/1992, annex III, section A) was inspired by purely humanitarian considerations; there was no need to comment on the proposed addition in detail as it was to be found already in most penal codes.

Mr. HOARE (United Kingdom) explained that his amendment (E/CH.4/L.140) was based on the general principle that the rights set out in the covenant on civil and political rights should be defined as closely as possible so as to impose clear and identical obligations on all States. There could be no question of progressive implementation as in the case of economic and social rights; no one could maintain that the content of civil and political rights varied from country to country, in accordance with its state of development.

The purpose of the United Kingdom amendment was to define the right to life as precisely as possible by listing the cases in which a person could legitimately be deprived of it. Because of its lack of precision the present text seemed to imply that accidental deprivation of life should be regarded as a crime; in order to avoid such an interpretation -- which was directly contrary to the intention of the authors of the article -- the text should be qualified as proposed in the United Kingdom amendment so as to read: "No one shall be deprived of his life intentionally". Article 3 of the draft covenant also mentioned the case of self-defence; since the meaning of that term, in Anglo-Saxon law, was much more limited than the French expression "légitime défense", he hoped that the French-speaking representatives would not insist on retaining the latter term.

Paragraph 2 of the United Kingdom amendment listed cases in which deprivation of life would not be regarded as inflicted in contravention of the provisions of article 3, provided it resulted from the use of force which was no more than was necessary.

/Deprivation

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Deprivation of life resulting from lawful acts of war was insufficiently covered by the existing text, which left out of account the right of collective self-defence recognized by the Charter. Moreover deprivation of life in war did not fall within article 3, which was of a general nature, but within article 2 dealing with exceptional circumstances. The United Kingdom delegation had submitted an amendment to that article providing for an exception in respect of deaths resulting from lawful acts of war.

Mrs. ROOSEVELT (United States of America) said that her delegation had joined the Chilean delegation in submitting a sub-amendment (E/CN.4/L.176) to the USSR amendment (E/CN.4/L.122). She hoped that the amendment thus modified would be adopted by the Commission.

Her delegation had previously submitted an amendment to article 3 (E/CN.4/L.130), to supplement paragraph 2 which provided for only three cases of legitimate use of force. It had not attempted to make a complete list of such cases, but proposed a principle generally applicable to all exceptional cases in which the taking of life was legally justifiable. The joint sub-amendment (E/CN.4/L.176) achieved the same purpose, but in a simpler way, by stating that no one could be arbitrarily deprived of his life. The inclusion of the word "arbitrarily" filled a gap in the USSR amendment. The word was already used in articles 6 and 8 of the draft covenant. The Chilean and United States delegations had also tried to improve paragraphs 2 and 3 of the USSR amendment by combining them into a single paragraph so as to make clear that the death sentence could be imposed only for the most serious crimes mentioned in paragraph 2.

The United Kingdom amendment (E/CN.4/L.140) was almost identical with the one the Commission had rejected in 1950. The proposed formula might perhaps solve certain problems arising in the United Kingdom but it should not be included in a covenant which had to be drafted in very general terms so as to cover the different legal systems of Member States. The proposed list was incomplete; she cited a number of specific cases in which the taking of the life of others would not be regarded as a crime, and yet which were not covered by the United Kingdom amendment. She recalled the Commission's repeated and vain attempts to draw up a complete list of such exceptions, and read out, by way of example, a list of twelve exceptions proposed in 1948. She hoped, therefore, that the Commission would abandon a method which experience had shown to be impracticable.

/Mr. MORGON

Mr. MEROZOV (Union of Soviet Socialist Republics) did not agree with the United Kingdom representative that there was so much difference between economic, social and cultural rights and civil and political rights as to require the use of different methods in the respective covenants. On the contrary, he thought that the Commission should include provisions in both covenants ensuring effective realization of the basic rights of the individual. Seen from that angle, the problem was to determine the objective of article 3. The answer would determine the nature of the article. The Commission could choose between a form of words designed to safeguard the life of individuals through the enforcement of the commandment: "thou shalt not kill", and a provision listing the cases in which the life of others might be taken.

The United Kingdom delegation had decided on the latter formula, according to which homicide could be justified in certain cases. It was impossible, however, even setting aside the legal circumstances of each individual case, to list all the cases in which the State could and should inflict the death penalty.

At the sixth session of the Commission which his delegation had not attended, the United Kingdom delegation had succeeded in introducing, in the text of the article as adopted by the Commission in 1949, references to self-defence and enforcement measures authorized by the Charter. The United Kingdom delegation was now trying to introduce new elements in article 3, paragraph 3, of the draft covenant. The USSR delegation, on the other hand, wished to revert to the 1949 text, though it accepted certain modifications, in particular in paragraph 4, which would improve the drafting without affecting the substance. It believed that every person's right to life must be protected by law, while the United Kingdom proposal justified in vague terms the right to take a person's life. The United Kingdom amendment (E/CN.4/L.177) to the Indian amendment (E/1992, annex III, section A) stated that to take life in defence of property was justifiable. The penal codes of many countries closely regulated and limited defence of private property on the general principle that property defended by arms must be of greater value than any damage caused by the defence thereof. The application of that principle was left to the judges to determine and the formula used was not in itself sufficient to cover all cases. The same difficulty arose in connexion with homicide for the purpose of preventing the escape of a person lawfully detained as that purpose could certainly be accomplished by other means.

/According

According to the USSR amendment (E/CN.4/L.122) it was for the State to promulgate laws to protect life; the laws must also state in what specific cases homicide was permissible. Even national legislation, however, could not cover all possible contingencies and it would always be for the courts to weigh the facts of the case.

The primary purpose of the enumeration in the United Kingdom amendment (E/CN.4/L.140) was to justify homicide in the case of riots or insurrection mentioned in sub-paragraph (c) of that text, but care had been taken to insert before that provision the cases mentioned in sub-paragraphs (a) and (b) so as not to shock world opinion. By adopting sub-paragraph (c) of that amendment the Commission would automatically legalize all summary police action. The fact that those measures must be taken in accordance with the law did not make that text in any way less dangerous. It should be rejected because it transformed article 3 which was meant to protect life, into a text authorizing the taking of life.

Mr. SANTA CRUZ (Chile) said that the difficulties arising in connexion with the covenant on civil and political rights were quite different from those encountered in drafting the covenant on economic, social and cultural rights, since the former covenant had to take into account the legal system of each country.

The covenant should protect the rights of the individual from action by the State. Where the right to life was concerned, the question arose whether the relevant article should distinguish between punishable and non-punishable homicide and list the various categories of homicide, or should be based on the principle that no one's life might be taken arbitrarily. The first method, used in the United Kingdom amendment (E/CN.4/L.140), raised difficulties which had been pointed out by the UK and United States representatives. Using the second method, it would merely be necessary to take into account the fact that the legislation of some countries provided for a death penalty and to lay down two general limitations, to the effect that that penalty should be applied only pursuant to the sentence of a competent court and in accordance with law not contrary to the Universal Declaration of Human Rights.

/The United Kingdom

The United Kingdom representative had said that it would be easy to list categories of justifiable homicide covering all possible cases. The remark of the USSR and United States representatives and the exception stipulated in Chilean legislation were proof to the contrary. The United Kingdom representative also thought that the word "intentionally" in paragraph 1 of his amendment would take care of all cases of death by accident or death caused unintentionally; but in some legislations, in particular that of Chile, unintentional homicide was subject to high penalties in, say, cases of unguardable negligence or imprudence, whereas intentional homicide might not be punishable if committed under coercion, under the influence of an irresistible force, or by an insane person.

The danger of attempting to enumerate exceptional cases was that the list might be incomplete. The Commission should leave it to States to specify in what cases homicide was either not punishable or subject to lesser penalties only. Sub-paragraphs (a), (b) and (c) of the United Kingdom amendment were not exhaustive; thus, they did not specify that self-defence against unlawful violence should be proportional to the assault. A general formula should therefore be provided, applicable to all cases, even if they were not listed.

He agreed with the French Delegation that the word "arrest" should be deleted (E/CN.4/L.160). With reference to statements in the press to the effect that article 3, paragraph 3 of the covenant would make it difficult to implement the Convention on Genocide, he did not think that the provisions of that Convention should be contrary to the Universal Declaration of Human Rights, but he would not object to a mention of the Convention in the paragraph.

He added with regard to that paragraph that paragraph 1 of the United Kingdom amendment (E/CN.4/L.140) made no stipulation concerning the nature of the laws which imposed a death penalty. As in some countries such laws were contrary to the principles of the Declaration, it should be stipulated in the covenant that they must be in conformity with those principles.

He would vote in favour of the USSR amendment (E/CN.4/L.222) if the United States and Chilean amendment was accepted.

Mr. JUVICHY (France) introduced his amendment (E/CN.4/L.160) and remarked that amnesty was a much broader concept than either pardon or commutation of sentence. He felt that the word "arrest" should be deleted

because, first, the right to seek amnesty was not an exclusively individual right, but could be exercised by groups, legal persons, and even the general public; and secondly, amnesty was a general and impersonal measure taken by legislators and applying to a whole class of facts with no special consideration for the person of the man sentenced. The legal position of a convicted person benefitting from an amnesty was different from that of a person who had received a personal pardon or commutation of sentence. The phrase "to seek amnesty" was thus meaningless and the French delegation was therefore proposing the deletion of the word "amnesty".

Mrs. KHAND (India) said that her delegation was unable to support either the United Kingdom amendment (E/CN.4/L.140) or the USSR amendment (E/CN.4/L.122), which split up paragraph 3 of the article, but would vote in favour of the joint Chilean and United States amendment (E/CN.4/L.175). She liked the text of article 3 as it stood and would support it, provided that the word "self-defence" was replaced by "in defence of persons, property or State or in circumstances of grave civil commotion".

Mr. HOWE (United Kingdom) wished to emphasize that, unlike the covenant on economic, social and cultural rights, the covenant on civil and political rights imposed immediate obligations on States.

The general wording used in paragraph 1 of the USSR amendment (E/CN.4/L.122) was not a sufficiently precise obligation on States; yet it was necessary to consider the individual in relation to the State, defining as closely as possible the obligations of the State towards the individual and specifying the cases in which States could be exempt from those obligations. The mere obligation to enact laws on the subject was too weak to be acceptable. The United Kingdom amendment would limit the cases in which a State could claim that the taking of an individual's life was not contrary to the general principle that human life should be inviolable. There was no intention of providing for all possible cases, but merely of laying down broad categories of exemptions, leaving the standards to be determined by domestic law. The categories were stated in descending order of importance and the Indian amendment (E/1952, Annex III, section A), which also included a reference to riots followed exactly the same order. He agreed that the mention of defence of property, contained in the Indian amendment could be added to the cases enumerated in his own (E/CN.4/L.140), but thought that his text covered all the other cases cited by the United States representative, except perhaps

those of revenge or honour and of homicide committed in order to save the life of another person. He doubted whether those were proper for inclusion but would be prepared to consider that question.

The joint Chilean and United States amendment (E/CN.4/L.175) would alter the general formula in paragraph 1 of the USSR amendment (E/CN.4/L.122), but the word "arbitrarily" was not acceptable to his delegation because it did not express a generally recognized idea and it was undesirable to leave its interpretation to the proposed Committee on Human Rights.

He emphasized that his amendment (E/CN.4/L.140) proposed the deletion of paragraphs 3 and 4 of the existing text of article 3 because they were superfluous; the provisions they contained already existed in all countries and they would not bring about greater control of State action in that domain.

Mr. KHEZDOROV (Union of Soviet Socialist Republics) recalled that, at the Commission's fifth session, the Chilean delegation had proposed the separation of the provisions which now appeared in paragraphs 2 and 3 of the article, and asked the Chilean representative why in the joint amendment (E/CN.4/L.176) they were again merged into a single paragraph.

He also asked the Chilean representative why the word "principles" was omitted before the reference to the Universal Declaration of Human Rights in the English and French texts of the joint amendment, whereas it was included in the Russian text.

Mr. LANZA CERRE (Chile) explained that paragraphs 2 and 3 had been merged into one paragraph in order to emphasize the fact that the death penalty could be applied only for serious crimes; the drafting of the article was improved thereby. He accepted the insertion of the word "principles".

In reply to the United Kingdom representative, he said that the United Kingdom amendment (E/CN.4/L.140) omitted many exceptions. The word "intentionally" was not acceptable to all countries, particularly those of Latin America; and in theory the covenant was to be applicable to sixty States. The word "arbitrarily" had the merit of having already been used and of being generally understood.

Mr. JEVKELOVIC

Mr. JEVREHOVIC (Yugoslavia) accepted the substitution of the word "inflicted" for the words "put into effect" in his amendment (E/CN.4/ER.309, annex III, section A) as proposed by the Chilean representative. The latter's suggestion that there should be a mention of the Convention on the Prevention and Punishment of the Crime of Genocide should also be adopted. He therefore proposed amendments (E/CN.4/L.177, E/CN.4/L.179, E/CN.4/L.180) to insert such a mention in paragraph 3 of the existing text of article 3, in paragraph 2 of the joint Chilean and United States amendment (E/CN.4/L.176) and in paragraph 3 of the USSR amendment (E/CN.4/L.122).

The meeting rose at 1.05 p.m.