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E/CN.4/SR.90
20 May 1949

ORIGINAL: ENGLISH

COMMISSION ON HUMAN RIGHTS

Fifth Session

SUMMARY RECORD OF THE NINETIETH MEETING

Held at Lake Success, New York,
on Wednesday, 18 May 1949, at 11.00 a.m.

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<u>Chairman:</u>	Mrs. F. D. ROOSEVELT	(United States of America)
<u>Rapporteur:</u>	Mr. C. MALIK	(Lebanon)
<u>Members:</u>	Mr. JOCKEL	(Australia)
	Mr. LEBEAU	(Belgium)
	Mr. SAGUES	(Chile)
	Mr. CHANG	(China)
	Mr. SOERENSEN	(Denmark)
	Mr. CASSIN	(France)
	Mrs. MEHTA	(India)
	Mr. INGLES	(Philippines)
	Mr. KOVALENKO	(Ukrainian Soviet Socialist Republic)
	Mr. PAVLOV	(Union of Soviet Socialist Republics)
	Miss BOWIE	(United Kingdom)

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Consultants from non-governmental organizations:

Category B:

Dr. I. LEWIN	(Agudas Israel World Organization)
Mrs. G. AISTA	(Catholic International Union for Social Service)
Mr. F. NOLDE	(Commission of the Churches on International Affairs)
Mr. M. MOSKOWITZ	(Consultative Council of Jewish Organizations)
Mr. E. CRUICKSHANK	(Inter-American Council of Commerce and Production)
Mrs. R. PARSONS	(International Council of Women)

Secretariat:

Mr. J. P. HUMPHREY	(Representative of the Secretary-General)
Mr. E. LAWSON	(Secretary of the Commission)

LEBANESE DRAFT RESOLUTION ON THE DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS AND MEASURES OF IMPLEMENTATION (E/CN. 4/191) (discussion continued)

Mr. FAYLOV (Union of Soviet Socialist Republics) recalled that at the previous meeting the Belgian representative had made certain comments with respect to his statement on unemployment in Belgium. That statement had been based upon uncontestable facts; the comments of the Belgian representative, on the other hand, had been based on allegations against the USSR Government which had never been proved. Moreover, with regard to investigation of conditions, it was worthy of note that the Belgian delegation in the Economic and Social Council had voted against the USSR proposal to set up a commission which would investigate conditions in all countries.

Turning to the Lebanese draft resolution (E/CN.4/191), he proposed an amendment, consisting in the deletion of references to the draft measures of implementation in the preamble and in paragraphs 1, 2 and 3. He hoped that the Lebanese representative would accept that deletion, the reason for which was that the term "measures of implementation" had gradually acquired a meaning very different from that given to it by the USSR delegation; it had, in fact, come to mean not the putting into effect by Governments of the various rights contained in the draft covenant, but coercive measures to be applied to those Governments by

some international body. The view of the USSR delegation was that measures for putting into effect the rights stated in the covenant should be included in the body of the covenant itself, and should be carried out by the Governments parties to the covenant. It was unthinkable that independent States should so far surrender their national sovereignty and their authority as to permit some international organ to coerce them into taking any action in their own territory. Should that happen, disorder and anarchy would result.

While he was prepared to support the Lebanese draft resolution if his amendment were accepted, he wondered whether that resolution was not somewhat premature. It was not impossible that, once it had begun work on the draft covenant, the Commission would find itself proceeding so rapidly as to be able to present a satisfactory draft to the Economic and Social Council before 1950.

Mr. MALIK (Lebanon), in reply to questions asked by the Belgian representative at the preceding meeting, said that in December 1947 the Secretariat had, at the Commission's instructions, sent the draft international bill of human rights to Governments, asking them to submit comments within a stated time. Hence a precedent for the action suggested in the Lebanese draft resolution already existed. On that occasion, no objection had been raised either in the Commission itself or in the Economic and Social Council; the latter had, in fact, decided to postpone consideration of the relevant parts of the Commission's report pending reception of the comments, and had thereby sanctioned the Commission's action.

With reference to his draft resolution, he recalled that in its resolution 46 (IV) the Economic and Social Council had instructed the Commission to complete work on the whole bill of human rights by 1948. While the Commission could not be held responsible for failure to meet that date, it was incumbent upon it to expedite the work as much as possible, as it had indeed been ordered to do both by the General Assembly in resolution 217 E (III) and by the Economic and Social Council in resolution 191 (VIII). The Lebanese draft resolution was designed to prevent unnecessary delay; it outlined a reasonable plan of work, modelled upon that originally suggested by the Council.

It was essential that the various delegations should go on record as pledging themselves and the Governments which they represented to complete the work before then not later than 1950; it was important that they should do it at the very outset of that work. Unless such a commitment was made, some delegations, like the Lebanese, might find their enthusiasm waning and might look beyond the United Nations for the realization of the project.

/Mr. Malik was

Mr. Malik was unable to accept the amendment proposed by the USSR representative, because the Commission had been instructed by the resolutions of the General Assembly and the Economic and Social Council to continue to give priority to the preparation of both a draft covenant on human rights and draft measures of implementation; the Commission had no choice but to abide by those instructions.

Mr. CASSIN (France) fully agreed with the Lebanese representative. If the Economic and Social Council should have any objection to the Commission's submitting the draft covenant directly to Governments, it could take appropriate action when it examined the Commission's report.

He too was opposed to the deletion of references to the measures of implementation, both on the formal grounds stated by the Lebanese representative and because, while he did not think implementation should be tantamount to coercion, he could not accept the USSR representative's view that a Member of the United Nations could not be called to account by an international body for violation of the covenant. The attitude of the USSR delegation on that point appeared contradictory, to say the least: if it was anxious that the United Nations should look into violations of human rights in Non-Self Governing Territories, it should be equally anxious to afford the United Nations the same opportunity with respect to sovereign States.

Mr. LEBEAU (Belgium) was grateful to the Lebanese representative for his lucid and entirely satisfactory reply, which made it possible for him to support the Lebanese draft resolution. He wished to reserve the position of his Government on one point: it was possible that the Belgian delegation on the Economic and Social Council might wish to vote in favour of obtaining comments from Governments on the draft covenant as revised by the Council before submitting it to the General Assembly.

It might be useful expressly to ask the Council not to work on the draft covenant until it had been revised by the Commission at its 1950 session in the light of comments received from Governments; confusion would thus be avoided.

Mr. CEANG (China) observed that, while he fully appreciated the desire of the Lebanese representative to expedite the work on the draft covenant, he felt obliged to remind the Commission of the larger objective which was its reason for being, and of which the covenant would be but a part. That objective was to assure to every individual the full exercise of human rights and fundamental freedoms; it could best be

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attained by bringing the full moral force of the United Nations to bear on Governments and public opinion. What the world needed most was education in the broadest sense of the word.

The draft covenant would, after all, be but another multilateral treaty, and a realistic view should be taken of the effectiveness of such treaties in the present state of civilization. It was always easier to ensure the observance of conventions on specific subjects, such as narcotic drugs. In a vast field like that of human rights, care should be taken to prepare the ground before a convention was launched, lest it should become merely another international instrument for lawyers to play with.

For that reason, while he did not oppose the Lebanese draft resolution, Mr. Chang did not think it wise to set definite dates for the completion of the draft covenant. The Commission would do better to devote cool intellectual attention to the production of a satisfactory document and a concentrated moral effort to the education of the world in the respect of human rights.

Mr. MALIK (Lebanon) reminded the Commission of its own decision, recorded in paragraphs 16 and 17 of the report of its third session (E/800), to complete a covenant and measures of implementation as component parts of the international bill of human rights. That decision had since been sanctioned by resolutions of the General Assembly and the Economic and Social Council; the Commission therefore no longer had a choice in the matter.

Mrs. METAH (India) supported the Lebanese resolution; the Commission should make every effort faithfully to follow the programme it outlined. Should more time be needed to carry out that programme, she wondered whether the current session of the Commission could be prolonged.

The CHAIRMAN replied that it would not be possible to continue the session more than one or two days after the date set for its close. The draft covenant and the measures of implementation would not have to be finally completed by that date, but they should be in such a form that they could be sent to Governments for their comments.

She emphasized that the measures of implementation were in reality an integral part of the draft covenant and could not be separated from it.

Mr. PAVLOV (Union of Soviet Socialist Republics) read section E of the General Assembly resolution 217 (III) in which the Commission was asked to continue to give priority to the preparation of the draft covenant

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on human rights and draft measures of implementation. The General Assembly did not seem to consider the Commission at fault in not having done that work earlier. The Commission should not base itself on a resolution passed by the Economic and Social Council prior to the General Assembly resolution and feel that it had been guilty of undue delay in carrying out its task.

Unless the Commission's aim was to complete a final text of the draft covenant and measures of implementation for submission to the ninth session of the Economic and Social Council -- and that apparently was not its aim -- there was no need to adopt the proposed schedule.

Mr. Pavlov pointed out, further, that after work on the covenant had been entirely completed, it might become clear that no additional document was needed to set forth the measures of implementation. The Commission was under no obligation whatsoever to draft two separate documents and the need for two separate documents was a question which should not be prejudged before the draft covenant had been prepared. He agreed with the representative of France that there might be different views regarding what was meant by measures of implementation. The Soviet Union view was that Governments should take concrete measures to ensure full implementation of the rights proclaimed in the Declaration of Human Rights and in the covenant. He could not support the position of some delegations that measures of implementation might imply the use of international organs such as the International Court of Justice or international commissions in order to coerce Governments, as that would mean interference in matters within the domestic jurisdiction of States and would therefore be contrary to the Charter. The USSR delegation considered that all reasonable and necessary measures of implementation could be included in the covenant.

Furthermore, the Commission had not had time, and would not have time at its current session, to give the question of measures of implementation the thorough consideration it deserved. Examination of that point should therefore be postponed. He would not be able to support the Lebanese resolution unless the reference to measures of implementation was deleted.

The CHAIRMAN felt that in accepting the Charter of the United Nations, Governments had given up some of their sovereignty. It was essential to recognize that some international means of implementation were necessary in any work undertaken by the United Nations, particularly in the matter of ensuring the protection of human rights.

She put to the vote the USSR proposal to delete from the Lebanese resolution the reference to measures of implementation.

The USSR proposal was rejected by 9 votes to 2, with 1 abstention.

The CHAIRMAN then put to the vote the Lebanese draft resolution.

The Lebanese draft resolution was adopted by 9 votes to none, with 3 abstentions.

Mr. JOCKEL (Australia) stated that although he had not been entitled to take part in the vote, Australia fully supported the Lebanese resolution.

Mr. CASSIN (France) said that in adopting the Lebanese resolution the Commission had not committed itself on the question whether or not the draft covenant and the draft measures of implementation should form two separate documents. The text of the resolution was not specific on that point.

DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS (E/800, E/CN.4/170, E/CN.4/188, E/CN.4/193) (discussion continued).

Article 5

The CHAIRMAN opened discussion on article 5 of the draft covenant and asked the representatives who had proposed amendments to that article to present them to the Commission.

Miss DOWIE (United Kingdom) drew attention to the word "intentionally" suggested by her delegation in paragraph 1 of the United Kingdom draft of article 5 (E/CN.4/188). The text given in document E/800 did not contain that word and would therefore cover such cases as fatal accidents. She observed that the word "intentionally" was also included in the text proposed by Lebanon.

Speaking of paragraph 2 of the United Kingdom proposal, she pointed out that the long list of limitations given in the Drafting Committee's text of article 5 had been greatly reduced in the United Kingdom draft. The words "the use of force which is no more than necessary" would exclude the right to use force out of proportion to the crime committed. Paragraph 2(a)(1) covered all the ideas contained in paragraphs 2, 5 and 6

of the Drafting Committee's text; paragraph 2(a)(ii) was the same as paragraph 3 of the latter text except that "certain offences" was changed to read "serious offences"; paragraph 2(a)(iii) was similar to paragraph 7 of the Drafting Committee's text but was more specific in that it included the words "from lawful custody"; paragraph 2(a)(iv) was in line with the idea given in paragraph 10 of that text but omitted the reference to officers of the law, since all citizens in the United Kingdom were under the obligation to assist in the prevention of a crime if called upon to do so by the officers of the law; paragraph 2(a)(v) covered the idea in paragraph 1 of the Drafting Committee's text; and paragraph 2(b) was similar to paragraph 12 of that text but was more restrictive in that account had been taken of the fact that members of the military forces might sometimes perform unjustifiable acts in time of war.

Turning to consideration of the United States draft amendment to article 5 (E/CN.4/170), Miss Bowie said she could not support that proposal, as it would limit the article to a statement of the relationship between the State and the individual and would not safeguard the life of the individual from acts by other individuals or groups.

Mr. MALIK (Lebanon) pointed out that the use of the word "intentionally" in the main body of article 5, as proposed by both the United Kingdom and by Lebanon, would have the important advantage of making it possible to shorten the list of limitations to that article.

He also urged the adoption of the Lebanese proposal to insert in article 5 a reference to article 13 of the draft covenant, so there would be no possibility of doubt as to the conditions under which a court sentence must have been imposed if it was to constitute grounds for depriving a person of his life.

Mr. Malik suggested that the word "killings" used in both the Drafting Committee's text and the United Kingdom draft might be changed to "death", which was more in conformity with the French wording. "Killings" seemed to imply specific intention.

Referring to paragraph 2(a)(i) of the United Kingdom proposal, he could not agree that defence of property should be given an equal place with defence of person as a justification for depriving a man of his life.

He also doubted the advisability of the word "serious" in paragraph 2(a)(ii) of that draft text. A more definite word should be used if possible.

/Mr. Malik

Mr. Malik fully supported the United Kingdom position with regard to the United States proposal. States accepting the covenant should ensure that their internal laws regarding an individual's relationship to other individuals and to groups were in complete conformity with the principles of the covenant. He could not therefore support the general idea that the covenant should proclaim only the relationship of the State to the individual.

The CHAIRMAN, speaking as the representative of the United States, pointed out that in her Government's proposed draft of article 5 appearing in document E/CN.4/170, the Covenant was limited to the punishment of crime, which made it unnecessary to enumerate exceptions. The United States Government felt that in the protection of individuals the role of an international instrument should be to defend them from the unwarranted actions of the State. In general, actions committed by individuals or groups against other individuals were covered under existing codes of criminal law and it was not the task of the Commission on Human Rights to attempt to codify existing national legislation in that field. While the United States Government understood the considerations raised by the United Kingdom and Lebanon on that question, it nevertheless felt that criminal law was essentially within the domestic jurisdiction of the State.

The United Kingdom's proposed amendments of article 5 attempted to redraft the text more concisely. The basic defect of that draft could be ascribed to an unduly broad statement of the initial right coupled with the accentuation of limitations rather than the protection of the individual. Mrs. Roosevelt considered that the United States approach, which eliminated the enumeration of exceptions, more effectively accomplished the objective of the Commission, namely, the protection of the individual from arbitrary State action. She wished to point out, furthermore, that unless the intentions of the Covenant were narrowed, it might be difficult to secure ratification of the document.

The United States Government thought that article 5 might include a cross-reference to article 13, as proposed by the Lebanese delegation.

Mr. CASSIN (France) was pleased to see that the basic elements of the problem before the Commission had been approached in such a realistic way. With regard to the United Kingdom proposals, he would agree in principle with the insertion of the word "intentionally" which

covered the case of officials who were obliged for the public good to order persons in their service to almost certain death. He would also support the Lebanese redraft of the first sentence of article 5, reading "No one shall be intentionally deprived of his life..." (E/CN.4/193).

In reply to the representative of the United States, Mr. Cassin wished to point out that the State had the duty not only of preventing its officials from killing its citizens but also of protecting each citizen from the untoward actions of other citizens or groups of citizens. For those reasons the French delegation preferred the United Kingdom draft.

Mr. Cassin thought it was unnecessary to include a reference to article 13 in article 5. The covenant was conceived as an integrated whole and the guarantees need not be repeated in every paragraph.

He was not satisfied that the Commission was entirely clear in its mind regarding the question of global or individual limitations and thought that a final decision should not be taken forthwith on that point.

He supported the United Kingdom proposed draft of article 5 but suggested that paragraph 2(1) should be amended to separate the concept of person from that of property, in order to classify the latter as an exception. He did not feel that both concepts could be maintained on an equal footing. In that connexion he cited the classic example of a person firing upon burglars without knowing whether they had intended to attack his person or his property. Mr. Cassin realized that paragraphs 2(a) (ii), (iii) and (iv) could not be eliminated from the covenant but he pointed out that their proper implementation would depend upon the good faith of the contracting parties. With regard to paragraph 2(a)(v), although a guarantee was contained in the word "lawfully", the case of individual rebellion had not been foreseen: for a Government to be able to ratify the covenant, a clause covering the infringement of military regulations would have to be added.

The French delegation favoured paragraphs 1 and 2 of the United Kingdom text of article 5, with the reservation formulated on the principle of limitations.

Mr. LEBEAU (Belgium) stressed the fact that the essential difference between the United States text of article 5 and the United Kingdom draft lay in the basic concept each delegation had of the objectives of the covenant. The United States draft emphasized the elements of protection and seemed to be seeking agreement on

methods of protection, whereas the United Kingdom draft affirmed certain principles in an attempt to establish agreement on the basic concepts which would govern every article of the covenant. If a State adhered to the covenant, including the United Kingdom draft of article 5, it would have contracted to implement considerably broader provisions than those in the United States draft.

Mr. Lebeau supported the comments of the representative of France and stressed the fact that a distinction should be made between person and property.

Mrs. MEHTA (India) considered that the United States draft limited the scope of the covenant and for that reason she would support the United Kingdom draft. In effect, the only course for the Commission would be to adopt the latter text. While it was true that the protection of the individual from other individuals was guaranteed by State laws, a clear indication of how human rights should be protected should be included in the covenant for the guidance of States.

The Indian delegation considered that the United Kingdom had compiled an exhaustive list of limitations. It also would prefer to distinguish between the concepts of person and property. It felt that a reference to article 13 in article 5 was unnecessary since the covenant was conceived as an integrated whole.

Miss BOWIE (United Kingdom) pointed out that the linking of the concepts of property and person in the United Kingdom amendment did not indicate that they were of equal value but rather that an offence could be committed against either. She would be willing to consider a formula along the lines of that suggested by the French representative which was not merely repetitive.

Mr. MALIK (Lebanon) also thought that the distinction between person and property was not clear. In the case cited by the representative of France the doubt whether the offence had been intended against person or property had been the deciding factor, because in view of the doubt it had been assumed that an attempt had been intended upon the person. There was consequently no reason to give equal weight to both concepts; no one had the right to kill another individual for stealing.

Mr. SOERENSEN (Denmark) understood the United States point of view with regard to the scope of the obligations to be assumed under the covenant. He also considered that the individual should be protected from other individuals or groups of individuals. It should be pointed out, however, that when a State undertook to protect the life of an individual, it undertook to prevent its officials from killing other individuals, but murder could not be considered within the jurisdiction of international law.

He thought it would be possible to adopt the United Kingdom draft of article 5 on the understanding that the State's obligation to the individual was to punish illegal acts but that it assumed no international responsibility for the prevention of such acts.

He would support the United Kingdom addition of the word "intentionally". He thought that the Lebanese objection to the word "killings" was covered by the first paragraph of the United Kingdom amendment. He suggested that the list of limitations could be reduced even further, because the exceptions listed in paragraph 2(a)(iv) appeared to be already covered in 2(a)(i).

Mr. CHANG (China) reminded the Commission that its real objective was to supplement the aims outlined in article 3 of the Universal Declaration of Human Rights and in particular the principle that "everyone has the right to life...". He pointed out that a covenant was really nothing more than an international treaty and that article 5 should be viewed in that light. It should be remembered that a treaty could be circumvented and that if the Commission wished to protect life it might do better to study the methods by which States protected the lives of their citizens at that time.

With regard to the United States text, he pointed out that if a State wished to deprive a person of life, it would have very little trouble in producing the requisite court records and sentence to justify its procedure. Consequently that draft of article 5 would not hamper the State and the covenant would really offer no protection to the individual.

With regard to the United Kingdom text, he considered that it might be difficult to enforce the fulfillment of contractual commitments assumed under the covenant.

The Chinese delegation thought it might be wiser to prepare a compendium of States' laws concerning the protection of individuals. Such a document would effectively support and perhaps even enforce the Universal Declaration of Human Rights, which his delegation considered to be extremely valuable for the protection of individuals. The compilation of a compendium of international legislation in that field would certainly be within the purview of an international body and would seem to be the most practical way of attacking the problem. The Chinese delegation was not convinced that the covenant, as then worded, would achieve any effective practical results.

Mr. MALIK (Lebanon) did not agree that if reference to article 13 were included in article 5 it would have to be included in the other articles of the covenant. Article 5 was the only clause which directly mentioned a court and the cross-reference was therefore highly desirable in that instance.

The meeting rose at 1 p.m.