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Fifth Session

SUMMARY RECORD OF THE NINETY-THIRD MEETING

Held at Lake Success, New York,
on Thursday, 19 May 1949, at 2.30 p.m.

CONTENTS: Draft International Covenant on Human Rights (E/800,
E/CN.4/170/Add.3, E/CN.4/202, E/CN.4/204, E/CN.4/205,
E/CN.4/206, E/CN.4/207/ E/CN.4/208) (discussion continued):
Articles 8 and 5 (discussion continued).

<u>Chairman:</u>	Mrs. Franklin D. ROOSEVELT	United States of America
<u>Rapporteur:</u>	Mr. Charles MALIK	Lebanon
<u>Members:</u>	Mr. HOOD	Australia
	Mr. STEYAERT	Belgium
	Mr. SAGUES	Chile
	Mr. P. C. CHANG	China
	Mr. SOERENSEN	Denmark
	Mr. LOUTFI	Egypt
	Mr. CASSIN	France
	Mr. GARCIA BAUER	Guatemala
	Mrs. MEHTA	India
	Mr. ENTEZAM	Iran
	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:

<u>Category B:</u>	Mr. LEVIN	Agudas Israel World Organization
	Mr. FRIEDMAN	Co-ordinating Board of Jewish Organizations
	Miss SCHAEFER	International Union of Catholic Women's Leagues
	Mr. STEINER	Committee of Churches for International Affairs
<u>Secretariat:</u>	Mr. HUMPEREY	Representative of the Secretary-General
	Mr. LAWSON	Secretary of the Commission

DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS (E/800, E/CN.4/170/Add.3, E/CN.4/202, E/CN.4/204, E/CN.4/205, E/CN.4/206, E/CN.4/207, E/CN.4/208)
(discussion continued)

Article 8 (discussion continued)

The CHAIRMAN pointed out that the delegations of the USSR, India, and the Lebanon had put forward new amendments to article 8 (E/CN.4/205, E/CN.4/206, E/CN.4/207). She asked that in future all amendments should be handed in before 10.30 a.m. of the day when they were to be presented.

Mr. SOERENSEN (Denmark) thought that the question of forced labour was a very delicate matter and that it would be useful for the Commission to hear the views of the International Labour Organization on the subject. At the same time, he felt that the Commission should agree on a provisional draft which it could submit to the ILO and to the Governments and which could be revised later when it could refer to the results of the enquiry on forced labour being conducted by the Secretary-General in co-operation with the ILO.

He agreed with the view of the representative of the American Federation of Labour that in the application of forced labour it was necessary to differentiate between ordinary criminals and persons convicted for political offences who, in his opinion, should not be subjected to forced labour.

In connexion with the proposal of the United Kingdom (E/CN.4/202), he felt that the limiting clause contained in paragraph 2 had too wide a scope and his Government would perhaps find itself compelled to formulate some reservations on that point.

As to paragraph 3 (a) he would have preferred the text put forward by the United States (E/CN.4/170/Add.3), which covered a greater variety of services as, for example, the rescue services, which no one could refuse to carry out.

The representative of Denmark had only a slight objection concerning paragraph 4 of the United Kingdom proposal, which corresponded to the text proposed by the ILO and provided for the abolition, within the shortest possible time, of local services of secondary importance. In his opinion, it was not right to abolish them and in that connexion he referred to certain public services in his country such as the clearing of roads in winter time. He noted, however, that different problems arose in each country. On that matter, his Government would be disposed to accept a short text such as that proposed by the United States (E/CN.4/170/Add.3 - 4 (c)) or paragraph 3 (c) of article 8 as submitted by the Drafting Committee.

Mr. Charles MALIK (Lebanon) thought it was essential to prepare a provisional text of article 8; the representative of Belgium had pointed out that the Commission had had the benefit of consultations with the ILO and was in possession of a communication transmitted by that organization. In his opinion the Commission was in a position to agree on a text.

The CHAIRMAN, speaking as the representative of the United States of America, recalled that her delegation had already explained its views on the question in connexion with the Universal Declaration of Human Rights. In her opinion, it was sufficient to say "No one shall be held in slavery". Such a provision implied the abolition of the slave trade if it still existed on a small scale.

She noted that slavery and servitude were two different ideas. The former granted absolute power of disposal over human beings while the latter existed only as the result of a contract. By mentioning servitude the intention of paragraph 1 would be weakened.

Mr. KOVALENKO (Ukraine, Soviet Socialist Republic) supported the USSR proposal which repeated literally the wording of article 4 of the Universal Declaration of Human Rights. He pointed out that

/the question

the question of the slave trade had not lost its importance and recalled that the General Assembly had decided to transfer to the United Nations the functions previously exercised by the Government of France in connexion with the prohibition of the white slave traffic. That was direct evidence that such practices still existed. Notwithstanding the statement of the representative of the United States, he affirmed that the slave trade was practised in the colonies; in the Union of South Africa the slave hunt has not disappeared. The provision proposed by the USSR delegation was therefore indispensable; it was moreover to be found in the Universal Declaration of Human Rights and it would be illogical not to include it in the Covenant which was supposed to guarantee the principles of the Declaration.

Mr. INGLES (Philippines) agreed to the deferment of the consideration of the second part of article 8, provided assurance was given that the report of the Secretary-General on the inquiry on forced labour would be produced during the current session. If that should not be the case, he shared the view of other representatives that a provisional text should be drafted at the present stage.

Mr. GARCIA BAUER (Guatemala) expressed the view that slavery and servitude should not be dealt with in the same clause.

He considered that the comments made by the representatives of the Women's International Democratic Federation, the World Federation of Trade Unions and the American Federation of Labor were important. He wished to know exactly what the proposals of the representatives of the Women's International Democratic Federation were with regard to the suppression of forced child labour. He pointed out that the United Nations was drafting a Declaration of Child Rights and in his opinion it would be more appropriate for that Declaration to provide for the prohibition of forced child labour.

Referring to the remark of the representative of the American Federation of Labor to the effect that a distinction must be made between ordinary criminals and persons guilty of political offences, he expressed the view that such an idea could not be introduced into the Covenant in view of the fact that there was no exact definition of political offenders and the interpretation of that term varied from one country to the other. With regard to forced labour, he considered

/that political

that political prisoners could not be required to perform certain work; for example, they could not be asked to work against the very cause they defended and for which they were imprisoned.

The representative of Guatemala asked the Chairman whether it would be possible to distribute to the members of the Commission the suggestions presented by the representatives of the three organizations to which he had previously referred.

He was prepared to agree to deferment of the consideration of the second part of article 8 until the report of the Secretary-General was available to the Commission, provided that the interval was not too long. In that connexion, he would like a statement by the representative of the Secretary-General.

Mr. HUMPHREY (Representative of the Secretary-General) indicated to the Commission that, in accordance with resolution 195 of the Economic and Social Council, the Secretary-General had approached the Governments of all Member States and also of non-member States and had asked them in what manner they were prepared to co-operate in an impartial inquiry into the extent of forced labour in their countries. The Secretary-General would present a report to the forthcoming session of the Economic and Social Council. He had received substantive replies from only three Governments, Colombia, New Zealand and Iceland. Other countries had merely acknowledged receipt of his communication. The Secretary-General had advised the Director of the ILO who intended to submit the question to the ILO Governing Body at its next session.

Mr. CHANG (China) supported deferment of consideration of the second part of article 8. The very valid reasons advanced by the representative of Denmark called for more careful consideration of the numerous and complex problems involved. The Commission, which was to complete its work before 22 June, should immediately take a decision on the first part of article 8; it could still return to the consideration of the second part if it felt it could do so before the end of the current session.

Miss BOWIE (United Kingdom) stressed the fact that the great number of amendments and comments which had been presented in connexion with article 8 led her delegation to consider the problem in a new light.

The United Kingdom delegation would in turn like to present a new amendment to the second part of article 8 and formally proposed deferment of the vote on that part until the following meeting.

The CHAIRMAN put the proposal of the United Kingdom delegation to the vote.

The Commission decided by 10 votes to 2, with 3 abstentions, to defer the vote on the second part of article 8 until the following meeting.

Mr. Charles MALIK (Lebanon) hoped that the vote which had just been taken obliged the Commission to complete the drafting of article 8 at its next meeting.

Mr. GARCIA BAUER (Guatemala) challenged that interpretation. In his opinion, the Commission had, on the proposal of the United Kingdom delegation, decided to defer consideration of the second part of article 8 but, during the subsequent discussion, delegations were free to propose deferment of the vote if they so desired.

After a brief discussion, the CHAIRMAN confirmed the fact that, by its vote, the Commission had undertaken to discuss the second part of article 8, but that it was not obliged to reach a decision on it.

The Chairman then invited the Commission to continue its consideration of the first paragraph of article 8.

Mr. CASSIN (France) stressed the fact that a practical solution of the problem should be sought. The idea of the Lebanese delegation, shared by the delegations of the USSR and France, to repeat the terms of article 4 of the Declaration of Human Rights was certainly good, but it must be recognized that the proposal of the United States delegation to limit the first paragraph to material dealing with slavery and to devote a second paragraph to the somewhat different idea of servitude was also wise. The French delegation would, therefore, choose the second solution.

Mr. Cassin stated that France wished the covenant clearly to indicate the obligation of States to fight against slavery in all its forms because France knew that slave trade still existed in current times and that it must be stopped; France solemnly undertook to co-operate in any international effort to fight against that evil.

Mr. GARCIA BAUER

Mr. GARCIA BAUER (Guatemala) stated that his delegation also would support the United States proposal.

Mr. Charles MALIK (Lebanon) indicated that he would not oppose the inclusion of the idea of servitude in a separate paragraph if that was the wish of the majority of the Commission. The Lebanese delegation would, however, accept that compromise solution only if the idea of servitude clearly appeared in article 8.

Mr. Malik could not, however, understand why the USSR delegation wished to change the order of the proposed clauses. The title of the Lebanese proposal corresponded exactly to the title of article 4 of the Declaration and in addition was in harmony with the general drafting of the other articles of the draft covenant.

The CHAIRMAN, speaking as representative of the United States of America, withdrew the United States amendment to article 8.

In reply to the representative of Lebanon, Mr. PAVLOV (Union of Soviet Socialist Republics) said that his delegation's proposal was entirely justified on logical grounds: actually, no statement of principle was being made; a specific obligation was being placed upon States. Accordingly, in the interest of clarity, the article should first state what was being prohibited and then the obligation arising from that prohibition.

Moreover, the USSR proposal did not in any way affect the substance of article 4 of the Declaration of Human Rights. The same could not be said for the United States proposal and that was why the USSR delegation would categorically object to any distinction being made between the concept of servitude and the concept of slavery.

The CHAIRMAN asked the Commission to decide whether to eliminate the mention of servitude in paragraph 1 of article 8 on the understanding that it would be discussed again when the Commission resumed consideration of the second part of the article at its next meeting.

The Commission decided to eliminate the concept of servitude from paragraph 1 by 8 votes to 3, with 4 abstentions.

/The CHAIRMAN

The CHAIRMAN put to the vote the USSR proposal to adopt the provisions of article 4 of the Declaration as article 8 of the covenant, on condition that they were arranged in inverse order.

The USSR proposal was rejected by 8 votes to 3, with 4 abstentions.

The CHAIRMAN then put to the vote the proposal of the Lebanese delegation to adopt the text of article 4 of the Declaration as article 8 of the covenant, eliminating the idea of servitude in accordance with the decision just taken by the Commission.

The Lebanese proposal was adopted by 13 votes to none, with one abstention.

Paragraph 1 of article 8 would be drafted to read:

"No one shall be held in slavery; slavery and the slave trade shall be prohibited in all their forms."

Article 5 (discussion continued)

Miss BOWIE (United Kingdom) presented the new text of article 5 drafted jointly by the United Kingdom and the Lebanese delegations (E/CN.4/204). It had been approved by the French delegation.

Miss Bowie pointed out that the authors had tried to take into account all the observations made in the course of the general debate. The new text was shorter and more specific than former texts and the number of exceptions had been reduced to a minimum.

At the suggestion of Mr. Charles MALIK (Lebanon), Miss Bowie agreed to make a correction in sub-paragraph (a) (ii) so that it would read: "in order to effect lawful arrests..."

In reply to a remark from Mr. SOERENSEN (Denmark) on the need to respect the legal principle of the non-retroactivity of laws, Miss Bowie said that the French text of the last part of paragraph 1 reflected the idea in the minds of the authors more accurately than the English text. The English text should therefore read as follows: "...by the law in force at the time of the commission of the crime".

The CHAIRMAN, speaking as the representative of the United States said that her delegation regretted that it would be obliged to vote against the new joint proposal of the United Kingdom and Lebanon owing to the list of exceptions it included. On several occasions, the

United States delegation had expressed its firm opposition to the system of limitations. Any enumeration of limitations was necessarily incomplete and tended to convey the impression that greater importance was being given to the exceptions than to the right established. Moreover, some of the exceptions maintained by the United Kingdom and Lebanese delegations left the way open to inevitable abuses of the right.

Furthermore, the United States delegation did not think it proper to speak of "lawful acts of war" in a covenant designed to safeguard human rights.

Mr. MALIK (Lebanon) pointed out to the United States representative that the abuses which she feared were restricted by the terms "no more than absolutely necessary" which qualified the use of force considered admissible in derogation of the principle laid down in article 5.

The authors of the proposal were convinced that the few exceptions they had maintained were confined strictly to cases coming within the framework of limitations generally admitted by present day legislation.

Mr. ENNEZAM (Iran) wished to know whether experts on penal law had been consulted on such a delicate subject. In his view, it was not for the Commission to determine the cases in which capital punishment might be applied.

Mr. PAVLOV (Union of Soviet Socialist Republics) observed that the phrase "law in force at the time of the commission of the crime" presented some difficulty for the USSR where the death penalty had been abolished and there was therefore no law providing for capital punishment.

Mr. Pavlov thought that sub-paragraph (a) of the text submitted by the United Kingdom should be completed by the addition of a phrase such as "and when there was no other means of obviating that danger".

In sub-paragraph (a) (ii), Mr. Pavlov supported the addition of the word "lawful" after "arrest".

On the other hand, Mr. Pavlov feared that sub-paragraph (a) (iii) might be inconsistent with the preamble of the Universal Declaration of Human Rights which specifically recognized that it was "essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law". Thus, on the one hand, recognition was given to the right to rebel against tyranny

and oppression and, on the other, punishment was to be meted out to those who exercised that right. The beginning of sub-paragraph (a) (iii) should be drafted as follows: "in action lawfully taken for the purpose of quelling a riot or insurrection which had not been brought about by a violation of human rights".

At the end of the same sub-paragraph, Mr. Pavlov thought it should be made clear that the security referred to was "national" security.

Finally, Mr. Pavlov thought that sub-paragraph (b) should be amended so that civilians as well as soldiers would be protected in case of war.

In conclusion, Mr. Pavlov said that while the United Kingdom text represented a substantial step forward, it was not yet entirely satisfactory.

Mr. GARCIA BAUER (Guatemala) considered article 5 one of the most delicate provisions of the draft covenant. Moreover, there was a need for all the more prudence inasmuch as the covenant was to be legally binding upon the signatory States. Article 5 raised the question of capital punishment which had already been abolished in the USSR and was rarely applied in most other countries. Mr. Garcia Bauer thought that the United Kingdom text was excellent and that the limitations it maintained corresponded to the principles of penal law recognized in most countries.

The representative of Guatemala agreed with the United States representative concerning sub-paragraph (b) that as the covenant would only be valid in time of peace, it was better to omit any provision dealing with war.

Mr. Garcia Bauer observed that the French and English texts of sub-paragraph (a) (ii) should be made to correspond more closely.

In view of the fact that the representative of the USSR and other delegations had submitted new comments, he thought it would be advisable for the Commission to postpone the rest of the discussion to another day, the following Monday for example, in order to give delegations time to reflect and an opportunity to reach an agreement on the best possible text. He therefore proposed that the debate should be adjourned, in conformity with rule 49 of the rules of procedure.

Mr. SAQUES (Chile) was in favour of an adjournment; he would like to see the whole of article 5 recast, and the exception provided for in paragraph 1 and the series of exceptions provided for in paragraph 2 regrouped in a general restrictive clause.

/Mr. Charles MAILLÉ

Mr. Charles MALIK (Lebanon) was opposed to an adjournment; the question had already been amply discussed, Governments had had the draft covenant before them for several months, agreement had so to speak been reached within the Commission and there would, therefore, be no point in postponing the decision indefinitely.

Mr. PAVLOV (Union of Soviet Socialist Republics) thought that the Commission would be wrong not to give all the delegations time to express their views on so important a question. He therefore asked the Guatemalan representative whether he would agree to wait until all the speakers on the list had taken the floor, before submitting his motion for adjournment.

Mr. GARCIA BAUER (Guatemala) accepted the suggestion of the USSR representative; when all the speakers who wished to speak had expressed their views and the discussion was closed, he would propose that the vote should be postponed.

Mr. Charles MALIK (Lebanon) recognized the validity of certain of the USSR representative's comments, particularly with regard to the addition of the word "national" before the word "security" in sub-paragraph (a) (iii), and the necessity of concurring the beginning of that sub-paragraph with the preamble to the Universal Declaration of Human Rights.

Noting that the representative of the United Kingdom had agreed to make the end of paragraph 1 read "existing law", he observed that article 14 of the covenant answered the same purpose, since it established the non-retroactivity of the law. At the preceding meeting, a discussion had arisen on the question of whether a reference to article 13 should be introduced into article 5. In his opinion, it would be better to abstain from any reference, but, if the Commission did not agree, the reference should apply to articles 13 and 14; in fact, the application of article 5 should be subordinate to that of articles 13 and 14. He asked the representatives of France and the United Kingdom if they would agree to end paragraph 1 with the word "law".

Miss BOWIE (United Kingdom) recognized that the problem of references was a complicated one and that article 5 contained many

/other elements

other elements imposed by the need to respect the principles contained in other articles. That was not a reason for giving up the idea of making the text of article 5 as precise as possible. The United Kingdom delegation had accepted the expression "existing law" (la loi en vigueur au moment de la perpétration du crime.) primarily in order to satisfy the French representative.

Mr. CASSIN (France) was satisfied with the expression "existing law", and thought that the word "existing" was indispensable when it was a question of protecting human life.

He thought it preferable to rule out all references, as the method of introducing references to other articles in every line was not to be recommended.

In order to satisfy the USSR representative, he proposed that the words "in countries where it exists" should be inserted after the words "this penalty -- the death penalty" in paragraph 1.

He noted that there were certain imperfections in the beginning of paragraph 2 of the French text. Instead of "si la mort est infligée par suite du recours", it would be better to write "si la mort résulte du recours".

He was sure that the expression "the use of force which is no more than absolutely necessary" should be quite enough to soothe the anxieties of the USSR representative.

Although he did not think it necessary, he accepted the insertion of the word "legitimate" before the word "arrests" in sub-paragraph (a) (ii). In sub-paragraph (a)(iii), he would prefer the word "general" to the word "national" before "security": there were in fact cases, for example in the protection of a dam, where certain measures were necessary not for the security of the nation as a whole but for the security of a given area.

He recognized that it would perhaps be preferable to eliminate completely any reference to the possibility of a war. Perhaps the representative of the United Kingdom would agree to delete sub-paragraph (b)?

There was one more delicate point: that of the insurrections or riots envisaged in sub-paragraph (a)(iii). When the Universal Declaration of Human Rights was being prepared, the USSR delegation had been opposed to the establishment of the right of insurrection. Of course, it was intended that the covenant should be drawn up for the democratic nations; the covenant as a whole should be dominated by that idea.

/In conclusion,

In conclusion, he proposed that a drafting committee should be set up to make the desirable final improvements in the text, and to submit to the Monday morning meeting a text for which all the delegations would be able to vote.

Miss BOWIE (United Kingdom) was sure that the expression "the use of force which is no more than absolutely necessary" was quite sufficient. With regard to sub-paragraph (a), she recognized that there was danger on both sides and that it was difficult to determine on which side it was the greater. With regard to sub-paragraph (b), she observed that the expression "act of war" appeared in the Hague Convention. Of course, it was an anomaly for the covenant to envisage the possibility of a war. However, war was a reality which must be faced; if there had not been wars, it would probably not even have been necessary to draw up a covenant on human rights.

In sub-paragraph (a)(iii), she would prefer the word "National" to the word "general". However, the drafting committee would be able to settle that question.

Rather than withdraw in the face of difficulties, the Commission should devote itself to producing the most satisfactory text possible, which would constitute a point of departure for new reflections and discussions, and which could be submitted for the consideration of Governments.

Mr. CHANG (China), like the representative of Guatemala, had intended to ask the representatives of the United Kingdom or Lebanon to delete sub-paragraph (b). Of course there had been wars, but by providing for the possibility of new wars, the covenant would make them almost inevitable. On the contrary, war must be definitely outlawed.

Mr. INGLES (Philippines) supported most of the comments which had just been made, particularly those of the representative of Lebanon. He thought that the last phrase of paragraph 1, "existing law" was superfluous; in point of fact, the non-retroactivity of laws would be established in article 14.

Instead of sub-paragraph (a), he would prefer a general restrictive clause; in listing special exceptions, there was a risk of losing sight of the essentials.

/With regard

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With regard to sub-paragraph (b), he thought that the covenant would be applicable only in time of peace. If by some misfortune war was to break out, the older conventions on the laws of war would enter into force.

He drew the Commission's attention to the words "danger to human life" in sub-paragraph (a). If those words applied to the life of the person effecting the arrest or preventing an escape, the matter was dealt with in sub-paragraph (a)(1) and sub-paragraph (a)(11) became useless.

The CHAIRMAN appointed a drafting committee, consisting of the representatives of the United Kingdom and France, to improve the text as far as possible. The Commission would not, however, be prevented from continuing its discussions at the next morning's meeting; as soon as the discussion was ended, the Guatemalan representative would be entitled to submit a motion for the postponement of the voting.

The meeting rose at 5.30 p.m.