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**Nations Unies**  
**CONSEIL**  
**ECONOMIQUE**  
**ET SOCIAL**

UNRESTRICTED  
E/CN.4/SR 95  
31 May 1949  
ENGLISH  
ORIGINAL: FRENCH

COMMISSION ON HUMAN RIGHTS

Fifth Session

SUMMARY RECORD OF THE NINETY-FIFTH MEETING

Held at Lake Success, New York,  
on Friday, 20 May 1949, at 2.30 p.m.

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<u>Rapporteur:</u>	Mr. Charles MALIK	Lebanon
<u>Members:</u>	Mr. HOOD	Australia
	Mr. LEBEAU	Belgium
	Mr. SAGUES	Chile
	Mr. CHA	China
later	Mr. CHANG	
	Mr. SOERENSEN	Denmark
	Mr. LOUEFI	Egypt
	Mr. CASSIN	France
	Mr. GARCIA BAUER	Guatemala
	Mrs. MEHTA	India
	Mr. ENITEZAM	Iran
	Mr. AZKUL*	Lebanon
	Mr. INGLES	Philippines
	Mr. KOVALENKO	Ukrainian Soviet Socialist Republic
	Mr. PAVLOV	Union of Soviet Socialist Republics
	Miss BOWIE	United Kingdom

\*Alternate

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Consultants from Non-Governmental Organizations:

Category A:

Miss GENDER	American Federation of Labor (AF of L)
Mr. FISCHER	World Federation of Trade Unions (WFTU)

Category B:

Mr. BEER	International League for the Rights of Man
Mr. NOLDE	Commission of the Churches on International Affairs
Mr. SPETNER	
Mrs. MILLARD	Women's International Democratic Federation
Mr. GROSSMANN	World Jewish Congress
Miss SCHAEFFER	International Union of Catholic Women's Leagues
Mr. FRIEDMAN	Co-ordinating Board of Jewish Organizations
Mr. CURLEY	Pax Romana
Mr. RENNIE	World Alliance of YMCAs

Secretariat:

Mr. HUMPHREY	Representative of the Secretary-General
Mr. LAWSON	Secretary of the Commission

DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS (E/800, E/CN.4/170/Add.1, E/CN.4/188, E/CN.4/206) (discussion continued)

Article 9

The CHAIRMAN requested the members of the Commission to examine article 9 of the draft covenant, preferably beginning with paragraph 1, together with the amendments submitted by the Lebanese, United Kingdom and United States delegations (E/CN.4/206, E/CN.4/188, E/CN.4/170/Add.1).

Miss BOWIE (United Kingdom) explained that her delegation's proposal was to combine paragraphs 1 and 2 of the Drafting Committee's text, both of which expressed the same idea. Her delegation preferred the wording of paragraph 2, which emphasized the concept of liberty and did not leave open the interpretation of the word "arbitrary".

Mr. AZKUL (Lebanon) said that his delegation saw a connexion between article 9, which was intended to protect personal freedom, and article 5, which was intended to protect life. In both cases, although

man should normally enjoy both freedom and life, two types of exceptions should be provided for: a person could be deprived of his life or liberty, either by the regular decision of a court in accordance with the law, or in exceptional cases in which the sentence of a court could not be passed. Article 5, as it stood, was made up of two parts: firstly, the statement that no one should be deprived of his life save in the execution of the sentence of a court, and, secondly, the provision made for exceptional cases. Article 9 should likewise first state that nobody should be deprived of his liberty, save in the execution of the sentence of a court and should then state the exceptions. If that idea were adopted, sub-paragraph (c) of the Drafting Committee's text would become redundant, as its contents would be found in paragraph 1. To place the exception provided for in sub-paragraph (c) among the others would be to misrepresent its essential difference from them all.

The word "arbitraire" had been included in paragraph 1 of the French text of the Lebanese amendment (E/CN.4/206) by error.

Mrs. MEHTA (India) was in favour of the Drafting Committee's text. In view of its context, the word "arbitrary" could have no other meaning but that of "non-compliance with the law".

It would not be possible to draw up a limitative list of exceptions like the one in paragraph 2; such a list could be no more than a series of examples.

Her delegation would therefore vote for paragraph 1 of the Drafting Committee's text, and for paragraphs 2, 3 and 4 of the text proposed by the United States delegation, as those four paragraphs alone contained the essential ideas.

Mr. LOUFI (Egypt) also preferred the Drafting Committee's text, which set forth more clearly the general principle that no one should be subject to arbitrary arrest or detention. To satisfy the Lebanese representative, sub-paragraph (c) should head the list of exceptions.

The CHAIRMAN, speaking as United States representative, said that her delegation could not accept the United Kingdom proposal to delete paragraph 1; the word "arbitrary" in that paragraph had an exact legal meaning and offered sufficient guarantee against any illegal arrest.

Nor could her delegation accept the Lebanese amendment as, in practice, arrest necessarily preceded sentence and did not result from it.

Mr. INGLES (Philippines) pointed out that it would be difficult to take a decision on article 9 until the question of whether or not a list of exceptions should be drawn up had been decided.

His delegation would vote for paragraph 1 of the Sub-Committee's text, which reproduced the provisions of the corresponding article in the Declaration of Human Rights.

He pointed out that the word "arbitrary" in paragraph 2 was used in the Declaration of Human Rights as meaning "illegal" or "contrary to the law". It should have the same meaning in the covenant. As a result it was difficult to understand why paragraph 2 classified, as exceptions, a series of perfectly legitimate acts which could not be considered to detract from the general principle which forbade all arbitrary arrests. Paragraph 2 should be deleted.

Mr. HOOD (Australia) suggested that the two ideas in paragraphs 1 and 2 should be combined in a single paragraph as follows:

"No one shall be subject to arbitrary arrest or detention or in any way deprived of his liberty save by due processes of law in the following cases..."

Such a wording would satisfy the United States, United Kingdom and Philippines representatives.

Mr. SOERENSEN (Denmark) thought that the list of exceptions in paragraph 2 constituted a guarantee against an abuse of legislative power. Paragraph 1 forbade arbitrary arrest, in other words arrest contrary to the law, but nothing would prevent a Government from promulgating new laws imposing certain penalties which could be called arbitrary although they were apparently legal. The list of exceptions foresaw that possibility and indicated the precise limits within which national legislations should remain if they were to be faithful to the spirit of the covenant.

Mr. CASSIN (France) agreed that the word "arbitrary" did not always have the same meaning in the various articles of the Declaration in which it appeared, but that, in article 9 of the Declaration, the word undoubtedly meant "contrary to the law". His delegation was, therefore, in favour of article 1 of the Drafting Committee's text, which was in line with article 9 of the Declaration. A further reason for retaining that paragraph was that it undoubtedly governed paragraphs 3 and 4.

He agreed with the Danish representative that paragraph 2 met a need and that it should be retained; he would, at the right moment, propose certain amendments on points of detail.

Like the United States representative, he could not support the Lebanese amendment.

Mr. Charles MALIK (Lebanon) doubted <sup>whether</sup> the word "arbitrary" meant nothing more than "illegal", "not in conformity with the law". He thought that the law could not be its own master in deciding what was just, and that, by the use of the word "arbitrary", article 9 to some extent established a law above the law.

Mr. GARCIA BAUER (Guatemala) shared the opinion of the representatives of the Philippines and France regarding the interpretation to be placed on the word "arbitrary" in the text of article 9. Like Mr. Ingles, he was in favour of deleting paragraph 2, since it listed a series of cases which could not in any event be regarded as cases of arbitrary arrest or detention.

Mr. SOERENSEN (Denmark) pointed out to the representative of Lebanon that the concept of a law above the law was not universally accepted. It was not therefore possible to give the word "arbitrary" such a wide meaning, in a covenant of the kind the Commission intended to draw up. It would be better to keep to the narrow legal sense and to try, after setting forth the principle that no arbitrary arrest could be made, to prevent any abuse by the legislature by listing the cases in which, in the opinion of the signatories to the covenant, arrest was justifiable.

/Mr. FAVLOV

Mr. PAVLOV (Union of Soviet Socialist Republics) thought it was unrealistic to try to interpret the word "arbitrary" as establishing a law above the law. By attaching any meaning other than that of "illegal" to the word "arbitrary", there was a risk of making the protection of the individual more precarious. The law should guarantee individual freedom; what was essential was that the law should be published in advance, that the person arrested should know under what law he had been arrested, and that he should be immediately released if it was proved that there was no law justifying his arrest. It was also important that the person arrested should be brought before a judge as soon as possible and that he should receive damages, if his arrest was unjust. The USSR delegation had already put forward that argument during the drafting of the Declaration of Human Rights.

The same questions arose in connexion with the covenant. They had been solved satisfactorily in the text prepared by the Drafting Committee, and the USSR delegation would therefore support that text. However, it thought that the exceptions listed in paragraph 2 were too numerous and, at the same time, that the list was incomplete. If the list were extended still more, there would be the risk that the principle of freedom might be obscured by the vast number of cases in which it was allowable to encroach upon freedom. It would be better to condense all the exceptions in a single, very brief, general formula.

Mr. Charles MALIK (Lebanon) <sup>noting</sup> the criticism aroused by the amendment submitted by his delegation, said that he would not press for the Commission to take the amendment into consideration.

Miss BOWLE (United Kingdom) accepted the wording suggested by the Australian representative. That wording would therefore replace the first paragraph of article 9 in the text proposed by the United Kingdom delegation (E/CN.1/188).

The CHAIRMAN, speaking in her capacity as representative of the United States of America, said that her delegation could accept neither the Australian proposal nor that of the United Kingdom, on which it was based

The word "arbitrary" had been the subject of lengthy consideration and had been finally retained by the Drafting Committee, which had set aside the wider and less precise concept of "freedom" for the purposes of an article which was so nearly related to the juridical field.

She observed that the first part of the text proposed by the Australian delegation coincided exactly with the original text of paragraph 1. The question of principle which arose, therefore, was whether the Commission wished to combine paragraphs 1 and 2 in a single paragraph.

Miss BOWIE (United Kingdom) said that it would be difficult for the Commission to take any decision on that point without first thoroughly examining the various sub-paragraphs of paragraph 2.

After a short discussion, and at the suggestion of Mr. Charles MALIK (Lebanon), the CHAIRMAN asked the Commission to vote on the first part of the Australian text while reserving its decision on the question of principle and, if necessary, on the content of the second part of the text, until later.

She therefore put to the vote the following sentence: "No one shall be subjected to arbitrary arrest or detention".

The sentence was adopted unanimously, by 17 votes.

The CHAIRMAN then invited the Commission to examine paragraph 2 of the text proposed by the Drafting Committee and the amendments relating thereto, in order to decide whether or not it would opt for a list of limitative exceptions.

Mrs. MEHTA (India) thought that, if the Commission could not draw up a complete list -- and she was afraid that it would not be able to -- it should specify that the exceptions listed were given as examples only.

Mr. CASSIN (France) thought that it was too early to take a decision of principle; the Commission must first make a sincere effort to decide whether or not it was possible for it to adopt the system to direct limitations.

/The French

The French delegation would prefer to have the sentence already adopted enlarged upon along the lines suggested by the Australian representative. It would then take as a general basis for consideration the list of exceptions drawn up by the United Kingdom delegation, which seemed to it to combine certain interesting characteristics. At first sight, some drafting amendments and certain substantive comments seemed necessary.

First of all, he would like to see sub-paragraph (c) at the head of the list, since it set forth the ordinary right of detention. It should be decided whether or not the idea of "a breach of the peace", which appeared in the United Kingdom text and not in the original, should be retained: that was a matter worthy of discussion. Again, the Commission should not omit from among the exceptions the case of escape after the commission of an offence: that motive was, of course, the most justifiable of all. Lastly, he drew the Commission's attention to another omission which should be corrected, if the list of exceptions was chosen: sub-paragraph (e) both in the United Kingdom text and in the original provided for the custody of a minor only at the request of his parents or guardian, whereas such a request might come from other authorized sources, such as a juvenile court. He suggested that sub-paragraph (e) should be reworded as follows: "the custody of a minor, lawfully ordered for his supervision and education."

Mr. GARCIA BAUER (Guatemala) repeated that the presence of the word "arbitrary" made a list of exceptions quite unnecessary.

The CHAIRMAN, speaking as the representative of the United States of America, recalled that the original list of limitations submitted to the Drafting Committee had included about forty exceptions: in other words, the current list was far from complete. Obviously, the Commission could add to the list if it desired but, by so doing, it would give the impression that it attached greater importance to the exceptions than to the right which it wished to establish. Mrs. Roosevelt stressed the fact that the covenant should have permanent value in principle; it would be a mistake to have it include all the details of enforcement which were normally found in national legislation. The representative of the United States appealed to the members of the Commission to consider carefully before making a decision which might prove extremely serious for the very principle of human freedom.

/Mrs. Roosevelt



Mrs. Roosevelt concurred in the view of the representative of Guatemala that the first paragraph was adequate to guarantee the principle which should be established, namely, the obligation of States not to arrest or detain persons arbitrarily. Paragraph 2 did not add any guarantee which was not implicitly provided for in paragraph 1. On the contrary, by adopting an incomplete list the Commission would be encroaching on the legislative power of States without preventing any eventual abuses of such power.

The United States delegation would not hesitate to vote in favour of the deletion of paragraph 2.

Mr. ENTEZAM (Iran) also favoured the deletion of paragraph 2. Nevertheless he wondered whether the Commission might adopt a compromise formula which, while keeping the list of exceptions favoured by a great number of representatives, would solve the difficulty pointed out by the representative of India. That formula would be to replace the words "save in the case of" by "save in cases similar to the following".

Miss BOWLE (United Kingdom) emphasized the fact that the United Kingdom delegation had tried to reduce the exceptions to a reasonable number. She believed that it could be stated that the list she proposed covered the vast majority of cases in which an individual could justly be deprived of his liberty.

Mr. SCERENSEN (Denmark) proposed a method which, if adopted, would help to settle the difficulty.

In his opinion a list of exceptions to article 9 was essential because an attempt must be made to restrict the liberty of action of Governments in a field where abuses were to be feared. It must, however, be recognized that that list, which should define the limits beyond which no encroachment on individual liberty could be tolerated, might very easily conflict with the provisions of the various national legislations in force. The Danish delegation therefore proposed that the Commission should retain paragraph 2 as it stood but should make it possible for Governments to depart temporarily from what, in the current state of national legislation, must still be considered as an ideal to be attained. That could be done by adopting a

final article authorising Governments when they signed or ratified the covenant to make reservations regarding the immediate acceptance of commitments which would be contrary to the provisions of their legislation in force.

Mr. PAVIOV (Union of Soviet Socialist Republics) stated that his delegation opposed the adoption of a long list of exceptions which could not fail to make an unfavourable impression on world public opinion. Even a restricted list such as the one proposed by the United Kingdom delegation would raise doubts regarding the force of a principle which was affirmed in the first paragraph only to be denied in the following paragraph.

The USSR delegation would therefore vote for the deletion of paragraph :

Mr. HOOD (Australia) recalled that the principal aim of the covenant was to let the individual know the conditions under which he could demand respect of the rights which were recognized as his in the Declaration; if the covenant contained nothing more than the Declaration, that aim would not be achieved.

With regard to the article under discussion, it was important to draw up a list of exceptions which would enable the individual to know that in any other circumstances he could not be arrested or detained. While the listing of the exceptions represented a negative attitude in a sense, it was preferable to merely proclaiming that no one could be arbitrarily arrested or detained.

Without retaining the forty exceptions listed by the Drafting Committee, the Commission could and should seek a draft covering the principal exceptions in a relatively restricted list identical to the list proposed by the United Kingdom delegation.

Mr. CHANG (China) pointed out that the difficulty raised by restricting the exercise of a right occurred not only in the case under consideration. It also occurred in article 5 inter alia.

If certain exceptions were to be mentioned, they must be limited to the essential and general cases provided for in the legislation of all States.

It would be overambitious to try from the very beginning to draft a covenant anticipating all possible cases and giving all the consequent definitions. Even if the covenant which the Commission was drafting was not perfect, it would serve as a basis for a jurisprudence which would become increasingly important and significant. That jurisprudence would make it possible to complete the original covenant and to revise certain of its articles during the subsequent years.

Mr. Chang was therefore of the opinion that, for the time being, the Commission should limit its activities to the statement of general principles which jurisprudence could clarify and make concrete by protocols which would complete the original covenant whenever such action seemed possible and desirable. By such progressive action, increasingly perfect definitions could be established and, for certain articles, increasingly complete lists of exceptions could be drawn up. /

If a too perfect covenant was sought immediately, there would be the risk that the opposite result would be achieved and the moral prestige of the Declaration encroached upon.

He would therefore vote against the retention of a list of exceptions, namely, against paragraph 2 of the proposed article.

Mr. SAGUES (Chile) remarked that the proposed list of exceptions was not complete. He did not think however that it should be made too wide in scope; the disastrous result of such a course would be to bury under a heap of exceptions the fundamental concept of the article: the preservation of individual liberty.

As it stood, the proposed list of exceptions was exhaustive; that was regrettable, but it seemed that any attempt to change its character would be bound to fail.

He wished to point out that Chile could not approve of the exception provided for in sub-paragraph (f), namely: the lawful arrest or detention of a person to prevent him making an unauthorized entry into the country. Indeed, there was a provision in the Chilean constitution that any person was free once he had entered Chilean territory, even if he had entered unauthorized.

The definition of an arbitrary act was as follows: any act which violated justice, reason, or legislation, and dictated by caprice alone.

In view of that most precise and comprehensive definition, the word "arbitrary" was sufficient to determine the cases when no one could be deprived of his liberty. Furthermore, the statement that "no person shall be arbitrarily deprived of his liberty" fully brought out the meaning of paragraph 4 of the proposed article.

Miss BOWIE (United Kingdom) pointed out to the Chinese representative that after drawing up the draft covenant, the Commission had to work out measures for its implementation. The covenant, therefore, could not be limited to general definitions without much practical value. The United Kingdom draft amendment to article 9 was intended to pave the way for the evolving of implementation measures.

Replying to the USSR representative, Miss Bowie said that the expression "breach of the peace" had a technical meaning in Anglo-Saxon law: it applied to acts which were not crimes but mere offences or contraventions of regulations relating to public order. In the USSR, she had visited reformatories for young women arrested for soliciting: those women had committed a "breach of the peace". That simple example showed that any delegation really interested in the drafting of the covenant should be able to supply a list of exceptions so that the Commission could work out a final list which took into consideration the provisions of all domestic legislations.

Mr. LOUMI (Egypt) remarked that it was difficult to mention all cases in which arrest and detention were not a violation of human rights; the task was all the more difficult as the covenant would have to be ratified by all the various States which had very different legislations.

He felt that the Commission should examine all the exceptions listed by the Drafting Committee, together with those submitted by the United Kingdom delegation. After drafting a list which it regarded as satisfactory, the Commission could submit two draft articles to the General Assembly: one of them, like the text proposed by the United States, would not include a list of exceptions, while the other, like the text proposed by the United Kingdom, would.

The Egyptian representative requested that, should the inclusion of a list of exceptions be voted on, the opinion of the minority should be communicated to all Member States.

Mr. Charles MALIK (Lebanon) believed that article 9 was the most important one in the whole covenant. Liberty became a mere word, and other human rights lost all their meaning, if there were no sufficient guarantees against arbitrary arrest and detention. Article 9 was the crucial point of the draft covenant, the one that would give it its entire value.

He remarked that the question of arbitrary arrest and detention had assumed its full importance after the Second World War: after the excesses committed by the Nazis and Fascists, fear of arbitrary arrest had become deeply anchored in the hearts of men. The main duty of the Commission was to eradicate that fear.

He agreed with the United Kingdom point of view on the need to draw up a list of cases when arrest and detention were not arbitrary. The Chilean representative had given a perfect definition of the word "arbitrary"; under that definition it was obvious that the cases listed in paragraph 2 of the United Kingdom text were not arbitrary, but they should be mentioned so that every one was clear as to the cases in which arrest and detention were perfectly justified.

He pointed out that the list proposed by the United Kingdom was no mere enumeration of examples: the dignity of the human person was at stake in each case. The words "in consequence" were likewise important, for they linked paragraphs 1 and 2, showing that the list of exceptions specified the main cases in which arrest was not arbitrary.

He concluded by saying that the Commission should undertake a thorough study of cases when arrest and detention were justified, with a view to drawing up a complete and concise list that would give article 9 all the necessary strength, in the interest of the covenant as a whole.

After noting the names of representatives desirous of speaking on the subject, the CHAIRMAN announced that the list of speakers on paragraph 2 of the United Kingdom amendment was closed.

The meeting rose at 5.35 p.m.