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| <u>Chairman:</u> | Mrs. ROOSEVELT | United States of America |
| <u>Rapporteur:</u> | Mr. AZKOUL | Lebanon |
| <u>Members:</u> | Mr. HOOD | Australia |
| | Mr. LEBEAU | Belgium |
| | Mr. SAGUES | Chile |
| | Mr. P. C. CHANG | China |
| | Mr. SOERENSEN | Denmark |
| | Mr. LOUFI | Egypt |
| | Mr. CASSIN | France |
| | Mr. GARCIA BAUER | Guatemala |
| | Mrs. MEHTA | India |
| | Mr. ENTEZAM | Iran |
| | Mr. INGLES | Philippines |

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|---------------|-------------------------------------|
| Mr. KOVALENKO | Ukrainian Soviet Socialist Republic |
| Mr. PAVLOV | Union of Soviet Socialist Republics |
| Miss BOWIE | United Kingdom |
| Mr. VILFAN | Yugoslavia |

Consultants from Non-Governmental Organizations:

| | | |
|---------------------|--------------------------------|---|
| <u>Category A:</u> | Miss SENDER | American Federation of Labor (AFL) |
| <u>Category B:</u> | Mrs. VERGARA) Miss ARETA) | Catholic International Union for Social Service |
| | Mr. STEINER | Commission of the Churches on International Affairs |
| | Mr. FRIEDMAN | Jewish Organizations for Consultation with the Economic and Social Council |
| | Miss SCHAEFER | International Union of Catholic Womens Leagues |
| <u>Secretariat:</u> | Mr. HUMPHREY | Director of the Human Rights Division |
| | Mr. LAWSON | Secretary of the Commission |

DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS (E/800, E/CN.4/W.21,
E/CN.4/W.22, E/CN.4/W.23, E/CN.4/212) (discussion continued)

Article 5 (discussion continued)

Mr. PAVLOV (Union of Soviet Socialist Republics) emphasized the fact that article 5 was intended to protect the right to life, enunciated in article 3 of the Universal Declaration of Human Rights. Article 5 was therefore of paramount importance. Consideration of the proposals in connexion with article 5 showed that those submitted by the United Kingdom, France and Chile were very similar. The United Kingdom proposal (E/CN.4/W.21), while stating at the outset that no one could be deprived of his life, went on to give a list of the cases in which death could be inflicted. That list was not confined to a mention of the death penalty -- in which case death was inflicted after a sentence -- but also mentioned other cases in which death could be inflicted, even without a sentence. Thus it would be legitimate to cause death in defence of any person from unlawful violence, in order to effect a lawful arrest, to prevent an escape or to prohibit entry to a place to which access was forbidden on grounds of national security and, finally, in the performance of lawful acts of war. Nor would it be a crime to cause death in quelling a riot or insurrection.

/What then

What then would become of the right to rebel against tyranny and oppression in the last resort, a right included in the preamble of the Declaration? The United Kingdom had voted in favour of the preamble. Why then did that country, when the time came to put the principles into practice, propose to legalize an exception to the right to life, in cases where it might apply to those who revolted against a tyrannous regime? After that list of lawful exceptions what would remain of the sacred right to life?

If exceptions which did not even require a sentence were to be included in the Covenant, the most violent massacres would be justified and no law would thereafter be able to prevent them. In that connexion Mr. Pavlov recalled that, during the "pacification" of Malaya, a certain Great Power had made use of cannibals to quell a rebellious tribe, on the pretext that they were being used for reconnaissance purposes. It would be impossible to denounce such practices if the United Kingdom proposal were adopted.

Moreover, a covenant intended to protect the right to life should not contain provisions dealing with the laws of war (point(c) of the United Kingdom proposal). The Hague Convention was very important for the conduct of war, but that did not mean that the actions it dealt with should be included in a covenant on human rights. All those exceptions to the right to life would leave the door wide open for arbitrary acts and abuses of all kinds. It was only too well known that the right to fire on prisoners attempting to escape had enabled the Hitler regime to get rid of many hostile elements on the pretext of attempted escapes. The inclusion in the Covenant of the right to cause death while preventing an escape would hardly be calculated to guarantee the right to life. In support of his argument, Mr. Pavlov cited extracts from a recent report submitted by the United States Department of Justice to the President's Committee on Civil Rights. It was shown in that report that abuses committed by the police often went so far as to result in the death of so-called suspects, before any sentence had been passed, as an act of personal revenge.

The victims were, for the most part, of course, Indians or Negroes whose families did not possess the financial means necessary to go to law.

Certain members of the Commission had criticized the first sentence of the Chilean proposal: "No one may deprive another person of his life arbitrarily". It had been said that the word "arbitrarily" would make abuses possible and the example of the Hitler and fascist regimes had been given. The mention of those regimes was quite inappropriate since the laws promulgated under them could not be considered valid. The word "arbitrarily" was perfectly clear: it meant contrary to the law. There were laws in each State which would make it possible to define what was arbitrary and what was not.

To say simply that no one should be deprived of his life intentionally, as the French representative desired, would be a repetition of the Tenth Commandment. That formula could not be used in a covenant, since the death penalty in fact still existed and death could be imposed in certain cases which were clearly defined by the laws of each country.

On the other hand, Mr. Pavlov agreed with the representative of France that the second paragraph of the Chilean proposal should apply above all to traitors -- persons who were guilty of the most heinous crime and who therefore above all others deserved the supreme punishment. If treason were not punishable by death, doubt would be cast on the validity of all the work which was still going on in Europe to liquidate the last vestiges of collaboration.

He agreed with the United Kingdom representative that the purposes of the third paragraph of the Chilean amendment (E/CN.4/W.22) were already covered by article 14 of the draft Covenant.

With regard to the general aspect of the question, the USSR representative did not think it was possible to give a complete list of the lawful exceptions to the provision prohibiting the deprivation of life. The list given by the United Kingdom representative was necessarily incomplete. If that formula were accepted there would be the danger that many States would refuse to adhere to the Covenant because it did not mention the exceptions provided under their laws. On the other hand, many States would be able to adhere to the Covenant if it corresponded strictly to the principles set forth in the Declaration of Human Rights. In order to achieve that end, the enumeration should be deleted and it should be stated that "no one may deprive another person of his life except in the cases provided for by the laws of the various States".

/Mr. Pavlov

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9, 12, 15 and 17. The covenant should not do less than the Declaration, and he wondered therefore whether the right to life should be limited in any way whatsoever. He did not think that the word "arbitrarily", used in the first paragraph of the Chilean amendment, should be retained. If the United Kingdom proposal that the word "intentionally" should replace the word "arbitrarily" were adopted, every accused person would be able to plead that he had not acted intentionally.

It would be better to leave it to the person who inflicted death to prove that he had not done it arbitrarily or intentionally, the value of that proof being universally recognized. He asked, therefore, that a separate vote should be taken on the word "arbitrarily" in the first paragraph of the Chilean amendment.

He agreed that the death penalty should be authorized only in the most serious cases, and that pardon should be provided for in all cases.

He thought that the proposal submitted by the United Kingdom delegation was a step in the right direction. Nevertheless, the article as drafted was not altogether satisfactory. In fact, paragraph 2 (b), which defined three cases in which the use of force would not be permitted unless "absolutely necessary" was worthless unless it was known where absolute necessity began. In order to have a satisfactory article, the efforts made by the United Kingdom delegation should be continued, a comparative study made of the laws in force in all countries of the world, and a compilation made of the provisions by which exceptions to the right to life might be limited.

The subject had not been sufficiently studied to enable a decision on article 5 to be taken immediately.

Mr. INGLES (Philippines) thought that the exceptions provided for in the United Kingdom amendment did not include all the cases in which the police could use force. He gave as an example a hypothetical situation in which the police authorities of a certain town were warned that at a specified time an individual would attempt to poison that town's water supplies. If, at the time indicated, a policeman on guard at the reservoir saw a man pouring something

into the water and if, after having warned him, the policeman fired on him, it seemed that such an act would only be justified if the individual had in fact been trying to poison the town's water supply, and not if he had been throwing some harmless substance into the water.

He pointed out that there seemed to be a certain confusion in the lists given in the United Kingdom and French amendments; on the one hand, the use of force was justified in case of danger to human life, and on the other, it was justified on grounds of national security.

Miss BOWIE (United Kingdom) answered that the case put forward by the Philippine representative was covered by paragraph 2(b)(iii) of the United Kingdom amendment. In such a case, the policeman on guard could reasonably suspect the man of trying to poison the town's water supply. If he fired on him after having warned him, it was simply in order to effect his arrest. But the policeman would be obliged to justify his action before the courts and, if it was recognized that he had committed an abuse, he would be prosecuted for a criminal act.

Mr. CASSIN (France) thought there were three courses open to the Commission: either it could purely and simply repeat in the Covenant the terms of the Universal Declaration of Human Rights, which would not seem to have a great deal of point: or it could adopt the Chilean amendment containing the word "arbitrarily", and he pointed out that there were cases of the use of force which were not necessarily in the execution of a sentence; or thirdly, it could adopt the French and United Kingdom amendments which, by making provision for exceptions, were closer to reality.

Mr. SAGUES (Chile) recalled that he had withdrawn from the last part of the third paragraph of his amendment the phrase beginning "and prior to". He observed that the first paragraph of that amendment contained principles identical with those which had inspired the United States amendment. The Chilean amendment strictly limited the powers of the authorities applying the death penalty; the death penalty should, in fact, be inflicted only in the most serious cases. It had been

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said that the adoption of that amendment would not in any way prevent abuses in legislation; that was why the United Kingdom and French delegations had drawn up a list of exceptions. But, except in the case provided for in paragraph 2 (a) of the United Kingdom amendment, abuses in legislation were not included in those exceptions. Lastly, in spite of the Lebanese representative's argument that a list of exceptions would prevent Governments from misusing their powers, it must be admitted that it would be extremely difficult to draw up a complete list of exceptions. He therefore preferred the solution advocated by his Government.

Mr. LOUTFI (Egypt) proposed that the following phrase should be inserted at the end of the third paragraph of the Chilean amendment: "...a law in force not contrary to the principles enunciated in the Universal Declaration of Human Rights".

Speaking in her capacity as representative of the United States of America, the CHAIRMAN said that she would prefer the following phrase: "...a law in force in conformity with the recognized principles of justice". In view of the fact that several articles of the Covenant contained very precise references to certain principles enunciated in the articles of the Declaration, the United States delegation thought it would be a mistake to refer in article 5 to the Universal Declaration of Human Rights as a whole.

Mr. KOVALENKO (Ukrainian Soviet Socialist Republic) was against any limitation of the fundamental right to life. The French representative would have done better not to mention the Ten Commandments, since they were simple and imperative and contained no exceptions. If the Commission decided to include exceptions in the Covenant, it would legalize limitations on the right to life and justify arbitrary action. The United Kingdom amendment would protect the police authorities from all the legal consequences which might result from the use of force. In particular, in the case of a riot or insurrection, the police would be able to use any methods they thought proper.

He then referred to the Lebanese representative's statement that it would be desirable for the various

Governments to improve their legislation. He thought such improvement would only be made possible by the adoption of the Chilean proposal.

He was surprised by the United Kingdom representative's statement regarding the so-called illegal action of the Soviet police in Germany. It was well-known that there were no Soviet police in Germany and that, moreover, the Soviet police never committed illegal acts.

Mrs. MEHTA (India) said that there was no doubt that the right to life was the most important right of all. A list of exceptions must therefore be inserted in the Covenant, or else the various countries would be able to establish more numerous exceptions under their own legislation. The list should be as short as possible.

Mr. PAVIOV (Union of Soviet Socialist Republics), replying to the representative of Lebanon, said that the abuses committed by Governments could only be limited if the latter were signatories to the Covenant. But no Government would sign the Covenant if the Commission decided to include a very long list of exceptions. He was opposed therefore to the United Kingdom and French amendments.

Recalling the United Kingdom representative's reply to the Philippine representative, he thought that the Covenant as contemplated by the United Kingdom would be a covenant on the rights of the police rather than on human rights.

In particular, paragraph 2 (b) of the United Kingdom amendment did not in any way specify cases in which the police authorities would be in the wrong.

He then referred to the United Kingdom representative's statement on the incidents in Berlin. Those incidents had caused clashes between the strikers and the German police, not the Soviet police; it was well known that there were no Soviet police in Berlin.

The United Kingdom representative had tried to make the Soviet Government responsible for the incidents in Berlin. But those incidents had not been merely fortuitous and it would be interesting to see who would profit by them. In point of fact, certain circles did not want the difficulties which had arisen in Berlin to be settled by peaceful means; they

/wanted the military

wanted the military occupation to be maintained. He emphasized that certain information at his disposal had shown the part played in the recent incidents by underground Nazi Youth organizations. Those organizations had acted in the interests of those who wanted to see the Paris Conference result in failure. In conclusion, he said that the United Kingdom representative's statement showed who were the real instigators of the incidents in Berlin.

Mr. AZKOUL (Lebanon) said that the provisions of subparagraph 2 (b) (iii) of the United Kingdom amendment would make it possible to eliminate a clause which might leave the way open for deplorable abuses. The USSR amendment referred to "grounds established by law"; the United Kingdom amendment defined those grounds.

It was important that States should not enact legislation which conflicted with the principles of the Charter of the United Nations and those proclaimed in the Universal Declaration of Human Rights. Mr. Azkoul shared the view of the Indian representative: it would be desirable to reduce the list of exceptions to two or three cases. He emphasized, however, that the Commission should for the time being merely determine what exceptions it envisaged; that list would be sent to the various Governments, which would submit their suggestions before the following session of the Commission, and the latter could then draft a list, which it should attempt to make as short as possible.

Mr. Azkoul noted that the last three paragraphs of the Chilean amendment seemed to define the meaning of the word "arbitrarily" contained in the first paragraph. He asked the representative of Chile whether his amendment comprised only cases in which competent courts had passed sentence, or whether it referred indirectly to the exceptions contained in the United Kingdom amendment. If the first interpretation applied, it would seem difficult to justify self-defence. Under the second interpretation it would be possible for a Government to foresee certain exceptions which the Commission had not considered.

Mr. SAGUES (Chile) replied that many exceptions contained in the United Kingdom draft could be covered by the Chilean amendment.

Miss BOWIE (United Kingdom) in reply to the representative of the Ukrainian SSR, pointed out that the case of police authorities who resorted to the undue use of force was provided for in article 2.

Mr. CHANG (China) requested that the first paragraph of the Chilean amendment should be voted in two parts, the word "arbitrarily" to be voted on separately.

The first paragraph of the Chilean amendment, with the exception of the word "arbitrarily" was adopted by 14 votes to none, with one abstention.

The word "arbitrarily" was not adopted, 7 votes being cast in favour and 7 against, with one abstention.

Miss BOWIE (United Kingdom) pointed out that the Commission should vote on the word "intentionally".

The CHAIRMAN replied that the Commission was considering the Chilean amendment and not the United Kingdom text.

Speaking as the representative of the United States of America, she requested that the vote on the second paragraph of the Chilean amendment should be taken in two parts.

The first part of the second paragraph was adopted by 9 votes to 4, with 2 abstentions.

The second part of the second paragraph was rejected by 5 votes to 4, with 6 abstentions.

The third paragraph, was amended, was adopted by 8 votes to none, with 6 abstentions.

The fourth paragraph was adopted by 9 votes to one, with 5 abstentions.

Mr. SAGUES (Chile) requested that a roll-call vote should be taken on the Chilean amendment as a whole.

/A vote was

A vote was taken by roll-call as follows:

Australia, having been drawn by lot by the Chairman, voted first.

In favour: Chile, China, Egypt, Philippines, Ukrainian
Soviet Socialist Republic, Union of Soviet
Socialist Republics, United States of America,
Yugoslavia.

Against: Australia, Belgium, Denmark, France, India,
United Kingdom.

Abstaining: Iran.

The Chilean amendment was adopted by 8 votes to 6, with
one abstention.

Mr. HOOD (Australia) thought that the text could be improved by the addition of the word "intentionally"; otherwise, the Chilean amendment would seem completely illogical.

The CHAIRMAN pointed out that the Commission would only have been able to vote on the word "intentionally" if a member had proposed it in the form of an amendment. The Commission could always decide by a two-thirds majority to reconsider its decision.

Miss BOWIE (United Kingdom) emphasized that some confusion seemed to have arisen and she requested that the text of the United Kingdom amendment should be included in the Commission's report with the comments of the members who had supported that amendment.

Article 9

Mr. FAVLOV (Union of Soviet Socialist Republics) proposed to insert the following text in article 9, paragraph 3, of the original text, or in paragraph 2 of the United Kingdom amendment, should the list of exceptions contained in those texts not be adopted:

"Every person arrested on a charge of having committed a crime or to prevent him from committing a crime which he is preparing should be promptly brought before a court."

He noted that individuals arrested when about to commit a crime should be entitled to at least the same protection as was granted to confessed criminals.

/The CHAIRMAN

The CHAIRMAN, speaking as the representative of the United States of America, explained the various changes suggested by her delegation; they were mainly drafting changes.

Mr. CASSIN (France) thought that paragraph 2 of the United States amendment satisfied a need. A person could be arrested, either because an accusation had been brought against him or for other reasons. In every case he should be informed of the reasons for his arrest. Paragraph 3 of the United States amendment referred to bail. Mr. Cassin thought that it would not be advisable to draft that paragraph in mandatory form. Lastly, he wondered whether paragraphs 2 and 3 of the United States amendment should be separate or combined into one, as had been done in the drafting Committee's text.

Mr. ENTEZAM (Iran) pointed out that in paragraph 2 of the United Kingdom amendment, the word "promptly" had been translated into French by the adverb "immédiatement". It would be better to translate it by the phrase "dans le plus court délai".

Miss BOWIE (United Kingdom) withdrew the first sentence of paragraph 2 of the United Kingdom amendment in favour of paragraph 2 of the United States amendment.

Paragraph 2 of the United States amendment was adopted by 14 votes to none

The meeting rose at 5.30 p.m.