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Fifth Session

SUMMARY RECORD OF THE NINETY-NINTH MEETING

Held at Lake Success, New York,
on Wednesday, 25 May 1949, at 11.30 a. m.

CONTENTS: Draft international covenant on human rights (E/800, E/CN.4/170/Add.1, E/CN.4/188, E/CN.4/206, E/CN.4/212, E/CN.4/250) (discussion continued): Article 9.

Chairman:	Mr. CHANG	China
Rapporteur:	Mr. AZKOUL	Lebanon
Members:	Mr. SHANN	Australia
	Mr. STEYAERT	Belgium
	Mr. SAGUES	Chile
	Mr. SOERENSEN	Denmark
	Mr. LOUTFI	Egypt
	Mr. CASSIN	France
	Mr. GARCIA BAUER	Guatemala
	Mrs. MEHTA	India
	Mr. ENTEZAM	Iran
	Mr. INGLES	Philippines

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Members: (continued)

Mr. KOVALENKO	Ukrainian Soviet Socialist Republic
Mr. PAVLOV	Union of Soviet Socialist Republics
Miss BOWIE	United Kingdom
Mr. SIMSARIAN	United States of America
Mr. FONTAINA	Uruguay
Mr. VILFAN	Yugoslavia

Consultants from non-governmental organizations:

Category A:	Miss SENDER	American Federation of Labor (AF of L)
Category B:	Mr. NOLDE	Commission of the Churches on International Affairs
	Mr. MOSKOWITZ	Consultative Council of Jewish Organizations
	Miss SCHAEFER	International Union of Catholic Women's Leagues
	Mrs. ARETA	Catholic International Union for Social Service
	Mr. FRIEDMAN	Co-ordinating Board of Jewish Organizations
	Mr. RENNIE Mr. BARNETT Mrs. BARNETT	World's Alliance of Young Men's Christian Associations
Secretariat:	Mr. HUMPHREY	Director of the Human Rights Division
	Mr. LAWSON	Secretary of the Commission

DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS (E/800, E/CN.4/170/Add.1, E/CN.4/188, E/CN.4/206, E/CN.4/212, E/CN.4/250) (discussion continued)

Article 9

The CHAIRMAN recalled that the Commission had already adopted the first two paragraphs of article 9.

The United States delegation had presented an amendment (E/CN.4/170) to paragraph 3, to which the French delegation, in turn, had presented an amendment. The United States text was intended to replace the Drafting Committee's text.

Finally, the USSR delegation had submitted an amendment (E/CN.4/250) to paragraph 2 of the United Kingdom draft (E/CN.4/188).

Miss BOWIE (United Kingdom) recalled that during the preceding meeting her delegation had withdrawn the amendment it had proposed to the first sentence of the United States amendment.

For that reason she thought the USSR amendment should henceforth be considered as an amendment to the text proposed by the United States of America.

Mr. PAVLOV (Union of Soviet Socialist Republics) pointed out that, from the opening of the debate on article 9, he had presented his amendment as a variant of the other texts. As, however, the first sentence of the United Kingdom amendment was practically identical with that of the United States amendment, his delegation did not object to its amendment being considered as applying to the United States text.

Mr. SIMSARIAN (United States of America) thought the USSR proposal was based on a misunderstanding. The words: "The accused in a criminal charge" included all cases of arrest or accusal on a criminal charge, attempts to commit such an offence and, in general, all cases in which any action was brought on a criminal charge; the text was meant to confer on anyone who was the object of such action the right to be "brought promptly before a judge or other officer authorized by law to exercise judicial power, etc".

Consequently, he thought the text proposed by the USSR delegation was superfluous, as its object was to provide for certain cases to which the provisions of the United States text were applicable in any event.

The CHAIRMAN explained that the USSR proposal was to replace the words: "The accused in a criminal charge" by the words "Any person who is arrested on a charge of having committed a crime, or to prevent the commission of a crime for which he is making preparation, shall be"; then came the remainder of the text proposed by the United States of America. In his opinion, the words "the accused in a criminal charge" included the cases provided for by the USSR text.

Mr. SOERENSEN (Denmark) wondered whether, in view of the remarks of the United States representative and the fact that the United Kingdom delegation had withdrawn its amendment, the USSR representative could not agree that his amendment should henceforth apply to the text of the Drafting Committee.

He thought that the text proposed by the USSR delegation differed only in form from that of the other amendments; for that reason the USSR amendment should rather relate to the second sentence of paragraph 3 as proposed by the Drafting Committee; it was the latter text which was closest to the text of the amendment that had been withdrawn and to which the USSR amendment related.

Replying to a question from the Chairman, as to which text he would prefer his amendment to relate, Mr. PAVLOV (Union of Soviet Socialist Republics) replied that his amendment should relate to the text the other provisions of which would be accepted by the Commission.

Mr. CASSIN (France) thought the USSR amendment might have been useful if the Commission had not already decided to delete, in paragraph 2 of article 9, the enumeration of the various exceptions.

But, since paragraph 3 no longer contained any reference to the exceptions and since the United States text alone was under discussion, he considered that the words "the accused in a criminal charge" included all cases and all situations.

In those circumstances, he could not accept the USSR amendment, for that text might be interpreted as validating arrests made under the pretext of preventing certain persons from committing a trifling offence, such as a disturbance of the public order.

Moreover, the idea contained in the text proposed by the USSR was contained in the United States amendment, whereas it was not in the text presented by the Drafting Committee.

Mr. VILFAN (Yugoslavia) was afraid that the USSR delegation had submitted its amendment because it had only had an imperfect translation of the text of the United States amendment, and because the expression "in a criminal charge" had been given too restricted a meaning in Russian. That point should be elucidated.

/The CHAIRMAN

The CHAIRMAN said that the expression "in a criminal charge" covered both the commission of the crime and the intent to commit the crime.

Mr. PAVLOV (Union of Soviet Socialist Republics) called attention to the essential difference distinguishing the United States amendment from the original text: the original provided that any person who was arrested would be brought immediately before a judge, while the United States amendment used the expression "the accused in a criminal charge". That amendment therefore introduced the notion of accusation into a paragraph which was intended to ensure the protection of arrested persons. In addition, the United States amendment was faulty in the sense that it established a certain discrimination in respect of persons who were simply accused as opposed to those against whom a definite charge had been made. The USSR delegation therefore requested that the text of its own amendment should be substituted for the United States amendment.

Miss BOWIE (United Kingdom) wondered whether it might not be possible to solve the difficulty by adopting the following formula: "Any one who is arrested and accused of a criminal offence...".

Mr. PAVLOV (Union of Soviet Socialist Republics) pointed out that a person could be accused without being taken into custody.

Mr. ENTEZAM (Iran) recognized the justice of that observation and proposed the following formula: "Any one who is arrested or accused...".

Mr. CASSIN (France) once more alleged that the United States amendment had a very wide meaning and certainly applied both to persons accused of a definite offence and persons who were simply under arrest.

It seemed difficult to introduce into paragraph 3 the notion of the preparation of a criminal offence, because that would to some extent validate the arrest of persons without an established motive. He proposed the following formula which seemed to him to be complete and satisfactory: "Any person who is accused of a criminal offence or an attempt to commit a criminal offence, whether or not he has been taken into custody, shall be brought immediately before a judge...".

Mr. ENTEZAM (Iran) accepted the formula suggested by the French representative. He noted, however, that casesof arbitrary and illegal arests were not covered.

The CHAIRMAN answered that that question was the subject of the next paragraph of the draft.

Mr. SIMSARIAN (United States of America) said that article 9, which dealt exclusively with arrest and detention, tried in paragraph 3 to accord a certain amount of prctection to persons who were arrested because they were accused of or charged with a criminal offence. That was the exact meaning of that paragraph; any other problem would fall outside its scope.

The United States delegation was ready to accept the proposal of the United Kingdom representative, which would perhaps make for a certain amount of precision in a clause which, for its own part, it considered to be already very clear.

It could not, however, accept the suggestion of the Iranian representative to insert "or" in the place of "and", for it was obvious that the provision concerned only the arrested persons whose release it was intended to hasten, and could not consequently be applied to persons who were accused without being arrested or placed in detention.

Mr. SAGUES (Chile) thought that the USSR proposal and that of the United States could be combined without going outside the framework of paragraph 3, which dealt solely with arrests, by saying: "Any person who is arrested with a view to the prevention or punishment of a criminal offence shall be immediately...".

He considered that the text proposed by the United States delegation was preferable to the original text, since the expression "criminal charge" covered at once a crime, a misdemeanour, and an offence, all three of which might give cause for arrest under Chilean legislation.

Mr. AZKOUL (Lebanon) pointed out, in reply to the representative of Iran, that article 9 did not deal with the detention of criminals alone, but also with that of minors or persons of unsound mind. It should therefore specify the cases in which legal action was necessary.

/As regards

As regards the charge, it was also clear that article 9, which sought a means to prevent deprivation of liberty, dealt only with charges made against persons who had been deprived of their liberty, that was to say, persons who had been arrested.

The article should therefore state on the one hand that any person who had been deprived of his liberty should be informed of the grounds for his detention and, on the other, that persons arrested for a crime would be given a prompt trial.

Mr. Azkoul thought that the sequence of thought would be brought out more clearly if presented in a single paragraph on the lines of the text originally adopted by the Drafting Committee. He consequently proposed that the phrase, which had already been retained by the Commission: "Any person who is arrested shall be informed promptly of the charges against him", should be followed by the additional phrase: "if the charges pertain to a crime, he shall be brought promptly...etc.".

Mr. STEYAERT (Belgium) suggested that the Commission should first come to a decision on paragraph 4. That paragraph was of much more general scope than paragraph 3 which was being studied: it averted the danger of arbitrary detention, it ensured the lawfulness of every detention and should thus logically come before paragraph 3 which dealt with the procedure to be followed after arrest.

Mr. ENTEZAM (Iran) supported the Belgian representative's suggestion. He pointed out that there would be no purpose to his proposal if paragraph 4 were adopted. It would be difficult, however, for him to withdraw his proposal as long as there was no certainty that the Commission would retain the paragraph.

The CHAIRMAN thought that, in order to speed up the work, it would be better not to delay the vote on paragraph 3. He assured the representative of Iran that the Commission was fully conscious of the connexion which existed between paragraphs 3 and 4. If paragraph 4 was rejected, the Commission could go back on its decision with regard to paragraph 3 so as to take into consideration the observations by the representative of Iran.

Mr. ENTEZAM (Iran) stated that in those circumstances his delegation would agree to withdraw provisionally its verbal amendment.

The meeting rose at 1 p.m.