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Eighth Session

SUMMARY RECORD OF THE THREE HUNDRED AND FOURTEENTH MEETING

Held at Headquarters, New York,
on Wednesday, 28 May 1952, at 2.30 p.m.

CONTENTS:

Draft international covenant on human rights and measures of implementation: part II of the draft covenant contained in the report of the seventh session of the Commission (E/1992, annex I, and annex III, section A; E/CN.4/528, E/CN.4/528/Add.1, E/CN.4/L.103/Rev.1, E/CN.4/L.131, E/CN.4/L.137, E/CN.4/L.151, E/CN.4/L.158, E/CN.4/L.183:

Programme of work of the Commission;

Article 6 (continued);

Article 7

Chairman: Mr. MALIK (Lebanon)

Rapporteur: Mr. WILLIAM Australia

Members:

Mr. NISOT	Belgium
Mr. VALENZUELA	Chile
Mr. CHENG PAONAN	China
AZMI Bey)	Egypt
Mr. GHORBAL)	
Mr. CASSIN	France
Mr. KAPSAMBELIS	Greece
Mrs. MEHTA	India
Mr. AZKOUL	Lebanon
Mr. WAHEED	Pakistan
Mr. BORATYNSKI	Poland
Mrs. RÖSSEL	Sweden
Mr. KOVALENKO	Ukrainian Soviet Socialist Republic
Mr. MOROZOV	Union of Soviet Socialist Republics
Mr. HOARE	United Kingdom of Great Britain and Northern Ireland
Mrs. ROOSEVELT	United States of America
Mr. BRACCO	Uruguay
Mr. JEVREMOVIC	Yugoslavia

Representatives of non-governmental organizations:

Category B:

Mrs. SOUDAN	International Federation of Business and Professional Women
Mr. RONALDS)	World Union for Progressive Judaism
Mrs. POLSTEIN)	

Secretariat:

Mr. HUMPHREY	Director, Division of Human Rights
Mr. DAS)	Secretaries of the Commission
Miss KITCHEN)	

/DRAFT

DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS AND MEASURES OF IMPLEMENTATION:
PART II OF THE DRAFT COVENANT CONTAINED IN THE REPORT OF THE SEVENTH SESSION
OF THE COMMISSION (E/1992, annex I and annex III, section A; E/CN.4/528,
E/CN.4/528/Add.1; E/CN.4/L.103/Rev.1, E/CN.4/L.131, E/CN.4/L.137,
E/CN.4/L.151, E/CN.4/L.158, E/CN.4/L.183)

Programme of work of the Commission

The CHAIRMAN drew attention to his suggested programme of work (E/CN.4/L.103/Rev.1). The Commission had four working days in which to complete its agenda, since one day had to be reserved for the Rapporteur to prepare the report and another day for the consideration of the report by the Commission.

Mr. HOARE (United Kingdom) considered that the Chairman's suggested programme was the best plan in the circumstances, but did not think that to allocate two days for the complete disposal of the first eighteen articles could be regarded as allowing for any adequate consideration of the text. He was willing to support those members who wanted to prolong the session for another week, although even that extension would not give the Commission sufficient time.

Mr. VALENZUELA (Chile) agreed with the United Kingdom representative that the complete consideration of the first eighteen articles would require more time. His delegation was greatly concerned at the effect that a hasty consideration might have on the quality of the Commission's work and he therefore proposed the reconsideration of the decision taken at the morning meeting to conclude the session on 6 June.

Mr. CASSIN (France) thought that, generally speaking, the Chairman's suggested programme met the Commission's needs, but that the meetings on Tuesday 3 June should also be devoted to the first eighteen articles. If the Commission decided to reconsider its decision, however, he hoped that that decision would be taken immediately, since members of the Commission had to make their plans accordingly.

/Mr. MOROZOV

Mr. MOROZOV (Union of Soviet Socialist Republics) did not think that anything could be gained by lengthy discussions of the Commission's programme of work. The first eighteen articles had been discussed exhaustively in the past and there were not many amendments to them. The Commission might even have time to consider the additional articles, most of which had been submitted a long time previously. If the French representative's suggestion was followed, the Commission would have seven lengthy meetings in which to discuss part II of the covenant and would have ample time to complete that work.

Mr. KAPSAMBELIS (Greece) said that, although he had voted against the indefinite extension of the session, he would not object to the reconsideration of the decision. Nevertheless, he did not think that another week would lead to any substantial progress in the Commission's work.

The CHAIRMAN put to the vote the question whether the Commission should reconsider its previous decision not to ask for an extension of its session.

The Commission decided, by 10 votes to 5, with 2 abstentions, to reconsider its previous decision.

The CHAIRMAN asked the Chilean representative whether he maintained his proposal put forward at the previous meeting to extend the session for one week only.

Mr. VALENZUELA (Chile) said that he did.

The Chilean motion was adopted by 9 votes to 2, with 6 abstentions.

The CHAIRMAN stated that the Secretariat would immediately draft a letter to the Economic and Social Council requesting a decision as soon as possible on the extension of the Commission's current session.

Mr. KOVALENKO (Ukrainian Soviet Socialist Republic) thought that, in view of the reconsideration of the Commission's decision, the prolongation of meetings and the time limit set for speeches, which had been adopted as an emergency measure, should also be reconsidered.

Mr. VALENZUELA (Chile) pointed out that the Economic and Social Council had not yet granted an extension and that the decision on time limits therefore remained in force.

The CHAIRMAN agreed with the Chilean representative's views and stated that the decision on time limits and times of meetings would be revised when the Economic and Social Council's reply was received.

Article 6 (continued)

Mr. CASSIN (France) introduced his amendment (E/CN.4/L.151) to paragraphs 4 and 5 of the original article. He withdrew his first amendment to paragraph 4, for the deletion of the words "on a criminal charge". The purpose of his remaining amendment to that paragraph was to show that the provision related not only to trials, but to all stages of judicial proceedings. The French amendment to paragraph 5 was purely formal and involved no changes of substance.

Mr. BORATYNSKI (Poland) said that he had moved his amendment (E/CN.4/L.183) to the United Kingdom amendment (E/CN.4/L.137) because the latter text served to nullify the fundamental principle of article 6 by including a long enumeration of cases in which deprivation of liberty might be legalized and justified. The relations between national penal codes and the covenant had been discussed exhaustively and he would refrain from repeating the arguments that had been advanced; nevertheless, the outcome of those discussions had been that the most important purpose of the covenant was to guarantee rights, and not to list exceptions. The Commission had rejected an enumeration of exceptions in the case of article 3 on the right to life and he hoped that it would do the same in the case of article 6.

Mrs. ROOSEVELT (United States of America) could not support the United Kingdom amendment (E/CN.4/L.137) because she did not consider that any enumeration of exceptions could be exhaustive; she could suggest eight more instances, chosen at random, of exceptional cases in which an individual could be deprived of his liberty. She preferred the original paragraphs 1 and 2 and was in favour of the original text as a whole, with the exception of paragraph 6, to which her delegation had proposed a slight amendment.

She would vote against the French amendment (E/CN.4/L.151). The French amendment to paragraph 4 seemed to be unnecessary because the sentence concerned began with the words "pending trial". The formal amendment to paragraph 5 did not seem to clarify the text.

/She would

She would oppose the Indian amendments (E/1992, annex III, section A). The amendment to paragraph 3 implied that some time could lapse before a person was informed of the reason for his arrest and would in effect give authorities an opportunity of arresting persons without just cause. The amendment to paragraph 4 did not provide a generally applicable criterion.

She asked for a vote by division on the Polish amendment (E/CN.4/L.183) because, although she would vote for the second and third sentences, which restated the original article, she considered the first sentence to be declaratory and therefore inappropriate for inclusion in the covenant.

Mr. MOROZOV (Union of Soviet Socialist Republics) objected to the United Kingdom amendment (E/CN.4/L.137) because it contained an enumeration of exceptions which could not be exhaustive and because such an enumeration laid down as binding rules certain provisions which were not acceptable to the legislations of many countries. Sub-paragraph (b) seemed to leave the way open for arrest in fulfilment of legal obligations which differed in various legal systems; for example, the law of some countries provided for arrest for debt, and sub-paragraph (b) would make that possible, although it was prohibited under article 7. The provisions for the detention of minors in sub-paragraph (d) were open to the same objection; the reference to vagrants in sub-paragraph (e) was vague, since the definition of vagrancy varied from one country to another; it seemed to be unnecessary to include the provision of sub-paragraph (f) in article 6, when admission to the territory of a State was dealt with in article 9. The only useful provision of the United Kingdom amendment was in the first sentence, but the effect of that provision was vitiated by the subsequent enumeration, which would serve to legalize unlawful arrest.

Mr. HOARE (United Kingdom) considered that the Polish amendment (E/CN.4/L.183) left a far wider latitude for abuse than did the United Kingdom amendment, which limited the exceptions established by law to the deprivation of liberty. The United Kingdom exceptions were general and were not based on English law, since many of the provisions did not apply to the United Kingdom. Sub-paragraph (b) was a general statement of what might be

/covered by

covered by non-compliance with a lawful court order, and did not involve the arbitrary effects implied by the USSR representative; the provision in subparagraph (d) was extremely important in all social work relating to minors, since it enabled them to be lawfully removed from undesirable surroundings; although the United Kingdom was not concerned with the detention of vagrants, certain other countries were; and the fact remained that it was lawful for States to arrest persons with a view to their deportation or their extradition. In reply to the United States representative, he stated that he would be prepared to consider the eight exceptions to which she had referred and, if they were not covered by his enumeration, to incorporate them in his amendment.

The last paragraph in his amendment covered the same ground as the Indian proposal. It was a drafting alteration and made no change to the substance of paragraph 5.

With regard to the French amendment (E/CN.4/L.151), he thought that the amendment to paragraph 4 might be desirable; the wording of the English text of the original paragraph 5, however, was satisfactory and should not be changed.

Mr. VALENZUELA (Chile) said he would vote against the United States amendment (E/CN.4/L.131) because it proposed to substitute a procedural right for the substantive right to compensation. If the right to compensation was not stated, it would seem to be impossible to take action on a right which did not exist.

He would vote against the United Kingdom amendment (E/CN.4/L.137), because it was incompatible with the nature of the covenant. Penal obligations could not be stated so specifically and all the sub-paragraphs, especially (e) and (f), would give rise to difficulties of application.

He would vote for the French amendments (E/CN.4/L.151).

Mr. JEVREMOVIC (Yugoslavia) said that he would support the French amendments and the Indian amendment to paragraph 3 (E/1992, annex III, section A). He would not oppose the Indian amendment to paragraph 4, although he considered it to be unnecessary. His delegation took the same position with regard to the first sentence of the Polish amendment (E/CN.4/L.183), but would vote for the second and third sentences, which restated the original text.

/He would

He would vote against the United Kingdom amendment (E/CN.4/L.137), because the limitative enumeration it contained might lead to abuse. The provision in sub-paragraph (b) was inconsistent with a guarantee in article 7 of the original text and sub-paragraph (c) provided for an unacceptable legalization of arrest which did not apply to all countries. He would not vote against the United Kingdom amendment to paragraph 4, but considered that the original text was adequate.

He would vote against the United States amendment (E/CN.4/L.131) for the reasons expressed by the Chilean representative. Moreover, the idea contained in that amendment was clearly stated in article 1, paragraph 3 (b) of the covenant.

Mr. CASSIN (France) said that the United Kingdom amendment (E/CN.4/L.137) was an interesting attempt to set out the limitations to the right to liberty of person, which had in fact already been done in the Rome Convention for the Protection of Human Rights and Fundamental Freedoms, concluded by the Council of Europe, but it could not be accepted in the draft covenant of the United Nations owing to the much wider variation between domestic legislations. The first sentence, however, common to both the United Kingdom amendment and to the Polish amendment (E/CN.4/L.183) to it, was wholly acceptable. The first Indian amendment (E/1992, annex III, section A) should not be adopted, as the insertion of the phrase proposed would give the police far too much latitude. He could vote for the United States amendment (E/CN.4/L.131) to paragraph 6, with some minor changes to cover cases in which the person arrested might be at fault, for example by refusing to show his identification papers. The United States representative seemed to have misunderstood the scope of the French amendment (E/CN.4/L.151) to paragraph 4; it was designed to cover not only the court hearing but the whole period after the arrest until a final decision was reached.

Mr. AZKOUL (Lebanon) said that his delegation had always insisted that the covenant should contain as many safeguards as possible for the individual against its misuse by governments. It would therefore support the United Kingdom amendment (E/CN.4/L.137), even though the list in it might be incomplete. A general statement might seem more restrictive on paper, but in practice it gave

/the government

the government greater latitude. As he had often pointed out, the word "arbitrary" could be interpreted by a government in such a way as to curtail all human rights, because it could enact laws which, although technically legal, might be arbitrary if viewed in the light of the Universal Declaration of Human Rights or of the conscience of humanity. There could, in fact, be arbitrary laws. Furthermore, the United Kingdom delegation's method of listing the limitations was consonant with the General Assembly's instructions to take into consideration the view that it was desirable to define the limitations to the rights set forth in the draft covenant with the greatest possible precision (resolution 421 B (V)). The United States amendment (E/CN.4/L.131) unduly weakened paragraph 6 and the Polish amendment (E/CN.4/L.183) added nothing new. The English text, at any rate, of the French amendment (E/CN.4/L.151) should be adopted.

Mr. BORATYNSKI (Poland) said that the meaning of the word "arbitrary" had been threshed out during the discussion of article 3 and had been adopted in the final text. The proof that he had been correct in stating that the United Kingdom delegation was trying to delete the principle embodied in article 1 of the original text (E/1992) was that its amendment (E/CN.4/L.137) substituted a list of exceptions for the statement of the principle.

Mrs. ROOSEVELT (United States of America) supplied a list of some of the exceptions omitted from the list in the United Kingdom amendment. They included: the detention of a child by his parent or guardian without reference to lawful order or educational surveillance; the detention of a person without a court order to prevent serious bodily harm to him; an accidental or unintentional detention; the arrest and detention of a witness in a criminal case to assure his presence at a trial or for his protection; the arrest and detention of a defendant as a means of instituting a civil suit involving tortious conduct such as fraud, defamation or malicious prosecution; the arrest of members of a legislative body by the sergeant-at-arms in order to force the attendance of a quorum; the arrest and detention upon the order of a legislative body for contempt; the detention of a seaman by a captain for disciplinary purposes. But even if all those additional exceptions were included, the list would still be incomplete. She agreed with the Polish representative that all the connotations of the word "arbitrary" were fully appreciated.

Mrs. MEHTA (India) preferred the original text of paragraph 1 to the United Kingdom text, because even the Drafting Committee's list of forty exceptions (E/800) was not exhaustive. The Indian amendment (E/1992, annex III, section A) to paragraph 3 was necessary in order to meet practical difficulties that might arise. She would withdraw her amendment to paragraph 4 in favour of the United Kingdom amendment to that paragraph. If that United Kingdom amendment was rejected and if the words "pending trial" remained in the original text (E/1992), she would have to vote against the French amendment (E/CN.4/L.151) to paragraph 4.

Mr. WHITLAM (Australia) said that the term "arbitrary" had a limited connotation in some domestic systems of law and should not be used in an instrument concerning all Members of the United Nations. The United Kingdom amendment to paragraph 1 was preferable. The criticism that it was simply a catalogue was no longer a valid objection; a similar catalogue had been adopted in the article dealing with the right to education. The list in the United Kingdom amendment covered most existing legislation in general but tested terms. Any other exceptions could probably be brought under the heads set out in that amendment. He would also support the United Kingdom amendment to paragraph 4; the French amendment was not so well worded. He would oppose the Polish amendment because its method conflicted with that used in the United Kingdom amendment. He appreciated the intention of the Indian amendment to paragraph 3 and would support it. The original text of paragraph 5 was a better one than that of the French amendment. The United States amendment to paragraph 6 was unnecessary.

The CHAIRMAN drew the Commission's attention to the Secretary-General's memorandum (E/CN.4/528) on the meaning of the term "arbitrary" (paragraphs 109 to 114) and on the continuation of criminal proceedings not to be prejudiced by release on bail (paragraph 118). He reminded the Commission that the United States representative had asked that the three sentences of the Polish amendment (E/CN.4/L.183) to the United Kingdom amendment (E/CN.4/L.137) affecting paragraphs 1 and 2 of the original text should be put to the vote separately.

The first sentence of the Polish amendment was adopted by 7 votes to 5, with 5 abstentions.

The second sentence of the Polish amendment was adopted by 10 votes to 2, with 5 abstentions.

/The third

The third sentence of the Polish amendment was adopted by 10 votes to 2, with 5 abstentions.

The Polish amendment (E/CN.4/L.183) to the United Kingdom amendment (E/CN.4/L.137) to paragraphs 1 and 2 was adopted by 7 votes to 6, with 4 abstentions.

The Indian amendment (E/1992, annex III, section A) to paragraph 3 was adopted by 6 votes to 5, with 6 abstentions.

Mr. NISOT (Belgium) explained that he had voted against the Indian amendment because it left the way open to every kind of arbitrary action by the authorities: the expression "as soon as may be" was vague enough to cover any period. Apparently the Commission had not realized that. The vote should be reconsidered.

Mrs. ROOSEVELT (United States of America), Mr. HOARE (United Kingdom) and Mr. AZKOUL (Lebanon) supported the Belgian representative's motion for reconsideration.

It was decided, by 10 votes to 1, with 6 abstentions, that the vote on the Indian amendment (E/1992, annex III, section A) to paragraph 3 should be reconsidered.

Mrs. MEHTA (India) explained that the intention had been merely to obviate certain practical difficulties that might hinder officials from immediately informing an arrested person of the reasons for his arrest. It had not been intended that any appreciable period should elapse between the arrest and the charge.

Mr. NISOT (Belgium), Mr. WHITLAM (Australia), Mrs. ROOSEVELT (United States of America) and Mr. HOARE (United Kingdom) agreed that it was unthinkable, particularly in the light of unfortunate past experience, that anyone arrested should not immediately be informed of the reason for his arrest.

Mrs. MEHTA (India) withdrew her amendment since no satisfactory wording could be found to express the idea she had in mind without great danger of misinterpretation.

Paragraph 3 of the original text (E/1992) was adopted unanimously as paragraph 2.

The CHAIRMAN noted that there were two amendments to paragraph 4, the first by the United Kingdom delegation (E/CN.4/L.137) and the other by the French delegation (E/CN.4/L.151). To facilitate the procedure, he suggested that with the consent of the French representative the French amendment should be considered as a sub-amendment to the United Kingdom proposal.

It was so agreed.

After an exchange of views regarding drafting, the CHAIRMAN put to the vote a revised version of the first part of the French amendment to the United Kingdom amendment adding the following words: "at any other stage of the judicial proceedings".

The first part of the French amendment was adopted by 12 votes to 1, with 5 abstentions.

The CHAIRMAN put to the vote the French version of the second part of the French amendment, revised as follows: "et, le cas échéant, pour l'exécution du jugement" (and, should the occasion arise, for execution of the judgment) on the understanding that, if the proposal was adopted, the English translation would be settled by the Secretariat.

The second part of the French amendment was adopted by 8 votes to 2, with 8 abstentions.

The CHAIRMAN put to the vote the United Kingdom amendment (E/CN.4/L.137) to the last sentence of paragraph 4 as amended by France, as follows:

"It shall not be the general rule that persons awaiting trial shall be detained in custody but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings and, should the occasion arise, for execution of the judgment."

The United Kingdom amendment as thus amended was adopted by 14 votes to none, with 3 abstentions.

Paragraph 4 as amended was unanimously adopted.

/The CHAIRMAN

The CHAIRMAN put to the vote the French amendment to paragraph 5 contained in E/CN.4/L.151

The French amendment to paragraph 5 was adopted by 8 votes to 1, with 9 abstentions.

Paragraph 5 as amended was unanimously adopted.

The CHAIRMAN put to the vote the United States amendment to paragraph 6 contained in E/CN.4/L.131.

The United States amendment to paragraph 6 was rejected by 10 votes to 5, with 3 abstentions.

The CHAIRMAN put to the vote the whole of article 6 as amended.

Article 6 as amended was adopted by 15 votes to none, with 2 abstentions.

Mrs. ROOSEVELT (United States of America) said that the opening sentence of the first paragraph of article 6 as adopted contained a declaration which made the article meaningless and which was unsuitable in a legal instrument such as the covenant. She felt that that point might not have been adequately taken into consideration and that, in view of its action on the Indian amendment to article 6, the Commission might wish to reconsider the first sentence. She therefore moved reconsideration of that sentence.

The CHAIRMAN indicated that the position in the case of the Indian amendment was different because the Commission had decided on reconsideration before taking the final vote on the paragraph in question. The United States motion for reconsideration had, however, been submitted after the final vote on paragraph 1 as a whole.

Mr. MOROZOV (Union of Soviet Socialist Republics) said that reconsideration of decisions other than those relating to procedure would establish a dangerous precedent, would unnecessarily protract the Commission's work and would violate the rules of procedure. The Indian amendment had been reconsidered because of difficulties of language and interpretation which did not arise in connexion with the first paragraph of the article. Adoption of the United States motion would open the way to proposals for reconsideration of articles by other delegations which were dissatisfied with the texts adopted

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98

earlier by the Commission. He pointed out that all delegations were at liberty to reserve their right to propose reconsideration of any article in other organs of the United Nations.

Mr. BORATYNSKI (Poland) expressed the view that the Indian action on the amendment should not be regarded as a precedent. The United States motion was dangerous and would retard the Commission's work. The Polish delegation and other delegations had often in explaining their vote indicated their intention to propose reconsideration of a given article in the Economic and Social Council or in the General Assembly. Reconsideration in the Commission itself had, however, never been suggested because it would open the door to constant reconsideration of decisions already taken.

Mrs. ROOSEVELT (United States of America) said that, in the interest of expediting the Commission's work, she withdrew her motion for reconsideration of the first sentence of paragraph 1 of article 6.

Article 7

The CHAIRMAN put to the vote article 7 to which no amendments had been submitted.

Article 7 was unanimously adopted.

The meeting rose at 5.50 p.m.

11/6 a.m.