

UNITED NATIONS  
ECONOMIC  
AND  
SOCIAL COUNCIL



GENERAL

E/CN.4/SR.147  
17 April 1950

ENGLISH  
ORIGINAL: FRENCH

COMMISSION ON HUMAN RIGHTS

Sixth Session

SUMMARY RECORD OF THE HUNDRED AND FORTY-SEVENTH MEETING

Held at Lake Success, New York,  
on Wednesday, 5 April 1950, at 2.45 p.m.

CONTENTS:

Draft international covenant on human rights (annexes I and II of the report of the Commission on Human Rights on its fifth session, document E/1371)

Article 9 (E/CN.4/353/Add.10, E/CN.4/365, E/CN.4/394, E/CN.4/397, E/CN.4/399, E/CN.4/400, E/CN.4/401, E/CN.4/402 and E/CN.4/405)

<u>Chairman:</u>	Mrs. ROOSEVELT	United States of America
<u>Members:</u>	Mr. WHITLAM	Australia
	Mr. STEYAERT	Belgium
	Mr. SANTA CRUZ	Chile
	Mr. CHANG	China
	Mr. SORENSON	Denmark
	Mr. RAMADAN	Egypt
	Mr. ORDONNEAU	France
	Mr. KYROU	Greece

Mrs. MEHTA	India
Mr. MALIK	Lebanon
Mr. MENDEZ	Philippines
Miss BOWIE	United Kingdom of Great Britain and Northern Ireland
Mr. ORIBE	Uruguay
Mr. JEVREMOVIC	Yugoslavia

Also present:

Mrs. CASTILLO LEDON	Commission on the Status of Women
---------------------	-----------------------------------

Representative of a specialized agency:

Mr. EVANS	International Labour Organisation (ILO)
-----------	---

Representatives of non-governmental organizations, Category A:

Miss SENDER	International Confederation of Free Trade Unions (ICFTU)
Mrs. THOMAS	World Federation of United Nations Associations (WFUNA)

Representatives of non-governmental organizations, Category B:

Mr. LEWIN	Agudas Israel World Organization
Mrs. NOLDE	Commission of Churches on International Affairs
Mr. BERNSTEIN	Co-ordinating Board of Jewish Organizations
Mr. HUNTINGTON	Friends' World Committee for Consultation
Mrs. PARSONS } Mrs. CARTER }	International Council of Women
Miss TOMLINSON	International Federation of Business and Professional Women
Miss ROBB	International Federation of University Women
Mr. BEER	International League for the Rights of Ma-
Miss SCHAEFER	International Union of Catholic Women's Leagues

Secretariat:

Mr. LAUGIER	Assistant Secretary-General in charge of the Department of Social Affairs
Mr. HUMPHREY	Director of the Division of Human Rights
Mr. LIN MOUSHENG } Mr. DAS }	Secretaries of the Commission

/DRAFT

DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS (ANNEXES I AND II OF THE REPORT OF THE COMMISSION ON HUMAN RIGHTS ON ITS FIFTH SESSION, DOCUMENT E/1371)

Article 9 (E/CN.4/353/Add.10, E/CN.4/365, E/CN.4/394, E/CN.4/397, E/CN.4/399, E/CN.4/400, E/CN.4/401, E/CN.4/402 and E/CN.4/405)

1. Mr. ORDONNEAU (France) thought that the Commission's discussion of the basic problem of the method to be followed in drafting the covenant at the preceding meeting had been very interesting. The question was whether the covenant should contain a vague statement or a necessarily incomplete enumeration in respect of each right. That question had arisen when the draft covenant was first considered and Mr. Ordonneau thought it had long since been settled. Apparently, that was not the case and like Penelope's tapestry, the draft covenant was unraveled and rewoven at every session.

2. The truth was that the members of the Commission did not agree on the method to be followed. That was alarming because they ran the risk of adopting different positions on each article, depending on the vote, and of submitting a final text which would be unsound and disjointed.

3. All the members of the Commission agreed on the aim to be achieved. They all thought that the covenant should go further than the Universal Declaration of Human Rights and have a precise legal meaning.

4. It had been said that some members of the Commission were progressive because they sought greater rigidity in the text; that was not necessarily true.

5. Mr. Ordonneau considered that a purely technical problem, all the elements of which were perfectly clear.

6. Those who favoured the system of listing specific cases held that only text so drafted would have legal value and be practically applicable and capable of improving the existing situation. That was true, but Mr. Ordonneau wondered how they could be sure of being able to fulfil that purpose in respect of the covenant. It appeared that even the members of the Commission who held that view had some doubts about it because they/ <sup>were continually</sup> discovering new lists and new cases.

/Actually

Actually it was difficult to co-ordinate all the elements of complex problems within the framework of each article in the space of a few hours. For example, the question of forced labour was dealt with in a paragraph of article 8; on the other hand, it was the subject of an entire convention adopted by the ILO. The same applied to freedom of the press, which was mentioned in an article of the covenant, but had also been the subject of very long discussions in other organs.

7. Mr. Ordonneau thought the Commission should at once consider that there might be a need later to draft one or more separate conventions to be prepared and examined at leisure.

8. Thus, the Commission had to revert to the synthetic text. Mr. Ordonneau acknowledged that it was not perfect and that its usefulness had still to be proved. But even if the text of the covenant was limited to a restatement of the provisions of the Declaration, the signatories of the covenant would be legally bound to observe them, which had not been the case up to that point.

9. If the covenant were not broadened at some later stage, of course very little progress would have been made. But in order not to prejudice that future work Mr. Ordonneau thought it advisable not to introduce detailed but necessarily incomplete provisions into the covenant.

10. He hoped that the Commission would adopt a simple and definitive policy. For his part, he would vote against the United Kingdom amendment.

11. Mr. JEVREMOVIC (Yugoslavia) conceded that it would be difficult to find a better text for paragraphs 1 and 2 of article 9 than that adopted by the Commission at its fifth session. Moreover, he considered it impossible to enumerate all the cases in which an arrest would not be lawful and consequently found the general provisions of paragraph 2 adequate.

12. To cite only one example, Mr. Jevremovic mentioned the case of an arrest ordered by a superior officer as a measure of military discipline; that was a case which the Lebanese amendment would not cover. It was impossible at that stage to draw up a complete list of all possible cases and, even if none of the cases which might arise at present were overlooked, those which might occur in the future could not be foreseen.

/13. Mr. RAMADAN

13. Mr. RAMADAN (Egypt) congratulated Mr. Malik on his brilliant analysis at the preceding meeting when he had introduced his amendment. However, he found the first paragraph of the Lebanese text very vague: was Mr. Malik using the word "liberty" in the legal or in the philosophical sense? In that connexion, Mr. Ramadan quoted from an article in the newspaper Le Monde of 18 October 1949 commenting on the work of the Neuchâtel Philosophical Congress, which stated that the word "liberty" was in a fair way to being replaced by "liberation". Mr. Ramadan could not agree with Mr. Malik in his enumeration of exceptions because the list of exceptions was necessarily incomplete. He would therefore vote against the Lebanese amendment and in favour of the text adopted by the Commission at its fifth session. He merely suggested the addition of the word "unjust" to the word "arbitrary".

14. Mr. MALIK (Lebanon) observed that the problem was important. It might be asked what was the value of life if liberty was not strictly protected. Undoubtedly, all the members of the Commission were seeking the same objective, namely, to safeguard the fundamental freedom of the individual as fully as possible and to protect him from unjustified and arbitrary interference by the State.

15. The real difficulty lay in the word "arbitrary". In his amendment Mr. Malik had tried to enumerate the cases of arrest which were not arbitrary. Some members of the Commission considered it sufficient to specify that arbitrary meant illegal, unjust etc.

16. Mrs. Roosevelt had stated that there was an unlimited number of cases which did not fall within the five categories enumerated in the United Kingdom text, and she had given concrete examples. The United Kingdom representative had taken those examples one by one, and, except in one case, had convincingly proved that they actually came within the scope of the categories enumerated in the United Kingdom text. Mr. Malik thought that the matter should be settled objectively: in his opinion it would be completely arbitrary and irrational to settle the question by a mechanical vote without first giving the representative of the United Kingdom and the United States an opportunity to prove who was right and who was wrong to the satisfaction of all the members of the Commission.

/17. Moreover,

17. Moreover, other members of the Commission had referred to two further specific cases: the problem of military discipline and the problem of contagious diseases and quarantine. Mr. Malik thought that the first case could be mentioned separately in the list of exceptions or could be considered as not falling within the general framework of the covenant. He thought that the second case should also be listed separately.

18. It was not the first time that some members of the Commission had sought to introduce a list of cases into an article of the covenant. Even if the lists they submitted were not absolutely complete, it could be affirmed that the cases forgotten or overlooked were unimportant as compared with those which were covered. Besides, it was not impossible that the covenant might subsequently be revised.

19. Mrs. Roosevelt had commented that the first paragraph of the Lebanese text would be acceptable even to a dictator. Mr. Malik agreed, but pointed out that that paragraph was followed by a paragraph which enumerated the only cases in which a State could deprive an individual of his liberty. Obviously a dictator would be unable to accept paragraph 2.

20. Mr. Malik thought that the suggestions of Mr. Kyrou and Mr. Ramadan in connexion with the definition of the word "arbitrary" presented interesting possibilities which should be investigated.

21. The basic difference between the points of view of members of the Commission lay in the fact that some were mainly concerned with the freedom of the individual and the danger of unjustified and arbitrary State interference with that freedom, while others were mainly concerned with protecting the State against capricious and anarchistic interference by individuals. Mr. Malik held the first point of view, but respected the second. He thought that the danger of the State for the individual was considerably greater than the danger of the individual for the State. The cases in which the State was authorized to restrict or suppress the freedom of the individual should therefore be made clear beyond a shadow of a doubt. All the members of the Commission were agreed on the principle of article 9 but Mr. Malik wished to lay particular stress on the aspect of individual liberties.

/22.The CHAIRMAN

22. The CHAIRMAN, speaking as representative of the United States, observed that discussion of article 9 between the United States and the United Kingdom had already lasted two years, and she therefore hesitated to reopen it. Nevertheless, she noted that, according to the United Kingdom representative, the case of quarantine came under paragraph (e) of the United Kingdom text. She did not agree with that interpretation.

23. Moreover, according to the United Kingdom representative, the case of witnesses who were held in protective custody would be covered by paragraph (b) of the United Kingdom text; Mrs. Roosevelt did not follow the logic of that conclusion.

24. In the circumstances, she thought that the only solution was to take a vote. She agreed with Mr. Kyrrou that the word "arbitrary" included the idea of injustice. That was the sense in which it was being used in the covenant, but she feared that if that interpretation were given in the text of the article, the force of the word "arbitrary" would be weakened because it actually had a much broader meaning than "unjustified" or "illegal".

25. She appreciated Mr. Sorenson's efforts to combine paragraphs 1 and 2, but felt that the resultant text was less precise than the original text of paragraph 1 and that it also weakened the word "arbitrary". In her opinion it should be unambiguously stated that "arbitrary" referred not only to the conformity or non-conformity of an act with the law, but also to the nature of the law itself. She preferred the original text to all the texts which had been proposed to replace it.

26. Mr. CHANG (China) said that there were two very interesting points in Mr. Malik's statement.

27. He was happy to note that Mr. Malik had acknowledged that the actions of the modern State were monstrous and was trying to protect individuals against State abuse of power. It would therefore seem logical for Mr. Malik to vote against his own amendment, in which the word "law" was mentioned in each sentence. Law emanated directly from the State and to vote for the Lebanese amendment would be to strengthen the already excessive power of the State, which itself enacted the laws which suited it. Mr. Malik had declared, moreover, that the covenant would not be immutable and might be revised. If that was so, all

/the exceptions

the exceptions that had been mentioned could be incorporated in the legislation which would develop as the provisions of the covenant were applied. He hoped that the Commission would have before it each year a report by the Secretariat on the progress of legislation in that field. Meanwhile, he considered that the members of the Commission should not lose sight of the fact that laws were essentially arbitrary and hung like a threat over human rights. For that reason he thought that the text adopted by the Commission at its fifth session was not as imperfect as some made out, and he would vote for it.

28. Miss BOWIE (United Kingdom) recalled that Mr. Malik and she had endeavoured to list the means of defence against an arbitrary arrest as exactly as possible, as neither of them had felt that the word "arbitrary" was adequate. She referred in that connexion to the definitions of the word "arbitrary" in the two authoritative dictionaries of the English language, Webster's and the Oxford Dictionary. In both cases a very broad definition was given and the insertion of the word "arbitrary" would therefore constitute only a very vague guarantee, and the guarantee should be clearly defined in a legal instrument like the covenant.

29. Mr. KYROU (Greece) agreed with Mrs. Roosevelt that the word "arbitrary" conveyed the idea of injustice, and wondered whether Mr. Malik would agree to withdraw his amendment if the words "and unjust" were added after the word "arbitrary" in paragraph 1 of the original text.

30. Mr. MALIK (Lebanon) preferred not to withdraw his amendment, but agreed that Mr. Kyrrou's suggestion would certainly considerably improve the original text; it would be better to say "or unjust".

31. Mr. KYROU (Greece) said he had made that suggestion only in order to reach unanimity. If Mr. Malik did not wish to withdraw his amendment then Mr. Kyrrou would withdraw his suggestion.

32. Mr. MENDEZ (Philippines) pointed out that it was not a question of being exercised over all the meanings of the word "arbitrary", but simply over its meaning in conjunction with the word "arrest". The expression "arbitrary arrest" was clear enough if it was considered in the light of the provisions of article 13.

33. The CHAIRMAN recalled that the representative of the International Council of Women had asked to make a statement in connexion with paragraph 2 of article 9.

34. Mrs. CARTER (International Council of Women) explained that she would ask to speak only if the Commission adopted the amendment proposed by the Danish representative.

35. The CHAIRMAN said that she would put to the vote in turn paragraph 1 of the Lebanese text, paragraph 2 of that text, the Danish and Australian amendments; and, finally, paragraph 1 of the original text (E/CN.4/365).

Paragraph 1 of the Lebanese text was rejected by 9 votes to 3, with 2 abstentions.

Paragraph 2 of the Lebanese text was rejected by 9 votes to one, with 2 abstentions.

The Danish amendment (E/CN.4/402) was rejected by 9 votes to one, with 2 abstentions.

The Australian amendment (E/CN.4/353/Add.10) was rejected by 9 votes to 2, with 2 abstentions.

Paragraph 1 of the original text (E/CN.4/365) was adopted by 10 votes to 2, with 2 abstentions.

36. Mr. KYROU (Greece) said that he had voted for the original text on the clear understanding that the word "arbitrary" conveyed the idea of injustice.

/ 37. The CHAIRMAN

37. The CHAIRMAN, speaking as representative of the United States of America and Mr. SANTA CRUZ (Chile) supported Mr. Kyrrou's statement.

38. Mr. MALIK (Lebanon) said that he had abstained from voting on the original text because, although he had no serious objections to it, he would have preferred his own text. He reserved the right to take advantage of the fact that most of the Commission's members thought the word "arbitrary" was not clear in order to propose a fresh formula on second reading.

39. Mr. ORIBE (Uruguay) had voted for the original text with the thought that it established the principle of legality, that is, that no one could be deprived of his liberty except under conditions defined by law. Consequently, in his opinion, "arbitrary" essentially meant "illegal" and did not necessarily include the idea of "injustice".

40. Mr. MENDEZ (Philippines) had voted for the original text although he would have preferred that draft to include the idea of unlawful detention, which was recognized in the Philippines. He had considered that the most important thing was to create an obstacle to arbitrary arrests; in his opinion the interests of the individual were of primary importance.

41. Mrs. MEHTA (India) associated herself with Mr. Kyrrou's statement, and said that by "arbitrary" she meant both "illegal" and "unjust".

42. Mr. ORDONNEAU (France) felt the Commission could adopt Mr. Kyrrou's interpretation, which would give it more weight.

43. The CHAIRMAN thought the Commission could formally record its opinion that "arbitrary" meant both "illegal" and "unjust". However, as the Lebanese representative would not accept such an interpretation by the Commission without a formal vote, she would in the first instance put paragraph 2 of the original text (E/CN.4/365) to the vote.

Paragraph 2 of the original text was adopted by 11 votes to one, with 2 abstentions.

44. Mr. MALIK (Lebanon) said he had abstained from voting on paragraph 2 of the original text because of the fact that the Commission, having adopted paragraph 1, had not explained the exact meaning it intended to give to the word "arbitrary". He had been unable to vote for paragraph 2 of the original text for fear that the Commission might then decide "arbitrary" meant both "illegal" and "unjust" for there would then be a contradiction between paragraphs 1 and 2. Under the provisions of paragraph 1, a person could not be arrested if the arrest was illegal or unjust, whereas under the provisions of paragraph 2 he could only be arrested if his arrest was legally justified.

45. Mr. WHITLAM (Australia) said that he had abstained from voting on paragraph 2 not because he was opposed to it in principle but because in his opinion it was inadequate.

46. Mr. CHANG (China) thought that was not the proper time to try to give a final interpretation of the word "arbitrary". Delegations which wished to define the word clearly should present concrete proposals to that effect so that the Commission could examine them during the second reading of the draft.

47. The CHAIRMAN realized that the question was complicated and deserved further consideration.

48. Mr. MENDEZ (Philippines) saw no need to define the word "arbitrary" and emphasized that his delegation did not wish to associate itself with delegations which had attempted to interpret it.

49. Miss BOWIE (United Kingdom) remarked that the discussion which had just taken place showed that she had been correct in voting against the first two paragraphs because of their vagueness.

50. The CHAIRMAN said that in view of the Chinese representative's objection there was hardly any reason to put the proposal to define the word "arbitrary" as "illegal and unjust" to the vote.

51. She pointed out, in that connexion, that the word had been purposely chosen in order to cover all possible cases in which an arrest or detention should not take place.

52. Mr. MALIK (Lebanon) regretted that the explanation of his vote had led the Commission to change its opinion. Several delegations, particularly those of Chile, China, Denmark, France and Greece as well as his own, had already stated their interpretation of the word "arbitrary". It would therefore be regrettable for the Commission to reconsider its position by removing any possibility of defining the term because of his explanation of his vote.

53. Mr. CHANG (China) assured the Lebanese representative that his suggestion that the word "arbitrary" should not be defined until a study had been made of whether it was possible or desirable to define it had not been inspired by that representative's interpretation.

54. Mr. ORDONNEAU (France) said that he had no objection to postponing a decision on the question, provided it was understood that delegations would have an opportunity of reopening the matter in due course.

It was so decided.

#### Paragraph 4

55. Mr. RAMADAN (Egypt) maintained his delegation's amendment proposing that the words "Toute personne arrêtée ou détenue sur l'accusation d'une infraction ou d'une tentative d'infraction" in the French text should be replaced by the words "Toute personne arrêtée ou détenue à la suite d'une accusation portée contre elle du chef d'une infraction ou d'une tentative d'infraction..." (E/CN.4/410).

56. Mr. ORIBE (Uruguay) proposed that the words "or of preparing to commit a crime" should be deleted. In criminal law a distinction must be made between the separate acts of preparation, intent and commission. In his opinion, it was inappropriate to introduce accessory notions of that kind into the text of paragraph 4 since it was impossible to mention one without the rest.

57. Miss BOWIE (United Kingdom) disagreed with the suggestion to delete the words "or of preparing to commit a crime". They covered cases in which an individual was obviously making preparations to commit a crime.
58. Mr. ORDONNEAU (France) said that the new wording proposed by the Egyptian representative met the Uruguayan representative's fears because it covered all preparatory acts, intent, complicity and the rest.
59. Mr. SANTA CRUZ (Chile) pointed out that the use of the word "tentative" in the French and "tentativa" in the Spanish text was not very fortunate because the term had a very precise legal meaning in those two languages. The English word "preparing" on the other hand could cover all the elements of a crime and could mean intent as well as complicity. French and Spanish expressions corresponding to the English term must therefore be sought.
60. Mr. KYROU (Greece) observed that the word "preparing" included the idea of intention. A person could not be punished merely for an intention. He wondered therefore whether some expression such as "on the way to committing a crime" would not be more appropriate.
61. Speaking as representative of the United States of America, the CHAIRMAN explained that the word "preparing" implied complicity. She also said that paragraph 4 was intended solely to safeguard the rights of a person arrested for a crime and should be strictly limited to that field.
62. Mr. MENDEZ (Philippines) wanted to know whether the paragraph covered that category of crimes known as "felonies".
63. Mr. ORIBE (Uruguay) said that it was a question of finding out whether the word "crime" in English corresponded to the idea of "infraction" in French and "delito" in Spanish; the words "delito" and "infraction" covered complicity as well as preparation and commission. If it did not include those ideas, it should be replaced by another expression.

/64. Mr. RAMADAN

64. Mr. RAMADAN (Egypt) thought that his amendment "du chef d'une infraction" solved all the difficulties; all that was needed was to find an English equivalent.

65. Mr. SORENSON (Denmark) proposed that the words "on the charge of having committed a crime or of preparing to commit a crime" should be replaced by the words "on a criminal charge".

66. Mr. SANTA CRUZ (Chile) accepted that formula, on condition that it was interpreted as including all the degrees of responsibility covered by crime.

67. Miss BOWIE (United Kingdom) was inclined to accept the amendment, subject to a more detailed examination.

68. Speaking as representative of the United States of America, the CHAIRMAN said that in the United States the word "crime" covered commission as well as preparation or intent. In view of the fact however, that in certain legislations a distinction was made between a crime properly so called and the acts accessory to a crime, the Commission had decided to insert the words "or of preparing to commit a crime" in order to fill any gaps.

69. Mr. WHITIAM (Australia) had no objection to the Danish representative's amendment, but thought that it would be better to keep the idea of preparation of a crime in the text.

70. He also pointed out that care must be taken not to use different expressions in the covenant to convey the same idea.

71. The CHAIRMAN put to the vote as a joint amendment the proposals of Egypt, Denmark and Uruguay. The amendment proposed to replace the words "Toute personne arrêtée ou détenue sur l'accusation d'une infraction ou d'une tentative d'infraction" by the words "Toute personne arrêtée ou détenue à la suite d'une accusation portée contre elle du chef d'une infraction ou d'une tentative d'infraction" in the French text, and in the English text

/the words

the words "any one arrested or detained on the charge of having committed a crime or of preparing to commit a crime" by the words "any one arrested or detained on a criminal charge".

The joint amendment was adopted by 12 votes to none, with 2 abstentions.

72. Mr. ORLONNEAU (France) recalled that the Chairman had asked the representatives of the United Kingdom and France to agree on an English equivalent of the French term "sans délai". It seemed that the English word "speedily", which was used in paragraph 5 of article 9 did not correspond exactly to the French term, and that the expression "without delay" would be better, on the understanding that the French term "sans délai" did not mean "without any delay".

73. Mr. SANTA CRUZ (Chile) said that although he would have preferred a narrower and more effective term, he would accept the French representative's proposal.

74. Miss BOWIE (United Kingdom) agreed to the substitution of the expression "without delay" for the word "speedily" in the English text.

75. The CHAIRMAN said that the Commission would, therefore, vote on the French proposal. The United States delegation had withdrawn its proposal for the addition of the following sentence at the end of paragraph 5: "This remedy may not be suspended unless when in cases of rebellion or invasion the public safety may require it". Thus, after the vote on the French proposal, the Commission would only have to vote on the whole of paragraph 5, as amended.

76. Mr. MENDEZ (Philippines) did not think that the term "without delay" corresponded more nearly than the word "speedily" to the French term "sans délai". He would prefer "speedily" because circumstances might make delay inevitable.

/77. The CHAIRMAN,

77. The CHAIRMAN, speaking as representative of the United States of America, said that she saw no objection to the substitution of the expression "without delay" for the word "speedily"; the expression "without delay" would prevent unjustified delays.

78. Miss BOWEN (United Kingdom) thought that the term "without delay" was better suited to a legal document.

79. Mr. WHITLAM (Australia) said that the question did not seem to him of vital importance. Nevertheless, it raised a legal idea, and should be as clearly defined as possible.

80. Mr. KYROU (Greece) requested that a vote should be taken.

The Commission decided by 12 votes to one, with one abstention, to substitute the term "without delay" for the word "speedily" in the English text.

Paragraph 5 of article 9, as amended, was adopted by 14 votes to none.

81. The CHAIRMAN called for consideration of the amendment submitted by the Philippine delegation to paragraph 6 of article 9 (E/CN.4/365, page 31).

82. Mr. MENDEZ (Philippines) said that the addition he had proposed to paragraph 6 was intended to provide for a simple act of justice and to meet a definite need. If anyone who had been the victim of unlawful arrest or deprivation of liberty was entitled to compensation, there was then all the more reason why the family of anyone who had been unlawfully killed should be entitled to such compensation.

83. The CHAIRMAN pointed out that that proposal involved an addition to paragraph 6, while the United States proposal was to delete the paragraph. A vote should, therefore, be taken first on the Philippine amendment and afterwards on the United States amendment.

84. Mrs. MEHTA (India) thought that the Philippine amendment should be inserted in paragraph 5 rather than in paragraph 6, which dealt with the unlawful deprivation of liberty.

/85. Mr. SANTA CRUZ

85. Mr. SANTA CRUZ (Chile) agreed with the representative of India.
86. Mr. MENDEZ (Philippines) saw no objection to withdrawing his amendment to paragraph 6, but reserved the right to re-submit it in connexion with paragraph 5.
87. The CHAIRMAN, speaking as representative of the United States of America, urged the deletion of the paragraph or, at the very least, a careful modification of it.
88. The liability imposed by the existing language was so sweeping and absolute as to put every law enforcement officer in the position of performing his duty at the peril of being penalized for any mistake, without any distinction being made as to whether it was accidental or wilful, or resulted from a bona fide exercise of judgment or from malice. Unless distinctions of that kind were made, the liability proposed was too broad. Normally all persons were held accountable for the consequences of their negligent or wilful acts. There was no basis for saying that because they might happen to be public officers, they should be absolutely liable for accidents or for a mistaken exercise of judgment made in good faith.
89. In the United States, the general rules of liability in the case of unlawful arrest were not nearly as onerous upon honest law enforcement as the paragraph proposed. In order not to discourage the fearless performance of duty, officers and government were not punishable, by civil suit for damages or otherwise, in the discharge of duty, even though by reason of mistakes of judgment there might result the infringement of an individual right.
90. In the United States delegation's view, it was not necessary for the covenant to go into the details of liabilities and domestic remedies for the infringement or violation of rights under the several articles of the covenant. The United States delegation thought it unnecessary and in some ways unwarranted to compel different legal systems to accept the peculiarities of others in the assessment of compensation.
91. The United States delegation would also be submitting an amendment to paragraph 6 of article 9 (E/CN.4/394), if the Commission decided to keep that paragraph.

22. Mr. ORDONNEAU (France) pointed out that there was a right to compensation in all cases of illegal arrest or deprivation of liberty, even if the illegality was accidental. Whether compensation should be paid by the officer responsible or by the State was another question. But illegality established a right to compensation and it must be punished.
23. Mr. ORIBE (Uruguay) thought such a provision should not be put in paragraph 6 of article 9, for the right to compensation was already stated in article 13. He would therefore vote for the proposal to delete paragraph 6.
24. Mr. RAMADAN (Egypt) thought something was lacking in paragraph 6. There were two sorts of injury, moral and material, and that should be taken into account in the text of the article.
25. Mr. SANTA CRUZ (Chile) agreed with the representative of Uruguay on the principle of the right to compensation. But the principle must be generally applied and should be the subject of a special article. It was not enough to limit it to cases of arbitrary or unjust arrest or detention. For that reason, he would vote for the proposal to delete paragraph 6. It was understood, however that the principle remained open for discussion.
26. He did not consider the United States amendment (E/CN.4/394) acceptable. It was not right to limit the right to compensation to cases of unlawful arrest or detention by an individual. The State should also be held responsible for compensation if it made an arbitrary arrest.
27. Contrary to what the representative of Uruguay thought, Mr. ORDONNEAU (France) considered that paragraph 6 of article 9 was a very suitable place for the principle of the right to compensation. Paragraph 3 of article 13 dealt with the right to compensation of persons who had undergone punishment as a result of an erroneous conviction. Replying to the Chilean representative, who thought the right to compensation should be general and be the subject of a separate article, Mr. Ordonneau pointed out that it would be very difficult to deal with the question as a whole. The first objective of the covenant was to punish the most serious infringements of liberty. The Commission must confine itself to that objective; otherwise it would be faced with insurmountable difficulties.

98. Mrs. MEHTA (India) shared the French representative's opinion. Like him, she thought paragraph 6 of article 9 should be retained.

99. Mr. MALIK (Lebanon) thought, like the Chilean representative, that the right to compensation should be general and form the subject of a separate article. On the other hand, the representatives of France and India thought that to make the right general would entail difficulties. He was quite prepared to share both views. He also thought, like the representative of Uruguay, that the right to compensation for any person who was the victim of unlawful arrest would probably be more appropriately incorporated in another article, but the provision must not be deleted from the covenant.

100. The United States proposal simply to delete the paragraph was more radical than the Uruguayan and Chilean proposals merely to move it to another place and Mr. Malik regretted he could not support it.

101. The CHAIRMAN called upon the Commission to vote in turn on:  
(1) the United States proposal to delete paragraph 6 of article 9;  
(2) the Philippine proposal (E/CN.4/365), page 31; and  
(3) the United States amendment (E/CN.4/394).

102. Mr. MENDEZ (Philippines) withdrew his amendment.

103. Mr. ORIBE (Uruguay) asked whether a vote for the deletion of paragraph 6 would imply a denial of the general principle of the right to compensation.

104. The CHAIRMAN stated that the United States proposal was merely to delete the paragraph.

105. Mr. ORIBE (Uruguay) said his delegation was not ready to vote on the proposal. Like the French representative, he thought it would be very difficult to reach agreement on a separate article on the general right to compensation. It would probably have to suffice to reintroduce in article 9 a principle which it had not been found possible to formulate in a separate article. In the circumstances, the Uruguayan delegation reserved its position until that time.

106. The CHAIRMAN proposed that a vote should be taken on the last sentence of paragraph 4 of article 9 at the next meeting. The representatives of France, the United Kingdom and the United States might consider the matter together in the morning and draw up a joint text. In the afternoon, the Commission would decide on paragraph 6, examine the text of article 8 and then return to article 5.

107. Mr. MALIK (Lebanon) asked what procedure should be followed for the introduction of a separate article on the right to compensation. He would be glad if Mr. Santa Cruz would submit a draft on the question.

108. Referring next to document E/CN.4/368, he wished to know whether the Secretary-General would be able to submit a study of the right of petition, as the Commission had requested in draft resolution C submitted to the ninth session of the Economic and Social Council.

109. Mr. CEDONNEAU (France) said that, if the Commission was to postpone examination of paragraph 6 until a separate article dealing with the right to compensation had been drafted, that should be noted in the records of the Commission's work. A vote could also be taken on the existing paragraph 6, which could be replaced on second reading, if necessary, by the proposed separate article.

110. The CHAIRMAN accepted the French representative's suggestion and assured Mr. Malik that the Secretariat would soon be submitting a study of the right of petition.

The meeting rose at 5.40 p.m.