

COMMISSION ON HUMAN RIGHTS

DRAFTING COMMITTEE

SECOND SESSION

TWENTY-SECOND MEETING

Held at Lake Success, New York
Wednesday, 5 May 1948, at 10.30 a.m.

Present:

Chairman: Mrs. Franklin D. ROOSEVELT (United States of America)

Vice-Chairman

and

Rapporteur: Mr. Charles Malik (Lebanon)

Members: Mr. E. J. R. Heywood (Australia)
Mr. H. Santa Cruz (Chile)
Mr. T. Y. Wu (China)
Mr. A. P. Pavlov (Union of Soviet Socialist
Republics)
Mr. G. Wilson (United Kingdom)

Representatives of Specialized Agencies:

Mr. Oliver Stone (International Refugee
Organization)

Consultants from Non-Governmental Organizations:

Miss Toni Sender (American Federation of Labor)

Secretariat: Dr. John P. Humphrey

Mr. John Male

1. STATUS OF ALTERNATE REPRESENTATIVES

The CHAIRMAN asked the representative of the Secretariat to make a statement on the situation of alternates regarding the right to vote.

Dr. HUMPHREY (Secretariat) read Article 11 of the rules of procedure of Functional Commissions of the Economic and Social Council, under which

/alternates

alternates appointed for the duration of the session had the same rights as representatives. The rules of procedure did not take into account the position of provisional alternates sitting for one meeting or for a few meetings only. The question had arisen at the first session of the Sub-Commission on Freedom of Information and the Press. A sub-committee had suggested that a provisional alternate be given the right to participate in the discussion without vote, but this decision had been rejected by the full committee, and the alternate granted voting rights.

In the present case one of the alternates in the Drafting Committee had not yet presented a letter designating him in lieu of the accredited representative of his country, though it was understood that the letter was on the way.

Mr. MALIK (Lebanon) expressed the view that a decision of this nature should come from the Council. The precedent in the Sub-Commission on Freedom of Information and of the Press was therefore not binding. He felt that the rules of procedure did not allow for provisional alternates being granted the same voting rights as the principal representatives.

Mr. HEYWOOD (Australia) thought that other United Nations organs had accepted provisional alternates without the right to vote.

Mr. SCHACHTER (Legal Department) explained that the word "session" had been used deliberately, to prevent abuse in the designation of alternates, and because representatives were selected intuitu personae.

Mr. SANTA CRUZ (Chile) considered that the main object was to have representatives qualified to take decisions. In the present case the representative of France was an alternate apparently designated pending the arrival of the principal representative, Mr. Cassin. He suggested the application of Article 19 of the Rules of Procedure, extending to Committees and Sub-Committees the Rules of Procedure of Commissions "in so far as they are applicable." The purpose of the rule on alternates was to prevent abuses. In this instance there was no negligence or lack of goodwill on the part of a representative who was really unable to attend.

The representatives of China and the United Kingdom agreed that the right to vote could be granted to the alternate representative of France.

Mr. MALIK (Lebanon) felt that voting procedure was too important to permit acceptance of the suggested compromise.

Dr. HUMPHREY (Secretariat) read a letter just received from the Head of the French Delegation to the United Nations, accrediting Mr. Ordonneau as alternate representative of France pending the arrival of Mr. Cassin. The letter cited precedents in the Sub-Commission on Freedom of Information and

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of the Press and the Economic and Employment Commission and added that since the right to make propositions and amendments was linked up with the right to vote, if the latter were denied to Mr. Ordonneau his presence in the Committee would be of no use. In that event, Mr. Ordonneau would not be able to sit at further meetings of the Committee.

Mr. MALIK (Lebanon) expressed concern at the conditions stated in the letter. There was no doubt that an alternate delegate could make propositions and suggest amendments. This had been the case when Mr. Dehc (Belgium) was replaced by Mr. Lebeau at the first session of the Commission on Human Rights.

Mr. HEYWOOD (Australia) pointed out that his own situation was even uncertain than that of Mr. Ordonneau. It had been understood by the Australian Delegation that he (Mr. Heywood) would sit at any meeting which Mr. Wood was unable to attend because of duties connected with the Special Session of the General Assembly.

The CHAIRMAN suggested that the Australian delegates decide among themselves as to the procedure they wished to follow. Regarding Mr. Or she suggested that she communicate with the Head of the French Delegation explaining the circumstances and stating that the Committee would interpret his letter as meaning that Mr. Ordonneau had been appointed as an alternate for the whole of the session, and that, under the circumstances Mr. Ordonneau would have voting rights for this session of the Committee.

This suggestion was approved by four votes to none against with one abstention.

2. DISCUSSION OF THE DRAFT COVENANT ON HUMAN RIGHTS

The CHAIRMAN pointed out that the first three articles of the Covenant dealt with implementation. They would therefore be considered later, and Article 4 was accordingly open for general discussion. Speaking as representative of the United States, the Chairman explained that her delegation was opposed to the insertion of a provision permitting derogation from the obligations under Article 2 in time of war or public emergency. Such a system presented the same risks of abuse as an overall clause of limitation, without its advantages. The United States had three reasons for supporting a general limitation clause:

1. The Covenant should emphasize rights rather than limitations;
2. The enumeration of limitations brought all signatories down to a lower level instead of encouraging them to grant a maximum of liberty. It would result in confusion since each state would have its own particular exceptions to each right; and

/3. The system

3. The system of enumerating limitations had resulted in an unhappy experience in the drafting of the Article on Freedom of Information. If there were no overall limitation clause she thought the Committee would have to consider individual limitations one by one. She asked the Committee whether it wished to do this and come back to Article 4 later.

Mr. WILSON (United Kingdom) stated that whether or not there was a limitation clause, provision had to be made for limitations in exceptional circumstances such as war. If a general limitation clause were to be considered, it would be necessary to look at Article 4 again later.

Mr. SANTA CRUZ (Chile) felt that it was impossible to discuss a right without considering the limitations accompanying it. Discussion of individual limitations would not prejudice the eventual adoption of a general clause if that proved desirable.

Mrs. ROOSEVELT (United States of America) handed over the chairmanship at this point to Mr. Malik. Mr. J. Hendrick sat as alternate representative of the United States.

Mr. WILSON (United Kingdom) said that this matter had been discussed several times already. It was necessary to provide for numerous individual limitations, even though the task of drafting them might prove difficult. It must be understood that these were not limitations which the state must impose but limitations which the state might impose. Article 9, which was one of the most important, illustrated the danger of a vague "general welfare" formula.

Mr. HENDRICK (United States of America) pointed out that it is impossible to state rights and limitations in general terms. The Committee could later insert specific limitations on specific rights.

Mr. WU (China) reminded his colleagues that in the general debate his delegation had favoured a general limitations clause.

Mr. PAVLOV (Union of Soviet Socialist Republics) observed that at previous meetings he had voted against discussing the Covenant first but had been overruled. The present discussion demonstrated the error of the majority decision. He reserved the right to comment later on the Covenant as a whole and on individual articles.

DISCUSSION OF ARTICLE 5

Mr. SANTA CRUZ (Chile) said that it was important to state that an offence could be punished only under a law in force at the time it was committed. He also suggested the redrafting of the article on the basis of a Brazilian comment in document E/CN.4/85, page 60.

/Mr. HENDRICK

Mr. HENDRICK (United States of America) pointed that a later Article dealt with retroactive laws. This Article should also cover acts such as killing in self-defence or killing in the course of lawful arrest. He suggested adding a reference to "due process of law" and to "liberty" and "rights of property".

Mr. SANTA CRUZ (Chile) objected to grouping the right to life and the right to property, since governments might have widely divergent views on the latter. These rights were on different levels.

Mr. WILSON (United Kingdom) agreed that the right to life should stand by itself.

Mr. HENDRICK (United States of America) pointed out that the suggested formulation would not cover cases of self-defence. He admitted that the right to property was not essential here.

The CHAIRMAN recalled that the Economic and Social Council had suggested that the comments received from governments be used as a basis for redrafting the articles. In the case of Article 5, suggestions had been made by the governments of Brazil and the Union of South Africa.

Mr. HENDRICK (United States of America) and Mr. SANTA CRUZ (Chile) stated that in the legal systems of their countries, the word "person" could have various interpretations, and this might cause difficulties in translation. Mr. Santa Cruz asked that the French translation be clarified when the English text had been approved.

It was decided by three votes in favour to none against with one abstention, to begin the article with the words "no one shall be deprived..."

Mr. WU (China) suggested the insertion of the word "unjustly", making the Article read "no one shall be deprived of life or liberty unjustly and without due process of law".

A discussion followed on the phrase "due process of law".

Mr. HENDRICK (United States of America) suggested substituting "save in execution of the sentence of a court".

Mr. WILSON (United Kingdom) said that it seemed to him that the three questions before the Committee were:

1. Inclusion of the words "and liberty" after "his life";
2. Substitution of the expression "due process of law" for the phrase "the sentence of a court"; and
3. Reference to killing in self-defence.

He asked that these points be taken separately.

After short discussion it was agreed to omit the word "liberty".

The formula "without due process of law" was rejected by three votes to one with one abstention.

Mr. PAVIOV (Union of Soviet Socialist Republics) observed that he was abstaining from voting on the separate articles. He would comment later on all the articles. He added that the death penalty had been abolished in his country.

Mr. HENDRICK (United States of America) again referred to the question of killing in self-defence, and quoted the comments of the Government of the Union of South Africa on this Article.

Mr. SANTA CRUZ (Chile) quoted instances of killing which were sanctioned by law.

The CHAIRMAN agreed that the text suggested by the representative of China could be mentioned as an alternative text in the Committee's report to the Commission.

Mr. WILSON (United Kingdom) was opposed to the views of the representatives of the United States and Chile on the ground that the examples cited of self-defence and of killing in the course of lawful arrest, were really cases of accidental killing. He suggested that the article be worded so as to refer to "deliberate" deprivation of life.

The meeting rose at 1.10 p.m.
