

COMMISSION ON HUMAN RIGHTS

DRAFTING COMMITTEE

SECOND SESSION

SUMMARY RECORD OF THE TWENTY-FIFTH MEETING

Lake Success, New York
Thursday, 6 May 1948, at 2.30 p.m.

<u>Chairman:</u>	Mrs. Franklin D. ROOSEVELT	United States of America
<u>Vice-Chairman</u> and <u>Rapporteur</u>	Mr. E.J.R. HEYWOOD Mr. H. SANTA CRUZ Mr. T.Y. WU Mr. P. ORDONNEAU Mr. Charles MALIK Mr. A.P. PAVLOV Mr. G. WILSON	Australia Chile China France Lebanon Union of Soviet Socialist Republics United Kingdom
<u>Representatives of the Specialized Agencies:</u>	Mr. Oliver STONE	(International Refugee Organization)
<u>Consultants from Non-Governmental Organizations:</u>	Miss Toni SENDER Mr. NOLDE	(American Federation of Labor) (World Federation of United Nations Associations)
<u>Secretariat:</u>	Dr. John P. HUMPHREY Dr. E. SCHWELB Mr. John MALE	

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1. DISCUSSION OF ARTICLE II (CONTINUED)

Mr. WILSON (United Kingdom) referred to the United Kingdom's comments, the first part of which correspond to the observations submitted by the Government of the Netherlands. He was prepared to accept the Netherlands proposal, in place of his own, but he would like to study it more carefully. There were also two other matters which were referred to in the United Kingdom comments. One covered the same problems as the ILO Convention No. 50, concerning the Regulation of Certain Special Systems of Recruiting Workers, which dealt with the protection of primitive or unsophisticated communities from exploitation by imposing controls on emigration. Regarding the second matter, he felt that two neighbouring countries should be allowed to agree to stop illegal population movements across common borders.

Mr. STONE (International Refugee Organization) pointed out that it would be helpful to consider the problem in the light of the world situation ten years ago, when thousands of persecuted individuals tried to escape into other countries. He felt it advisable to keep in mind that the Article should not be understood to deprive persecutees of the right to seek asylum.

Mr. WU (China) said that he thought the Article should rather be placed in the Declaration as a standard to be achieved than be drafted in the form of a law in the Covenant.

The CHAIRMAN suggested that Article 11 (2) should read: "No one shall be denied the right to emigrate" and that the Committee wait for the drafting of a limiting clause before making a final decision.

/Mr. WILSON

Mr. WILSON (United Kingdom) pointed out that the word "emigrate" had a special meaning, namely, to leave one's country and settle permanently elsewhere. He preferred the phrase "leave one's country". He also suggested that two different clauses of limitations should be submitted to the Commission on Human Rights: one on specific limitations and one on general limitations, and that they should be drafted at once.

The CHAIRMAN felt that it would be simpler to accept the main and positive idea at this stage and return to the limitations later.

Mr. WU (China) favoured this procedure.

Mr. HEYWOOD (Australia) pointed out that in order to give a positive statement, one must have in mind the specific limitations. It would be better if they were considered at the present time, and not postponed.

Mr. SANTA CRUZ (Chile) said he was of the opinion that some limitations should be provided at this stage and was in favour of retaining those which were mentioned in the original text. Moreover, mention should be made not only of the right to leave one's own country, but also of the right to leave any country in which one might be living.

The CHAIRMAN suggested that the words "Any person ... shall be free..." be amended to read: "No one who is not subject, etc... shall be denied freedom..." "Any person" gave a legal connotation which should be avoided.

Miss SENDER (American Federation of Labor) preferred the words "Every one:..." as used in the original draft.

/Mr. WILSON

Mr. WILSON (United Kingdom) said it was impossible to have complete consistency throughout as far as positive and negative usages were concerned. It was better in this case to be positive.

There was a similarity between the United Kingdom and the Netherlands proposals, but he preferred the United Kingdom wording, which could not be interpreted as widely as that of the Netherlands.

On the understanding that any limitations to this article would be considered after Article 4 had been discussed, it was decided, by four votes to none, with three abstentions, that paragraph 2 should read as follows:

"Any one shall be free to leave any country including his own."

The CHAIRMAN supported by the representatives of Chile and France, proposed that discussion on the limiting clauses should be postponed until a decision had been taken on the substantive parts of the Articles.

Mr. MALIK (Lebanon) thought that this procedure would pre-judge the question of an over-all clause. It might be impossible to deal thoroughly with all the issues presented if the question were left until the end of the session.

The CHAIRMAN asked the Committee whether it thought one over-all limitation clause would be sufficient, or whether two types of limitations would have to be presented to the Human Rights Commission, namely an over-all clause together with specific limitations to each Article.

Mr. SANTA CRUZ (Chile) believed there should be one general limitation clause applicable to the greatest possible number of restrictions, and it would be impossible to draft that until all

/the rights

the rights had been considered. However, there would be other limitations which could not be covered by the general limitations clause, and these could be discussed with the related articles.

Mr. WILSON (United Kingdom) said that two documents might have to be submitted, one on the assumption that there would be a general limitations clause, and the other that limitations would be spelled out in connection with each article. The Covenant should be gone through article by article on that understanding. It would be dangerous for the general limitations clause to be too comprehensive; as much as possible should be covered by specific limitations.

The CHAIRMAN could not see why the positive right which would remain unchanged could not be expressed in each draft first. It would be foolish to draft each Article twice, and it would be difficult to discuss an over-all clause until the rights were known.

Mr. MALIK (Lebanon) thought time would be gained by a general fundamental discussion on the implications and meaning of an "over-all clause". The amount of liberty taken in deciding on the positive rights in the separate articles would depend largely upon whether the limitations would be included in the body of each article or in a general limitation clause. The Articles of the Covenant would be binding on Governments, and it would therefore be necessary to consider them minutely, leaving no possibility of an escape clause. If this were done, there would have to be limitations on each article.

Mr. WILSON (United Kingdom) said that the Geneva document, which included comments by Governments and specific limitations, should be taken as the basis of discussion. Alternative texts could be included in the report to the Commission. To give first only the basic general rights would be pre-judging the issue.

/Mr. HEYWOOD

Mr. HEYWOOD (Australia) said that unless the limitations were discussed with each Article, there was really nothing to consider.

Mr. PAVLOV (Union of Soviet Socialist Republics) thought that general principles should be considered first, and then the implementation of the Rights and afterwards any limitations. The present difficulty was caused by the Committee's failure to follow this logical procedure.

He pointed out that he had received no document in Russian for some time. In the out-dated document in Russian containing the draft of Article II, the meaning of paragraph 2 was distorted and could have led to error had the French text not been available to him. It was essential to have both French and English texts of all documents. The French text of the document now being considered had not yet been received.

Mr. ORDONNEAU (France) supported the Soviet representative. There seemed particularly to be difficulties regarding translation. He recalled an instance of the English translation of a French document appearing before the original.

Mr. MALIK (Lebanon) said the moral was to work harder in the Fifth Committee.

The CHAIRMAN said that delegations would do well to support any request for increased appropriations for technical services in the Fifth Committee of the next regular session of the General Assembly.

Mr. SANTA CRUZ (Chile) agreed that representations should be made in the Fifth Committee.

Mr. WU (China) and Mr. ORDONNEAU (France) also supported the remarks of the Soviet representative.

2. DISCUSSION OF ARTICLE 12.

Mr. SANTA CRUZ (Chile) said it should be made clear in Article 12 that the aliens referred to were those admitted to a country for permanent residence. The French word "régulièrement" perhaps expressed this idea.

Mr. ORDONNEAU (France) shared the doubts regarding the text expressed by the government of Egypt. France had been liberal in accepting foreigners, who had all their rights and privileges of French citizens. Complications only arose if the alien wanted to work. However, the administration reserved the power to expel a foreigner who disturbed public order, or morality. This was necessary, and the word "arbitrarily" in the Article was therefore dangerous. He suggested an amendment to the effect that the expulsion of legally admitted aliens should follow such procedures and guarantees as the law might provide.

Mr. SANTA CRUZ (Chile) supported by the representative of France, said that the French and Indian drafts were the same in substance and either might be used to avoid misinterpretation of the text suggested at the Second Session of the Commission, which included the word "arbitrarily". Both drafts safeguarded aliens from expulsion without adequate reason.

Mr. MALIK (Lebanon) said that the government of South Africa had cast doubt on the fundamental character of the right, and this challenge should be faced. No one should be arbitrarily expelled from a country because of holding certain views. If an alien had been legally admitted to a country, any abuse of his dignity should be safeguarded.

/The CHAIRMAN

The CHAIRMAN supported the French amendment.

Mr. ORDONNEAU (France), supported by the representative of the United Kingdom said the Indian draft was acceptable. It had one advantage over the French text in that it stated a positive principle.

The Indian text was adopted, reading as follows:

"No alien legally admitted into the territory of a State shall be expelled therefrom except in accordance with procedure prescribed by law." (document E/CN.4/82 Add.7)

3. DISCUSSION OF ARTICLE 13.

Mr. SANTA CRUZ (Chile) asked that paragraph 1 and paragraph 2 of Article 13 should be discussed separately.

He thought the comments submitted by the government of Brazil were pertinent and interesting, and he supported the proposed additional sentence expressing the principle that the individual in question had the right to be present in person. As logically stated by the government of India, public hearings should be dispensed with in cases where public morals, etc. were involved.

The CHAIRMAN agreed with the United Kingdom proposal that paragraphs 1 and 2 should be reversed, but the draft of paragraph 1 should be reworded in the negative, and "No person" should be amended to read "No one". Referring to the Brazilian proposal she said it would be reasonable to stipulate "within a reasonable time" after "if he appears in person", but that the reference to language was implicit in "fair hearing" in the draft in E/CN.4/85.

Mr. WILSON (United Kingdom) moved that the United Kingdom amendments to Article 13 as set forth on pp. 74 and 75 in document E/CN.4/85 should be adopted. The words "fair hearing" covered the Brazilian amendment and should be retained in the interest of brevity.

/Mr. SANTA CRUZ

Mr. SANTA CRUZ (Chile) thought "fair hearing" could be interpreted in various ways. It might mean the submission of a written document. It should be made clear that the accused could be heard in person.

Mr. ORDONNEAU (France) spoke in support of the Chilean amendment. Everyone had the right to be present at his trial and in some cases it was a duty. If "representative" were used instead of "counsel" it might interfere in a case where a lawyer did not represent a client but was only his spokesman. It was necessary to provide for closed trials. The Indian text was the best in this respect, but the judgment should always be made public, and that also must be stated in the Article. He wished to suggest an alternative text.

It was agreed that the representatives of FRANCE, the UNITED KINGDOM and the UNITED STATES OF AMERICA should re-draft Article 13, taking into account amendments in wording which had been submitted.

4. DISCUSSION OF ARTICLE 14.

Mr. SANTA CRUZ (Chile) thought it unwise to retain paragraph 2 which attempted to cover cases of special criminals. It did not state clearly whether it was an exception to the first principle in paragraph 1 - that a person could be condemned a posteriori. If retained it would leave paragraph 1 without any real value. War criminals could be covered by another convention.

The CHAIRMAN agreed that paragraph 2 should be deleted. "No person" in paragraph 1 should be amended to read "No one".

Mr. WILSON (United Kingdom) drew attention to the second part of paragraph 1 which would allow a person to weigh the consequences
/before

before committing a crime, knowing the maximum penalty beforehand.

With "No person" amended to "No one" and paragraph 2 deleted, the draft of Article 14 as contained in E/CN.4/85 was approved by a vote of 7 to none with 1 abstention.

5. DISCUSSION OF ARTICLE 15.

The CHAIRMAN, speaking as representative of the United States, felt that the Article was not clear.

Mr. ORDONNEAU (France) supported by the representative of Chile, thought the Article should be retained. It was intended to prevent any one from being deprived of his normal human personality or legal standing. He cited the treatment of certain people in Nazi Germany.

Miss SENDER (American Federation of Labor), referring to the comments by the Netherlands Government, said that a situation should not persist where special categories of individuals needed the authorization of other individuals when they had to appear before a law court.

Miss WILSON (United Kingdom) said he thought it better to retain the wording of the text in E/CN.4/85 rather than to find alternative words for a concept which did not exist in Anglo-Saxon law, since the phrase appeared in the Civil Code of France, and also in that of the Province of Quebec, Canada.

After further discussion as to whether or not the wording should be changed, or an explanatory note appended to the Article, the text of Article 15 given in E/CN.4/85 was adopted with "No person" being amended to "No one", as proposed by the representative of the United States, by a vote of 5 to none with 3 abstentions.

The meeting rose at 5:40 p.m.