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COMMISSION ON HUMAN RIGHTS

DRAFTING COMMITTEE

SECOND SESSION

SUMMARY RECORD OF THE TWENTY-SEVENTH MEETING

Lake Success, New York
Tuesday, 11 May 1948 at 10.30 a.m.

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

Rapporteur and Vice-Chairman: Mr. Charles MALIK (Lebanon)

Members:

Mr. E. J. R. HEYWOOD	(Australia)
Mr. H. SANTA CRUZ	(Chile)
Mr. T. Y. WU	(China)
Mr. P. ORDONNEAU	(France)
Mr. A. P. PAVLOV	(Union of Soviet Socialist Republics)
Mr. G. WILSON	(United Kingdom)

Representative of a Specialized Agency:

Mr. R. W. COX (International Labour Organization)

Consultants from Non-Governmental Organizations:

Miss Toni SENDER	(American Federation of Labor)
Mr. O. F. NOLDE	(World Federation of United Nations Associations)

Secretariat:

Mr. J. P. HUMPHREY
Mr. E. SCHWELB
Mr. J. MALE

DISCUSSION OF ARTICLE 20 OF THE DRAFT INTERNATIONAL COVENANT ON
HUMAN RIGHTS (E/600)

The CHAIRMAN proposed to consider Article 20 of the Draft Covenant in two parts, starting with the first sentence which was the first part

Mr. WILSON (United Kingdom) said that Article 2 (a) of the Draft Covenant covered everything contained in the first sentence of Article 20. Discrimination was not specifically mentioned, and it might be necessary to include some phrase concerning distinction on grounds of race, sex, language, religion, etc., which was however implied under Article 2 (a). It was important to avoid repetition in the Covenant. He proposed either that the Committee should let Article 2 (a) stand as it was, on the grounds that Article 20 added nothing to its substance, or that they should postpone consideration of the first part of Article 20, and consider it in connexion with Article 2 (a) and then decide whether or not to add a discrimination clause.

The CHAIRMAN said that the United States delegation would agree that Article 2 (a) covered part one of Article 20. The Commission on Human Rights at its Second Session, and the members of the Drafting Committee, had wanted to add something more explicit concerning discrimination. The United States delegation would be satisfied to see this included in Article 2.

Mr. SANTA CRUZ (Chile) said that Article 2 might be interpreted as implying prevention of discrimination in stating that the enjoyment of human rights and fundamental freedoms should be secured to all persons. The Commission on Human Rights however had to face the fact that racial discrimination existed in the world. It was for that reason that the United Nations had on every occasion emphasized that discrimination was against the principles of its Charter. It was essential to have a separate provision

/on this

on this subject like that contained in Article 20. He said this as the representative of a State where there was no discrimination.

He preferred the wording of Article 19 of the French Draft Convention (document E/CN.4/82/Add.8, page 13) to the United States draft (document E/CN.4/AC.1/19, page 21) which would prevent discrimination only in respect of the rights and freedoms set forth in the Covenant. This he thought was covered by Article 2, but the Covenant should aim at the prevention of all discrimination on grounds of race, sex, language, religion, etc. This was covered by the French text.

Mr. ORDONNEAU (France) said that Article 19 of the French Draft Convention expressed the idea stated in paragraph 3 of Article 1 of the Charter, adding only the words "opinions and social status".

The CHAIRMAN said that the first part of the French text and the United States proposal were almost the same in substance. The United States text followed the wording of the United States Constitution. She proposed that the representatives of France, the United Kingdom and the United States should form a sub-committee to draft a text which would be acceptable in both French and English.

Mr. MALIK (Lebanon) said that Articles 2 and 20 of the Covenant were not identical in substance. Under Article 2 the State guaranteed rights and freedoms; under Article 20 the emphasis was on the individual enjoying the rights and freedoms set forth in the Covenant. These were two separate ideas. As each Article of the Covenant stated that every person was entitled to the right or freedom defined in the Article, the first part of Article 20 seemed superfluous. He would have no objection, however, if the Committee felt that a separate Article was necessary to stress the prevention of discrimination. He would accept the United States text of Article 20 with the addition in line 2 of the word "enjoyment", to read "with respect to the enjoyment of any of the rights and freedoms set forth in part II of this Covenant".

/Mr. HEYWOOD

Mr. HETWOOD (Australia) said that the difference between Articles 2 and 20 of the Covenant was not as great as it seemed. The distinction would be more true for the Declaration. Logically, discrimination was prohibited by the use in each Article of the phrase "every person" or "every one" but he thought it was necessary to have a special provision which might be connected with Article 2. The prohibition of discrimination should be related to the rights and freedoms set forth in the Covenant. He thought that the French text was too broad. It did not, as in Article 1 of the Charter relate discrimination to fundamental freedoms. Restrictions on the employment of women for reasons of health could be considered discrimination on grounds of sex, but it was not a violation of a fundamental freedom.

Mr. WILSON (Australia) supported the representative of Lebanon. He thought Article 20 was unnecessary, and would accept the addition of the word "enjoyment" to the United States text.

The CHAIRMAN suggested that the Committee should decide whether the United States text, with the Lebanese amendment, would be acceptable with the understanding that a sub-committee as proposed should meet to agree on the French translation. The Committee might then decide whether part one of Article 20 could be inserted in Article 2 as suggested.

Mr. SANTA CRUZ (Chile) said that the French text different in substance from the text as drafted by the Commission on Human Rights and as proposed by the United States. The latter dealt with discrimination in respect of the rights and freedoms set forth in the Covenant, while the French text dealt with every discrimination. He thought the French text should be voted on as an amendment. He had no objection to the establishment of a drafting sub-committee.

/Mr. WILSON

Mr. WILSON (United Kingdom) said that three questions of principle should be decided in order to give guidance to the drafting sub-committee: (1) whether part one of Article 20 should be included or not. He agreed with the Lebanese representative that the substance was covered in each individual article. (2) If part one was included, the Committee should decide whether it should be a separate Article at the end of the Covenant, part of Article 2, or closely connected with Article 2. He thought it was better to include it in Article 2 or in a consecutive Article. (3) The Committee should decide on the difference in substance between the United States and French texts. The United States text contained the concept of equal protection of the law for all people, which was not included in the French text. He thought this wording should appear and therefore favoured the United States text. He supported the representative of Australia in his remarks concerning the Charter and prevention of discrimination in respect of fundamental freedoms. He cited further examples: most governments discriminated against employment of aliens in public office, there was also discrimination on grounds of language. To state as a general principle that every discrimination must be prevented was too broad a statement, although he agreed with the objective in view.

Mr. SANTA CRUZ (Chile) supported the United Kingdom representative and said that the three questions of principle should be decided separately.

Mr. PAVLOV (Union of Soviet Socialist Republics) said that the Committee must draft Article 20 in such a way as to further the promotion of respect for human rights, aiming at the material realization of the rights set forth in the Covenant. The basic fault of Article 20 and all the amendments was that they dealt with arbitrary discrimination or incitement to such discrimination, and not with discrimination as a whole. There was nothing in the Article which would end discrimination. He cited the case
/of negroes

of negroes in the United States and of Indians in the Union of South Africa who, he said, were discriminated against by law. The Article should state that it condemned all racial and other discrimination, and incitement to ^{for such} propaganda/discrimination. The Soviet Union Constitution guaranteed equal rights to all citizens, and any discrimination on grounds of race, sex, language or religion was punishable by law. Discrimination meant the violation of equality of rights. He thought that the distinction should be maintained between the obligation of States to guarantee human rights and fundamental freedoms, and the rights of individuals to enjoy them. There should be two separate articles.

Mr. SANTA CRUZ (Chile) said that none of the drafts before the Committee referred to arbitrary discrimination only. The French text clearly referred to any discrimination, legal or arbitrary.

Mr. ORDONNEAU (France) said that the French text fully met the point made by the Soviet Union representative. The concept of discrimination was a modern one, which had first been mentioned in the United States Constitution and the French Declaration of the Rights of Man. At that time emphasis was laid on the equality of all people before the law, and prevention of discrimination on grounds of religious belief or social origin. Later it had seemed necessary to fight against other forms of discrimination. This was stated as one of the purposes of the United Nations. The wording of the Charter was different from the United States Constitution and the French Declaration, and represented a step forward. Article 20 as drafted by the Commission on Human Rights used wording which was close to that of the Charter while the French text went further, emphasizing discrimination. The meaning of discrimination was apparent. Discrimination presupposed arbitrarily made distinctions. Restrictions on employment of women in physically hard work was not discrimination. Paragraph 2 of Article 19 of the French Draft

Convention prohibited all arbitrary distinction, and that meant any discrimination practised on racial or other grounds. Every logical and reasonable distinction could be practised under that text. It was impossible to accept a restricted formula, the French text was more general than the other texts before the Committee and was closely linked to the Charter. Regarding the grounds for discrimination, the French delegation had added to the wording of the Charter the phrase "opinions and social status". This addition could and should be discussed by the Committee. The French delegation believed that discrimination should be so defined.

The CHAIRMAN said that the United States delegation was not against the French point of view that promotion of human rights without any distinction was one of the aims of the United Nations, but this should be carefully worded. For example, citizens must not be denied certain advantages over aliens. This might be possible under the French formula. She thought it was better to restrict the clause to the rights set forth in the Covenant.

It was decided by four votes to three that a special provision such as Article 20 was not necessary.

Mr. SANTA CRUZ (Chile) asked that a statement be inserted in the Report of the Committee that Chile was in favour of a separate provision dealing with discrimination.

Mr. ORDONNEAU (France) supported the representative of Chile.

Mr. PAVLOV (Union of Soviet Socialist Republics) said that he wished to be put on record as voting against the deletion of Article 20 and in favour of a separate Article on discrimination.

/Mr. MALIK

Mr. MALIK (Lebanon) said that he had voted for the deletion of Article 20 not because he was unaware of the existence of discrimination in the world, nor because he was not in favour of a separate statement, but primarily because he was not satisfied with the way in which it was stated in Article 20. He thought the idea had been adequately expressed in previous articles and that it was unnecessary to repeat it.

Mr. SANTA CRUZ (Chile) referred to the remarks of the French representative concerning the new concept of discrimination as defined in the United Nations Charter. If there had been a misunderstanding in the wording, he thought that logically the representative of the Lebanon should have voted for the inclusion of a provision on discrimination.

Mr. PAVLOV (Union of Soviet Socialist Republics) said that the emphasis in Article 20 was on the right of individuals to enjoy the rights and freedoms set forth in the Covenant without distinction as to race, sex, language, etc. This emphasis was not contained in the previous Articles. He cited the case of discrimination against women in many countries, particularly in political rights. The Covenant should aim at the practical guarantee of rights and freedoms.

The Committee agreed without objection to vote again on the inclusion of Article 20, in view of the statement of the Soviet Union representative regarding his vote and a request from the Soviet Union representative to reconsider the vote.

/There were four

There were four votes in favour to four votes against the proposal that Article 20 was adequately covered elsewhere, and it was declared rejected.

Mr. WILSON (United Kingdom) said that he regarded the matter as one of drafting and reserved the right to raise it again before the Commission on Human Rights.

The Committee agreed to leave to the Drafting Sub-Committee the decision on whether Article 20 should remain at the end of the Covenant or be placed near Article 2.

The CHAIRMAN proposed to put to the vote whether the Covenant should exclude all possible forms of discrimination along the lines suggested by the French proposal with no reference to the rights set forth in the Covenant, instead of being limited to the rights set forth in the Covenant.

Mr. MALIK (Lobaron), Rapporteur, thought that it was safer^{to} maintain the limitations of Article 20. He drew attention to the fact that the Article emanated from the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities which had considered it necessary to maintain the limitations.

Mr. SANTA CRUZ (Chile) said that the Committee should understand that discrimination meant arbitrary distinctions as explained by the French representative and that it did not refer to reasonable logical distinction

The Committee decided by five votes to two with one abstention that Article 20 should limit the forms of discrimination to the rights set forth in the Covenant.

The meeting rose at 1:10 p.m.