

COMMISSION ON HUMAN RIGHTS

DRAFTING COMMITTEE

SECOND SESSION

SUMMARY RECORD OF THE TWENTY-EIGHTH MEETING

Held at Lake Success, New York
Tuesday, 11 May 1948, at 3.10 p.m.

Present:

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

Rapporteur: Mr. Charles Malik (Lebanon)

Members: Mr. E. J. R. Heywood (Australia)

Mr. H. Santa Cruz (Chile)

Mr. T. Y. Wu (China)

Mr. P. Odonneau (France)

Mr. A. P. Pavlov (Union of Soviet Socialist
Republics)

Mr. G. Wilson (United Kingdom)

Representatives of Specialized Agencies:

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

(UNESCO)

Consultants from Non-Governmental Organizations:

Miss Toni Sender (American Federation of Labor)

Mr. O. F. Nolde (World Federation of United
Nations Associations)

Secretariat: Dr. J. P. Humphrey

Dr. E. Schwelb

Mr. J. Male

1. Discussion of Article 20 of the Draft Covenant (continued)

The CHAIRMAN stated that the question before the Committee was whether or not to include in this article the idea that any person was entitled to protection under the law against "incitement to discrimination". She suggested that the Committee should first discuss this matter, after which the Article should be submitted to a Sub-Committee for final drafting.

She had no objection to the use of the word "arbitrary" in this article, but she felt that the expression of the words "incitement to such discrimination" was too vague and that its inclusion in the article, therefore, was not desirable.

Mr. WILSON (United Kingdom) agreed with the Chairman. He stated that the United Kingdom had always relied, with success, on a well-informed public opinion to deal with the problem of incitement. He could not agree with the French draft either which forbade "all incitement to establish arbitrary distinctions", since he considered that this would constitute an attempt to force the enactment of laws where countries were already adequately handling the problem.

Mr. SANTA CRUZ (Chile) maintained his support of this principle for reasons he had given the day before. He stated that just as penal codes of all countries prevented anyone from violating that penal code, so should this Convention insure protection for the individual against incitement to violate the principle, i.e. discrimination, laid down in the Convention. He doubted that this would constitute a violation of the principle of freedom of expression.

The inclusion of a provision against incitement to discrimination in Article 20 was defeated by three votes for to five against.

The CHAIRMAN said that the Article would be submitted to the drafting Sub-Committee for co-ordination of the English and French versions of the text.

2. Discussion of Article 21

The CHAIRMAN read the comment of the Union of South Africa on this Article (E/CN.4/35, page 90).

She stated, in presenting the views of her delegation, that the substance of the Article had been fully discussed at the General Assembly last year, as well as at the United Nations Conference on Freedom of Information. She pointed out that while some countries limited freedom of expression in this respect, she felt that it was better to err on the side of too great freedom of speech. She considered that this problem was best treated by individual self-discipline rather than by the enactment of laws

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which played into the hands of those who would attempt to restrict freedom of speech entirely.

Mr. PAVLOV (Union of Soviet Socialist Republics) stated that Article 21 could place a powerful weapon in the hands of democracy, serving to restrict the dissemination of Nazi-Fascist propaganda. He pointed out that failure to restrict the dissemination of Nazi-Fascist theories had resulted, in recent times, in a terrible destruction of lives and in the elimination of human rights in Germany.

He felt that true democrats could not but be anti-Fascist and anti-Nazi, and were therefore obliged to combat such theories. Consequently, it was incumbent upon the Committee to retain Article 21. He proposed that the words "to violence" in the article be omitted.

Mr. WILSON (United Kingdom) said that he agreed with the representative of the United States for the same reasons she had given. He felt, too, that it was necessary to combat fascist and nazi theories, as the Soviet representative had stated. He considered, however, that the only safe remedy was to let the people speak freely and clearly. In this way one could finally trust to the good sense of the people to maintain a truly democratic philosophy. Therefore, he suggested that the Article be deleted.

The CHAIRMAN stated that the subject had been discussed at some length at the Second Regular Session of the General Assembly. The basic question then before the Assembly had been whether certain types of restriction on speech were preferable to free speech. Her opinion had been that people who are able to hear all sides of any given problem would usually come to wise conclusions.

Mr. SANTA CRUZ (Chile) could not agree with the theory expounded by the representative of the United Kingdom, which seemed to him to signify that the only way to defend democracy was to grant absolute, unlimited freedom of speech. While the United Kingdom had been particularly lucky not to have been really threatened by totalitarian ideologies, the rest of the world had not been so fortunate. At the Conference at Bogota, twenty-one nations of the Americas had banded together to repudiate any violence, and any threat to human liberties which might arise from the dissemination of totalitarian doctrines.

He considered, therefore, that Article 21 should be accepted, since it would place a restriction on incitement to national, racial or religious hatred. It would be, as it were, a spearhead against racism, fascism and other forms of totalitarian ideology. He felt that it should not be permitted to disseminate ideas which threatened the very principles that the Commission on Human Rights was trying to establish for the benefit of humanity.

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He proposed that the wording of Article 21 be changed to read "Any advocacy of national, racial or religious hostility that constitutes an incitement to violate the liberties and rights mentioned in this Covenant shall be prohibited by the law of the State".

Mr. PAVLOV (Union of Soviet Socialist Republics) stated that before voting upon the amendments proposed by the representatives of the Union of Soviet Socialist Republics and Chile, the Committee should first decide whether or not to include the Article. Basically, it would seem that the Committee was faced with two opposing opinions; the one for retention of the Article and the other for its deletion.

The proposal to include Article 21 in the Draft Covenant was defeated by three votes for to four against with one abstention.

Mr. SAINTE CRUZ (Chile) requested the Chairman to have inserted into the Report of the Committee the reasons for his delegation's support of this Article together with the amendment suggested by him.

3. Discussion of Article 22

The CHAIRMAN read to the Committee the comment on this article by the Government of Brazil (E/CN.4/85, page 91) and the comment of the Government of France (E/CN.4/82/Add.8, page 13).

Speaking as a representative of the United States, she recommended deletion of this Article from the Draft Covenant. She recalled that at the Second Session of the Commission on Human Rights, it had been considered that some provision should be made whereby the legal fulfillment of this Covenant should be bound up with its spiritual fulfillment. The example of Hitlerian tactics had been cited. Nazi Germany had appeared to be legally fulfilling the duties and obligations of the state, but in practice, had been destroying all human rights and liberties.

She felt, however, that the Committee would be unable to prescribe with any exactitude, in this Covenant, the spiritual fulfillment of the principles being laid down. She thought it would be impossible to obtain good results by piling generalities upon generalities.

Mr. WILSON (United Kingdom) agreed with the comments of the representative of the United States. He read the comments of the Government of the United Kingdom as contained in E/CN.4/85, page 91, and added that in his consideration the right place for an article of this nature would be in the Article concerning freedom of speech. He formally proposed adoption of this procedure and also pointed out that even persons who aimed at the destruction of human rights were entitled to certain forms of protection.

Mr. HALLIK (Lebanon) was unable to agree with either the representative of the United States or the representative of the United Kingdom. He

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considered that this was a most important article which simply aimed at rendering it impossible for any mischief-maker to invoke the Bill of Rights for his own protection while he was in the act of destroying or attempting to destroy the human rights of others. To condone such activity, would be unthinkable.

With reference to the comment of the government of the United Kingdom, he was inclined to agree to the deletion of the words "or state" in this article, since he felt that the argument presented by the United Kingdom in this matter had some validity. However it might be preferable to leave the article as it stood.

He explained that the formulation of the Article was based on the concept of checking and preventing the growth of nascent nazi, fascist or other totalitarian ideologies. The purpose of the Article, therefore, was to inform such parties that their activities would have to be consistent with the principles of the Covenant and that they could expect no protection under this Article.

He could not agree with the representative of the United Kingdom that the correct place for this Article would be in the Article concerning freedom of speech, since it covered other activities, such as public meetings, etc.

It was decided by five votes to two with one abstention, to include Article 22 in the Covenant.

The proposal to delete the words "or State" was declared defeated following a vote of three in favour to three against with two abstentions.

The proposal that Article 22 be included under the Article on Freedom of speech was defeated by two votes for to five against with one abstention.

4. Discussion of Article 23

The CHAIRMAN read the comments on this Article of the Governments of the Netherlands and Brazil as contained in E/CN.4/85, page 93.

She felt that it might be advisable to replace, in paragraph 2, the words "two-thirds of the states Members" by "15 states members". She could not agree with the suggestion made by the Government of the Netherlands that accession by only two states be sufficient to have the Covenant come into force.

Mr. WILSON (United Kingdom) stated that with the discussion of Article 23, the Committee was proceeding into the field of implementation. He drew the attention of the Committee to the paper circulated by the Secretariat listing the Ad Hoc committees set up by the Drafting Committee for the purpose of re-drafting paragraphs 2, 3 (a) and (c) of Article 8 and

Articles 13, 16 and 20. He suggested that the Committee revert to a discussion of these operative articles before proceeding to a discussion of implementation.

Mr. ORDONNEAU (France) agreed with the representative of the United Kingdom. He would prefer to postpone the discussion of the implementation articles until his delegation had had more time to study the comments submitted by governments on them.

The CHAIRMAN pointed out that in addition to a discussion of the work of the Ad Hoc Committees, the Australian proposal for adding new articles to the Covenant had yet to be considered.

5. Discussion of Article 8, Paragraph 3, Sub-Paragraph (a)

Mr. MALIK (Lebanon) stated that the redraft of Article 8, paragraph 3, sub-paragraph (a) which had been assigned to him, had been prepared and was contained in document E/CN.4/AC.1/22.

The CHAIRMAN, speaking as representative of the United States, stated that she could accept this text subject to a final decision on the insertion of an over-all limitations article in the Covenant which would obviate the necessity of including detailed limitations in each Article.

The text of Article 8, paragraph 3, sub-paragraph (a) as contained in E/CN.4/AC.1/22 was accepted by the Committee with this reservation.

6. Discussion of Article 8, Paragraph 2

Mr. WILSON (United Kingdom) stated that the representative of France and he had worked on Article 8, paragraph 2 and had agreed to the following text:

"No person shall be required to perform forced or compulsory labour except as a consequence of a conviction of crime by a competent court".

Miss SENDER (American Federation of Labor) requested that the Committee be permitted to hear the opinion of the representative of the International Labour Organization on this matter before coming to a decision on this text.

Mr. COX (International Labour Organization) stated that the position of the International Labour Organization was set out in document E/CN.4/AC.1/25. He said that he would like to see the Committee adopt the ILO text on forced labour, which came from a convention ratified by twenty-two States, and which would therefore seem to be acceptable.

Mr. WILSON (United Kingdom) drew the attention of the Committee to the fact that the actual words used in the text prepared by the representative of France and himself were adopted directly from the International Labour Organization Convention.

The CHAIRMAN stated that the Committee had to decide whether to adopt

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the longer International Labour Organization statement or to use that part of the International Labour Organization statement which had been redrafted by the representatives of the United Kingdom and France.

Mr. MALIK (Lebanon) called the attention of the committee to the fact that what was referred to the International Labour Organization was not all of Article 8, as the representative of the American Federation of Labor had seemed to imply, but only point (c) of that Article, namely the question of minor communal services.

The CHAIRMAN said that she would vote for the text proposed by the representatives of France and the United Kingdom, but with the reservation that she felt that not all limitations had been included, and that therefore she would prefer to have an over-all limitations article inserted into the Covenant.

Mr. COX (International Labour Organization) pointed out that the wording of the text of the International Labour Organization Convention on this point went beyond the substance of the text proposed by the representatives of France and the United Kingdom. The purpose of the International Labour Organization text was to ensure against the use of forced labour in private industry.

The exact wording was as follows:

"any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervisions and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations;"

Mr. WILSON (United Kingdom) stated that the text of the International Labour Organization Convention went beyond the scope of the Commission on Human Rights and therefore could not be placed in a document such as the Committee was drafting. It was not within the purview of the Committee to define the forms of labour.

The text of Article 8, paragraph 2, as drafted by the representatives of France and the United Kingdom was accepted.

7. Discussion of Article 8, Paragraph 3, Sub-Paragraph (c)

Mr. WILSON (United Kingdom) stated that he had not as yet seen the comments of the International Labour Organization in writing and would like time to review them before discussing this point.

It was agreed to postpone discussion on Article 8, paragraph 3, sub-paragraph (c).

Mr. MALIK (Lebanon) reminded the Committee that the representative of the United Kingdom and he himself had been requested by the Committee to prepare a draft which would combine paragraphs 1 and 2 of this Article.

The meeting rose at 4.40 p.m.