

COMMISSION ON HUMAN RIGHTS

DRAFTING COMMITTEE

SECOND SESSION

SUMMARY RECORD OF THE TWENTY-NINTH MEETING

Lake Success, New York
Wednesday, 12 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 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
Mr. Joseph BOTTOM World Federation of Christian Trade
Unions

Secretariat:

Dr. J. P. HUMPHREY
Dr. E. SCHWEIB
Mr. J. MALE

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1. DISCUSSION OF THE ADDITIONAL ARTICLES SUGGESTED BY THE AUSTRALIAN DELEGATION FOR THE DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS (E/CN.4/AC.1/21)

Mr. HEYWOOD (Australia) said that the Australian proposal was designed to include in the Covenant certain legal and economic and social rights which had been recognized in the Draft Declaration but omitted from the Draft Covenant. The additional provisions represented no difference in principle from the rights already contained in the Covenant. It had been said, with reference to the inclusion of economic and social rights in the Covenant, that these should be dealt with in later Conventions, and that their inclusion might prevent some states from signing it. This, he said, was a misconception. Freedom from want, the third of the Four Freedoms, had been widely accepted in the world. At the present stage in world history, people were especially interested in economic and social as well as political rights, and it was important to include them in order to give a complete and balanced statement in the Covenant. If they were omitted, the common man would regard the Covenant as a purely academic document. The intention to draw up additional Conventions later was not sufficient, nor did the argument hold that the International Labour Organisation would draw up detailed Conventions on economic and social rights. The ILO Convention on Forced Labour had not made superfluous the inclusion of an Article on the principle of forced labour in the Covenant. The Covenant should represent a guarantee of rights which concerned the common man; it should not be drawn up on the basis of the denial of rights under Nazi persecution. The drafting of the Articles in the Australian proposal was based largely on the wording of similar Articles in the Declaration with the modifications necessary in a legal document. He recognized that the draft was not perfect and required discussion by the Committee.

/Miss SENDER

Miss SENDER (American Federation of Labor) supported the Australian proposal, saying that the Covenant would not be complete without the inclusion of economic and social rights. The right to life must be complemented by the right to work and earn one's living. The Covenant must have the support of public opinion if it was to be effective, and public opinion at the present time was primarily interested in economic and social rights. If the Committee considered that the Australian formulation of Articles 24, 26, 29 and 25 was too detailed, she could suggest a shorter text. She thought that the Covenant would have greater support in certain countries if the economic and social rights were included. This would not interfere with the work of the International Labour Organization, whose task was to work out in full detail conventions on specific rights, such as Forced Labour.

Mr. SANTA CRUZ (Chile) said that he firmly supported the Australian proposal, and the views expressed by the representatives of Australia and the American Federation of Labor. They were in full accord with the views put forward by his delegation throughout the discussion on the Bill of Rights. The Covenant should guarantee those rights and fundamental freedoms which were understood in the modern conception of democracy. It should secure to all persons the basic human rights which were held worthy of a human being. If the first United Nations Covenant on Human Rights omitted some of the rights and freedoms, the common man would be disillusioned, and the Commission on Human Rights would have taken a step backwards from the position which the nations had held at the San Francisco Conference. To include only political rights, rights which had been known of for many years, would be insufficient. He believed that economic and social rights

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were especially important in the modern world, and could not be omitted from the first Covenant.

Mr. MALIK (Lebanon) said that he fully supported the views expressed by the Australian representative in respect of the Declaration. The Commission on Human Rights must affirm to the world in very clear terms that political, economic, social and cultural ideals were the ideals of the United Nations. There was, however, an essential difference between governments expressing belief in ideals and between holding themselves, as governments, internationally responsible for their realization. Responsibility had no meaning without power, and if governments held themselves responsible for the realization of ideals, they must have power and control over the economic, social and cultural agencies, such as universities, the arts, religion, the church and the free social institutions including the home, folk lore and folk songs. Governments must also have control over the economic development of the community. Such governmental control meant the destruction of free institutions in a free world. There should be complete autonomy for the church, business, and the internal growth of social and cultural ideals. Governments should see only that the material conditions of freedom were maintained.

He agreed that the Covenant was incomplete, but to discuss at that time the precise legal terms in which these all-important economic, social and cultural rights should be defined, might delay presentation of the Covenant to the Third Session of the General Assembly. Economic, social and cultural rights represented a new field which must be considered very carefully and as soon as possible.

He proposed that the Covenant should be examined as drafted by the Commission on Human Rights for presentation to the Third Session of the General Assembly. The Commission should, however, continue the process of
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drafting other Conventions. He feared governmental control in the field of economic, social and cultural rights but was in favour of examining this territory thoroughly as soon as possible with a view to drawing up a second Convention or Conventions.

The CHAIRMAN said that in considering what should be included in the Covenant the Committee should bear in mind the fact that the International Labour Organisation had studied many of these questions, and had worked out the problems rather slowly, and states had adhered to the conventions also rather slowly. She said that the Covenant was drafted for all States Members of the United Nations, and not only for progressive States like Australia. The time factor was important, and to draft a Convention on the points raised in the Australian proposal would be a long process. It was also important to have a Covenant to which as many States as possible could adhere as soon as possible.

She thought that it was more advantageous to include a statement of ideals, hopes and aspirations in the Declaration, which was a sort of educational document, rather than in a Covenant, which should include only those provisions which governments could feel responsible for putting into practice. The United States delegation felt that the first Covenant should contain only fundamental rights and freedoms. When a substantial number of countries had adhered to the Covenant, then the Commission could consider drafting additional conventions.

Her delegation would accept Article 14 on property rights as proposed by the Australian delegation for inclusion in the Covenant as it contained a provision recognized by most states. It was felt, however, that the additional rights could not be included in the first Covenant. Careful drafting was necessary in respect of these rights, and the Committee had not the necessary time.

/Mr. WU

Mr. WU (China) said that he supported the principle of the Australian proposal, but preferred a short and precise Covenant which would be supplemented by other Conventions. He thought the initial aim should be modest. More time was needed for adequate drafting and consideration of provisions for economic and social rights. Some measure of success would already have been achieved if, for the first time, the human rights and freedoms set forth in the present Covenant were accepted.

Mr. WILSON (United Kingdom) supported the views expressed by the representatives of the Lebanon, the United States and China. In reply to the representative of Chile, he referred to Articles 62 and 68 of the Charter and said that a distinction was drawn there between work in the economic and social fields and in the field of human rights, although some overlapping of the two was inevitable.

He said that it was necessary to realize that there was a distinction between human rights and fundamental freedoms on the one hand, and those things which were necessary for the development of the full life of the individual. The dividing line between the two was largely a matter of opinion, but if the Committee tried to define everything necessary to the development of a full life, over and above fundamental human rights and freedoms, he feared that it would be many years before states reached agreement on any Convention.

The Australian proposal amounted in substance to abandoning the Declaration, embodying all its provisions in the Covenant, with machinery for their implementation. It was ill-advised to underestimate the value of a Declaration. History had proved over a period of time the effectiveness of such declarations as the United States Bill of Rights and the French Declaration of the Rights of Man. To include the additional provisions

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suggested by the government of Australia might be dangerous in its effect on public opinion. The United Nations should avoid giving any impression that these provisions could be enforced immediately.

Mr. SANTA CRUZ (Chile) said that it was not necessary, under the Charter, to maintain a distinction between economic and social matters and human rights. He referred to Article 68 and said that there were obviously economic and social questions which were not human rights, questions such as those studied by the Regional Commissions of the Economic and Social Council. The existence of such Commissions, however, did not mean that they should not be considered part of human rights.

He could not support the views expressed by the representative of the Lebanon, who had said that the Australian proposal might imply governmental control. The answer to this was apparent if one examined each Article separately.

In drafting a Convention for acceptance by all States Members of the United Nations, it was not necessary to adopt a Convention which was based on the lowest standards. He believed that members of the Drafting Committee supported the principles of the Australian proposal, and he thought that it should be sent forward for the consideration of the General Assembly.

Mr. ORDONNEAU (France) said that he supported the principle of the Australian proposal, but believed that it was too late to be considered for the reasons already expressed by other members of the Committee. There was no time now to examine a new and difficult field.

Mr. HEYWOOD (Australia) said that he thought the Australian proposal had been misunderstood. The rights it enumerated already existed in many countries, along with the civil rights contained in the Covenant. They had also been recognized in the ILO Conventions. He thought that they were a

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necessary complement to the provisions of the Covenant, and not merely rights necessary for the enjoyment of a full life by the individual. They would fall very short of this. It was not true that all the provisions of the Declaration were contained in the Australian proposal. He did not consider that the argument that examination of the proposal would delay the presentation to the Third Session of the General Assembly was as strong as had been claimed. He thought that the Covenant would be incomplete if these Articles were not considered, and proposed that they should be examined one by one.

Mr. SANTA CRUZ (Chile) supported the proposal to consider each Article separately.

Mr. PAVLOV (Union of Soviet Socialist Republics) said that he had not had time to consider in detail the Australian proposal and would reserve the right to make a statement at the next stage of examination of the Covenant. The broadening of the democratic aspect of the Covenant and the Declaration was very important. The Committee was concerned not only with giving an objective list of fundamental freedoms, but in preventing violation of these rights and securing their material realization. He considered that the Australian proposal dealt with fundamental freedoms under Articles 55 and 62 of the Charter. He thought that the Committee might request the Rapporteur and the Australian representative to examine the proposal and select those Articles which should be considered in the light of fundamental freedoms, and those which might be incorporated in subsequent Conventions or included in the Declaration.

Mr. WILSON (United Kingdom) suggested that, when the Articles of the Declaration were discussed by the Committee, the representatives of

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Chile and Australia might make formal proposals that the relevant Articles contained in the Australian document should be included in the Covenant.

Mr. HEYWOOD (Australia) said that this would not be a very appropriate procedure as the wording of Articles for the Declaration was somewhat different from the wording of Articles for the Covenant.

The Committee rejected by two votes in favour, to three against with three abstentions the suggestion that all or some of the Australian proposals should be considered for inclusion in the Covenant.

The CHAIRMAN said that the representatives of Australia and Chile would have the right to make appropriate comments for inclusion in the Committee's report when the relevant Articles of the Declaration were under discussion.

2. DISCUSSION OF ARTICLE 5 OF THE DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS

The CHAIRMAN read the text of Article 5 as previously adopted by the Committee: "No one shall be deprived of life save in the execution of the sentence of a court following his conviction of a crime for which this penalty is provided by law." This text had been adopted provisionally subject to the decision of the Committee regarding an over-all limitation clause. She read a list of exceptions to be included in Article 5 if an over-all limitation clause were not adopted (Document E/CN.4/AC.1/38). It was difficult to enumerate all exceptions, and this list could not be considered all-inclusive.

Mr. WILSON (United Kingdom) suggested that, as it was difficult to take into account all exceptions, the first phrase of the Article might read "No one shall be deliberately deprived of his life..." or "No one shall be deprived of his life by the State...". The list of exceptions might be

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included in the report of the Committee to the Commission on Human Rights. A number of the exceptions would be covered if Article 4 were retained in its present form. He preferred Article 5 as read by the Chairman. Most of the exceptions were accidental killings except in the case of suppression of rebellion or riots, and this would be covered under "public emergency" in Article 4. Legislation could not prevent accidental killings.

The CHAIRMAN said that the United States delegation would accept the addition of the words "by the state". She cited the case of a police officer deliberately killing an escaping prisoner. This would not be accidental killing.

Mr. ORDONNEAU (France) said that the wording "in the execution of the sentence of a court" presupposed action by the state, and he did not think this amendment would add anything.

Mr. HEYWOOD (Australia) said that arbitrary deprivation of life need not be by the state alone. It had been done for example by the Nazi party in Germany. He preferred the use of the word "deliberately". He supported the suggestion to send forward to the Commission on Human Rights the text as adopted with the list of exceptions read by the Chairman.

Mr. PAVLOV (Union of Soviet Socialist Republics) said that "by the state" was too restrictive. In the United States, for example, the lynch law allowed killing.

The CHAIRMAN explained that lynching was not permissible under law in the United States.

Mr. WU (China) said that the question should be considered when the decision regarding an over-all limitation clause was taken.

/Mr. WILSON

Mr. WILSON (United Kingdom) said that it should be stated in the report of the Committee to the Commission that suggestions had been made that the Article be drafted in such a way as to take account of the exceptions proposed. The list of exceptions should then be included.

The Committee decided by six votes to none with one abstention that the text, as read by the Chairman, should be submitted to the Commission on Human Rights with the list of exceptions.