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ORIGINAL: ENGLISH

COMMISSION ON HUMAN RIGHTS

DRAFTING COMMITTEE

FIRST SESSION

SUMMARY RECORD OF THE THIRD MEETING

Held at Lake Success, New York, on Wednesday, 11 June 1947 at 2:30 p.m.

Present:

Chairman:	Mrs. Eleanor Roosevelt	(United States)
Vice-Chairman:	Dr. P. C. Chang	(China)
Rapporteur:	Dr. Charles Malik	(Lebanon)
	Mr. Ralph L. Harry	(Australia)
	Mr. H. Santa Cruz	(Chile)
	Prof. Rene Cassin	(France)
	Prof. V. Koretsky	(Union of Soviet Socialist Republics)
	Mr. Geoffrey Wilson	(United Kingdom)
Specialized Agencies:		
	Mr. J. Havet	(UNESCO)
Non-Governmental Organizations:		
	Miss Toni Sender	(American Federation of Labor)
	Miss Lena Spiegel	(WFTU)
Secretariat:	Prof. J. P. Humphrey	(Secretary of the Committee)
	Mr. Edward Lawson	

1. Consideration of Document E/CN.4/AC.1/3/Add.3: Textual Comparison of the Draft Submitted by the United Kingdom Delegation and the Draft Prepared by the Secretariat

The CHAIRMAN opened the meeting by explaining that it was her intention to go through the remainder of the textual comparison as quickly as possible. She asked the Secretariat to take note of any general agreement reached in relation to any of the articles.

/Articles 10

Article 10 of the Secretariat Draft Outline and Part II Article 11 of the United Kingdom Draft

The CHAIRMAN read the text of these articles and asked for the opinion of the members. Professor CASSIN (France) stated that he wished to comment on the substance of this article, which, in his opinion, was very important. A paper touching on this subject had been given to the Secretariat for distribution. He pointed out that there are certain human rights recognized by all civilized nations which involve the co-operation of more than one State. One of these rights, relating to emigration, was stressed in the French paper. Professor KORETSKY (Union of Soviet Socialist Republics) reserved the right to comment on this point later.

Article 14 of the Secretariat Draft Outline and Part II Article 13 of the United Kingdom Draft

The CHAIRMAN read the text of these articles and remarked that the text proposed by the United Kingdom was considerably longer than that suggested by the Secretariat. Professor KORETSKY (Union of Soviet Socialist Republics) said that Article 14 of the Secretariat draft was unobjectionable substantively but that Part II Article 2 of the United Kingdom draft seemed to him to be too detailed. This was also the case with other sections of the United Kingdom draft. He felt that the inclusion of too many details in a Bill of Rights would make implementation more difficult and might interfere with the jurisdiction of national governments. The Bill of Rights, he said, should not be too detailed as that would tend to show a lack of confidence in the national legislatures of other countries. He therefore urged that any stipulations adopted by the Committee be in less detail than appeared in the United Kingdom draft.

Mr. WILSON (United Kingdom) stated that the question of the amount of detail is of great importance. His Government found that unless they went into detail with respect to certain subjects there was a serious danger of boiling the draft down to a simple declaration of non-discrimination. If limitations were not written in, he maintained, governments would find

themselves

themselves in a very difficult position.

Dr. MALIK (Lebanon) said that what he liked about the United Kingdom draft was its mention of the right "to change belief." There is no freedom, he said, if one is not free to change his mind. Whatever text was adopted, he stated, the right to change one's mind on any question without any legal recriminations is most important. He added that in his opinion a Resolution of the General Assembly could not be considered an imposition on the rights of a State nor could a Convention, to be adhered to by governments, be considered such an imposition.

Professor KORETSKY (Union of Soviet Socialist Republics) stressed the fact that in his opinion the Committee should give serious consideration to the principle of equality of men. Discrimination between peoples on grounds of race, sex, language or religion, he pointed out, was one of the gravest things that had ever happened. He referred to Professor Cassin's use of the phrase "civilized nations" and stated that this expression had no meaning at the present time. In the old Russia, nations like India and China had been considered uncivilized in spite of their age-old civilization. Professor KORETSKY proposed that the Committee should not go into details in its draft of the Bill but should call attention to these principles which would make men feel free and equal. He said that the old laws and the Decalogue which were short, concise, and clear, should serve as models.

Mr. HARRY (Australia) said that he had not understood the Delegate of the United Kingdom to suggest getting away from the principle of non-discrimination but that he agreed that if the Bill of Rights only made affirmations it would be achieving nothing. The test was not whether there was to be freedom in the strict legal sense but whether this freedom was to be accepted in practice. He felt that it might be necessary to spell out in some detail the question of belief and the question of freedom to teach and to instruct but that the relative length or brevity of each article of the Bill should be considered on its merits. Professor CASSIN (France)

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stated that he had twice before called attention to the danger of attempting to make too detailed a text. The problem, he said, was to have all nations of all different civilizations accept certain common principles. In France written law relating to the subject of conscience and belief was very brief and concise. Similar brevity might be the best method for the Bill of Rights and would help to protect the United Nations from a flood of red tape. Mr. WILSON (United Kingdom) stated that the United Kingdom draft had been drawn up in detail because it had found that detailed legislation was necessary in his country. He called attention to the provisions made in the United Kingdom draft for certain sections of the Bill of Rights to be drafted by the Sub-Committees of the Human Rights Commission and pointed out that there was no question but that the United Kingdom placed just as much emphasis on the principles of non-discrimination as did any Member of the Human Rights Commission.

Dr. CHANG (China) remarked that in his opinion China was perhaps the least bothersome nation insofar as religious discrimination was concerned. This fact, he added, had attracted the attention of the English philosophers in the eighteenth century. He added that the relative brevity or detail to be contained in each article of the draft would have to be discussed article by article.

Mrs. ROOSEVELT (United States of America) stated that there appeared to be general agreement that an article on this subject should be included.

Article 16 of the Secretariat Draft Outline and Part II Article 14 of the United Kingdom Draft

The CHAIRMAN read the text of these articles. Professor KORETSKY (Union of Soviet Socialist Republics) asked whether the Secretariat, in drafting this provision, had considered the work of the Sub-Commission on the Freedom of Information and of the Press. He naturally shared the view of the Soviet representative in that Sub-Commission. Professor HUMPHREY (Secretariat) replied that the Secretariat draft outline had been drawn up before the meeting of the Sub-Commission and that therefore Article 16 had

/not been

not been based on the work of that Sub-Commission. He further pointed out that the Sub-Commission had spent most of its time drawing up an agenda for the forthcoming conference on the Freedom of Information and had devoted only a few hours to discussion of the concept of Freedom of Information. He added that the Secretariat did distribute to the members of the Drafting Committee texts of the statements made by members of the Sub-Commission relating to this subject.

Article 17 of the Secretariat Draft Outline and Part II Article 14 of the United Kingdom Draft

The CHAIRMAN read the texts of these articles. Mr. WILSON (United Kingdom) explained that what appeared to be a duplication was caused by the fact that there were two articles on the subject in the draft outline of the Secretariat but only one in the draft of the United Kingdom.

Dr. CHANG (China) remarked that the United Kingdom draft put the affirmative ideas first and that this appeared to be a better arrangement. Mr. HARRY (Australia) agreed with the statement made by Professor Koretsky that the Drafting Committee should consider the report of the Sub-Commission on Freedom of Information and of the Press. If necessary, he proposed, the Sub-Commission might be asked to consider the text of an article for inclusion in the Bill of Rights. Professor HUMPHREY (Secretariat) drew attention to the fact that the Sub-Commission on Freedom of Information and of the Press would not meet again until next winter and that, therefore, the Drafting Committee might have to consider the subject independently of the Sub-Commission.

Professor CASSIN (France) said that he feared that in the speed of the work the Drafting Committee might have given too little attention to the outline of the Secretariat. From his point of view, he said, it is always the Secretariat draft which should be considered the basic source of the Committee's work.

Article 19 of the Secretariat Draft Outline and Part II Article 15 of the United Kingdom Draft

The CHAIRMAN read the text of these articles, on which there were no comments.

Article 20 of the Secretariat Draft Outline and Part II Article 16 of the United Kingdom Draft

The CHAIRMAN read the text of these articles, on which there were no comments.

Article 26 of the Secretariat Draft Outline and Part II Article 12 of the United Kingdom Draft

The CHAIRMAN read the text of these articles, on which there were no comments.

Article 27 of the Secretariat Draft Outline and Part II Article 2 of the United Kingdom Draft

The CHAIRMAN read the text of these articles. Professor KORETSKY (Union of Soviet Socialist Republics) pointed out that he wished to reserve the right generally to make observations on the articles at a later time. He drew attention to the use of the adjectives "independent" and "impartial" in the Secretariat draft outline and said that these might be dangerous and unnecessary to use in connection with tribunals of a sovereign State. Mr. HARRY (Australia) asked for an explanation of what Professor Koretsky meant by his statement. Professor KORETSKY (Union of Soviet Socialist Republics) explained that in his opinion the expression "independent and impartial tribunals" might be considered as an invitation to evaluate the courts of the judiciary of independent governments. The possibility of such evaluation, he felt, should be eliminated. He said that he might be in favour of the phrase "open tribunals," but felt that the qualifications "independent and impartial" were unnecessary and that they might be considered to indicate a criticism of certain courts. Mr. HARRY (Australia) stated that in his opinion it is just as important for courts to be independent or impartial as to be open.

/The CHAIRMAN

The CHAIRMAN stated that she thought the misunderstanding arose from the fact that in the United States and in the United Kingdom the terms "independent and impartial" were always used in connection with courts. She did not feel that either adjective was intended as a criticism. Professor KORETSKY (Union of Soviet Socialist Republics) said that such a term might be found in many Constitutions but that it should not appear in the language of an International Bill of Rights. He pointed out that in a specific case the courts of certain countries might justify aggression of certain persons against others because of the colour of their skin. He wondered who would be in a position to say that such courts were or were not impartial. Professor CASSIN (France) suggested that all of the articles considered so far had been guarantees of personal liberty. He suggested that these might be placed separately and grouped together.

Article 45 of the Secretariat Draft Outline and Comment to Part II of the United Kingdom Draft

The CHAIRMAN read the text of these articles on which there were no comments.

Article 47 of the Secretariat Draft Outline and Part II Article 2 of the United Kingdom Draft

The CHAIRMAN read the text of these articles. Professor KORETSKY (Union of Soviet Socialist Republics) raised a question as to whether decisions were being taken by the Committee regarding whether or not certain articles should or should not be included in the preliminary draft of the Bill of Rights. Mrs. ROOSEVELT replied that no decisions were being taken at this stage; the members of the Committee were simply making such comments as they felt were necessary.

Article 48 of the Secretariat Draft Outline and Part I Article 1 of the United Kingdom Draft

The CHAIRMAN read the text of these articles and stated that in her opinion they dealt with the question of implementation. Since the Committee had agreed to leave discussion of the question of implementation until

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later; she suggested that these articles not be discussed immediately. Professor KORETSKY (Union of Soviet Socialist Republics) called attention to the fact that in the United Kingdom draft the phrase "civilized nations" was used. He asked that the Drafting Committee not follow old documents too blindly but find a new track for itself. Mrs. ROOSEVELT (United States of America) agreed that the Committee, in preparing its preliminary draft, would have to look forward and move forward. However, she said, it must recognize that there are peoples of different levels of development in various parts of the world. This did not imply that any people were by nature inferior to any other people but it meant that some people had not had equal opportunities for development. It was her hope that such opportunities might be extended to all in the future. Mr. WILSON (United Kingdom) pointed out that the phrase "civilized nations" was used in the Charter of the International Court of Justice to which the Soviet Union was also a party.

2. Consideration of the Draft Outline of the International Bill of Rights prepared by the Division of Human Rights (E/CN.4/AC.1/3)

The CHAIRMAN suggested that the Committee next consider those articles appearing in the Secretariat draft outline, the substance of which did not appear in the United Kingdom draft. She announced that the United States had prepared alternate texts for certain of the articles in the Secretariat draft and that these would be distributed. She read Article 1 of the Secretariat draft and remarked that in the opinion of the United States Government such an article was not necessary. The same subject was covered to some extent by Article 8 of the Secretariat draft. In addition it was felt that the first article of the Bill of Rights should not be one in which duty of an individual was expressed. Professor CASSIN (France) said that he did not insist upon the article being placed first, but that he felt that the substance of the article ought to be in the Bill of Rights, either in the Preamble or elsewhere.

/The CHAIRMAN

The CHAIRMAN read Article 8 of the Secretariat draft and remarked that it covered only a part of what had to be said about an individual's duty to his State.

At this point Professor KORETSKY (Union of Soviet Socialist Republics) left the meeting of the Committee.

Mr. SANTA CRUZ (Chile) stated that he had no comments to make at the moment on either Article 1 or Article 8. Mr. HARRY (Australia) felt that attention should be drawn to the general duty of the individual comparing to each general right. He said that he would make a statement on this subject later. Dr. CHANG (China) remarked that the Committee should not tend to set up the possibility of the State and the individual being so sharply contrasted.

Speaking with respect to Articles 1 and 2, Dr. MALIK (Lebanon) questioned why they should be called "preliminary," and placed at the very beginning of the Secretariat draft outline. Both of them, he said, would limit the freedom of the individual if they were adopted in their present form. In his opinion, any social pressure placed upon the individual by a Bill of Rights should be balanced by a statement of what society owes the individual. He characterized as "astounding" the statement in the Secretariat outline: "Every one owes a duty to his State" and pointed out that it might be questioned whether an individual owed such a duty of loyalty regardless of the characteristics of his State. In considering a Bill of Rights, he went on, it was odd that men ought first be told that their freedom is limited. If this were done it would be a Bill not of Human Rights but of what man owes society. It was precisely because the balance had been tipped against the individual and in favour of society that human rights had been violated. He concluded by saying that Article 1 of the Secretariat draft was to him objectionable and should not be included; or if included should be reworded; and that Article 2 should not appear at the beginning of the Bill of Rights.

/Mr. WILSON

Mr. WILSON (United Kingdom) supported this point of view. He thought that the article itself should be omitted from the Bill but that the substantive idea might be included somewhere in the Preamble. In this connection he drew attention to Article 4 of the draft of the United Kingdom.

Mrs. ROOSEVELT (United States of America) summarized the general consensus of opinion that:

1. Article 1 should not itself be the first article in the Bill of Rights; and

2. the substance of the article might be included somewhere else.

Dr. MALIK (Lebanon) insisted on some qualification of the phrase appearing in Article 1, "loyalty to his State." The conception that the State must be a just State should also be included, he said. Mrs. ROOSEVELT pointed out that the Committee was not at that stage attempting to agree upon specific wording.

Article 2 of the Secretariat Draft Outline

The CHAIRMAN read the article and the alternative text proposed by the United States Delegation (E/CN.4/AC.1/8)

Professor CASSIN stated that he accepted the proposal that the substance of Article 1 be placed elsewhere than first in the Bill. He said, however, that he did not feel that the first part of Article 2 had the same objectionable characteristics as Article 1. He felt that Article 1 might be redrafted along these lines: "Society should seek to help human beings find happiness and protection." The opening article of the Bill of Rights, he said, should stress the principles of liberty, of solidarity, and of equality; limited by the equal and equivalent rights of other men. Mr. SANTA CRUZ (Chile) supported the idea put forward by Professor Cassin and suggested that as a first article in the Bill of Rights there should be a declaration concerning what constitutes a State and what obligations an individual owes a State. He agreed that a declaration such as that proposed by Professor Cassin should be studied.

/Dr. CHANG

Dr. CHANG (China) pointed out that the modification proposed by the United States was clearly worded. In his opinion it contained two different ideas which might be separated. The middle sentence might logically be permitted to stand by itself. He formally suggested using the United States modification by separating it into two articles, one a statement of the relation of individuals to the State and the other a statement of the relation of one individual to another. Professor CASSIN (France) thought that there ought first to be a broad statement of principles. Mr. HARRY (Australia) agreed that the suggestion of Professor Cassin of a general article at the very beginning of the Bill, setting its key-note, was an excellent one. Dr. MALIK (Lebanon) said that he did not feel it proper to begin a Bill of Rights with "The State." This ought not to be at the beginning, if at all, he said. He concluded that the substance of the article should be limited to the Preamble. Mr. WILSON (United Kingdom) agreed.

The CHAIRMAN summarized the consensus of opinion as being that the substance of the article should be included somewhere in the Bill but perhaps in another place; the first article of the Bill should be a general article on the rights of humanity. She asked that the members think over this suggestion and bring in their own ideas about it.

Article 3 of the Secretariat Draft Outline and the United States Alternate Text

The CHAIRMAN read the two alternate texts. She referred to the previous discussion relating to the abolishment of the death penalty and asked for expressions of opinion on the substance of the article.
Mr. HARRY (Australia) pointed out that there had been agreement with relation with the mention of capital punishment in the Bill early in the day and suggested that any further suggestion on this point might be delayed until the actual drafting started.

Dr. CHANG (China) observed that it was obvious that all members of the Committee would agree that the right to life should be included in a

Bill of Rights. He suggested, however, that more thought should be put into a definition of the word "life" - was it intended to mean mere physical existence or did it imply something more than that?

Professor CASSIN (France) made two observations, one on the method of work and one on the substance of the question. With regard to the method of work, he felt that a good road had been indicated by the Australian Delegate. With regard to the substance, he considered that the term "right to life" referred to physical life and only to physical life. He pointed out that this distinction might not appear obvious at first glance but that recently the world had known of instances where certain persons felt that they had the right to destroy life. Mr. WILSON (United Kingdom) agreed that the best method of work would be to read through the Secretariat outline and try to reach a general agreement on what should and what should not go into the Committee's draft. He suggested that if anyone did not agree to the wording of the Committee's draft he should have the privilege of presenting an alternative draft in writing. He referred to the use of the expression "gravest of crimes" in the draft of the United States and said that, in his opinion, its meaning was very vague because what might be considered the gravest of crimes in one country might not be so considered in another.

The CHAIRMAN asked that all suggestions for alterations in the Secretariat outline be submitted as soon as possible. She summarized the general consensus of opinion as being that the substance of Article 3 of the Secretariat outline should be included in the Committee's draft but that its wording would have to be discussed later.

Article 4 of the Secretariat Draft Outline

The CHAIRMAN read the article and asked for comments. Professor CASSIN (France) pointed out that the question of torture was directly connected with life. He felt that the word "indignity" as used in the Secretariat draft was a shocking expression and should be altered. As for

/the word

the word "torture," he felt that it might require clearer definition. The Committee ought to take into consideration, he said, such questions as: Do some humans have the right to expose others to medical experiments and do any have the right to inflict suffering upon other human beings without their consent, even for ends that may appear good? Mr. SANTA CRUZ (Chile) said that no doubt an article referring to corporal punishment and torture should appear in the Committee's draft. He agreed with Professor Cassin that the word "indignity" as used in the Secretariat draft was not a happy expression. He reminded the Committee that the Economic and Social Council already was engaged in studies regarding torture in connection with the formulation of a Convention on the crime of Genocide.

Mr. HARRY (Australia) agreed that there should be something in the Committee's draft of the Bill to cover the case of physical torture. He pointed out, however, that if any specific kind of torture were mentioned the Committee might also have to include other types, such as mental torture and torture resulting from involuntary experimentation.

Dr. CHANG (China) felt that the article was tied up with the previous article and that both should be included in the Committee's draft. He felt that the draft somehow should stress the goodness of life itself.

Dr. MALIK (Lebanon) pointed out that the substance of Article 4 would have to be included in the draft in some form. He found ambiguity in the word "torture" and said that in his opinion it should be defined more carefully. Specifically, he wondered whether forced labour, unemployment or dental pain might be considered torture. He also found the phrasing "no one" and "every one" objectionable and suggested that either "person" or "human being" be used instead.

Mr. WILSON (United Kingdom) agreed with all that had been said by the other members.

Mrs. ROOSEVELT (United States of America) said that the consensus of opinion was that the substance of Article 4 should be included, its

wording and its grouping to be decided upon later.

Article 5 of the Secretariat Draft Outline

The CHAIRMAN read the article and asked for comments. Professor CASSIN (France) felt that the text regarding personal liberty included a rather wide field. It ought, he said, to be backed up by a whole series of texts further defining it. It might even be a sort of chapter head. Mrs. ROOSEVELT (United States of America) asked him if his recommendation was that this right should be placed elsewhere. Professor CASSIN replied that it was correctly placed. Mr. SANTA CRUZ (Chile) agreed that there should be an article in the Secretariat draft relating to personal liberty. Mr. HARRY (Australia) also approved of the article and said that in the idea of his Government "personal liberty" referred to the opposite of imprisonment. He wondered whether this article should not be attached to Article 6.

Dr. CHANG (China) called the attention of the members of the Committee to document E/CN.4/AC.1/3/Add.2 and pointed out that there were seven articles numbered 5 to 11, all dealing with liberty of the person. He suggested that in the Committee's draft all of the articles on this subject should be grouped together. Dr. MALIK (Lebanon) supported his suggestion and Mr. WILSON (United Kingdom) said that he also was in favour of this arrangement.

The CHAIRMAN said that it appeared to be the consensus of opinion of the Committee that all of the articles grouped under the heading "liberty of the person" should be considered by the Drafting Committee. She proposed that the Drafting Committee plan to go ahead at its next meeting with a consideration of the articles on which there was general agreement. She asked the members of the Committee to give their rewordings of any specific articles to the Secretary of the Committee as soon as possible and she requested the Secretary to inform Professor KORETSKY (Union of Soviet Socialist Republics), who had had to leave the meeting during the discussions, what had happened in his absence.

The meeting adjourned at 5:00 p.m.
