

COMMISSION ON HUMAN RIGHTS

DRAFTING COMMITTEE

SECOND SESSION

SUMMARY RECORD OF THE THIRTIETH MEETING

Held at Lake Success, New York
Wednesday, 12 May 1948, at 2.30 p.m.

<u>Chairman:</u>	Mrs. Franklin D. ROOSEVELT	United States of America
<u>Rapporteur:</u>	Mr. MALIK	Lebanon
<u>Members:</u>	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
<u>Representative of a Specialized Agency:</u>		
	Mr. R. W. COX	International Labour Organization
<u>Consultants from Non-Governmental Organizations:</u>		
	Miss T. SENDER	American Federation of Labour
	Mr. J. BOTTON	World Federation of Trade Unions
<u>Secretariat:</u>		
	Dr. HUMPHREY	
	Mr. MALE	

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CONTINUATION OF DISCUSSION ON THE DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS

Article 6

The CHAIRMAN read Article 6 as adopted at the previous meeting, and the limitations proposed by the United States of America.

Mr. PAVLOV (Union of Soviet Socialist Republics) suggested that the Article should read "...physical mutilation or such medical or scientific experimentation against his will as are punishable by the laws of the country", to bring in the idea of domestic legislation.

He did not agree with the representative of the United Kingdom that his point was covered by Article 2. A general limitation should be made. It would be difficult to list all exceptions. Inoculations, etc., as cited by the United States of America would not be punishable under his amendment as these would be sanctioned by law. He would continue to abstain from voting on Article 6 unless his amendment were accepted.

Mr. ORDONNEAU (France) said he could not support the USSR amendment, which would make each country the sole judge.

The CHAIRMAN believed the USSR amendment would give too much latitude, and would allow for abuse, but vaccinations, etc. were not implicit in Article 6 as it stood.

Mr. SANTA CRUZ (Chile) said a compromise solution should be found. The article was not acceptable in its present form. Some medical experiments involving mutilation were acknowledged to be in the interests of humanity, but States should not be entirely free to judge. There should, however, be some limiting clause, or a general limitation.

/Mr. ORDONNEAU

Mr. ORDONNEAU (France) believed the limitations cited by the United States of America were covered by Article 6 as it stood.

It was agreed by a vote of 4 to 0 with 4 abstentions that Article 6 should read: "No one shall be subjected to any form of physical mutilation or medical or scientific experimentation against his will, except..." with the limitations cited by the United States of America following, and with the understanding that other limitations might be added.

Mr. ORDONNEAU (France) abstained from voting because he did not believe any of the limitations listed were true exceptions to the rule. Article 7

Mr. ORDONNEAU (France) believed that the word "punishment" should be amended to "treatment". It would avoid the repetition of the words "cruel or inhuman" which had been pointed out by the representative of the Union of Soviet Socialist Republics, if Article 7 were amended to read: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment".

The CHAIRMAN pointed out that it had been decided at the Second Session of the Commission that the words "cruel and inhuman" should be repeated for purposes of clarification and for emphasis. She agreed with the representative of Lebanon that the French amendment did not include "indignity", but this was a matter of translation as the representative of France had not intended to change the substance of the Article but only to avoid repetition.

Mr. WILSON (United Kingdom) said he would abstain from voting on Article 7 as it stood because the words "cruel or inhuman" were too

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subjective. What might be termed "cruel or inhuman" in one country might not be considered so in another.

Mr. PAVLOV (Union of Soviet Socialist Republics) explained that he would abstain from voting because the repetition of "cruel or inhuman" weakened the text. He would only vote on a Russian text where the words were not repeated as this was more correct in his language. He asked the Committee to accept such a text regardless of the decision on the English version.

It was agreed by a vote of 6 to 0 with 2 abstentions that Article 7 in English should read as follows: "No one shall be subjected to torture or to cruel or inhuman punishment or to cruel or inhuman indignity".

Article 8

The CHAIRMAN said that with certain additions to paragraph 3 (b) the United States delegation found the text of Article 8 acceptable as it stood.

Mr. PAVLOV (Union of Soviet Socialist Republics) proposed that paragraph 1 of Article 8 should read: "Slavery or servitude in any direct or indirect form is outlawed. Any attempt to establish or to hold slaves or to engage in slave traffic shall be punishable by law". This would also outlaw secret forms of slavery which the Geneva text did not cover.

Mr. WILSON (United Kingdom) supported by Mr. ORDONNEAU (France), the CHAIRMAN and Mr. SANTA CRUZ (Chile) was in favour of the original draft which covered all the points raised by the USSR representative. No one could indulge in slave trading if it were forbidden to hold anyone in slavery; there would be no slaves. The last sentence of the USSR amendment was the only real addition, but "attempts" would be difficult to judge.

/Mr. ORDONNEAU

Mr. ORDONNEAU (France) proposed that Article 8, paragraph 3, sub-paragraph (b) should read: "Any service exacted in cases of emergency, calamity or danger threatening life or the well-being of the community". The enumeration of cases was unnecessary. He would abstain from voting on the Article as it stood.

In reply to a question by Miss SENDER (American Federation of Labor) regarding sub-paragraph (c), the CHAIRMAN said that "services of minors which have been agreed upon by parents or guardians" referred to work carried out in the normal course of family life.

Mr. WILSON (United Kingdom) reserved his right to consider Article 8 further in the full Commission. He reminded the Committee that the International Labour Organization had made interesting criticisms regarding paragraph 3 (c).

He agreed with Mr. MALIK (Lebanon) that the Geneva drafting of paragraph 3 (b) was the best, as it gave an exhaustive list based on the text of the International Labour Organization Convention which represented the wide experience of that organization. The French amendment gave too much latitude.

Mr. ORDONNEAU (France) said it was precisely because a detailed text existed elsewhere that it was unnecessary to repeat it in the Covenant. His text was no more vague than the Geneva draft which used such words as "similar calamities...".

The CHAIRMAN supported the French amendment to sub-paragraph (b).

It was agreed by a vote of 5 to 2 with 1 abstention that the French text of Article 8, paragraph 3 sub-paragraph (b) should be accepted.

/The amendment

The amendment to Article 8 paragraph 1, proposed by the Union of Soviet Socialist Republics was rejected by a vote of 5 to 1 with 2 abstentions.

It was agreed by a vote of 6 to 0 with 2 abstentions that Article 8 should be accepted as a whole with the French amendment to paragraph 3 sub-paragraph (b), with the alternative text suggested by the International Labour Organization for sub-paragraph (c) of paragraph 3, and the suggestions by the United States of America, due note being taken of the reservation of the United Kingdom.

Mr. WU (China) abstained from voting as he could not approve of the detailed limitations.

The CHAIRMAN did not approve of the detailed exceptions, but if included they would have to be comprehensive.

Mr. COX (International Labour Organization) pointed out that the wording of the text proposed by the ILO for sub-paragraph (c) which was to be submitted to the Commission with the Geneva text, was the same as that in the Convention.

Article 9

Mr. WILSON (United Kingdom) said that he and the representative of Lebanon had been asked to re-draft paragraph 2 of Article 9. They had agreed that if it began with "In consequence, no person..." it would have the desired effect of emphasizing that it was merely a definition of paragraph 1.

The CHAIRMAN proposed that paragraph 2 should read as suggested by the representatives of the United Kingdom and Lebanon, with the limitations to follow.

/Mr. PAVLOV

Mr. PAVIOV (Union of Soviet Socialist Republics) proposed that the whole Article should be amended to read: "No person shall be subject to arrest except by order of the court; inviolability of the person should be guaranteed by law; every person arrested must be immediately advised of the charges against him; every person who has been deprived of liberty shall be brought before the court in as short a time as possible for consideration of his case, or he shall be freed; each person has under the present existing law the right to compensation for illegal arrest or deprivation of liberty".

Mr. WILSON (United Kingdom) was in favour of enumerating the exceptions.

It was decided to leave further discussion on Article 9 until the USSR draft had been submitted in writing together with all the limitations which the United States of America, the United Kingdom, Lebanon and France had proposed should be added to the Geneva draft.

Article 10

The CHAIRMAN said the United States of America would accept the present text of Article 10, but reserved its right to propose an amendment at a later date.

In reply to a question by the representative of France, Mr. SANTA CRUZ (Chile) said that the present text had been adopted as a compromise. He had been in favour of the Geneva text but some representatives had thought the wording might cover cases of fraud.

Mr. ORDONNEAU (France) said the drafts were different in substance. "Inability" was stressed in the present text. A person might be able but not willing to fulfil his obligations. There was danger in

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that approach. He reserved his right to reopen the question at a later stage.

Mr. SANTA CRUZ (Chile) preferred the Geneva draft but reserved his right to bring the matter up again before the Commission.

The representatives of the United Kingdom and the Union of Soviet Socialist Republics affirmed that all members of the Committee had the right to reopen discussion before the Commission without having made formal reservations.

Article 11

Mr. WILSON (United Kingdom) said he had accepted Article 11 as a statement of the general principles involved, but did not agree to its being submitted to the Commission in its present form. He moved that as in other cases, the Geneva text should be taken as a basis and submitted with the proposed amendments and the lists of further exceptions to be considered.

The CHAIRMAN submitted the restrictions on movement proposed by the United States of America.

Mr. ORDONNEAU (France) reserved his right to add two exceptions to paragraph 2 of Article 11. These were listed under the French draft of Article 10 (b).

Mr. SANTA CRUZ (Chile) pointed out that Article 9 was closely connected with paragraph 1 of Article 11. If the USSR amendment to Article 9 were adopted, similar wording would have to be adopted for Article 11.

It was agreed to leave further discussion until a decision had been taken on Article 9.

Article 12

Adopted at first reading.

Article 13 (Report of the Sub-Committee, document E/CN.4/AC.1/24/Rev.1)

Mr. MALIK (Lebanon) proposed that the first part of paragraph 2 (a) of Article 13 should read: "...a public trial, though the press and public may be excluded from some or all portions thereof..."

The CHAIRMAN said the United States of America would accept this proposal and would agree to the whole article being submitted to the Commission, but reserved the right to propose amendments later.

Mr. SANTA CRUZ (Chile) stated that although in the United States of America criminal proceedings began after an investigation had been made by the Attorney-General and data had been compiled, in countries such as Chile, criminal proceedings began from the opening of investigations, and it was therefore necessary to safeguard them at the beginning. An exception should be provided in such cases.

Mr. ORDONNEAU (France) agreed with the representative of Chile, who later supported his statement that the interested party should not have the right to waive a public hearing as suggested by the Sub-Committee's draft. He and the representative of the United Kingdom reserved their right to make a final statement when instructions had been received from their Governments.

The CHAIRMAN said the right of an individual to a public trial or to waive it must be preserved.

Mr. PAVLOV (Union of Soviet Socialist Republics), stressing the difficulty of not having either the French or Russian texts before him, proposed that Article 13 should state that all persons should be

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equal before the court; judges should be independent and should be answerable only to courts of law; court trials in each state should be based on democratic grounds; hearings of public trials should be public in all courts unless otherwise provided for by law (in cases involving security or morals, or state security) with the guarantee that the person charged should have the right for his defence. In cases where the person committed was not conversant with the language in which the case was conducted, he should be given full information regarding the proceedings through an interpreter and should be free to speak in his own national tongue.

The USSR draft would be acceptable to all democratic states and yet would not interfere with their legal processes.

Mr. ORDONNEAU (France) stressed the complexity of the problem of drafting a text which would be acceptable to States with opposed systems of legal procedures, and agreed with the representative of the Union of Soviet Socialist Republics regarding the difficulties created by not having the translations of documents available.

Mr. WILSON (United Kingdom) accepted the Sub-Committee draft, with a reservation about the right to waive a public trial.

As proposed by Mr. SANTA CRUZ (Chile) Article 13 was left in abeyance until the USSR proposal had been submitted in writing, and all relative documents and proposals were available.

Article 14

Mr. PAVLOV (Union of Soviet Socialist Republics) pointed out that there was nothing in the text of the Covenant regarding war criminals, and this should be remedied.

/Mr. SANTA CRUZ

Mr. SANTA CRUZ (Chile) reminded the Committee that Article 14 concerned the position of the individual in relation to the laws of the various countries. It had been decided that war criminals should be dealt with in a separate convention, as that was a separate question and should be regulated by laws not dealt with in the Covenant. A statement to that effect should be included in a separate article.

It was agreed that Article 14 should be accepted as it stood with the deletion of paragraph 2, and that a new Article should be drafted to deal with war criminals.

The meeting rose at 5:45 p.m.