

COMMISSION ON HUMAN RIGHTS

DRAFTING COMMITTEE

SECOND SESSION

SUMMARY RECORD OF THE THIRTY-SECOND MEETING

Lake Success, New York
Thursday, 13 May 1948 at 2:30 p.m.

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

Rapporteur and
Vice-Chairman

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

Representatives of Specialized Agencies:

Mr. Rene LEBAR (United Nations Educational, Scientific and Cultural Organization)

Consultants from Non-Governmental Organizations:

Miss Toni SENDER	(American Federation of Labour)
Mr. O. F. NOLDE	(World Federation of United Nations Associations)
Mr. Joseph BOTTON	(World Federation of Christian Trade Unions)

Secretariat:

Dr. J. P. HUMPHREY
Dr. E. SHWELB
Mr. E. LAWSON

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DISCUSSION OF ARTICLE 16 OF THE DRAFT INTERNATIONAL COVENANT

Mr. WILSON (United Kingdom) said that he preferred the text submitted by the Drafting Sub-Committee (E/CN.4/AC.1/35) to that proposed by the Soviet Union delegation (E/CN.4/AC.1/33).

Mr. ORDONNEAU (France) said that the Soviet Union text was too restrictive.

The CHAIRMAN agreed that the Soviet Union text was too restrictive, especially the phrase "In accordance with the laws of the country". This could mean, for example, that Seventh Day Adventists, if forbidden by the laws of the country, would not be able to practise their religion. She preferred the text of the Drafting Sub-Committee.

Mr. MALIK (Lobanon) supported the Chairman.

The Committee decided by seven votes to one with no abstentions that it would consider the text of Article 16 as submitted by the Drafting Sub-Committee. (E/CN.4/AC.1/35)

The Committee adopted by seven votes to none with one abstention paragraph 1 of Article 16, as submitted by the Drafting Sub-Committee.

Mr. ORDONNEAU (France) noted that the French text was not a definitive translation. He thought that the last phrase of paragraph 2 was unnecessary, and not altogether clear. He asked whether acts contrary to worship and observance meant acts relating to certain religious cults. He said that, for Catholics and Protestants, Sunday was a day of rest. This had at one time been the only way to force employers to grant one day of rest a week to their workers. This was no longer necessary as modern labour laws enforced it. It might even be a dangerous statement to make, as workers could refuse to work on Sundays and this might disrupt certain essential services, such as railways. He proposed that the phrase should be deleted.

/Mr. SANTA CRUZ

Mr. SANTA CRUZ (Chile) said that if the last sentence was added in order to protect the right stated in the preceding sentence, he would agree that it was unnecessary. Under this Article, States should ensure freedom of worship and observance, and take the necessary measures to make it possible for their citizens to exercise that right. It should not be necessary to emphasize this principle further as had been done in paragraph 2.

Mr. MALIK (Lebanon) said that the last sentence had been adopted at the Second Session of the Commission on Human Rights, when the Commission had in mind the criticisms made by the representatives of France and Chile. Objection to paragraph 2 could only be raised on principle or on the grounds that it was superfluous. As the principle was contained in the first sentence, there could be no logical ground for objection on that basis if this sentence had been accepted. In reply to the criticism that it was superfluous, he said that there had been recent abuses of this freedom, and he thought that repetition with precision was important.

Mr. SANTA CRUZ (Chile) said that his criticism was not only that the sentence was superfluous, but that it was too broad a statement, open to different interpretations. He pointed out that a similar provision had not been included under the Article on freedom of speech.

The CHAIRMAN said that the United States delegation would support the deletion of the sentence on the grounds that it introduced more detail into an Article which it considered too detailed already.

The Committee decided by three votes to three with two abstentions to delete the second phrase of paragraph 2 of Article 16.

Paragraph 2 as amended was adopted by six votes to none with two abstentions.

Mr. WILSON (United Kingdom) referred to a point made at the previous meeting of the Committee by the Soviet Union representative, that the last sentence of paragraph 3 might imply that the parent or guardian of a minor had to determine what religious teaching he should receive. He proposed the insertion of the words "if any" after "religious teaching".

Mr. WU (China) said that the sentence should be deleted. It was not appropriate to include it in a legal document. A minor might be twenty or twenty-one, in which case the provision went ^{much} /too far.

Mr. SANTA CRUZ (Chile) supported the representative of China. The term minor was interpreted differently in different legislations. If in this Article it meant a person who had not reached the age of reason, it would be very difficult to define. Moreover, this provision might give rise to serious conflict between an individual and his parent or guardian. The last sentence of paragraph 3 should be deleted.

The CHAIRMAN said that the United States delegation would prefer the deletion of the last sentence of paragraph 3.

The Committee decided by five votes to three with no abstentions that the last sentence of paragraph 3 of Article 16 should be deleted.

Paragraph 3 of Article 16 as amended was adopted by seven votes to none with one abstention.

Paragraph 4 of Article 16 was adopted by seven votes to none with one abstention.

Mr. PAVLOV (Union of Soviet Socialist Republics) said that before the Committee voted on Article 16 as a whole, he wished to note that some of the provisions and principles contained in the Soviet Union amendment had now been included in the final Article. There were certain

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religious cults and sects which required mutilation of the body, or human sacrifice. The laws relating to freedom of religion should limit the rights of people to indulge in such practices. This had been in the mind of the Soviet Union delegation when proposing the amendment.

He supported the deletion of the second sentence of part 3 of Article 16, as this would have meant obligatory religious teaching for children. This would have presented some difficulty in the Soviet Union, where schools and religion were quite separate, and anti-religious teaching was recognized.

He would abstain from voting on the Article as a whole.

Mr. ORDONNEAU (France) said that the Soviet Union amendment was more restrictive than the text proposed by the Drafting Sub-Committee. The former granted freedom of religion in accordance with the laws of the country and dictates of public morality. Under the latter, law did not mean necessarily national legislation. He pointed out that religious teaching was not necessarily religious instruction given by priests, but any kind of religious teaching.

Article 16 was adopted as amended by seven votes to none with one abstention.

DISCUSSION OF ARTICLE 17 OF THE DRAFT INTERNATIONAL COVENANT

The CHAIRMAN read the text of the Soviet Union amendment to Article 17 (E/CN.4/AC.1/34)

Mr. MALIK (Lebanon) said that the Soviet Union amendment was not suitable for the kind of Covenant the Committee was drafting. Some of the phrases were vague. He feared that the second paragraph as proposed would necessitate a nationalization of the press and organs of information, to which he was opposed.

/Mr. WU

Mr. WU (China) said that the reference to freedom of assembly in paragraph 1 of the Soviet Union amendment was inappropriate as it was the subject of a separate article. The provision regarding State assistance in providing material resources necessary for the publication of organs of the press in paragraph 2 could not be accepted by many States.

The CHAIRMAN, speaking as the United States representative, supported the statement of the Chinese representative concerning freedom of assembly in paragraph 1. She said that paragraph 2 would imply socialization of the press, which might be essential under some economic systems, but not all, and it would therefore be a mistake to include it in an Article of this kind.

Mr. ORDONNEAU (France) said that he supported the opinions expressed by other members of the Committee. He did not think it necessary to say that freedom of the press should be in accordance with the principles of democracy. This might be useful in the preamble to the Declaration but not in a Covenant Article. The point about freedom of the press being used for the purpose of propagating Fascism and aggression or of inciting war between nations had been adequately discussed already. Paragraph 2 was unacceptable as there was no freedom of the press if the State could in any way interfere.

Mr. SANTA CRUZ (Chile) supported the view that freedom of assembly should be dealt with in a separate Article. He would support the last sentence of paragraph 1 if the words "any other totalitarian ideology contrary to the principles of this Covenant" were added.

Mr. PAVLOV (Union of Soviet Socialist Republics) said that freedom of assembly could be omitted from paragraph 1. He asked the representative of Lebanon to state exactly what was not clear in the Soviet Union amendment.

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He said that the fears of the Lebanese and the United States representatives that paragraph 2 meant nationalization of the press and printing industries were unjustified. The Article aimed at granting the broad masses of the people freedom of the press through provision by the State of the necessary material resources. The masses had not the money to acquire printing presses and newsprint, and in such cases the State should provide them. In countries where the press was in the hands of monopolies it would be difficult to conceive that such material resources should be made available to the masses, but democratic governments should face this situation. It was useless to draft a Covenant of Human Rights without granting the means to implement these rights. He was opposed to monopolies which did not work in the interests of the people. In the United States one-sixth of the newspapers were in the hands of six owners, who imposed their views on the rest of the population.

Freedom of speech and of the press should not be used for incitement to war and hatred, or for the purposes of propagating Fascism. Only those who favoured incitement to hatred and war could object to this provision. The Soviet Union would fight hatred amongst nations through teaching and education. They had learned from the war what Fascism and Nazism meant.

In the Soviet Union the newspapers were published by the people for the people and did not contain propaganda inciting to war and hatred. He said that in 1913 only six thousand books were published which had a circulation of some thirty-eight millions. At the present time some eighty-three thousand seven hundred books were published a year with billions of copies in all languages. This showed to some extent the achievements of the Soviet Union Government in granting freedom of speech for its people. The criticisms which had been made of the Soviet Union amendment did not seem to him reasonable or convincing. He thought that the amendment offered a possible basis for co-operation which each State, believing in the principles of democracy, could safely support. Freedom of speech and of

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the press must be secured, but freedom for Nazis and Fascists to prepare war by propaganda should not be tolerated by democratic peoples and States.

The CHAIRMAN said that the points which her delegation would support in the Soviet Union amendment were already included in the two drafts it was proposed to submit to the Commission on Human Rights, that is, the text proposed by the United Nations Conference on Freedom of Information (E/Conf.6/79) with the addition of certain limitations, and the text proposed by the French delegation (E/CN.4/82/Add.8). She said that the information given by the Soviet Union representative concerning the United States Press was incomplete, and she referred him to the records of Committee 3 at the Second Session of the General Assembly where, as the United States representative, she had given an exhaustive list of the newspaper owners in the United States and of the thousands of independent newspapers. She could not support paragraph 2 of the Soviet Union amendment which granted the State the power to supply paper, printing presses, etc., but also the power to withdraw such supplies if the views expressed were contrary to those of the State. Naturally, no one could approve of incitement to war and hatred. Her delegation was opposed to any type of totalitarianism.

Mr. ORDONNEAU (France) said that doubtless there was freedom of the press in the Soviet Union on the lines mentioned in paragraph 2 of the amendment, but unfortunately for certain other European countries, this paragraph recalled Nazi systems. The German government had given material support to certain journals, but this had not been very successful, as the result had been that all newspapers, other than those supporting the Nazi Party, were suppressed.

He thought that the point concerning the use of freedom of speech and of the press for the purposes of propagating Fascism and inciting war between nations was already covered in the French text. Moreover, it was

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difficult to define exactly what was meant by Fascism or Nazism. There should be no discrimination on grounds of political opinions, even against Fascists. If there was real freedom of speech and of the press, there could be no danger from Fascist propaganda, as it would be rejected by public opinion.

Mr. MALIK (Lebanon) said that the three words which he criticized in the Soviet Union amendment as being vague and ambiguous were "democracy," "fascism" and "incitement". It was apparent that democracy meant one thing in the Soviet Union and another outside, and that it became more vague and meaningless according to the context of its origin. He asked whether fascism meant Hitlerism, in which case the word Hitlerism should be used; racialism, which was covered by other Articles; or military aggression, which occurred in the following sentence. He thought that the word was dangerous because it was capable of abuse. It was clear what was meant by incitement in general terms, but it was very difficult to define it in a legal document. Propaganda aimed at inciting hatred among nations was something all wished to prevent, but hatred should not be limited to hatred among nations. Hatred between different social and economic classes must also be fought.

Mr. PAVLOV (Union of Soviet Socialist Republics) said that the word democracy had already been used frequently without causing embarrassment. For the Soviet Union, it meant that which worked for the interest of all peoples. The nations had fought together in a war against fascism and nazism and had then clearly understood those terms. He cited the case of Mosley, who represented British Fascism. He thought that the meaning of the terms was quite clear. In reply to the statement concerning propaganda inciting class hatred he said that this was a matter for each country to decide for itself. The Soviet Union had no desire to interfere with the sovereignty of other peoples. In the Soviet Union there were

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friendly relations between the workers and the farmers who co-operated with the intelligentsia. If necessary, a preliminary statement could be made defining fascism. He thought the Bill of Rights should carry on the struggle against fascism which the peoples of the United Nations had waged during the war.

The Committee rejected the Soviet Union amendment to Article 17 by seven votes to one.

The CHAIRMAN said that the Committee would transmit to the Commission on Human Rights the text put forward by the United Nations Conference on Freedom of Information, with the list of limitations (E/CN.4/AC.1/28) and the text proposed by the French delegation.

3. DISCUSSION OF ARTICLE 13 OF THE DRAFT INTERNATIONAL COVENANT

Mr. WILSON (United Kingdom) said that the Drafting Sub-Committee in preparing its draft of Article 13 (E/CN.4/AC.1/24/Rev.1) had taken into account the amendment proposed by the Soviet Union delegation (E/CN.4/AC.1/32). He thought that all the points in the Soviet Union amendment were covered by the other text. The detailed provision in paragraph 2 of the Soviet Union amendment was covered by the words "fair hearing", which actually implied more than the details spelled out in the amendment.

Mr. MALIK (Lebanon) proposed that line 2 of paragraph 2 (a) of the Drafting Sub-Committee's text should read "excluded from all or some of the portions thereof".

Mr. HEYWOOD (Australia) proposed the deletion of the word "all".

Mr. PAVLOV (Union of Soviet Socialist Republics) questioned the statement of the United Kingdom representative that all the points in the Soviet Union amendment were covered in the Drafting Sub-Committee's text.

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In the Soviet Union legal procedure was based on democratic principles, and he thought that the Soviet Union text, in stating "all persons shall be equal before the law" stated this principle more clearly.

He did not think that the words "fair hearing" adequately covered the points in paragraph 2 of the Soviet Union text. It was not absolutely clear what was meant by "fair".

Miss SENDER (American Federation of Labour) said that she preferred the text submitted by the Drafting Sub-Committee, which contained two basic principles not in the Soviet Union text: The judges of the tribunal must be impartial, and the accused must have the right to defense of his own choosing. Both these provisions were very important.

Mr. WILSON (United Kingdom) said that he had no objection to the Soviet Union amendment, except that in certain respects, such as those mentioned by the representative of the American Federation of Labour it did not go far enough. The provision concerning equality before the law was already included in Article 2 and Article 20 of the Covenant.

Mr. WU (China) said that there was some merit in paragraph 2 of the Soviet Union amendment, and he proposed that the substance should be included as paragraph 2 (c) of the text submitted by the Drafting Sub-Committee.

The Committee decided by two votes to one with five abstentions that the Drafting Sub-Committee should reconsider the text of Article 13.

4. DISCUSSION OF ARTICLE 9 OF THE DRAFT INTERNATIONAL COVENANT

The CHAIRMAN drew attention to Document E/CN.4/AC.1/23/Add.1 which was a memorandum by the Secretariat giving a summary and analysis of the restrictions presented in respect of Article 9. She suggested that this document should be transmitted to the Commission on Human Rights.

/Mr. WU

Mr. WU (China) read a list of additional limitations (E/CN.4/AC.1/23/Add.2).

Mr. PAVLOV (Union of Soviet Socialist Republics) pointed out that the Soviet Union amendment to Article 9 (E/CN.4/AC.1/31) would avoid the necessity of listing the limitations, and he proposed that the Committee should consider this amendment.

The CHAIRMAN suggested that the Committee should forward to the Commission on Human Rights the Soviet Union amendment, and the United States proposal (E/CN.4/AC.1/19, page 9).

Mr. SANTA CRUZ (Chile) said that it was not proper to submit the various texts to the Commission without further discussion. He would support the Soviet Union amendment but some clarification was needed. The first point was, who should effect the arrest and detention in prison of a person; the Soviet Union amendment made provision for this; the text as drafted at the Second Session of the Commission on Human Rights did not. No provision was made in either text concerning the formalities of carrying out an arrest. Under the circumstances under which an arrest could be carried out there was the long list of exceptions and enumerations. He thought that the wording of paragraph 2(a) of the text as drafted by the Commission on Human Rights rendered the list of exceptions unnecessary. Every State was free to define by law the exact meaning of crime or offence. Both the Soviet Union amendment and the text as drafted by the Commission stated that an accused man must be tried before a tribunal, before which he had certain specified rights. He thought that the Committee should draft an Article similar to that proposed by the Soviet Union with certain additions.

/Mr. WU

Mr. WU (China) suggested that a Drafting Sub-Committee should redraft Article 9, using the Soviet Union amendment as the basis and omitting too detailed limitations. The question of limitations should be left to the Commission on Human Rights.

Mr. WILSON (United Kingdom) said that there was no need to single out Article 9 for particular treatment by the Committee. He thought it should be dealt with in the same way as other Articles, that is, that the text as drafted by the Commission at its Second Session should be transmitted with the list of further exceptions proposed. In reply to the representative of Chile, he said that a person could be arrested for other reasons than commission of a crime, as stated in paragraphs 2 (b), (c), (d), (e), (f), (g). He said also that there had been cases of States arresting persons because they wanted them in custody. Article 9 should prevent this.

In answer to the Chairman's suggestion that a Drafting Sub-Committee, composed of the representatives of United Kingdom, USSR, China and Chile, be appointed to formulate two alternative texts, Mr. Wilson said that it would be impossible to produce an agreed draft, as the members proposed for the Sub-Committee held completely opposite views.

Mr. SANTA CRUZ (Chile) and Mr. WU (China) said that in view of the statement by the United Kingdom representative, they would accept the suggestion to refer the whole matter to the Commission on Human Rights.

The Committee decided by six votes to none with one abstention to forward to the Commission on Human Rights the text of Article 9 as proposed at the Second Session of the Commission, and amended with the list of exceptions which had been suggested (E/CN.4/AC.1/23, E/CN.4/AC.1/23/Add.1, E/CN.4/AC.1/Add.2), the Soviet Union amendment (E/CN.4/AC.1/31), and the United States proposal (E/CN.4/AC.1/19).

5. DISCUSSION OF ARTICLE 11 OF THE DRAFT INTERNATIONAL COVENANT

The CHAIRMAN pointed out that the Committee had decided to reconsider Article 11 after discussion of Article 9 in view of the list of limitations to Article 9 which might affect Article 11. She proposed that Article 11 should be transmitted as adopted with a note for the Commission on Human Rights, indicating that the decision on Article 9 might affect the decision on Article 11.

Mr. PAVLOV (Union of Soviet Socialist Republics) said that a long list of limitations to Article 11 would make a very unwieldy Article. He proposed that paragraphs 1 and 2 should become one paragraph and the phrase "in accordance with the laws of their country" should be added. Those laws would specify all existing limitations. He requested that this proposal should be included in the texts transmitted to the Commission on Human Rights.

The Committee decided by 6 votes to none with 2 abstentions to transmit Article 11 as adopted, with a note stating that the Commission's decision on Article 9 might affect its decision on Article 11.

The meeting rose at 5:50 p.m.