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COMMISSION ON HUMAN RIGHTS

DRAFTING COMMITTEE

SECOND SESSION

SUMMARY RECORD OF THE THIRTY-FOURTH MEETING

Friday, 14 May 1948, at 3:00 p.m.

<u>Chairman:</u>	Mrs. Franklin D. ROOSEVELT	United States of America
<u>Rapporteur:</u>	Mr. Charles MALIK and Mr. AZKOUL (later)	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>Representatives of Specialised Agencies:</u>		
	Mr. P. LEBAR	United Nations Educational, Scientific and Cultural Organisation
<u>Consultants from Non-Governmental Organisations:</u>		
	Miss T. SENDER	American Federation of Labor
	Mr. J. BOTTON	World Federation of Christian Trade Unions
<u>Secretariat:</u>		
	Dr. J. P. HUMPHREY	
	Dr. E. SCHWELB.	

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DISCUSSION OF ARTICLE 4 OF THE DRAFT COVENANT

The CHAIRMAN read the comment of the Government of Brazil as contained in document E/CN.4/85, page 59.

She stated that the second paragraph of the Geneva text was really concerned with implementation and that the Committee should therefore confine itself to a discussion of the first paragraph.

Feeling that an over-all limitation clause, applicable to the whole Convention, would be preferable, she proposed the following text as a substitute for the Geneva text:

"The obligation imposed by Articles 1 and 2 shall not effect the right of States parties to this Covenant to take action reasonably necessary for the preservation of peace, order or security or the promotion of the general welfare. Such action may be taken only by or pursuant to law, in conformity with Article 20 hereof."

Mr. WILSON (United Kingdom) said that since the Committee had reached no decision on whether one general over-all limitation clause, or specific limitations to each article, should be included in the Covenant, he suggested that the Committee send both drafts of Article 4 to the full session of the Commission on Human Rights for ultimate decision.

The CHAIRMAN read a statement prepared by the U.S.A. delegation in which she enumerated the extent of specific limitations which would have to be incorporated into Articles 5, 6, 8, 9, 11, 16, 17, 18 and 19. In reviewing these nine difficult-to-draft substantive articles, it had been found that three already were subject to what in effect are general limitation clauses, with a strong possibility of treating two other articles - freedom of expression and of movement - in the same way. The other four articles were

/subjected

subjected to sixty-two exceptions, many of which were rather broad and vague. To these 62 areas of exception, there was added the further general exception of the war and emergency clause contained in Article 4. Furthermore, these suggestions came from only seven United Nations Members.

She had hoped that the Committee should include a general limitation clause or article in the Covenant to take the place of the exceptions noted and which might have also made unnecessary the article on war and emergency, unless reasons appeared for some special provision respecting such periods of time.

Since, however, the Committee was not yet ready to come to a clear-cut decision and to vote a single general limitation clause, and because she felt that the process of listing more limitations was not an exhaustible one, since the Committee was dealing with the whole body of reserved legislative powers, she suggested that the Committee agree to stating that:

"(1) the limitations set forth in the Covenant, without the additions suggested by other governments, are not all - inclusive;

"(2) that the Committee note that certain governments, which have suggested further limitations have stated that theirs are not all inclusive;

"(3) that the Committee observe that the matter of restricting the rights and freedoms of the Covenant arises from many sources of law and that the Human Rights Commission must find the solution for dealing with the problem caused by omission of further probable limitations not yet enumerated."

/She proposed

She proposed that the Committee send both versions of Article 4 to the Commission on Human Rights adding the enumerated paragraphs of the United States comment mentioned above.

Mr. WILSON (United Kingdom) agreed with the suggestion of the Chairman, with one exception. He suggested replacing the words "theirs are not all inclusive" in paragraph (2) of the comment of the Chairman, by the words "they might wish to add others later", since the representatives had tried to include all the exceptions which they were able to think of at the moment.

Mr. HEYWARD (Australia) stated that the World Jewish Congress had placed before the Committee some important considerations for discussion to which extent rights could be derogated in time of war. Under the Hague Convention, certain rights may be derogated in time of war and he considered that it would be useful for the Committee to discuss this point. If this question were not to be discussed, he felt that the Committee's report should note that further consideration should be given to the question whether it should not be provided that some rights must be respected also in time of war.

Mr. MALIK (Lebanon) considered that there are certain rights and freedoms which should explicitly be excluded from any exception even in time of war or public emergency. It should be possible for the Committee to decide on a minimum degree of human rights and freedoms in the Covenant which should be in force under any circumstances.

/Mr. SANTA CRUZ

Mr. SANTA CRUZ (Chile) supported the Chairman's proposal to send the two draft versions to the Commission on Human Rights. He further wished to go on record as agreeing entirely with the representative of Lebanon that certain basic rights and freedoms must be maintained even in time of war or public emergency. The protection of certain rights is even more necessary in time of war than in time of peace.

Mr. WU (China) reserved the right to raise again the question of what rights should not be derogated even in time of war or public emergency.

Mr. ORDONNEAU (France) stated that the text refers explicitly to obligations under Article 2, which means that in time of war, certain measures could be taken to suspend these rights and freedoms. Suspension of these rights and freedoms does not mean that these rights and freedoms would be impaired. Therefore, the Committee in agreeing to Article 4 of the Geneva Draft would not be voting on an article which permits the State to abrogate entirely such rights as are contained in Article 2.

Mr. MALIK (Lebanon) drew the attention of the Committee to the fact that there would be at least a half-dozen rights established in this Covenant which no State, under any circumstances, should be entitled to derogate. He stated that there are certain individual human rights and freedoms which are above and beyond all emergencies and must be protected even in time of war.

A discussion ensued on the best way of transmitting the two draft versions of Article 4 and the three ^{to the} United States proposals/ Commission on Human Rights.

DECISION: It was decided by a vote of 6, with one abstention,
to send the Geneva text and the proposed United States draft of Article
4 to the next session of the Commission on Human Rights together
with the original written statement submitted by the United States repre-
sentative and the ^{oral} comments of the various representatives as having
come from their different sources.

DISCUSSION OF THE PREAMBLE

The CHAIRMAN stated that the representative of France had expressed his desire to include some ideas of his delegation in the Preamble, as follows:

"THE STATES PARTIES HERETO,
bearing in mind the general principles
proclaimed in the United Nations Charter and
in the Declaration of Human Rights,

agree to give effect in this Covenant to
certain of the principles specified in the
Declaration, as follows:"

Before proceeding to a discussion of the Preamble, she drew the attention of the Committee to the lengthy discussion in Geneva on the question of the Preamble. It was considered there that it would be better to postpone its actual phrasing until the Covenant had been completed and that the preamble should have literary as well as substantive value. However, the Committee could proceed to a vote on the French proposal as one of the principles to be included in the Preamble.

Mr. ORDONNEAU (France) explained his purpose in drafting his proposal for inclusion in the Preamble. He wished merely to put forth certain fundamental ideas which he hoped would be submitted to the Commission on Human Rights for consideration when the Preamble was to be adopted.

/The CHAIRMAN

The CHAIRMAN drew attention of the Committee to the fact that it would not be voting on the final wording of this textual amendment but only on the principle contained there.

DECISION: The principle contained in the proposal submitted by the representative of France was adopted unanimously for inclusion in the Preamble.

DISCUSSION OF ARTICLE 1 OF THE COVENANT

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The CHAIRMAN suggested that in Article 1 of the Covenant the word "principles" (where first used) was to be replaced by "rights and freedoms".

Mr. PAVLOV (Union of Soviet Socialist Republics) reserved the right to return to a discussion of the wording of Article 1. He drew the attention of the Committee to the objection made by the Indian Government to the words "recognized by civilized nations". He felt that this would constitute a discrimination and it would hardly be appropriate for the Covenant to begin with words which may give rise to doubt with respect to certain peoples and States. Such an expression as "democratic States" might be more correct since only the Fascist and Nazi state could consider that there were any discriminations in this Covenant.

He would abstain from voting on this Article.

Mr. WU (China) also reserved the right to consider the words "civilized nations."

DECISION: Article 1 as amended by the United States proposal was accepted by a vote of six for with two abstentions.

/DISCUSSION

DISCUSSION OF ARTICLE 23 OF THE COVENANT

The CHAIRMAN read the comments from the Governments of the Netherlands and Brazil on this Article.

Mr. MALIK (Lebanon) agreed with the comment of the Netherlands Government that the words "two-thirds of the States members" should be replaced by a much smaller number. He pointed out that there was nothing to prevent even two countries from concluding a pact of this nature between themselves.

If it were necessary for two-thirds of the States Members to ratify this Covenant before it came into force, a hardship would be placed on those members who were willing to enter into such an agreement because the adherence of the necessary number of States might be delayed for a considerable time or not even obtained.

He favoured the inclusion of some wording to express that any State might ratify it if it so wished, or negatively, not to place any restriction at all on this point.

Miss SENDER (American Federation of Labor) stated she was interested in seeing the Covenant come into effect as soon as possible. She, too, considered that the two thirds clause would render a hardship for States Members who were anxious to ratify and adhere to the terms of the Covenant. Such a provision would be understandable in the case of creating an international agency.

Mr. WILSON (United Kingdom) said that the problem to be envisaged here is one of enforcement. He felt that the number of States should be somewhere between two and two-thirds but he felt that it would be awkward to secure enforcement of this Covenant if adherence by two States only were sufficient. He proposed the deletion of the words "two-thirds of the" viz. States Members and to leave the number of States blank.

/Mr. ORDONNEAU

Mr. ORDONNEAU (France) and Mr. MALIK (Lebanon) expressed the same view.

Mr. PAVLOV (Union of Soviet Socialist Republics) stated that no one could prohibit two or three States from entering into an accord on this Covenant. He thought it strange, however, that a Committee of eight members should prepare a document for only two States. He felt that the work of the Committee was certainly something of a broader nature.

Mr. ORDONNEAU (France) thought that it would be better to leave the number of States blank. It would be up to the General Assembly to decide upon the number.

Mr. SANTA CRUZ (Chile) agreed with those who considered that the Covenant should be open for adherence to a greater number of States, and also to States not members of the United Nations.

He supported the suggestion of the representative of the United Kingdom that the Committee should not, at this point, decide on the number of States because this would depend on the implementation of enforcement clause to be accepted.

If an international organ is given the power to intervene in all cases of violations of the Covenant's provisions, then various States would consider very carefully the problem of becoming parties to the Covenant and would want to know how many other States are parties to this Convention. If there is no provision for implementation, then the idea of having only two States adhere to the Covenant might be acceptable.

/Mr. WILSON

Mr. WILSON (United Kingdom) in answering the question of the representative of the USSR.S.R. "By what were the drafters of this two-thirds clause governed in coming to this figure?" stated that the insertion of this number was not due to any particular reason. However, he did feel that the number was somewhat large and should be reconsidered at a later date.

DECISION: Article 23 was accepted by a vote of 5 for with one abstention with the proviso that the number of States shall be left blank.

DISCUSSION OF ARTICLE 24 OF THE COVENANT

The CHAIRMAN read the Comment of the Government of India.

Mr. WILSON (United Kingdom) pointed out that Article 24 applied to a Federal State and that Article 25 applied to States having colonial or overseas territories.

His objection to these two articles was based on the grounds of discrimination. Obligations were placed on states with colonial or overseas territories which were not placed on Federal States. Paragraph 2 of Article 25 contains the words "at the earliest possible moment" and "immediately its consent has been obtained" which are not in Article 24 and would seem therefore to place a heavier obligation on States which have responsibility for colonial or overseas territories than on Federal States.

His delegation had submitted a single text which would combine Articles 24 and 25 (document E/CN.4/85, page 94). He considered that in the text submitted by the Government of the United Kingdom, it was left to a supreme court or other appropriate legal instrumentality to determine the respective jurisdictional sphere, whereas in the original draft, the government of the Federal State would determine what was appropriate for federal action. /There

There were three solutions to this problem: I. the words of paragraph (a) of Article 24 should be incorporated into paragraph 1 of the United Kingdom's revised draft; II, or alternatively that paragraph (b) of Article 24 should be made to correspond to paragraph 2 of Article 25; III. or that paragraph 2 of Article 25 should be made to correspond with paragraph (b) of Article 24. This would be done purely with the object to make the obligations of Federal States and of States having colonies or overseas territories identical.

In the one case, the federal authorities, in the other the metropolitan territory, is responsible for the overseas relations of the separate States or of the overseas territories as the case may be. In the case of overseas territories, we are faced with a geographical limitation. In the case of the Federal State, the scope of its laws is limited jurisdictionally.

The Indian suggestion is one which will not have the effect that the Indian Government expects. It would make it possible for any Federal State or State having colonies or overseas territories, to accede to the Covenant.

The CHAIRMAN stated that the text of Article 24 was adopted from the new ILO constitution on the problem of Federal States. She was in favour of retaining Article 24 as it stood because it has a certain measure of testing by time.

She pointed out that the United Kingdom is not a Federal State and does not have the problems of a Federal State and the provision cannot therefore have the same interest for the United Kingdom as it has for the United States of America.

/As to

As to Article 25, she stated that she would be willing to consider any changes that might be submitted for re-drafting this article but she reserved her right not to vote until she had seen the final wording.

Mr. ORDONNEAU (France) considered that from the point of view of international law, the Government of India was quite correct, but that it would be difficult to carry this out in practice. Although he was inclined to support the Geneva text, he felt that such a statement as "In the case of Federal States, the obligations of this Covenant apply to the Federal Government and the municipalities of the various States," might be acceptable.

Mr. HEYWOOD (Australia) felt that as a representative of a Federal State, he would prefer to maintain the phrasing of Article 24 with reference to federal action as it is. But he did feel that the objection of the representative of the United Kingdom with reference to discrimination should be dealt with by the Committee in order to remove this discrimination.

Mr. WU (China) stated that he would prefer the separation of Articles 24 and 25 because the system of a Federal State is quite different from a state having colonial or overseas territories.

Though he considered that there was some merit in the comment of the Indian Government, he was in favour, of retaining Article 24 because it would be acceptable to those federal states which are presented with these difficulties.

Mr. WILSON (United Kingdom) said that the words "at the earliest possible moment" could be omitted from Article 25 or else

/inserted

inserted into Article 24. He felt that it would be better to approve Article 24 in principle and then to consider the two articles together.

The representatives of France and the United Kingdom suggested that a drafting sub-committee should work on a redraft of these articles.

The CHAIRMAN appointed the representatives of Australia, the United Kingdom and the United States of America as a drafting sub-committee on Articles 24 and 25.

DISCUSSION OF ARTICLE 26 OF THE COVENANT

The CHAIRMAN read the Comment of the Government of the Netherlands.

She agreed with the comment of the Netherlands that the number of ratifications required under Article 23 should be applied to this article as well.

She pointed out that Members of the United Nations who are not parties to the Convention should not be entitled to suggest changes in the Covenant. She considered that some amendment should be made to the text which would give effect to this idea.

The amendment of the United States Government to Article 27 (document E/CN.4/AC.1/19, page 27) was read to the Committee for consideration. This would replace paragraph 1. The deletion of paragraph 2 was further proposed.

Mr. WILSON (United Kingdom) stated that the Committee had best leave this point to later discussion after the problem of enforcement had been decided.

It was decided to postpone discussion on this point until the question of implementation had been discussed.

/DISCUSSION

DISCUSSION OF ARTICLE 27 OF THE COVENANT.

The CHAIRMAN read the comments of the Governments of the Netherlands and Brazil on this article.

She stated that her delegation favoured the deletion of this article.

The representatives of the United Kingdom, Union of Soviet Socialist Republics and France favoured deletion of this article as well.

Mr. AZKOUL (Lebanon) stated that this article had originated with the representative of Lebanon. It was thought that the definition of the individual human rights and their relations were still in a fluid stage and that it might therefore be possible to have one right interpreted in conflict with another.

DECISION: It was decided to delete Article 27 by a vote of six for the deletion.

DISCUSSION OF THE DRAFT DECLARATION ON HUMAN RIGHTS

The CHAIRMAN thought that the Committee might decide to consider those articles as accepted on which no comments have been made nor amendments submitted.

Secondly, she felt that the Committee should first consider the substantive articles beginning with Article 4 which practice had been applied during the discussion of the Covenant.

Mr. PAVLOV (Union of Soviet Socialist Republics) drew the attention of the Committee to the statement of the USSR which had been circulated to the Committee. This statement applied to the Declaration as well as to the Covenant. He reserved the right to make further amendments for the improvement, if need be, of the Declaration.

/Mr. WILSON

Mr. WILSON (United Kingdom) read the general comments of the United Kingdom on the Draft Declaration as contained in document E/CN.4/82/Add.1, page 2.

The Committee decided to discuss first the substantive articles of the Declaration and then proceed to a discussion of Articles 1, 2, and 3.

The meeting rose at 5:10.