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COMMISSION ON HUMAN RIGHTS

DRAFTING COMMITTEE

SECOND SESSION

SUMMARY RECORD OF THE THIRTY-SIXTH MEETING

Lake Success, New York
Monday, 17 May 1948, at 2:30 p.m.

<u>Chairman:</u>	Mrs. Franklin D. ROOSEVELT	United States of America
<u>Rapporteur</u> and <u>Vice-Chairman:</u>	Mr. Charles MALIK	Lebanon
<u>Members:</u>	Mr. E. J. R. HEYWOOD Mr. H. SANTA CRUZ Mr. T. Y. WU Prof. R. CASSIN Mr. A. P. PAVLOV Mr. G. WILSON	Australia Chile China France Union of Soviet Socialist Republics United Kingdom

Representatives of Specialized Agencies:

Mr. JENKS	International Labour Organization
Mr. O. STONE	International Refugee Organization
Mr. R. LIEBAR	United Nations Educa- tional, Scientific - and Cultural Organi- zation

Consultants from Non-Governmental Organizations:

Miss T. SENDER	American Federation of Labour
Dr. F. R. BIENENFELD	World Jewish Congress

Secretariat

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

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The CHAIRMAN read the text of a telegram addressed to Lady Dukeston expressing the Committee's condolence for the death of Lord Dukeston, whose loss was mourned by all who had collaborated with him in the work of the Human Rights Commission.

CONSIDERATION OF ARTICLES 7 THROUGH 11 OF THE DRAFT INTERNATIONAL DECLARATION OF HUMAN RIGHTS (E/CN.4/85)

The CHAIRMAN suggested that the representative of the World Jewish Congress, who had requested permission to speak on article seven, should be invited to do so at that time, so that the sub-committee, to which the drafting of that article had been referred, might take his remarks into account.

Dr. MALIK (Lebanon) heartily welcomed the opportunity to hear the views of the representative of the World Jewish Congress, who had made an important contribution to the work carried out in Geneva.

Mr. BIENENFELD (World Jewish Congress) thanked the Committee for affording him the opportunity to make a statement. He wished to refer to paragraph 2 of article seven, the deletion of which had been proposed by the representative of Brazil.

It was important that the paragraph should remain in the text of the article, for the principle of international law must be respected by all countries. It was this principle which was at the base of the international trials of war criminals; deletion of the paragraph would prevent such trials in the future, and would be in disharmony with resolutions adopted by the General Assembly. He therefore appealed to the members of the Committee to leave the text of paragraph 2 intact.

Article 8

The CHAIRMAN proposed the following draft for article 8: "Every-one is entitled to freedom from slavery and servitude in any form. Their practice is a challenge to the conscience of the world."

Mr. PAVLOV (Union of Soviet Socialist Republics) felt that it was not enough to state that slavery was inconsistent with the dignity of man, or was "a challenge to the conscience of the world;" the phrase "and shall be prohibited by law" should be included.

His delegation proposed the following draft for the article on slavery: "Slavery shall be prohibited in any form, direct or indirect. Slave trade shall be prohibited and attempts to engage in slave trade shall be punishable by law."

The CHAIRMAN thought that reference to prohibition by law would be inappropriate in a document such as the Declaration on Human Rights, because it concerned a method of enforcement.

Furthermore, in her opinion, reference to slave trade would be unnecessary if slavery as a whole were outlawed.

Mr. CASSIN (France) agreed with the representative of the United States that the prohibition of slavery should be expressed as a general principle, without stating specific examples, many of which were already covered by existing international conventions.

However, he expressed agreement with the USSR representative as to the existence, at present, of slave trade, but thought that the text proposed by his delegation would be a suitable one on which to reach a
/compromise

compromise agreement: "Slavery, in all its forms, shall be prohibited. Its practice is a challenge to the conscience of the world."

Mr. WILSON (United Kingdom) expressed his readiness to accept either the United States or the French text, but wondered as to the appropriateness of the phrase "its practice is a challenge to the conscience of the world" in the Declaration. That phrase constituted a commentary on the principle enunciated in the article and, whereas he agreed with the idea expressed, he thought that the inclusion of such commentary in one article might lead to the inclusion of similar commentaries in all the articles of the Declaration. He would therefore vote in favour of the proposed United States text, but with the omission of the last sentence.

Mr. WU (China) agreed with the remarks of the United Kingdom representative. He suggested that the article should be worded as follows:

"Everyone is entitled to freedom from slavery or involuntary servitude"

Mr. SANTA CRUZ (Chile) favoured the French text which, in his opinion, could serve as a compromise text. Although he agreed with the criticism of the United Kingdom representative, he thought that, in view of the gravity of the matter and taking into consideration the remarks of both the USSR and French representatives concerning the existence of slavery at the present time, the last sentence should be retained.

/The CHAIRMAN

The CHAIRMAN stated that the United States delegation would support the text proposed by the Chinese representative, which she proposed should be put to the vote first, after which the USSR and French proposals would be voted upon.

The proposal of the Chinese representative was rejected by three votes to three, with one abstention.

The USSR proposal was rejected by four votes to one, with one abstention.

The first sentence of the French proposal, "Slavery in all its forms shall be prohibited," was adopted by five votes to one, with one abstention.

The second sentence of the French proposal, "Its practice is a challenge to the conscience of the world," was rejected by three votes to two, with two abstentions.

Mr. SANTA CRUZ (Chile) thought that in view of the brevity of the article as adopted, it could easily be included in article 4, as suggested by the French delegation.

Mr. PAVLOV (Union of Soviet Socialist Republics) disagreed, and observed that the inclusion of the sentence into article 4 would reduce the article dealing with the right to life to a mere prohibition of slavery. It would be more logical to leave article 4 as drafted, and include the statement on slavery under a separate article.

The CHAIRMAN suggested placing the article on slavery immediately following article 4, thus changing its number from article 8 to article 5.

The Chairman's suggestion was unanimously adopted.

Article 9

Mr. CASSIN (France) felt that the text proposed by his delegation for article 9 (document E/CN.4/Add.8) was preferable to the original Geneva text because it combined man's various attributes, his honour and reputation, the
/the right

the right to privacy of family life and of correspondence in one whole. Moreover, he objected to the use in the French translation of the Geneva text of the word "abusif".

Mr. HEYWOOD (Australia) thought that the French text was similar to the one proposed by the United States (document E/CN.4/AC.1/20) but he preferred the former because it contained a reference to protection by the law of the various rights mentioned, rather than a general reference to the fact that everyone was entitled to freedom from interference with those various rights.

Mr. WU (China) favoured the draft proposed by the Netherlands delegation which emphasized the rights of the individual rather than stressing the lawfulness of those rights.

Mr. WILSON (United Kingdom) thought that it would be more appropriate to include reference to family life in article 13, which dealt with that subject at greater length.

He drew the Committee's attention to the text proposed by his delegation, contained in document E/CN.4/82/Add.9.

Mr. SANTA CRUZ (Chile) agreed that it would be preferable not to mix different concepts in the same article. He drew the Committee's attention to the Declaration adopted in Bogota, where the honour and reputation of an individual, the inviolability of his domicile and the secrecy of his correspondence were dealt with in three paragraphs. He agreed with the representative of China that those concepts should be stressed as being the rights to which everyone was entitled.

The CHAIRMAN proposed a rewording of the United States proposal, eliminating reference to "family".

Mr. WILSON (United Kingdom) withdrew the United Kingdom proposal and expressed his support of the new United States text.

Mr. SANTA CRUZ (Chile) said that he would be ready to support the United States text provided the word "unlawful" were included to qualify the word "interference," since interference could be unreasonable and yet fully in compliance with existing legislation.

Mr. HEYWOOD (Australia) pointed out that the use of the words "protection under law from" instead of "freedom from" would meet the obligations expressed.

Mr. CASSIN (France) favoured the Australian suggestion as "protection under law" was a wide concept which included both statute law and common law.

The CHAIRMAN proposed that the article would be drafted as follows:

"Everyone is entitled to protection under the law from unreasonable interference with his reputation, family, home, or correspondence."

The Chairman's proposal was unanimously adopted.

Article 10

Mr. WILSON (United Kingdom) suggested that the two paragraphs of the article should be considered separately.

With reference to paragraph 1, he proposed that everything up to the words "there shall be liberty" should be deleted.

The CHAIRMAN thought the text should then be rephrased in accordance with the wording adopted for the preceding article, and should read: "Everyone is entitled to freedom of... etc."

Mr. SANTA CRUZ (Chile) said that since no limitations were stated in the corresponding article of the covenant, none should appear in the Declaration.

/The CHAIRMAN

The CHAIRMAN pointed out that it had not been finally decided whether the limitations in the covenant would be stated specifically in every article or expressed generally to cover all articles. She drew attention to the fact that the limitation contained in article 2 of the Declaration would apply to the rights expressed in article 10.

Mr. CASSIN (France) felt that there was some danger in relying too greatly on one article to provide limitations for the whole Declaration.

Moreover, the more one concerned oneself with the rights of the individual, the more the rights and interests of society as a whole become apparent.

Recalling the sudden influx of a half million refugees into Europe during the Spanish Civil War, Mr. Cassin observed that, had the Government allowed those refugees to move about without restrictions, they might have caused themselves and the host country a great deal of damage by settling in already overcrowded areas. His country was among the most progressive in the world, he said, but in the interests of its own people it could not endorse freedom of movement without specifying certain restrictions under the law.

Mr. PAVLOV (Union of Soviet Socialist Republics) stated that he would support paragraph 1 insofar as it corresponded to the parallel article in the Covenant. He thought, however, that the words "general law" were not clear and should be replaced by a more precise expression.

With respect to paragraph 2, he thought that an important omission had been made and suggested the addition of the phrase "in accordance with the established laws of that country" after the words "their own country." Without that phrase, the second paragraph implied that individuals could leave their country at will, forgetting duty to the fatherland. The war had produced numerous examples of the results of such negligence. It would be morally wrong and contrary to democratic ideals to encourage such disregard of duty. Therefore, the paragraph should be amended as he proposed.

Mr. SANTA CRUZ (Chile) felt that the USSR representative had raised an interesting point in connection with the rights of individuals and society. He agreed that obligations of individuals toward their respective states were determined by the states themselves; but in view of the varying extent of national obligations, he opposed any general limitation in Article 10 of the right to free movement, and stated that he would only consider expressly defined limitations.

Mr. AZKOUL (Lebanon) drew a distinction between the declaration, which laid down the absolute, positive principles on which the rights of man were based, and the convention, which indicated the limitations of those rights. He therefore suggested that the question of limitations should not be considered in connection with articles of the declaration.

The CHAIRMAN, noting that the discussion had drifted to paragraph 2 of Article 10, reverted to paragraph 1. The United States amendment to omit the limitations in paragraph 1, being further removed from the Geneva text than the French proposal, was put to the vote first.

The Committee adopted the United States amendment by five votes to one with one abstention.

The CHAIRMAN then took up paragraph 2 to which, she said, the United States drafting amendment also applied. The Brazilian amendment raised no objections, but the Mexican amendment might be superfluous in view of the fact that paragraph 2 seemed to deal mostly with the acquisition of new nationality. The Chairman also pointed to a USSR amendment to that paragraph.

/Mr. CASSIN

Mr. CASSIN (France) stated that while the problem of free movement involved both emigration and immigration, the present article was only concerned with individuals' right to emigrate; that right might create a problem for the countries of emigration which, contrary to countries of immigration, might then have no control over the matter. He therefore felt that the Netherlands amendment to paragraph 2 constituted the most reasonable compromise between the rights of individuals to free movement and the right of states to impose certain obligations on their citizens. Consequently, he proposed that the limitation clause of paragraph 1 should be included in paragraph 2; should that proposal be rejected he would suggest a vote on the Netherlands amendment.

The CHAIRMAN pointed out that over-all limitations of individuals' rights would be laid down in Article 2. As regards the present article, its purpose might be to cover cases similar to that of the Russian wives who were unable to join their English and American husbands abroad.

Mr. WILSON (United Kingdom) agreed with the Chairman's remarks. He also supported the Lebanese representative's statement and felt that limitations in the declaration, beyond the general principles in Article 2, once started, would lead to an infinite number of restrictive provisions. The declaration should rather aim at the positive absolute of human rights. He further suggested that the text of the first part of paragraph 2 might be brought in line with Article 11 of the draft covenant, to read as follows: "the right to leave any country, including his own..."

/Mr. PAVLOV

Mr. PAVLOV (Union of Soviet Socialist Republics) felt that his amendment to paragraph 1 -- which corresponded to the Netherlands amendment to paragraph 2, both amendments setting certain limits to free emigration -- was even more justified in the light of the United Kingdom suggestion since the departure of any foreigner from a given country always entailed some procedure. He strongly protested against reference to the case mentioned by the representative of the United States, stating that it was a completely domestic matter. He insisted that a vote should be taken on his amendment.

Mr. SANTA CRUZ (Chile) felt that while not objecting to the French amendment, he would vote against it in view of consideration which had explained before.

The CHAIRMAN then proceeded to the vote on amendment to the first part of paragraph 2.

The USSR amendment was rejected by five votes to one, with one abstention.

The CHAIRMAN stated that, as Representative of the United States, she would vote against the French amendment.

Mr. WU (China) also said that he would vote against that amendment as being superfluous in view of the limitations contemplated in Article 2.

The French amendment was rejected by four votes to two, with one abstention.

The United States amendment was accepted by five votes to none, with two abstentions.

The amendment suggested by the United Kingdom representative was accepted by five votes to none, with one abstention.

/Mr. WILSON

Mr. WILSON (United Kingdom) speaking on the second part of paragraph 2, felt that the text was not clear in its present form. If the intention was to lay down the right of individuals to immigrate, then the following clause might be included: "and, if they so desire, settle in any country willing to allow them to do so." He thought that it was essentially a question of an individual's right to divest himself of his nationality.

The CHAIRMAN agreed, and recalled that the intention in Geneva had been to ensure individuals' right to divest themselves to their nationality.

Mr. CASSIN (France) agreed that the text as it stood might lead to dual citizenship.

Mr. SANTA CRUZ (Chile) also thought that the article might raise difficulties and suggested that the matter of citizenship should be considered in a separate article, article 10 to deal thus only with the right of free movement.

Mr. WILSON (United Kingdom) agreed with the representative of Chile, and pointed out that the question of citizenship could be taken up in connection with Article 15, dealing with nationality.

Mr. BIENNENFELD (World Jewish Congress) saw a misunderstanding with regard to that article which, unrelated to immigration, was only intended to provide emergency asylum to persecuted persons unable to obtain visas in time. He recalled that Lord Dukeston had also opposed that article on the grounds that it confused the concepts of immigration and asylum; it had consequently been ^{proposed} to add the

/following

following sentence to the Geneva draft of Article 11: "Everybody has the right to seek and be granted temporary asylum for persecution until he himself, or an international agency working under the auspices of the United Nations, has found a new place of residence for him." Thus it would be clear that the asylum granted was temporary and that the refugees would be taken care of in accordance with provisions of the IRO Constitution.

Mr. WU (China) proposed that the word "granted" in the first sentence should be deleted because it constituted an imposition on governments. He also proposed the deletion of the second sentence of paragraph 2, which included a limitation clause.

Mr. CASSIN (France), in the light of the remarks by the representatives of China and of the World Jewish Congress, felt that since it was unreasonable to expect individual countries to assume responsibility for refugees, it should be the duty of the United Nations to find asylum for refugees. To that end the United Nations could carry on negotiations with specialized agencies and individual states. Feeling that a universal declaration should include provisions not otherwise found in national constitutions, he disagreed with the Netherlands view on that question. He further noted that the points raised by the Brazilian and Chinese Governments would be met by the French alternative draft of that article (document E/CN.4/82/Add.8, Article 10). However, he opposed deletion of the limitation clause.

/Miss SENDER

Miss SENDER (American Federation of labor), pointing out that the declaration had been inspired by Nazi persecutions, recalled that many refugees had perished because they had been returned to Germany by countries in which they had sought refuge. Furthermore, provision for international action would not necessarily cover emergency cases. She therefore suggested that the text should be retained in its present form.

Mr. WU (China) raised the question of whether, according to the French proposal, the United Nations Organization or its individual members would have to take action on behalf of the refugees.

Mr. WILSON (United Kingdom) thought that further definition of "the right to asylum" was required in order to distinguish it from "the right to immigrate."

With regard to the French suggestions, he thought that since countries would have to deal principally with cases arising at their frontiers, there would be no time for international consultation. His own government preferred deletion of the second sentence, and the following re-drafting of the first sentence: "Everyone shall have the right to seek, and may be granted temporary asylum, from political, racial and religious persecution." In that way governments could not be attacked for granting asylum. He thought that the text suggested by the representative of the World Jewish Congress was too detailed and that the addition of the word "temporary" was sufficient.

Mr. PAVLOV (Union of Soviet Socialist Republics) supported the French proposal, as well as the enumeration of types of persecution in the United Kingdom amendment which however, he felt, should also include scientific persecution.

/He also

He also supported the French representative's proposal to retain the limitation clause, without which it might be possible for some governments to grant asylum to war criminals on the basis of the declaration. He stated that he would support both amendments, but agreed with the representative of China that the role of the United Nations in the matter had not been clearly defined.

Mr. CASSIN (France), in reply to the United Kingdom representative, said that the declaration should be based on the rights of individuals and not states. While agreeing with the USSR representative that scientific persecution was a reality, he preferred reference to persecution in general. As regards the part to be played by the United Nations, he stated that it would be the duty of the Organization as such to guarantee that asylum granted by its Members to refugees would be temporary; knowing thus that they would not carry the burden alone, countries would hesitate less to grant asylum. Mr. SANIA CRUZ (Chile) agreed with the representative of France and supported his proposals.

Mr. AZKOUL (Lebanon) asked for clarification of the "right to seek refuge" in article 10 of the French text (E/CN/82/Add.8). Under that article, he said, rapid action could be taken if United Nations co-operation were provided not by agreement on each case, but after the refugee had been granted asylum; he was ready to accept such an interpretation. As regards the question of criminals, he pointed out that the meaning of the word "persecution" would solve the difficulty since fugitive criminals were never considered victims of persecutions. He thought that enumeration of types of persecution, should be avoided lest some types be inadvertently omitted. He concluded by saying that the Chinese proposal might be amended to include the words "temporary" and "the right to find asylum."

/Mr. WU

Mr. WU (China) accepted the United Kingdom formula "may be granted". He opposed enumeration of types of persecution.

Mr. CASSIN (France), in reply to the representative of China, said that the most important consideration was to induce Members of the United Nations to say from the outset that, in case of persecution, they would grant asylum to the refugees. He was against the inclusion of the word "temporary."

The CHAIRMAN proposed the formation of a working group to draft a new article 11.

The Chairman's proposal was accepted.

The meeting rose at 5:50 p.m.