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ECONOMIC
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CONSEIL
ECONOMIQUE
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UNRESTRICTED

E/CN.4/AC.1/SR.37
28 May 1948
ENGLISH
ORIGINAL: FRENCH

COMMISSION ON HUMAN RIGHTS

DRAFTING COMMITTEE

Second Session

SUMMARY RECORD OF THE THIRTY-SEVENTH MEETING

Held at Lake Success, New York
on Tuesday, 18 May 1948, at 11 a.m.

<u>Chairman:</u>	Mrs. Franklin D. ROOSEVELT	United States of America
<u>Members:</u>	Mr. E. J. H. HEYWARD	Australia
	Mr. H. SANTA CRUZ	Chile
	Mr. T. Y. WU	China
	Mr. R. CASSIN	France
	*Mr. AZKOUL	Lebanon
	Mr. A. V. PAVLOV	Union of Soviet Socialist Republics
	Mr. G. WILSON	United Kingdom

Consultant of a Non-Governmental Organization:

Miss T. SENDER	American Federation of Labour
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Secretariat:

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

*Alternate Representative

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EXAMINATION OF ARTICLES 11 AND 12 OF THE DRAFT INTERNATIONAL DECLARATION ON HUMAN RIGHTS

The CHAIRMAN opened the discussion on article 12 of the Draft Declaration (document E/CN.4/85) and invited members to submit their comments. The article read as follows:

"Everyone has the right everywhere in the world to recognition as a person before the law and to the enjoyment of fundamental civil rights."

Speaking as the representative of the United States of America, she submitted to the Drafting Committee the re-draft of article 12 proposed by her delegation (document E/CN.4/AC.1/20), which, after the suppression of the words "in the world", read:

"Everyone is entitled everywhere to the right to recognition as a person before the law."

Mr. PAVLOV (Union of Soviet Socialist Republics) remarked that the Draft Covenant contained an article dealing with the same point.

The CHAIRMAN pointed out that article 15 of the Draft Covenant established that "No person shall be deprived of his juridical personality."

Mr. SANTA CRUZ (Chile) recalled that when the articles of the Draft Covenant had been discussed, his delegation had supported that text, although the United Kingdom and United States delegations had objected that the expression "juridical personality" had no meaning in the law of their countries. In his country, as in many others, that expression meant the right of the individual to exercise certain rights and to incur certain obligations, for example, the right to be represented in law. The authors of the article had intended it to reaffirm the principle of non-discrimination, according to which every person must enjoy fundamental civil rights. Even if those rights were already defined elsewhere, it was desirable to reaffirm them in this context.

/Mr. CASSIN

Mr. CASSIN (France) stated that his delegation had submitted no amendment to the text of article 12 because it thought it essential to retain it in the Draft Declaration as it stood. The text had a double significance. On the one hand, the expression "a person before the law" laid down the principle that everyone had the right to enjoy fundamental civil rights. That provision was directed against the modern forms of slavery which the Committee had condemned at its last meeting and which were twofold. For instance, there would have been no need to reaffirm that a human being could not constitute the property of another human being, had not certain heads of State, such as Hitler, sought in the last ten years to revive the ancient idea that an individual considered as a slave had no right to marry, to be a creditor or to own property.

In reply to the Chairman, who did not think that the word "everywhere" was of great importance, he would point out that it did have a bearing on fundamental civil rights. Here was a difficult problem, left unsolved by the declaration, namely, the status of individuals living on foreign soil. There was not a single country which did not discriminate to some extent between its own subjects and aliens. The rights of aliens in respect of the countries in which they lived should therefore be defined more closely. The Draft Declaration should guarantee them a minimum of fundamental rights.

Mr. WILSON (United Kingdom), supporting a statement made by the United States representative, stressed that the phrase "fundamental civil rights" had no meaning in Anglo-Saxon legislation and that its inclusion in the article under discussion might cause some confusion.

Mr. SANTA CRUZ (Chile) agreed with the point of view expressed by the French representative. He observed that the conception of fundamental civil rights was basically the same in all legislations. It provided for the right of the individual to marry, to make wills, to sign

leases, etc. The aim of the provision in question was to avoid the discrimination toward foreigners which might be exercised in certain countries. He did not see how it could call forth opposition and suggested it should be carefully studied before the Committee considered its suppression.

The CHAIRMAN remarked that the difficulty had arisen because the American lawyers who had been consulted had been unable to agree on the exact meaning of the phrase "fundamental civil rights". If that expression were adopted by the Committee, it would have no meaning in Anglo-Saxon law. For that reason, the United States delegation had formulated the proposal which she had read out at the beginning of the meeting.

Mr. PAVLOV (Union of Soviet Socialist Republics) asked whether it would not be possible to adopt the formula used in the Covenant, where the USSR legislation corresponded to the conception embodied in French law. He had in mind political, economic and social rights, and thought the wording of the Declaration should correspond to the text of the Covenant in that respect. He proposed that the words "in accordance with the laws of the country" should be added to that formula.

The CHAIRMAN, speaking as the representative of the United States, recalled that her delegation had pointed out at the time of the discussion of the Covenant that the conception of "juridical personality" did not exist in United States legislation, and that it had decided to agree to the provisional inclusion of that phrase only on condition that legal experts would later come to an understanding on its exact meaning.

/Mr. SANTA CRUZ

Mr. SANTA CRUZ (Chile) observed that two distinct conceptions were involved: that of the juridical personality and that of fundamental civil rights.

The concept "juridical personality" contained in it recognition that a person had certain rights and obligations in accordance with the laws of his or her country, varying according to age, sex and other conditions.

The concept of fundamental civil rights referred to in the second part of the article was a different one. Its aim was to protect the individual from measures of discrimination and to ensure his or her enjoyment of fundamental rights.

It would be logical for the Committee to retain the first part of the sentence, but he urged that the second part of the sentence should in any case remain in the Draft Declaration; it had a wider scope and should contain a condemnation of possible discriminatory measures against aliens.

The CHAIRMAN, speaking as the United States representative, insisted that an exact definition of fundamental civil rights should be formulated before her delegation was called upon to reach a decision.

Mr. WU (China) submitted a draft of article 12 which, he believed, would receive the approval of all the members. The text was as follows:

"Every person has the right to recognition before and equal protection under the law."

Mr. SANTA CRUZ (Chile) pointed out that civil rights were a matter entirely distinct from political, economic and social rights. Such civil rights were moreover analogous in a number of countries,

/including

including the United States of America, the United Kingdom, France and Chile. He thought that an equivalent term covering rights relating to marriage, wills, gifts, leases, sales, and the like, i.e. transactions between individuals in general, must exist in Anglo-Saxon legal language.

Mr. WILSON (United Kingdom) wished to know whether the adjective "fundamental" added anything to the meaning of the article, and proposed its deletion.

Mr. SANTA CRUZ (Chile) explained that the word was intended to single out the most important of the many civil rights which existed.

Mr. CASSIN (France) agreed with the representative of Chile that the word "fundamental" should be retained, as it was impossible, in the present state of feeling, to impose on any Government the obligation to treat aliens on a footing of absolute equality with its own nationals.

The recent example of Hitler, who had shown it was possible to impose the concept that a whole class of individuals could be deprived of a large part of their elementary civil rights, made it all the more essential that these fundamental rights should be guaranteed. That was quite a different matter from a mere denial of the juridical personality, which in fact amounted to telling the individual that he was non-existent.

The CHAIRMAN, speaking as the United States representative, observed that in her country there were as many jurisdictions as there were States and that no federal authority was capable of compelling those States to alter their own laws.

Mr. PAVLOV (Union of Soviet Socialist Republics) observed that in the State of Georgia of the United States, a married woman had no legal existence apart from her husband's. He asked whether article 12 envisaged laws of that kind.

/The CHAIRMAN

The CHAIRMAN, speaking as the United States representative, repeated that her delegation could not agree to the reference to fundamental civil rights, since no exact definition of those rights existed in her country, where they varied from State to State.

Mr. WU (China) withdrew his amendment.

Mr. SANTA CRUZ (Chile), replying to a proposal by the CHAIRMAN, moved that a vote should be taken first on the deletion of the last part of article 12 ("...and to the enjoyment of fundamental civil rights"), ^{as} proposed by the United States amendment.

The amendment proposed by the United States delegation
was adopted by three votes to two, with two abstentions.

Mr. WILSON (United Kingdom) proposed a slight drafting change of the English text of the article, involving no change in the French text.

Article 12 was adopted in the following form:

"Everyone has everywhere the right to recognition as a person before the law."

Mr. CASSIN (France) read the new text of article 11 of the Draft Declaration as drawn up by a Drafting Sub-Committee composed of the representatives of China, France and the United Kingdom (document E/CN.4/AC.1/39):

"Everyone shall have the right to seek and may be granted asylum from persecution. The United Nations is bound to secure this asylum in agreement with Member States.

"Prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations do not constitute persecution."

He would add that the wording had been inspired by the fact that it was impossible to recognize a right, in this case the right to asylum, if no one was bound to respect it. The United Nations should, therefore, conclude agreements to provide material assistance in those very varied cases where some countries might have to grant asylum but not be able to bear alone the resulting financial burden.

/Mr. WILSON

Mr. WILSON (United Kingdom) asked that the words "shall have the right..." in the first sentence of the proposed text should be replaced by "has the right...".

Mr. CASSIN (France) agreed to this alteration on behalf of the Drafting Sub-Committee.

The CHAIRMAN felt that the obligation for the United Nations to grant asylum to any persecuted person should be in the form of a resolution of the General Assembly and should not be embodied in the text of the Declaration.

Mr. AZKOUL (Lebanon) could not accept the text of the Drafting Sub-Committee. The right to asylum should be stated clearly and explicitly. Moreover, any measures implementing the exercise of that right were out of place in the Declaration, and should be laid down in a Convention, one on nationality, for example.

He suggested the following wording for the first sentence: "Every one has the right to seek and to be granted asylum during persecution."

Mr. WU (China) agreed with Mr. Azkoul. The Declaration must not contain any implementing articles and the whole of it should be so worded as to be understood by the greatest possible number of people, more particularly by those not versed in the law.

Miss SENDER (American Federation of Labor) preferred the wording of article 11 as drafted in Geneva.

Replying to the comments made by the Lebanese representative, Mr. CASSIN (France) said the Committee should take into account the fact that all countries did not accept unconditionally the principle of the right to asylum. The article would therefore be quite ineffective if the United Nations failed to encourage States to grant asylum and to give them the necessary assistance. It was not stated which States had to grant asylum in a specified case.

The State nearest to the one where persecution had taken place might not have the necessary funds to take in those who were persecuted and, what was more, the influx of refugees might have a disturbing effect on the national life of that country.

To secure the General Assembly's agreement to accept the new obligation to grant asylum, it had been necessary to make it clear that prosecutions genuinely arising from non-political crimes did not constitute persecution.

Mr. AZKOUL (Lebanon) reaffirmed that the Declaration must proclaim the right to asylum, even though that right might not be universally recognized today. The United Nations must bear a share of the burden falling upon the countries granting asylum to persecuted persons, but that principle had to be established by means of a resolution of the General Assembly and not by a clause of the Declaration. Lastly, it was obvious that prosecutions arising out of a crime under common law did not constitute persecution.

Mr. WILSON (United Kingdom) approved the use of the following expression in the first sentence: "Every one...may be granted asylum". It had to be borne in mind that the obligation to grant asylum would not be assumed by all States.

The ^{CHAIRMAN} CHAIRMAN asked for the first sentence to be amended as follows: "Everyone has the right to seek and may be granted temporary asylum from persecution in other countries".

It was to be foreseen that victims of persecution would receive temporary asylum and that the country receiving them was not bound to guarantee them the right of permanent residence. Furthermore, cases of religious persecution had to be excepted by specifying that the article referred to persecutions in another country. As regards the obligations the United Nations might assume under that article, it should be remembered that it was unable to act rapidly; one should bear in mind the difficulties encountered in

connexion with the setting up of the International Refugee Organization, which was not a permanent body.

Mr. HEYWARD (Australia) could not agree to article 11 containing implementation measures: the obligations to be entered into by the United Nations must be recorded in the text of a convention.

Mr. AZKOUL (Lebanon) approved the action of the Drafting Sub-Committee in mentioning the obligations of the United Nations as regards the right to asylum. Otherwise, the first sentence would proclaim the right for all persecuted persons to seek asylum without really enabling them to find such an asylum.

Mr. PAVLOV (Union of Soviet Socialist Republics) asked that article 11 should specifically debar Fascists and Nazis from the right to find asylum, and proposed the following addition to the text: "in particular, the right of asylum shall not be granted to Fascists and Nazis prosecuted for their activities."

Mr. CASSIN (France) asked for a separate vote to be taken on the three sentences composing the draft text of article 11, and then **for** a vote to be taken on the whole of that text.

Mr. PAVLOV (Union of Soviet Socialist Republics) approved the request of the French representative and stressed the importance of the USSR amendment depriving Fascists and Nazis of the right to asylum.

/The CHAIRMAN

The CHAIRMAN accepted the procedure proposed by the French representative, which was in accordance with the Rules of Procedure.

Mr. AZKOUL (Lebanon) proposed to vote first on the USSR amendment, and then on each of the sentences of the article, beginning with the last and proceeding in reverse order, i.e. the third, then the second, and then the first.

The CHAIRMAN accepted the proposal of the Lebanese representative.

Mr. WILSON (United Kingdom) said that he would vote against the USSR amendment because Fascist and Nazi activities formed part of the "acts contrary to the purposes and principles of the United Nations" as specified in the text of the Drafting Sub-Committee.

The addition proposed by the USSR representative was rejected by four votes to one, with two abstentions.

Mr. PAVLOV (Union of Soviet Socialist Republics) enquired whether the Committee accepted the interpretation of the United Kingdom representative and meant the activities of Fascists and Nazis to be excluded from the right to asylum as "acts contrary to the purposes and principles of the United Nations."

Mr. SANTA CRUZ (Chile) said that was the way he interpreted the proposed text, which covered all acts contrary to the purposes and principles of the United Nations and not only those of Fascists and Nazis.

Mr. CASSIN (France) said that he too interpreted the text in the same way as the United Kingdom representative.

/The third..

The third sentence of article 11 was adopted by five votes to two.

The text being as follows: "Prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations do not constitute persecution."

The second sentence: "The United Nations is bound to secure this asylum in agreement with member States", was not adopted, the voting being three votes for and three against.

Mr. AZKOUL (Lebanon) withdrew the amendment he had submitted to the first sentence of the article, as the discussion had shown that the Committee was not prepared to proclaim unconditionally the right to asylum. But he asked the United States representative to replace the expression "temporary" by the expression "during persecution".

Speaking as the United States representative, the CHAIRMAN pointed out that, if persecution were to continue, the State granting asylum might wish to be released from its obligation.

Mr. CASSIN (France) stressed again the importance of the sentence relating to the obligations of the United Nations, in the absence of which some States might be led to refuse that right of asylum.

Mr. Cassin thought there was no need to speak of "temporary asylum" or "asylum during persecution", but he agreed to the insertion of the words "in other countries" proposed by the United States delegation.

Replying to a remark made by the United States representative, Mr. AZKOUL (Lebanon) said there was no need to limit the period during which a State could grant asylum, because the obligation to grant such
/asylum

asylum was not contained in the text on which the Committee was about to vote.

By five votes to none, with two abstentions, the Committee adopted the following draft of the first sentence:

"Everyone has the right to seek and may be granted asylum from persecution."

By three votes to two, with one abstention, it rejected the addition to the first sentence of the expression "during persecution", suggested by the Lebanese delegation .

With a vote of two for, two against, and three abstentions, it did not adopt the insertion into the first sentence of the word "temporary" which the United States delegation had proposed adding to the word "asylum".

By six votes to none, with one abstention, it adopted the addition of the expression "in other countries" proposed by the United States delegation.

By six votes to none, with one abstention, the Committee adopted the whole of article 11 thus amended.

The meeting rose at 1.15 p.m.