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HUMAN RIGHTS COMMISSION

DRAFTING COMMITTEE

Second Session

SUMMARY RECORD OF THE THIRTY-EIGHTH MEETING

Held at Lake Success, New York,
on Tuesday, 18 May 1948 at 3 p.m.

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| <u>Chairman:</u> | Mrs. Franklin D. Roosevelt | United States of America |
| <u>Members:</u> | Mr. E.J.R. HEYWOOD | 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. Geoffrey WILSON | United Kingdom |

Consultants from non-governmental organizations:

- | | |
|------------------|---|
| Miss Toni SENDER | American Federation
of Labor (AFL) |
| Mr. NOLDE | World Federation of United
Nations Associations |
| Mr. VANISTENDAEL | International Federation
of Christian Trade Unions |

Secretariat:

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

*Alternate

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CONTINUATION OF THE DISCUSSION ON THE DRAFT INTERNATIONAL DECLARATION
ON HUMAN RIGHTS

ARTICLE 14

The CHAIRMAN called the Committee's attention to article 14 of the Draft International Declaration on Human Rights. She read the article and the comments made by the Governments of Brazil and the Union of South Africa.

Mr. CASSIN (France) reminded the meeting that he had proposed another text for this article, which he considered better, i.e. "ownership of property is a right, its exercise shall be regulated by the laws of the land."

Mr. WILSON (United Kingdom) suggested simplifying the text by deleting the end of the first paragraph, which would then read "Everyone has the right to own property."

Mr. AZKOLL (Lebanon) supported the United Kingdom representative's suggestion, which would remove any allusion to limitation of this right.

The CHAIRMAN, speaking as the representative of the United States, declared herself in favour of retaining article 14; she proposed, however, to modify the second paragraph. She supported the comment made by the Brazilian Government.

Mr. SANTA CRUZ (Chile) recalled the text of the draft adopted by the Inter-American Juridical Committee at the Bogotá Conference; "everyone has a right to own such private property as meets the essential needs of decent living, and helps to maintain the dignity of the individual and of the home."

/He thought

He thought that article 14 in its present form was wrong, because a right was not affirmed if it was stated at the same time that it could be suspended by law. The question to be decided was whether ownership of property was an essential and fundamental right. The idea of ownership of property was regarded from different angles in different countries; it was necessary to find a minimum common denominator or, if that proved impossible, to abandon the question altogether.

The CHAIRMAN thought that the text submitted by the Chilean representative appeared to limit the ownership of property to the level necessary to satisfy essential needs. That raised a difficulty; who would define exactly these "essential needs?" She would prefer the text suggested by the United Kingdom representative.

Mr. SANTA CRUZ (Chile) pointed out that the text drawn up at Bogotá did not limit the right to own property; it merely established to what extent it was to become an essential right, and each country would be free to determine reasonable limits in that connexion.

Mr. WILSON (United Kingdom) agreed with the arguments put forward by the Chilean representative. As he had not before him a copy of the proposed text, he made reservations as to the wording, but accepted the principle, which appeared to him correct.

Mr. CASSIN (France) pointed out that the text which would be adopted could only be the result of compromise. The members of the Committee were certainly in agreement on three points; (a) the natural inclination of everyone to possess material objects; this gave rise to

/the statement:

the statement: "Ownership of property is a right;" (b) the conception of the extent of the right to ownership of property: the formula suggested by the Chilean representative was likely to displease some countries; it was, therefore, necessary to state that ownership of property should be subject to the legislation of each country; (c) it was impossible to state categorically that an individual was entitled to such and such compensation; it had simply to be said that he would not be deprived of his property by any arbitrary measures.

Mr. SANTA CRUZ (Chile) regretted that he could not agree with the point of view put forward by the French representative. The purpose of the declaration, which was to establish essential rights, should not be forgotten. If States were granted the right to legislate on the matter, all that remained would be an abstract right.

He recalled that the French representative had asked for a formula based on a spirit of compromise. The easiest way would be to adopt a definition of the right to ownership of property, and that provided by the text adopted at Bogotá seemed the most suitable.

Mr. PAVLOV (Union of Soviet Socialist Republics) agreed with the French representative, that property should be subject to the laws of the land; he thought that this principle should be accepted by all. It seemed to him difficult to attempt to impose a system of property ownership, as each State might have a different conception of the matter. In Soviet countries common ownership was the basis of the regime, and such countries would be opposed to the adoption of any other system. He concluded that it was necessary to retain the idea that ownership applied alike to private ownership and common ownership, in conformity with the laws of the different States.

/Mr. WU (China)

Mr. WU (China) pointed out that divergencies of opinion arose chiefly in the interpretation of the right to own property. He agreed with the French representative that the final text of article 14 could only be the result of a compromise. It would be wise to try to find a compromise formula acceptable to all. If it were not possible to arrive at complete agreement, he suggested that article 14 should be deleted in toto.

Mr. SANTA CRUZ (Chile) said that his point of view had been interpreted in several different ways. He had not spoken in favour of any special system of ownership, but had simply said that the present text of the article established no such right. He thought that the conception held by the USSR fitted perfectly into the framework of the text which he proposed. He concluded that it was possible to establish that at least part of the property held should be held as of essential right.

The CHAIRMAN summed up the discussion, pointing out that the Committee had before it four amendments. The first, submitted by China, suggesting the deletion of the entire article; the second, put forward by Chile, suggesting the adoption of the text drawn up at Bogotá by the Inter-American Juridical Committee; the third, submitted by the United Kingdom, suggesting the deletion of the end of the first paragraph; the fourth, proposed by the Union of Soviet Socialist Republics, suggesting the addition of the words "private or common" to qualify property.

The CHAIRMAN put to the vote the Chinese amendment for the deletion of article 14.

/The amendment

The amendment was rejected by four votes to two, with two abstentions.

The Chairman put to the vote the Chilean amendment.

The amendment was adopted by three votes to two, with three abstentions.

As the two other amendments were no longer relevant, the Chairman put to the vote the question of retaining the second paragraph of article 14.

The retention of the second paragraph was approved by seven votes to none, with one abstention.

Mr. PAVLOV (Union of Soviet Socialist Republics) asked if the text of article 14 referred to "private property" or "property." He recalled that in the USSR private property was not the essential basis of "decent living" for individuals.

The CHAIRMAN read the text which had been approved.

Following an exchange of views, in which the representatives of Chile, the Union of Soviet Socialist Republics and the United Kingdom took part, Mr. WILSON (United Kingdom) suggested deletion of the word "private."

The proposal was adopted.

The CHAIRMAN suggested a modification in the text of the second paragraph.

Mr. CASSIN (France) pointed out that the proposed text could not be translated into legal French, although there was no basic difference in meaning.

/Mr. HEYWOOD (Australia)

Mr. HEYWOOD (Australia) suggested a new working of the text, consisting of the incorporation of the second paragraph in the first, which would then end with the words: "...and not be arbitrarily deprived of it."

The proposal was adopted.

The CHAIRMAN then stated that article 14 now consistent of a single paragraph, containing the text proposed by the Chilean representative, with the word "private" deleted, and concluding with the sentence suggested by the Australian representative.

Article 13

The CHAIRMAN read the draft of article 13 and the various documents relating to it. As the representative of the United States, she thought that this article might well be suppressed, since all the rights set forth therein appeared in other parts of the Declaration.

Mr. WILSON (United Kingdom) had no objection to the suppression of this article. He suggested in particular, that the first sentence should be suppressed, and he thought that the text suggested by the Economic and Social Council might be adopted. He recalled that suggested by the United Kingdom delegation: "Marriage shall not be contracted before the age of puberty and without the full consent of both intending spouses."

Mr. CASSIN (France) did not think that this article was useless. He did not think it was possible to disregard human groups and to consider each person only as an individual. There was in the world an unanimous movement to give the institution of marriage its full character and dignity.

/As regards

As regards freedom of consent, he thought that the form proposed by the United Kingdom representative might be improved. He recalled the text proposed by the French delegation: "No marriage can be contracted except by a man and woman of marriageable age and with their full consent."

Mr. MALIK (Lebanon), Rapporteur, recalled that at Geneva, he had made certain reservations concerning this article. It had just been suggested that this article should be omitted entirely because the rights set forth therein were mentioned elsewhere in the Draft Declaration. He thought that this omission would be exceedingly regrettable.

The family was the cradle of all human rights and liberties. It was in the family that everyone learned to know his rights and duties and it would be inexplicable if everything were mentioned except the family's right to existence. The text of article 13 represented a bare minimum, and he suggested once again the amendment which he had already proposed at Geneva and which had been rejected because certain countries, such as Uruguay, objected to the name of the Creator being mentioned with a capital. He did not see how the adoption of that amendment could go against the doctrine of the separation of Church and State.

After all, he pointed out, the "Creator" was not necessarily God; in certain philosophies, it might be Nature. There was no theological implication. He saw no reason why the word "Nature" should not be used instead of the word "Creator". The point on which he wished to insist was the fundamental and inalienable importance of the family.

/He thought

He thought that the family was entitled to protection from the State and the law and he asked the Committee to consider his amendment and to adopt the text drawn up at Geneva.

Mr. PAVLOV (Union of Soviet Socialist Republics) said that on fundamentals he was in agreement with the Lebanese representative. He pointed out that in the USSR the family was protected by law, but he thought the amendment proposed by Mr. Malik was pointless and might give rise to objection and complications.

As regards the second paragraph, he felt that it was unnecessary to bring any philosophical theories into the Declaration.

He suggested retaining the second part, emphasizing the equality of rights between man and woman after marriage. He proposed the following text:

"Men and women shall have the same right to contract marriage and shall have equal rights in their family life in conformity with the laws.

"The family deriving from the consent of both parties shall be protected by law."

Mr. WILSON (United Kingdom) sympathized with the Lebanese representative's point of view. He thought, however, that it was not appropriate to introduce at this point any comments, however relevant, on any given right. He suggested that the Lebanese representative might insert his amendment in the initial articles of the draft declaration which already contained certain philosophical considerations. In conclusion, he said he would vote against the Lebanese amendment and against the first sentence of Article 13.

/Speaking

Speaking as the representative of the United States of America, the CHAIRMAN agreed with the representatives of the Lebanon and the United Kingdom. As far as the second paragraph was concerned, she proposed the following wording: "Marriage and the family shall be protected by the law."

The CHAIRMAN put the Lebanese amendment to the vote.

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

Mr. MALIK (Lebanon), Rapporteur, recalled that the draft of the Inter-American Juridical Committee of the Bogotá conference contained the same idea.

He was entirely in agreement with the United Kingdom representative's suggestion provided that this fundamental conception of the family was inserted somewhere in the Draft Declaration.

Mr. CASSIN (France) thought that the Lebanese representative was right and the subject of the family could not be passed over in silence. He said that the first articles of the Declaration were devoted entirely to the individual and article 13 was the first which connected up the human being with the family; in like manner, article 15 linked the individual to the nation, etc. In the circumstances, it was necessary to consider the relationship of the individual with the family.

Discussion of the First Sentence of Article 13.

Mr. CASSIN (France) was in favour of retaining the first sentence.

Mr. PAVLOV (Union of Soviet Socialist Republics) thought there was no purpose in laying down that the family was based on marriage because it could hardly be based upon anything else.

/Mr. MALIK (Lebanon)

Mr. MALIK (Lebanon), Rapporteur, considered that a distinction should be made in the possible types of association. There could be family without the solemn ceremony of marriage.

Mr. PAVLOV (Union of Soviet Socialist Republics) noted a contradiction in this because a marriage was possible even if it was not solemnized, and he thought that the family, that is to say, the children, should be protected in all cases.

The CHAIRMAN put to the vote the question of whether or not the first sentence of article 13 should be retained.

The vote was taken.

There were three votes for, three against and two abstentions.

The CHAIRMAN ruled that the first sentence was deleted, but the representatives of the United Kingdom, Lebanon and France opposed this interpretation.

After a short discussion, the question was again put to the vote at the suggestion of the Lebanese representative.

It was decided to delete the first sentence by four votes to three, with one abstention.

Second sentence.

The CHAIRMAN recalled the proposal submitted by the Commission on the Status of Women. As the representative of the United States of America, she wished to propose the following which appeared preferable to her:

/"Men and women...

"Men and women shall have the same rights to contract marriage in accordance with the law."

Mr. CASSIN (France) feared that by stressing equality of rights the fundamental point of freedom of consent was being overlooked. He recalled that France had proposed the following text which bore in mind the proposal of the International Alliance of Women:

"Men and women of the age of puberty shall have the same freedom to contract marriage in accordance with the law."

The CHAIRMAN thought that the wording proposed by the United States of America was wider.

Mr. WILSON (United Kingdom) considered the point raised by the French representative was important and he recalled the amendment which he had already proposed:

"Marriage shall not be contracted before the age of puberty and without the full consent of both intending spouses."

Mr. SANTA CRUZ (Chile) was in favour of the amendment proposed by the United Kingdom representative which had the merit of covering the idea expressed by the French representative as well as laying down the equality of men and women in marriage. He thought that it should be established that men and women had the same fundamental right to dissolve marriage, although this was not recognized in all countries.

Mr. MALIK (Lebanon), Rapporteur, noticed a difference between the text adopted at Geneva and the amendment proposed by the United Kingdom: the latter brought the question within the purview of the authorities, instead of emphasizing the fundamental right of men and women to contract marriage.

/Mr. VANISTENDAEL

Mr. VANISTENDAEL (International Federation of Christian Trade Unions) drew the Committee's attention to the controversy which the text proposed by the Commission on the Status of Women might raise. The dissolution of marriage was unacceptable to millions of Christians and the text proposed was consequently in contradiction to that belief. He thought that the principle of complete equality between men and women should be maintained and those who wished to interpret that principle as being applicable also to the dissolution of marriage could do so without thereby hurting the feelings of Christians.

The CHAIRMAN put the text proposed by the Commission on the Status of Women to the vote.

The text was rejected by three votes to one, with two abstentions.

The CHAIRMAN then put the following United States amendment to the vote:

"Men and women shall have equal rights as to marriage in accordance with the law."

The United States amendment was adopted by five votes to none, with one abstention.

After a short discussion, the CHAIRMAN put the following United Kingdom amendment to the vote:

"Marriage shall not be contracted without the consent of the two parties and before the age of puberty."

The United Kingdom text was adopted unanimously.

Paragraph 2

Mr. WILSON (United Kingdom) considered that while the State could protect women, Society could not, and he proposed replacing the words "by the State and Society" by the words "by the law."

/Mr. SANTA CRUZ (Chile)

Mr. SANTA CRUZ (Chile) noted the difference between article 13 and article 26. Article 26 laid down the right of the family to social protection in the sense that the social legislation of the State should ensure the protection of the family. Article 13, however, laid down the moral and spiritual rights of the family; that was a wider conception and should be retained.

The Committee was drawing up a declaration and not a convention; it could, therefore, be stated that Society should protect the family and it would be for the State to promulgate the necessary laws.

Mr. PAVLOV (Union of Soviet Socialist Republics) considered it better to speak of the State and Society, rather than of the law.

He proposed the following text:

"Marriage and the family as well as the equality of rights of the spouses in marriage shall be protected by the State and Society."

The CHAIRMAN remarked that the point raised by the USSR representative was already covered by the United States amendment.

Mr. CASSIN (France) agreed with the representatives of Chile and the Union of Soviet Socialist Republics and considered that mention of the protection of the law alone would belittle the family and marriage. He also thought that the United States amendment already adopted made the amendment proposed by the USSR representative purposeless.

The CHAIRMAN put the United Kingdom amendment to the vote.

/The United Kingdom

The United Kingdom amendment was not accepted, by three votes to three, with one abstention.

The USSR amendment was rejected by three votes to two, with two abstentions.

Paragraph 2, as adopted at Geneva, was retained by three votes to one, with three abstentions.

The meeting rose at 5.50 p.m.