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COMMISSION ON HUMAN RIGHTS

DRAFTING COMMITTEE

SECOND SESSION

SUMMARY RECORD OF THE THIRTY-NINTH MEETING

Lake Success, New York
Wednesday, 19 May 1948, at 10.30 a.m.

Chairman:	Mrs. Franklin D. ROOSEVELT	(United States of America)
Members:	Mr. HEYWARD	(Australia)
	Mr. SANTA CRUZ	(Chile)
	Mr. WU	(China)
	Professor CASSIN	(France)
	Mr. AZKOUL	(Lebanon)
	Mr. PAVLOV	(Union of Soviet Socialist Republics)
	Mr. WILSON	(United Kingdom)
Non-Governmental Organizations:		
	Miss T. SENDER	(American Federation of Labor)
	Mr. A.J. VANISTENDAEL	(International Federation of Christian Trade Unions)
	Mr. O.F. NOLDE	(World Federation of United Nations Associations)
Secretariat:		
	Professor HUMPHREY	(Director, Division of Human Rights)
	Mr. LAWSON	(Division of Human Rights)

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1. CONSIDERATION OF THE REPORT OF THE DRAFTING SUB-COMMITTEE ON ARTICLES 5, 6, AND 7 OF THE DRAFT INTERNATIONAL DECLARATION ON HUMAN RIGHTS (document E/CN.4/AC.1/40)

The CHAIRMAN observed that the words "arrest or" at the beginning of the second sentence of the first paragraph should be deleted. She added that during the discussions in the Sub-Committee, the USSR representative had expressed the desire that sub-paragraph (c) of document E/CN.4/AC.1/40 should be supplemented by the addition of article 7, paragraph 2 of the Geneva text. Mr. Pavlov also wished to include in the Declaration the right of a person to receive all documents in a language familiar to him and to have the services of an interpreter, if the Court used a language he did not understand.

Mr. CASSIN (France) considered that article 7, paragraph 2 would be more appropriate in the Declaration than in the Covenant. He added that provisions concerned with criminal law should be separated from civil provisions.

The idea of compensation for arbitrary arrest should be included in the Covenant but not in the Declaration.

Mr. SANTA CRUZ (Chile) suggested that the Committee might revert to article 6 of the Declaration (document E/CN.4/AC.1/20) for the determination of civil rights and obligations, or else adopt the relevant text drawn up at the Bogota Conference. He accepted the drafting of the first paragraph of the Sub-Committee's report and agreed with Mr. Cassin on the necessity of separating criminal provisions from civil provisions.

Miss SENDER (American Federation of Labor) pointed out that the article submitted by the Sub-Committee made no reference to an accused person's right to choose his representative. She also considered that sub-paragraph (c) should apply to political as well as to criminal cases.

/Mr. SANTA CRUZ

Mr. SANTA CRUZ (Chile) thought that Miss Sender's interpretation of the word "criminal" was too narrow; it applied to political cases as well as to those of a strictly criminal nature.

Mr. PAVLOV (Union of Soviet Socialist Republics) proposed a number of additions and amendments to the text submitted by the Sub-Committee. In his view it was necessary:

1. To add the following phrase to the text of the article, in order to avoid possible discrimination: "All men are equal before the Court";

2. To add paragraph 2 of article 7: "Nothing in this article shall prejudice the trial and punishment of any person for the commission of any act which, at the time it was committed, was criminal according to the general principles of law recognized by civilized nations." The words "democratic countries" should be substituted for "civilized nations";

3. To retain sub-paragraph (d) on the right to compensation in respect of any unlawful arrest or deprivation of liberty. He considered the question of compensation to be of primary importance, since it was a general principle that should be included in the Declaration;

4. To add a paragraph regarding the right "to have the aid of a qualified representative of his own choice, and if he appears in person to have the procedure explained to him in a manner in which he can understand it and to use a language which he can speak";

5. To state that "No person shall be imprisoned in consequence of mere inability to fulfil a contractual obligation."

Mr. Pavlov also emphasized that judicial procedure must be based on democratic principles.

Mr. WU (China) proposed that the Drafting Committee should adopt the provisions already initiated in the draft International Covenant regarding the choice of a qualified representative and the services of an interpreter to assist the accused if he could not understand or speak the language used by the Court.

/He proposed

He proposed that those two principles should be included as paragraphs (c) and (d). Paragraphs (c) and (d) of the article would thus become (e) and (f).

Mr. SANTA CRUZ (Chile) thought that the text submitted by the Sub-Committee should be divided into two articles, the first concerning detention and the procedure relating thereto, and the second concerning judicial procedure proper.

Mr. WILSON (United Kingdom) considered that in view of the obvious wish of several members of the Committee to amplify the text of the Declaration, the Committee could adopt the provisions of the Covenant; but he himself did not share that wish. The Declaration should only include general principles. He pointed out that the Commission on Human Rights had asked the Committee to draft the articles of the Declaration as concisely as possible.

He thought, therefore, that the article in question should contain only the following general principles:

1. No person may be arbitrarily arrested or detained.
2. Everyone shall have the right to a fair hearing.
3. Any accused person is presumed to be innocent until proved guilty.
4. Everyone shall have access to independent and impartial tribunals.
5. Criminal laws may not be retroactive.
6. No one shall be subjected to torture or inhuman treatment.

The CHAIRMAN, speaking as representative of the United States, expressed her agreement with the United Kingdom representative. She was opposed to the inclusion of paragraph 2 of article 7, proposed by Mr. Cassin. On the other hand, she would accept the insertion of the paragraphs on presumption of innocence and the right of the accused to be defended by a representative of his own choice.

/Mr. CASSIN

Mr. CASSIN (France) agreed with the representative of Chile that the paragraphs on detention and trial must be examined separately. He also agreed with the United Kingdom representative that only the main general principles should be stated, without going into detail. In his opinion, however, the paragraph on war criminals did not constitute an implementation problem but was a fundamental principle of the community of nations.

Mr. PAVLOV (Union of Soviet Socialist Republics) thought that the Declaration should be a separate document, independent of the Covenant, so that Governments might adhere either to the Declaration or to the Covenant without being obliged to adhere to both. Consequently, all the general principles should be included in both documents. He pointed out that the amendments and additions proposed by the USSR delegation consisted of general principles such as:

1. All persons shall be equal before the courts.
2. Judicial procedure shall be based on democratic principles.
3. Article 7, paragraph 2 concerning war criminals.
4. A person's right to be defended by a representative of his own choice, to have the services of an interpreter, to speak in his native language, to receive compensation for unlawful arrest.

With regard to imprisonment for breach of contractual obligations, he thought that although that provision was not, strictly speaking, a general principle, it would be useful to include it in the Declaration. He proposed that his amendment on the equality of persons before the courts should be inserted in the first paragraph of the article. The other amendments could be inserted in the second paragraph.

Mr. WILSON (United Kingdom) observed that the USSR representative seemed to think that the Declaration and the Covenant constituted two alternative documents; he also pointed out that the equality of persons

/before the

before the law was already included in article 3, paragraph 2.

In his opinion, the paragraph on war criminals should appear either in the Declaration or in the Covenant, but not in both documents. He agreed with the representatives of France and of Chile on the necessity of separating the paragraphs dealing with arrest and trial.

Mr. SANTA CRUZ (Chile) considered that the concept of equality before the courts differed from that of equality before the law. He suggested that a vote should first be taken on the first two paragraphs of the article and on the amendments dealing with imprisonment for breach of contractual obligations and compensation for unlawful arrest.

Mr. AZKOUL (Lebanon) thought that the relation between the Covenant and the Declaration must be determined at once. The Declaration should be an expression of the human intellect inspired by the conscience of mankind; the Covenant, on the other hand, was determined not only by intellectual, but also by practical considerations. Consequently, the Declaration should be wider than the Covenant.

The CHAIRMAN decided that the text submitted by the Sub-Committee and the various amendments would be voted on during the afternoon meeting.

2. CONSIDERATION OF ARTICLE 15, CONCERNING NATIONALITY (document E/CN.4/AC.1/20)

Mr. WILSON (United Kingdom) suggested the following amendment to the first sentence of the article: "Persons shall not be deprived of their nationality, which they have acquired at birth, unless possessing another nationality."

He thought that the second sentence should be deleted in view of the decision taken by the Sub-Committee that obligations could not be imposed upon the United Nations in a similar case concerning the right to asylum.

/The CHAIRMAN

The CHAIRMAN, speaking as representative of the United States, suggested the deletion of article 15. She thought that the problem of stateless persons should be left to the Economic and Social Council.

Mr. CASSIN (France) pointed out that the Geneva text had been approved by the French Government. He thought that the work of the Economic and Social Council on statelessness should not prevent the General Assembly from condemning it in principle. The purpose of article 15 was to express one of the general principles of mankind and to affirm that every human being should be a member of a national group. The United Nations should contribute to putting an end to statelessness by urging the necessary measures upon sovereign States. He pointed out that the responsibility of a community of nations in respect of statelessness was no novelty. The Nansen passports introduced by the League of Nations proved that. Every person had a right to legal protection. He recalled that since the war, France had made it a strict rule not to declare forfeiture of nationality. It was the duty of the Commission on Human Rights to prepare the work of the General Assembly, with a view to granting everyone the right to nationality.

Mr. PAVLOV (Union of Soviet Socialist Republics) asked the French representative whether he thought that every individual should be forced to choose his nationality if circumstances so required.

Mr. CASSIN (France) replied that the solution of technical problems of nationality was not the Committee's present concern; however, unlimited freedom should not be granted to the individual. He considered that nationality could legitimately be imposed upon the individual to avoid confusion.

Mr. PAVLOV (Union of Soviet Socialist Republics) asked who would be authorized to take measures imposing a nationality.

/Mr. CASSIN

Mr. CASSIN (France) replied that a solution could only be found through international agreements sponsored by the United Nations.

The Drafting Committee decided not to delete article 15, by three votes to three, with one abstention.

The Committee rejected the United Kingdom amendment to article 15 by four votes to two, with one abstention. (Amendment quoted above).

The Committee decided to retain the first sentence of article 15: "Everyone has the right to a nationality," by three votes to three, with one abstention.

Mr. CASSIN (France) suggested that the second sentence of article 15 should be replaced by the following text: "It is the duty of the United Nations, as well as the States Members, to prevent statelessness."

The Committee rejected the amendment by four votes to two, with one abstention.

The Committee decided to delete the second sentence of article 15 by four votes to two with one abstention.

The Committee did not vote on the third sentence, which was rendered superfluous by the deletion of the second.

The meeting rose at 1 p.m.