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COMMISSION ON HUMAN RIGHTS

MASTER FILE

DRAFTING COMMITTEE

Second Session

SUMMARY RECORD OF THE FORTY-THIRD MEETING

Held at Lake Success, New York,
Friday, 21 May 1948, at 10.30 a.m.

<u>Chairman:</u>	Mrs. Franklin D. ROOSEVELT	United States of America
<u>Members:</u>	Mr. E.J.R. HEYWARD	Australia
	Mr. H. SANTA-CRUZ	Chile
	Mr. T.W. WU	China
	Prof. Rene 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 Labour
Mr. VANISTENDAEL	International Federation of Christian Trade Unions

Secretariat:

Mr. John HUMPHREY	Director of the Human Rights Division
Mr. Edward LAWSON	

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The CHAIRMAN asked the members to approve the report that very evening if possible, so that it could be transmitted in time to the Commission on Human Rights, which was meeting on Monday.

ALTERATIONS IN THE TEXT OF THE DECISIONS REACHED ON THE INTERNATIONAL COVENANT OF HUMAN RIGHTS (document E/CN.4/AC.1/W.3)

Mr. WILSON (United Kingdom) reminded the Committee that it had not approved the text of the preamble contained in the document; it had merely agreed on the ideas expressed therein.

Mr. CASSIN (France) confirmed that no decision had been reached on the present text. The fact was that a vote had been taken on another text, while the present one had merely been discussed. He proposed that both texts be quoted in a footnote.

The proposal was adopted.

At the suggestion of the CHAIRMAN, the following alterations were made in document E/CN.4/AC.1/W.3:

Article 2 (a), page 1: the word "shall" was inserted after the words "such rights and freedoms".

The following footnote was added:

"The Drafting Committee agreed to point out in its report that, in its view, the Covenant is not self-operative".

Article 2 (b), page 2: the words "as herein defined" were inserted after the words "rights or freedoms".

Article 4 (II), page 2: In the first line, the word "effect" was replaced by the word "affect".

In the last but one paragraph on the same page: the word "list" was added after the word "their", of which the final "s" was dropped.

Article 5, page 3: the word "suggested" in the phrase "suggested limitations" was replaced by "possible".

/It was

It was decided to replace the words "suggested limitations" by "possible limitations" throughout the document.

Article 8, note 2, page 5: The word "suggested" was replaced by the word "submitted".

Article 9, page 7: The whole of text III (proposed by the United States) was deleted.

Article 11, page 7: On the motion of Mr. WILSON (United Kingdom), the Committee decided to submit the text adopted for the article at Geneva for the consideration of the Commission on Human Rights.

Article 13, page 9:

Mr. PAVLOV (Union of Soviet Socialist Republics) regretted that, despite both his previous statements the first sentence of the text submitted by his delegation still contained the term "before the law". He preferred the phrase "devant la justice" in French, and "before the Courts" in English.

Mr. SANTA-CRUZ (Chile) said it would be better to use the English term "before the tribunals", so as not to exclude criminal courts, in accordance with the wishes of the representative of the USSR.

Mr. PAVLOV (Union of Soviet Socialist Republics) preferred the expression "before the Courts and tribunals", which was adopted.

Article 16 (4), page 10: The word "are" was inserted after "such limitations as" in the English text.

Article 17, page 13, last but one paragraph:

To meet the doubts raised by Mr. HEYWARD (Australia), the words between brackets "List of possible limitations arising out of..." were replaced by "These fourteen possible limitations arose out of, etc..."

/Article 17

Article 17, page 14: Comments of the Government of the Union of
South Africa

Mr. HEYWARD (Australia) thought that those paragraphs should be shortened to correspond to the comments appearing in other parts of the document.

The CHAIRMAN remarked that the comments of Governments had always been inserted textually, without any alterations. She thought that the references to the laws might possibly be deleted.

Mr. HEYWARD (Australia) recalled that only extracts from comments contained in document E/CN.4/85 had been included. He also recalled that in article 5, a list of limitations had merely been given without an analysis.

Mr. HUMPHREY (Secretariat) explained that in article 9, the Secretariat had been instructed to analyze the contents of the list submitted. In the other articles, only the Governments' comments had been reproduced.

The CHAIRMAN said that, at the request of the representative of Australia, the comments appearing on page 14 would be shortened.

Article 18 (d), page 16: The word "and" in the phrase "the protection of health and morals" was replaced by "or".

Annex A

The word "suggested" in the title was replaced by "possible". In the first paragraph of page 1, the word "suggested" was replaced by "submitted".

• In the first paragraph of page 2, and in sub-paragraphs 3, 4 and 5 of Section V on page 3, the word "suggested" was replaced in each case by "submitted".

/In paragraph

In paragraph (c) of page 4, the second sentence was altered to read as follows:

"In drafting the text, the Committee may wish to have regard to the Chilean proposed list (item 8 of document E/CN.4/AC.1/23) and the United States list (item k) which are to the effect that arrests..."

In paragraph (d) the words "suggesting that the Covenant should also cover the case of the arrest..." were replaced by "referring to the case of the arrest..."

On page 5 (VI.3) the word "proposal" was replaced by "list".

The CHAIRMAN asked the members of the Committee whether they wished to make any other alterations in the document.

Mr. CASSIN (France) and Mr. PAVLOV (Union of Soviet Socialist Republics) asked for time to study the document more closely.

The Committee decided to resume its study of the document at the afternoon meeting.

ADOPTION OF THE FIRST PART OF THE DRAFT REPORT OF THE DRAFTING COMMITTEE

Mr. AZKOUL (Lebanon) read the text of the report and noted that it was simply an objective factual record.

He asked permission to add the names of some non-governmental organizations which had been represented at the Committee's meetings.

He also asked permission to mention in the report that Mr. Hendrick had replaced the Chairman at one meeting.

Mr. PAVLOV (Union of Soviet Socialist Republics) asked the Committee not to forget to insert his delegation's comments concerning articles 8, 16 and 17 in the report.

/Mr. SANTA-CRUZ

Mr. SMIT SANTA-CRUZ (Chile) wished the report to state clearly why Mr. Ordonneau had been granted the right to vote. He suggested that it be stated that Mr. Ordonneau had been granted this right in accordance with the rules of procedure of the Council, which stated that the right to vote could be granted to alternates if they had been appointed for the entire duration of the session.

The CHAIRMAN confirmed that the Committee had decided to grant the right to vote to alternate representatives mentioned in the report because their Governments had appointed them for the entire duration of the session. When Mr. Cassin had arrived, the Committee had felt it ought to give him the right to vote. As that could not constitute a precedent, it had been thought desirable to recommend that the Economic and Social Council should reconsider its Rules of Procedure.

Mr. WU (China) also said that the Council should be asked to revise its Rules of Procedure on that point.

The CHAIRMAN appointed a Sub-Committee, composed of the representatives of Chile and China, whose task it would be to draft a new paragraph 5 in accordance with the ideas just expressed.

The first part of the report was adopted unanimously.

Mr. WILSON (United Kingdom) suggested examining article 25 of the Covenant as requested by the representative of the USSR.

Mr. PAVLOV (Union of Soviet Socialist Republics) said he was ready to submit his comments on that article. The new draft of the article, proposed by the Sub-Committee and supported by the United Kingdom representative, dealt with a matter of major importance, namely: the manner in which the provisions of the Covenant would be extended to non-self-governing territories. On that article depended whether the fundamental rights and liberties guaranteed by the Covenant should or should not be extended to non-self-governing territories. From the text proposed by the Drafting Sub-Committee, it was clear that the authors of article 25 did not wish those rights and liberties to be extended to non-self-governing territories.

The equivocal wording of the article left the final disposal of the non-self-governing territories to the arbitrary decision of the administering authority. The first sentence stated that "A State party to this Covenant may *de. déclarer* ..." That was, therefore, only a possibility. The second sentence, by what amounted to a verbal quibble, gave the final decision to the administering authority. He proposed replacing that wording by the following, which he wished the Commission to adopt: "The provisions of this Covenant shall apply to the territories of States parties to the Covenant and to any territories for the international relations of which the said contracting Government is responsible (non-self-governing territories, trust territories and colonial territories)."

That was clear, concise and unequivocal. The question of how the metropolitan State was to deal with non-self-governing territories to obtain their accession was of secondary importance and would depend on existing conditions. The adoption by the Commission of the Sub-Committee's text would deprive the non-self-governing territories

/of the rights

of the rights and liberties guaranteed by the Covenant, and would indirectly put them beyond the reach of the Declaration on Human Rights.

Mr. WILSON (United Kingdom) said that the attitude of the representative of the USSR concerning the position of the non-self-governing territories in regard to the Covenant was fundamentally mistaken. In fact, it was the text proposed by the USSR which would give the Government of the administering authority the arbitrary power to impose its decision on a non-self-governing territory. The text proposed by the Sub-Committee, on the other hand, respected the right of every non-self-governing territory to decide for itself. The question had already been discussed by the United Nations in connection with a similar article in the Convention for the Suppression of Traffic in Women.

Those supporting that article had stated at the time that its purpose was to recognize that many colonial territories had more or less autonomous governments and to enable those territories to accede to the Covenant through their own governments. Colonial powers could thus accede to a convention independently, without the delay which would arise if they had first to ascertain whether all the governments of their colonies were also able to accede to the convention. That practice was, moreover, in the interests of the territories in question. The United Kingdom Government was not, generally speaking, responsible for the legislation in force in the territories of its colonies, whose right to accede to international conventions independently must be safeguarded. Any other attitude would be a set-back to the progress of the colonial territories towards autonomy and independence. The United Kingdom Government did not prepare, from London, the legislation necessary to bring conventions into force in those territories; the latter were themselves responsible for that legislation. It had always considered

/that, however

that, however restricted the autonomy of a territory might be, people of that territory should have an opportunity to express their opinions on its legislation and administration by any constitutional means at their disposal.

Thus article 25 had been drafted in such a way as to allow non-self-governing territories to determine, in accordance with their own interests, whether they wished to accede to the Covenant. The second sentence, moreover, clearly stated that the Contracting States undertook, with respect to those territories on behalf of which they had not yet acceded, to seek the consent of the Governments of such territories at "the earliest possible moment."

Mr. PAVLOV (Union of Soviet Socialist Republics) said the draft article the United Kingdom Government was trying to re-introduce in the Covenant had been rejected in the General Assembly by a two-thirds majority during the discussion on the suppression of the traffic in women. The clause was therefore unacceptable. The United Kingdom representative, under the pretext of providing for consultation with the governments of non-self-governing territories, was in fact, trying to deprive coloured people of the rights which he recognized to the citizens of his own country.

Mr. CASSIN (France) said he would vote in favour of the text submitted by the Drafting Sub-Committee. His Government was satisfied with the text, which it regarded as compatible with its responsibilities for ensuring the progress towards autonomy of the territories entrusted to it. He noted with some interest that the representative of the country which had objected to the introduction of a convention should be the very one to wish for a larger number of accessions. He hoped, therefore, that the amendment of the representative of the USSR expressed a desire to see the Convention extended to all the nations of the world.

/Mr. HEYWARD (Australia)

Mr. HEYWARD (Australia) pointed out that article 25 had not been drafted by the United Kingdom representative, but followed the text proposed by the Geneva Conference on the Freedom of Information. To amend that text radically would mean that the Commission was rejecting a decision taken by an international conference.

Mr. SANTA-CRUZ (Chile) said he had already expressed some doubts on the interpretation of article 25, and still thought it unsatisfactory. He would like a text which would cover the two following points: (1) The Covenant should apply automatically to territories which had no administration of their own, as soon as the administering authority had signed it; (2) territories possessing an administration of their own, no matter how limited, should have the right to state their wants and desires, and should not be bound by the decision of the Government responsible for their international relations, i.e. the refusal of that Government to sign the Covenant should not prevent them from benefiting by the Covenant.

In the absence of a compromise text between the Sub-Committee's proposal and that of the representative of the USSR, he would abstain from voting in the Committee, and would only state his position in the Commission on Human Rights.

The CHAIRMAN supported the Sub-Committee's text. The accusation of the representative of the USSR had made against the United Kingdom and the United States of America, in connection with the General Assembly's debate on the traffic in women, namely that they favoured this traffic, was a distortion of the facts. The point was moreover irrelevant, for, as it had turned out, all the non-self-governing territories had acceded to the Covenant.

Mr. AZKOUL (Lebanon) agreed with the Chilean representative's point of view, but added that the Contracting States undertook not only

/to seek

to seek the consent of the governments of the non-self-governing territories, but also to accede forthwith to the Covenant on their behalf, as soon as their consent had been obtained.

Mr. SANTA-CRUZ (Chile) expressed satisfaction on that score. He thought it right that when the administering power considered the Covenant ought to be applied to the metropolitan territory, it should also be applied to the colonial territories unless they refused. The danger was that the non-self-governing territories could not benefit by the provisions of the Covenant unless the administering power signed it.

Mr. AZKOUL (Lebanon) proposed to add, in the second sentence, after the word "Governments", the words "or competent local authorities". In this way, no country would be deprived of the possibility of acceding to the Covenant.

Mr. CASSIN (France) recalled that he had suggested, at an earlier meeting, the use of the words "Governments or qualified authorities". On further reflection, he had realized that the word "government" had a much wider meaning in English than in French. The word might, therefore, be retained in the English text, and the words "Governments or competent authorities" used in the French text.

Mr. AZKUL (Lebanon) proposed that, if it was simply a question of translation, Mr. Cassin's suggestion should be adopted.

Mr. PAVLOV (Union of Soviet Socialist Republics) suggested that the Drafting Committee transmit the Sub-Committee's text and the draft submitted by the USSR to the Commission on Human Rights, without taking a vote on either text. In that way the Commission could consider them on an equal footing. Otherwise, he would vote against the Sub-Committee's text, which was unacceptable, not because of its second sentence, but because of the first, which left it to the

/administering authority

administering authority to decide whether the Covenant was applicable to non-self-governing territories. That text seriously endangered the freedom of the nationals of such territories. The Drafting Committee had, moreover, already adopted such a procedure for some of the articles.

The CHAIRMAN said the Committee had indeed adopted that procedure for articles 4, 11 and 17 in accordance with the members' wish not to take a final decision in favour of either of the two texts submitted for those articles.

As regards article 25, however, the Committee would have to decide first whether it wished to take a vote on the text submitted by the Sub-Committee. If that text were adopted, the USSR representative's text could be presented as an alternative proposed by the USSR. A note could be added to articles 4, 11 and 17 to the effect that the Committee had reached no decision on either of the two texts submitted, and to articles 25, 9 and 13 to the effect that the Committee had voted in favour of the first text submitted, but had deemed it useful to insert an alternative.

The Chairman put to the vote the question whether the Committee wished to vote on the text submitted by the Sub-Committee.

The Committee decided to vote on the text by four votes to one, with two abstentions.

The CHAIRMAN asked the USSR representative whether he wished his text to be considered as an amendment to the Sub-Committee's text and to be put to the vote, or as an alternative, in which case it would simply be referred to the Commission as such.

Mr. PAVLOV (Union of Soviet Socialist Republics) said his text was not an amendment, but a new article, which he wished to submit to the Commission as a separate proposal. He would, however, like the

/text to be

text to be
/ proposed by the Committee, and not by the USSR delegation.

The CHAIRMAN said that if the text was to be presented by the Committee, it would have to be put to the vote; otherwise the same procedure would be followed for article 25 as for articles 9 and 13, namely, the text proposed by the USSR representative in place of that article would be appended to it.

The Chairman put article 25 as submitted by the Sub-Committee to the vote.

The article was adopted by four votes to one, with two abstentions.

The CHAIRMAN said the Committee would deal with article 25 as it had done with articles 9 and 13, i.e. that the USSR representative's text would be annexed as an alternative, and the article would be accompanied by a note to the effect that the Committee had voted in favour of the first text, but had decided also to transmit to the Commission the text proposed by the representative of the USSR.

The meeting rose at 12.50 p.m.