

COMMISSION ON HUMAN RIGHTS

DRAFTING COMMITTEE

FIRST SESSION

SUMMARY RECORD OF THE TENTH MEETING

Held at Lake Success, New York, on Wednesday, 18 June 1947, at 3:30 p.m.

Present:

Chairman:	Mrs. Eleanor Roosevelt	(United States of America)
Vice-Chairman:	Dr. P. C. Chang	(China)
Rapporteur:	Dr. Charles Malik	(Lebanon)
	Mr. Ralph L. Harry	(Australia)
	Mr. H. Santa Cruz	(Chile)
	Prof. Rene Cassin	(France)
	Prof. V. Koretsky	(Union of Soviet Socialist Republics)
	Mr. Geoffrey Wilson	(United Kingdom)

Specialized Agencies:

Mr. J. Havet (UNESCO)

Non-Governmental Organizations:

Miss Toni Sender (American Federation of
Labor)

Secretariat: Prof. J. P. Humphrey (Secretary of the Committee)
Mr. Edward Lawson

1. Consideration of Suggestions Submitted by the Representative of France for the International Declaration of Rights (Chapter VII, Social, Economic and Cultural Rights) (Document E/CN.4/AC.1/W.2/Rev.1) (Continued).

Articles 38-44

The CHAIRMAN recalled that the Representative of France had agreed to shorten his text. She read Articles 38 to 44.

Prof. CASSIN (France) pointed out that the word "community" should be

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substituted for "State" in the first line of Article 10.

The CHAIRMAN remarked that Members apparently had no observations to offer regarding these Articles, and that all the Articles had been gone over in a general way. There were three Articles still to be written. She suggested that Members next proceed to discuss the proposed Convention, using the United Kingdom document as a basis.

2. Consideration of Annex I, "International Bill of Human Rights", of Document E/CN.4/AC.1/4, Text of Letter from Lord Dukeston, the United Kingdom Representative on the Commission on Human Rights, to the Secretary-General of the United Nations

Mr. WILSON (United Kingdom) pointed out that the Preamble and Part I of Annex I were entirely concerned with execution and enforcement, and that the enumeration of rights began on page 9.

Article 8

The CHAIRMAN read Article 8, and asked for Members' comments, adding that since the Drafting Committee was considering whether or not these Articles could be incorporated in a convention, careful thought should be given them.

Dr. CHANG (China) asked whether that implied that all Articles included were to be enforceable in terms of obligations in a treaty. He thought that Article 8 would be difficult of enforcement.

The CHAIRMAN remarked that, in their thinking, Members had to consider whether an Article was enforceable by the nations as a whole, as there was little use in putting unenforceable items into a bill.

Dr. MALIK (Lebanon) suggested adding the phrase "from the moment of conception" after the word "person"; the phrase "and bodily integrity" after the word "life"; and incorporating somewhere the phrase "regardless of physical and mental condition."

Mr. WILSON (United Kingdom) said he thought that the reference to physical and mental condition was implicit in the word "any" in the statement "It shall be unlawful to deprive any person," etc. •Acceptance of

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the suggestion regarding physical integrity would require a new clause. He thought that the phrase "from the moment of conception" might raise some difficult problems. As it was, no State was debarred from including this idea in its Constitution if it wished to do so. The suggestion that its inclusion be made obligatory needed careful thought, in his opinion.

The CHAIRMAN stated that a new proposal regarding torture had been submitted by the United Kingdom Representative, reading as follows:

"No person shall be subjected to:

"(a) Torture in any form;

"(b) Any form of physical mutilation or medical or scientific experimentation against his will;

"(c) Cruel or inhuman punishments."

She pointed out that some countries might find point (d) difficult to accept. She also thought that suggestions made by any Government should be taken into account when considering which Articles contained in the Convention were also covered by the Declaration.

Article 9

The CHAIRMAN read Article 9.

Mr. WILSON (United Kingdom) said that a text on the subject of compulsory labour was not yet available, but that something on this subject should be added to Article 9.

Dr. MALIK (Lebanon) said he thought that the United States text relating to slavery was preferable to any other.

The CHAIRMAN pointed out that the United States proposal referred also to compulsory labour. Her government felt that the subject of slavery and compulsory labour should be covered by a Convention.

Mr. WILSON (United Kingdom) agreed that when the draft Convention was being revised, the substance of the United States proposal might be incorporated in Article 9.

Article 10

The CHAIRMAN read Article 10, the United States proposal relating to the deprivation of personal liberty, and the item suggested in the Secretariat draft outline.

Miss SENDER (American Federation of Labor) said she favoured the United States wording, and suggested it might be possible to amalgamate this with the United Kingdom draft.

The CHAIRMAN, speaking as a Member, said her Government felt that this Article was not sufficiently broad, and outlined a number of difficulties which would be experienced in reconciling the laws of the United States with such a provision. She added that the Drafting Committee was at this point beginning to meet difficulties which would later be experienced not by the Government of the United States alone, but by many other Governments. In view of the short time remaining, she thought that the Committee might have to choose between a completed draft of a Declaration and a completed draft of a Convention. The United States favoured the preparation of both, but did not feel that anything resembling a generally acceptable Convention could be produced immediately. A Convention, it felt, must be worked out with painstaking accuracy and in great detail. For the United States, this was necessary principally because of its legal system. She was sure that other countries would find themselves in a similar position.

This did not mean, the CHAIRMAN went on, that the United States did not want a Convention or would not co-operate to the fullest extent in its drafting. A Declaration must, of necessity, be general in form, and any defect was likely to show at once; for that reason it should not be impossible to agree at this stage on a tentative Declaration containing those principles which the eight members of the Drafting Committee agreed upon. On the other hand, a Convention was a matter for technicians. She herself could outline ideas as to what a Convention should contain, but when

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it came to details and choice of correct technical wording, she preferred to to rely on lawyers. Every Government developed, over the years, a set of experts who knew exactly what should be stated in a Convention and what should not be stated. A Convention might be a simpler document without the intervention of these experts, but she knew that their opinions were absolutely necessary where a legally binding document was involved.

All Members of the Committee were in the same position when it came to considering the documents which had been submitted, she felt. Time was needed to think them over. That did not excuse Members from the responsibility of producing results at the present session, but her Government felt on safer ground working on the Declaration than on the Convention for the reason that in drafting the Declaration Members were basing their work on the Secretariat outline, which was in every respect an international document, while in attempting immediately to draft a Convention they would be basing their work only on the United Kingdom proposal, which had been prepared by one country and reflected the views of that country. Its provisions were admitted to be in compliance with the laws of the United Kingdom, but it would take detailed study on the part of the Members to make sure that those provisions were in compliance with the law of their particular countries, and if not, to ascertain what changes would have to be made and how they could be constitutionally effected.

Her comments, Mrs. ROOSEVELT continued, did not mean that in her opinion the United Kingdom draft did not seem to be an excellent document and a good beginning; the point her government wished to make was that it was more important at this session to produce a well-worded Declaration than a complete and well-worded Convention. At the same time, she urged that everything possible be done by the Secretariat to call a second session of the Drafting Committee in advance of the Second Session of the Commission on Human Rights in August, at which time the drafting of a Convention could be considered by legal technicians chosen by their Governments. She said she

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hoped that this procedure might prove acceptable to all Members.

Dr. MALIK (Lebanon) said that whether a Declaration or a Convention were drafted, it would have to be commented on by responsible legal and other technicians of all the Governments. Therefore, he did not believe there could be any argument for deferring consideration of the Convention. He thought that the position of the United States on this matter should have been made clear at an earlier stage.

The CHAIRMAN replied that she did not wish to defer the drafting of a Convention, but that she did feel very strongly that the technical work should be done by technicians.

Dr. MALIK (Lebanon) said that Members had spent four days on the Declaration, and he was sure that four days spent on the Convention would produce an equally acceptable preliminary draft. It was too late to reverse the decision of the Committee regarding drafting of two documents, he felt.

The CHAIRMAN explained that she was not suggesting that the decision taken be reversed; she only thought that a Declaration was easier to write than a Convention. If a meeting of the Drafting Committee could be arranged a few days before the next session of the full Commission, government technicians could draft the Convention in collaboration with Members of the Committee.

Mr. HARRY (Australia) said he understood the position of the United States. However, Members had embarked on their work with the understanding that their primary responsibility was to prepare a Bill of Human Rights which would eventually become an Act, a Convention. They had agreed it would be of value for a Declaration to be prepared in addition to the Convention. However, he could not agree to devoting less time to a preliminary draft of the Bill than to the preliminary draft of the Declaration. He thought that the remaining time should be spent on the Bill. He agreed that a meeting of the Drafting Committee, together with legal technicians, would be useful.

/Mr. SANTA CRUZ

Mr. SANTA CRUZ (Chile) said he was in agreement with the position of the Chairman, and maintained it was not a question which could have been raised before, as the extent and nature of the problems had not been realized earlier. The thing to do at the moment was to complete work on the Declaration; as the Chairman had suggested, a special meeting of the Drafting Committee could be called to study the Convention. He pointed out that the matter was a fairly simple one for his country in view of the fact that many of the provisions suggested were already incorporated in its legislation.

Mr. WILSON (United Kingdom) pointed out that it had been in the contemplation of all the Members of the Commission on Human Rights that at some stage a Convention would have to be produced. The present United Kingdom draft, he explained, had been submitted as the basis for the discussion of such a Convention. It did not represent the final views of his Government; it had not yet been submitted to the highest legal authorities in the United Kingdom. His Government had anticipated that a number of drafts with differing points of view would be presented to the Commission on Human Rights and that naturally all Members of the United Nations would have an opportunity to discuss any of these draft texts. He agreed that legal technicians also would have to go over any draft produced by the Committee; many differing points of view would have to be reconciled.

Mr. WILSON felt that the task of drafting a Convention could not be avoided. He said that in his opinion it was quite true that a Declaration might not import legal obligations; it might, however, import very strong moral obligations upon all Member States. A Convention might be more binding, but only on those States that accept it. He, therefore, felt it necessary to produce a Convention and a Declaration, simultaneously. He added that he explicitly reserved his position regarding Articles on which he had made no comment.

/Prof. KORETSKY

Prof. KORETSKY (Union of Soviet Socialist Republics) recalled that he had earlier drawn attention of Members of the Drafting Committee to the difficulties they would encounter if they attempted to discuss substantive matters. Some Members were forced to refrain from comment and had, therefore, reserved their positions on all questions of substance. He understood that the Committee was carrying out a preliminary work, drawing only broad lines which were neither exclusive nor final. There were indications that Members were not fully prepared - documents, for instance had been submitted late - and it was obvious to him that the Drafting Committee could not carry out the preparation of any type of Draft in the time at its disposal. The Chairman had suggested that technicians should be given the job of drafting any convention. Speaking as a jurist, he considered it necessary that the jurists first be given the foundation of any legal edifice which they were to build. There would at some stage have to be a decision as to the juridical foundation that might be at the base of a Declaration or of a Convention. Next, the legal details would have to be worked out. The Representative of the United Kingdom wished his document to be considered with a view to seeing whether it could form the basis of a Convention; he himself, however, thought it was premature to try to decide whether any document should be used for this purpose. The Drafting Committee, he felt, should limit itself to considering redrafting and rewording the Secretariat document, preparing a pre-pre-draft, as it were, so that the Commission on Human Rights would be able to study principles and decide whether or not they should be included in the Bill. On the basis of the Commission on Human Rights' decisions, the Drafting Committee would be able to prepare a draft which could be forwarded to the Economic and Social Council. He suggested that the Drafting Committee could meet simultaneously with the second session of the Commission on Human Rights.

Dr. CHANG (China) thought it was not far from wrong to say that a Declaration had been envisaged first of all, and therefore the Secretariat

document had taken that general form. The question was how the Drafting Committee should proceed. All questions of form and substance would have to be decided by the Commission, but the Members of the Commission might wish to bring legal experts with them, who could meet simultaneously with the Commission as an ad hoc legal working group.

The CHAIRMAN said that in her opinion the Committee should proceed to discuss the substance of a Convention on Human Rights, keeping in mind that it was considering only principles and not wording. She felt that the Committee might suggest that once the principles had been thought over, legal experts from the various countries could prepare new drafts before the next session.

Mr. WILSON (United Kingdom) said he agreed that the Drafting Committee could not hope to go through the United Kingdom document in technical detail, but that it might decide whether the proposal was wrong in any matters of principle, or whether any further principles should be included. He considered that the suggestions made by the Representative of Lebanon, regarding Article 8, were useful.

The CHAIRMAN read Article 11 of the United Kingdom draft.

Mr. HARRY (Australia) commented that the expanded form of the United Kingdom article seemed to him more appropriate than the briefer form of the Secretariat draft outline. He felt that the rights regarding taxation and dependents should be clearly stated here.

Article 12

The CHAIRMAN read Article 12 of the United Kingdom draft, along with Article 26 of the Secretariat draft outline and the corresponding United States rewording.

Mr. HARRY (Australia) observed that three principles were enumerated in the United States proposal, two in the Secretariat proposal and one in the United Kingdom proposal. He would like to see all three incorporated in the Convention.

/Mr. SANTA CRUZ

Mr. SANTA CRUZ (Chile) supported the suggestion of the Representative of Australia.

Article 13

The CHAIRMAN read Article 13 of the United Kingdom draft, along with Article 14 of the Secretariat draft outline.

Mr. HARRY (Australia) said he would prefer the longer and more explicit form to be included in the Convention.

Dr. MALIK (Lebanon) agreed with the Australian Representative that this was a matter of the utmost importance, in the stating of which the Drafting Committee could not be too explicit. He said he would also like to see stressed the notion of the autonomy of religious sects and orders, the right of these sects to hand down their teachings with absolute autonomy of conscience, and their liberty to perpetuate their own modes of life without interference.

Article 14

The CHAIRMAN read Article 14 of the United Kingdom draft, together with Articles 15-18 of the Secretariat outline and the corresponding United States proposals. She remarked that the wording of provisions obviously would be affected by the report of the Sub-Commission on Freedom of Information and of the Press. She felt that the principle could be stated in the Drafting Committee's report, with the understanding that its detailed examination would be left to the Sub-Commission.

Mr. SANTA CRUZ (Chile) said he agreed with the proposal to state the principle and leave the rest to the Sub-Commission.

The CHAIRMAN said that it was apparently the consensus of opinion that the principle would be stated but that the final wording would await the report of the Sub-Commission on Freedom of Information and of the Press.

Article 15

The CHAIRMAN read Article 15 of the United Kingdom draft, together with Article 19 of the Secretariat draft outline.

Prof. KORETSKY (Union of Soviet Socialist Republics) pointed out that his failure to comment on Articles did not mean that he accepted them, or agreed in principle to their inclusion. His Government reserved its position on all issues. He wondered if the silence of other Members indicated their acquiescence.

The CHAIRMAN said she presumed that silence indicated acceptance of the principle under discussion, and general agreement that something should be said on the subject in the draft Convention.

Prof. KORETSKY (Union of Soviet Socialist Republics) asked that it be noted that his silence did not even mean his acceptance of the fact that the principle should be mentioned.

Dr. CHIANG (China) said that in his case silence often indicated the need for mature consideration and expert advice.

Mr. SANTA CRUZ (Chile) said he accepted the inclusion of the principle but had reservations regarding the actual drafting, especially as regards restrictions to rights.

Mr. HARRY (Australia) suggested that the Committee keep in mind the form of the Report it would make to the Commission on Human Rights. The Report, he felt, should inform the Commission that agreement had been reached on the principle that a Declaration should be drafted, to be followed by one or more Conventions; that consideration had been given to certain matters which might be included in a Declaration and in a Convention; and that various draft proposals had been developed, copies of which were attached, which Members of the Committee, with the exception of the Soviet Representative, felt were suitable for inclusion in one of these documents.

Prof. KORETSKY (Union of Soviet Socialist Republics) said that his position had not been exactly reflected in Mr. HARRY's remarks. The Drafting Committee had no mandate to decide whether a Declaration or a Convention should be drafted, he felt. The Chairman, herself, had suggested that the

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Drafting Committee should work in anticipation of the Commission's decision in the matter.

The CHAIRMAN replied that her understanding was that the Drafting Committee's Report would be presented in a form acceptable to all the Members. It might include suggestions for both a Declaration and a Convention. The Commission on Human Rights might not decide to do the work in this form; it might adopt an entirely different procedure.

Dr. MALIK (Lebanon) asked for more enlightenment as to the form of the Report. Would the Committee like him to prepare a resume of all the discussions or only the results thereof?

Mr. WILSON (United Kingdom) suggested forwarding two documents to the Commission, one a draft of the Declaration and the other a draft of the Convention insofar as it had been worked out. The status of these documents could be explained and reference could be made to the summary and verbatim records for the details of the discussions.

The CHAIRMAN said she felt that the Report should not go into details, but should refer to the summary records.

Dr. CHANG (China) said that he hoped the Members of the Commission might receive (1) all summary records of the meetings of the Drafting Committee, (2) all drafts that had been submitted, (3) a composite draft of the Articles which might be included in a Declaration, and (4) a composite draft of the Articles that might be included in a Convention.

Article 16

The CHAIRMAN read Article 16 of the United Kingdom draft, together with Article 20 of the Secretariat Draft Outline and the corresponding United States rewording.

Dr. CHANG (China) said that as a non-technician, he was impressed by the importance of the structure of the United Kingdom draft. He felt that Members should not lose sight of its Preamble and of Part III.

/Dr. MALIK

Dr. MALIK (Lebanon), seeking clarity regarding the form of the Report, asked if the Committee intended to submit a draft Declaration, a draft Convention, or both?

The CHAIRMAN replied that her understanding was that the Committee was going to do both, but that it obviously would not be able to submit a finished Convention.

Prof. KONETSKY (Union of Soviet Socialist Republics) suggested that the Committee should decide whether all the provisions of the United Kingdom draft should be included, or not, in the working paper to be forwarded to the Commission.

Dr. CHANG (China) emphasized again the importance of Parts I and III of the United Kingdom draft.

The CHAIRMAN said that the two new suggested Articles given in document E/CN.4/AC.1/4/Add.1 could be regarded as subjects which might be included in a draft Convention. She suggested (1) that the Representative of France be asked to submit an abbreviated draft Declaration, and (2) that the working group be asked to go over Parts I and III of the United Kingdom draft and formulate recommendations. As regards Part II of the United Kingdom draft, her feeling was that the Drafting Committee had accepted certain principles but not the wording of every Article.

It was decided that the next meeting of the Drafting Committee would be held on Thursday afternoon. Professor CASSIN was asked to prepare, in the interval, a revised draft of his proposals for Articles to be included in the Declaration.

The meeting adjourned at 5:15 p.m.
