

COMMISSION ON HUMAN RIGHTS

DRAFTING COMMITTEE

SECOND SESSION

TWENTY-THIRD MEETING

Held at Lake Success, New York
Wednesday, 5 May 1948, at 2.30 p.m.

Present:

Chairman: Mrs. Franklin D. ROOSEVELT (United States of America)

Rapporteur: Mr. Malik (Lebanon)

Members: Mr. Heywood (Australia)
Mr. Santa Cruz (Chile)
Mr. Wu (China)
Mr. Ordonneau (France)
Mr. Pavlov (Union of Soviet Socialist
Republics)
Mr. Wilson (United Kingdom)

Representatives of Specialized Agencies:

Mr. Stone (International Refugee
Organization)

Consultants from Non-Governmental Organizations:

Miss Sender (American Federation of Labor)

Secretariat: Dr. Humphrey
Mr. Male

The CHAIRMAN stated that the International Labour Organization had requested the Committee for permission to make a statement on Article 8 of the Draft Covenant. Since the representative of the International Labour Organization was not present, she suggested that the Committee delay discussion of Article 8 until he could be present.

1. DISCUSSION OF ARTICLE 6

Mr. WU (China) proposed that Article 6 be amended to read "No one shall be subjected to any form of physical mutilation or medical or scientific experimentation against his will".

The amendment was supported by Mr. Santa Cruz (Chile) and the Chairman.

Article 6 was accepted as amended by a vote of four to none with one abstention.

The CHAIRMAN, speaking as representative of the United States, stated that Article 6 had been originally proposed by the United States delegation. She felt it necessary to point out that there were laws in the United States which, in order to promote the health and welfare of the people, provided for compulsory vaccination and treatment for certain infectious diseases. She also cited the case of emergency amputations and surgical operations on the field of battle which might be carried out without the consent of the patient. She considered that an article of general limitation would take care of such cases, but if this were not embodied in the Draft Covenant, she would have to insist on specific limitations within Article 6 itself.

2. DISCUSSION OF ARTICLE 5 (continued)

Mr. WILSON (United Kingdom) stated that at the previous meeting he had suggested that the word "deliberately" be added to Article 5, and he considered that this would seem to take care of other limitations. However, Article 5 was acceptable as it was, and he did not feel too strongly about the amendment.

Mr. SANTA CRUZ (Chile) stated that the amendment proposed by the representative of the United Kingdom did not meet all the difficulties. He pointed out that there were many ways of depriving persons of their lives which were not accidental. There were instances where killing a person might be deliberate but excusable, such as in cases of killing in self-defence. He felt that the basis of Article 5 was the position of the individual in relation to action taken towards him by the State. The Article supported this point of view in its qualifying phrase, "save in the execution of the sentence of a court".

The CHAIRMAN said that the Committee seemed to be in agreement that the one limitation expressed in Article 6 was not the only one, and the question would therefore be left open for later discussion.

3. DISCUSSION OF ARTICLE 7

Mr. WILSON (United Kingdom) considered that the expressions "cruel or inhuman punishment" and "cruel or inhuman indignity", especially the latter, were somewhat vague for a document of this nature.

Mr. MALIK (Lebanon) stated that at the Second Session of the Commission on Human Rights at Geneva, this article had been considered against the background of criminal events which took place in Nazi Germany. It was felt that even in a legal instrument such as the Covenant, the attention of the world should be called to these inhuman acts. He agreed that the word torture covered the idea of inhuman punishment and inhuman indignity, but he considered that the time had come to explain to the world what was meant by torture, inhuman punishment and inhuman indignity. The basic idea was to explain in an international instrument that the conscience of mankind had been shocked by inhuman acts in Nazi Germany, and therefore a positive and condemnatory article was needed. Considering what had happened in Germany he felt that it was better to err on the side of vagueness than on the side of legal accuracy.

The CHAIRMAN proposed that the wording of the Article be amended to begin with the words "No one". She went on to explain that at the Second Session of the Commission it had been decided to use words generally accepted by people everywhere. Expressions such as "cruel or inhuman" were to be found in the laws and constitutions of many countries. Imprisonment for a crime was lawful, for example, but imprisonment without water or food was inhuman. "Denial of justice" meant something in law, and the term "cruel or inhuman" also meant something. A Covenant of this general character would be unable to spell out what was cruel or inhuman punishment, or cruel and inhuman indignity and she would, therefore leave the text as it was.

Mr. WILSON (United Kingdom) referred to the comments offered by the Government of the Union of South Africa on this Article. He agreed that reference should be made to these expressions but considered that they would be more suitable in the Declaration.

Mr. MALIK (Lebanon) considered it strange that the Union of South Africa should oppose the word "indignity" as being too vague. The word "dignity" was found in the Preamble of the Charter of the United Nations, which was the creation of Field Marshal Smuts of the Union of South Africa. It would be better to run the risk of being vague than of being too particular, and considering the reaction of mankind to the barbarous activities of the Nazis, he felt that these expressions should be included in the Article.

/The recommendation

The recommendation of the Chairman that Article 6 should, in conformity with preceding Articles, begin with the words "No one shall be deprived ..." was accepted by the Committee.

Article 7, as amended, was accepted by a vote of four to none with one abstention.

4. DISCUSSION OF ARTICLE 9.

Mr. WILSON (United Kingdom) considered that this Article was confined to one single subject, namely the circumstances under which a person could be deprived of his liberty. He therefore proposed that the first paragraph be omitted, since the word "arbitrary" as used in the first sentence was imprecise, indefinite and vague. He felt, furthermore, that paragraph 1 of Article 9 did not add anything to the rest of the Article.

Under paragraph 2 some reference was needed to cover restrictions placed on people having infectious or contagious diseases. This might possibly be included in 2 (d).

Mr. SANTA CRUZ (Chile) considered that the Article went into too great detail. There would be further restrictions which the Committee might not at the moment have in mind, such as the arrest by military authorities of persons under their jurisdiction, not for penal violations but for infractions against discipline. He suggested a simplified wording, such as "No one shall be deprived of his liberty except in fulfilment of legal provisions and in accordance with formalities provided by law."

Mr. WU (China) agreed with the representative of Chile that Article 9 was too long. A briefer Article, shorn of limitations, was needed.

Mr. MALIK (Lebanon) referred to the historical background of the Article. At the Second Session of the Commission, it had been decided to include paragraph 1 because it contained the central idea of the Article. Since these Articles were not to bear titles, it had been suggested that paragraph 1, by its clause "arbitrary arrest or detention", would serve as the topic for the whole Article.

With reference to paragraph 2, he opposed eliminating the enumeration of restrictions since he felt that governments might find this an inducement to act arbitrarily in these matters. The inclusion of these limitations would therefore tend to avoid confusion.

Mr. WILSON (United Kingdom) suggested that the words "that is to say" be appended after the word "detention" at the end of paragraph 1, thus linking paragraphs 1 and 2.

/The CHAIRMAN

The CHAIRMAN stated that in the interest of securing a shorter Article, she had suggested combining Articles 9 and 13 under the following text:

1. No one shall be deprived of liberty without due process of law.
2. No one shall be arrested or detained without being promptly informed of the reasons for the arrest or detention and without being entitled to a fair hearing within a reasonable time or to release.
3. No one shall be denied the right to a fair hearing before an independent and impartial tribunal in the determination of any criminal charge against him or any of his rights or obligations.
4. No one shall be convicted or punished for crime except after a public trial within a reasonable time before a fair independent and impartial tribunal.

She added that she was able to think of seven further limitations, and she was certain that there were others. For this reason, she proposed the shorter Article.

Mr. SANTA CRUZ (Chile) insisted on his position, and said that the aim of the Article was to prevent any person from being arbitrarily deprived of his liberty. Detention or arrest should only be made in accordance with due process of law, and in accordance with the laws of the country. He considered that some formula should be found to cover these points. For the reasons given by Mr. Malik, he felt that paragraph 1 should be retained at the head of the Article.

Mr. PAVLOV (Union of Soviet Socialist Republics) requested the Chairman to explain the words "without being informed of the reasons for the arrest or detention" as phrased in her proposal. Did she mean "reasons" or "legal grounds"?

The CHAIRMAN stated that the person should be informed of the legal reasons for his arrest.

Mr. MALIK (Lebanon) pointed out that nothing was said of habeas corpus in the United States proposal.

Mr. WILSON (United Kingdom) pointed out that paragraph 3 also provided an answer to the query of the Soviet representative. With reference to the clause "without due process of law", as contained in the United States proposal, he felt that the same arguments obtained which he had made against this wording when Article 5 was being discussed. He considered that the words were vague and open to abuse.

He considered that Article 9 was perhaps the most important Article in the whole Covenant, because here the Covenant spelled out the way in
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which the state might deprive a person of his liberty. Unless specific limitations were placed on the state in enumerated restrictions, the state might arrogate to itself the widest powers over the individual. The Committee therefore should concern itself less with brevity and more with precision.

Since additional restrictions were being mentioned by members of the Committee, he suggested that the members bring to the next meeting a list of restrictions to be included in this Article.

With reference to the United States proposal to combine Articles 9 and 13, he felt that the Committee should confine itself to one idea at a time. Article 9 was concerned with the arrest and detention of the individual. Article 13 was concerned with fair trial. These ideas should be kept separate.

The CHAIRMAN read to the Committee the comment of the Government of India which had been received, to the effect that the list of cases justifying arrest should be treated as illustrative and not exhaustive.

She stated in reply to the comment concerning habeas corpus that this was provided for in the phrase "without being entitled to a fair hearing within a reasonable time".

Mr. SANTA CRUZ (Chile) maintained that either an exhaustive list of limitations should be included, or else it would be necessary to find some general formula which would cover the meaning of the Article.

Miss SENDER (American Federation of Labor) inquired whether it would be possible to compose a complete list of restrictions under paragraph 2, and then decide if such a long list was necessary.

Mr. SANTA CRUZ (Chile) proposed that the Committee postpone the discussion of paragraph 2 of the Article until the conclusion of discussion on the Covenant. He was supported by the representative of the Lebanon.

Mr. MALIK (Lebanon) considered that under the wording, "No one shall be deprived of liberty without due process of law", as proposed by the Chairman, the notion of law was left entirely to the subjective interpretation of the state. It must be recognized that "arbitrary arrests" did happen, and that they must be condemned. Therefore the word "arbitrary" was probably the most important word in the entire Article, and must be retained.

The CHAIRMAN stated that she had no particular objection to retaining paragraph 1 as it stood.

Mr. PAVLOV (Union of Soviet Socialist Republics) requested the Chairman to explain whether there was any special significance in the
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wording of her proposal, considering that arbitrary detention meant more than arrest. Illegal vigilante groups, or groups activated by racial or national hatred, might be responsible for the illegal detention of a person.

The CHAIRMAN explained that the phrase "due process of law" would exclude illegal detention by vigilante groups.

Mr. MALIK (Lebanon) referred to the suggestion of the United Kingdom concerning the combination of paragraphs 1 and 2. He considered that it would be better to have two separate paragraphs. A separate first paragraph, as it now stood, would give significance to the whole Article.

Mr. WILSON (United Kingdom) considered that paragraph 2 was an elaboration of paragraph 1, and therefore the words "that is to say" might be added after the first paragraph to emphasize the elaboration.

Mr. MALIK (Lebanon) pointed out that paragraph 1 contained the statement of the rule or principle. Paragraph 2 contained a secondary and less important elaboration of that rule. However, he had no objection to indicating in paragraph 2 that it was an explanation of paragraph 1.

It was agreed that the representatives of the Lebanon and the United Kingdom collaborate in the drafting of the text of paragraph 2.

Paragraph 1, reading "No one shall be subjected to arbitrary arrest or detention", was accepted by a vote of four to none with two abstentions.

Article 9, Paragraph 3

The CHAIRMAN pointed out that the new draft proposed by the United States for this paragraph was based on a mere drafting change.

Mr. WU (China) pointed out that this paragraph depended on paragraph 2.

Mr. WILSON (United Kingdom) said he preferred the positive assertion of the principle to the negative viewpoint contained in the United States draft.

Mr. SANTA CRUZ (Chile) agreed with the representative of the United Kingdom. He felt that the Committee might accept paragraph 3 but should defer mention of sub-paragraphs (a) and (b) until the second paragraph had been drafted and approved.

Mr. WU (China) felt that since the negative "No one ..." had been used throughout the Covenant, it might be consistent to retain that wording.

The CHAIRMAN agreed with the representative of China.

/At the suggestion

At the suggestion of the Chairman, the Committee agreed to postpone its decision on the final text of this paragraph until paragraph 2 had been drafted.

Article 9, Paragraph 4

Mr. WU (China) considered that the expression habeas corpus was not altogether clear to people who did not know Latin or English. He would prefer a clearer explanation of the term.

Mr. MALIK (Lebanon) explained that the term had historical importance and was considered a milestone in the history of human liberty. Therefore it should be retained.

The CHAIRMAN proposed that the paragraph be redrafted in a negative form.

Mr. SANTA CRUZ (Chile) considered that the negative form of the Article would not apply here since the previous paragraphs referred to the possible future detention or arrest of persons. In this paragraph, the person had already been arrested. A positive form would be clearer.

The expression habeas corpus seemed satisfactory to him, inasmuch as it was a juridical term, and accepted as such in his country.

The CHAIRMAN proposed the inclusion of the words "by arrest or detention" after the phrase "Every person who is deprived of his liberty ...". She pointed out that habeas corpus might not apply as a rule to minors and aliens.

Mr. SANTA CRUZ (Chile) stated that habeas corpus should apply to all people, and should include minors. Certainly, it should apply to guardians of minors. The principal of habeas corpus should have as wide an application as possible.

The representatives of Chile and the Lebanon agreed with the insertion of the phrase suggested by the CHAIRMAN.

Mr. MALIK (Lebanon) agreed that habeas corpus did apply to minors, if only through their guardians.

A vote was taken on the insertion of the words "by arrest or detention" as proposed by the CHAIRMAN.

The proposal to insert the words "by arrest or detention" was accepted by four votes to none with two abstentions.

Article 9, Paragraph 5

The CHAIRMAN, speaking as representative of the United States, stated that she was opposed to this paragraph. According to United States law, the government did not always compensate the individual in such cases.

/Mr. MALIK

Mr. MALIK (Lebanon) called the attention of the Committee to the comments of the Egyptian Government as contained in document E/CN.4/85, page 66.

Mr. WILSON (United Kingdom) stated that unlawful arrest was specifically prohibited in the United Kingdom, and that his delegation had been responsible for the inclusion of this paragraph. He felt, however, that the paragraph should be redrafted to the effect that there should be penalties for indiscriminate arrest. The right of remedy to cover cases of unreasonable arrest should also be included.

Mr. SANTA CRUZ (Chile) stated that compensation should be made by society where a man had been harmed by arbitrary detention, and was tried and finally acquitted.

The CHAIRMAN suggested that paragraph 5 be discussed again when a new draft had been submitted by the representative of the United Kingdom.

5. DISCUSSION OF ARTICLE 10

The CHAIRMAN read the comment of the Government of India on Article 10, to the effect that the Article should not apply to contractual obligations undertaken by any individuals towards the state.

Mr. WILSON (United Kingdom) agreed with the comment of the Brazilian Government that the phrase "or held in servitude" should be omitted.

Mr. SANTA CRUZ (Chile) supported the representative of the United Kingdom.

Mr. WU (China) said that he did not fully understand what was meant by a "contractual obligation" and felt that it was necessary to define how important the obligation was.

The CHAIRMAN proposed a redraft of the paragraph to read "No one shall be imprisoned solely because of his inability to pay a contractual debt."

Mr. WILSON (United Kingdom) proposed that the words "merely on the grounds of a breach of a contractual obligation" be substituted for "a mere breach".

The CHAIRMAN accepted the deletion of the words "or held in servitude" and the amendment submitted by the representative of the United Kingdom. She felt it was a debt that was envisaged in this paragraph. It seemed to her that the Committee might be considering another kind of contract.

Mr. SANTA CRUZ (Chile) stated that a person could be imprisoned for non-fulfilment of a civil contract. He requested Dr. Humphrey to give a French text for the words "No one shall be imprisoned merely."

/Dr. HUMPHREY

Dr. HUMPHREY (Secretariat) translated the text as "Nul ne sera emprisonné uniquement ...".

Mr. SANTA CRUZ (Chile) pointed out that the mere breach of a contractual obligation was not a cause for imprisonment. However, if this breach was accompanied by a criminal act, such as fraud, the act could be prosecuted.

Mr. MALIK (Lebanon) explained the philosophy behind this concept, which aimed at protecting the individual in the matter of contracts. Inability to pay a contractual obligation would not render him liable to prosecution. If it did, the individual might be considered as subservient to mere money.

Mr. SANTA CRUZ (Chile) agreed with this interpretation, and pointed out that this principle had been recognized in the Penal Code of Chile since 1847.

The CHAIRMAN proposed the following draft:

"No one shall be imprisoned merely on the grounds of inability to fulfill a contractual obligation."

The Chairman's proposal was accepted by five votes to none with one abstention.

6. DISCUSSION OF ARTICLE 11

The CHAIRMAN read the comment of the Government of India on this Article (document E/CN.4/82/Add.7, page 2).

The meeting rose at 5.20 p.m.
