

COMMISSION ON HUMAN RIGHTS

DRAFTING COMMITTEE

SECOND SESSION

SUMMARY RECORD OF THE THIRTY-FIRST MEETING

Lake Success, New York
Thursday, 13 May 1948, at 11:00 a.m.

<u>Chairman:</u>	Mrs. Franklin D. ROOSEVELT	United States of America
<u>Rapporteur:</u>	Mr. Charles MALIK	Lebanon
<u>Members:</u>	Mr. E. J. R. HEYWOOD	Australia
	Mr. H. SANTA CRUZ	Chile
	Mr. P. ORDONNEAU	France
	Mr. A. P. PAVLOV	Union of Soviet Socialist Republics
	Mr. G. WILSON	United Kingdom
<u>Representative of Specialized Agency:</u>		
	Mr. R. W. COX	International Labour Organization
<u>Consultant: from Non-Governmental Organization:</u>		
	Miss Toni SENDER	American Federation of Labor
<u>Secretariat:</u>		
	Dr. John P. HUMPHREY	
	Mr. John MALE	

1. DISCUSSION OF ARTICLE 14

The CHAIRMAN stated that the first paragraph of Article 14 had been accepted by the Committee.

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/Mr. WILSON

Mr. WILSON (United Kingdom) stated that he gathered from the comments of delegates that some misunderstanding existed with reference to paragraph 2 of Article 14. It had been said that paragraph 2 was a derogation from the principle laid down in paragraph 1 of this Article. He considered that paragraph 2 was merely an explanation and extension of the principle which would make it applicable to international as well as to domestic law. The question before the Committee therefore was whether or not it wished to apply this article to international law in addition to domestic law.

He pointed out that decisions of the International Court of Justice applied to (a) international conventions, (b) international custom and (c) general principles of law recognized by civilized nations, which would seem to set forth the need for the application of this article to international law. He felt that the most important part of the text of paragraph 2 was the words "at the time it was committed", which would mean that these laws could not be considered as ex post facto laws.

Accordingly he would vote in favour of retaining paragraph 2 of Article 14.

The CHAIRMAN stated that she was under the impression that the Committee had agreed to delete the second paragraph of Article 14 but that the matter could be brought up again at the full session of the Commission on Human Rights.

Mr. PAVLOV (Union of Soviet Socialist Republics) welcomed the statement of the representative of the United Kingdom. He wished to remind the Chairman that the Committee had agreed to retain the principle which had been incorporated in paragraph 2 of Article 14, but to insert it in an introductory article to the Convention or elsewhere in the

/Convention.

Convention. He believed, further, that the task had been assigned to one of the members of the Commission to determine just where this principle was to be placed.

The CHAIRMAN stated that it had been decided at the previous meeting to accept this Article, but that if the representative of Chile wished to submit a new proposal on this point, he could do so.

Mr. SANTA CRUZ (Chile) stated that in view of the opposition expressed in the Committee to retaining paragraph 2 in Article 14, he had suggested that the Committee might consider some provision of a general nature to the effect that this Article would not apply to war criminals because the question of war criminals would be dealt with under a separate Convention.

After due consideration, however, he felt that a general provision would create more difficulties and problems than the retention of paragraph 2 as it was in Article 14, because such a provision might give the impression that the Committee had decided that the guarantees and safeguards in regard to the trial of war criminals were to be eliminated.

He was therefore in favour of retaining paragraph 2 in Article 14.

The remarks of the representative of the United Kingdom made it easier to understand the significance of paragraph 2.

He considered that, contrary to the opinion of the representative of the United Kingdom, paragraph 2 constituted an exception to the rule of ex post facto law.

The CHAIRMAN concurred with the view of the representative of Chile to the effect that paragraph 2 constituted an exception to the rule of ex post facto law and did not consider it necessary, therefore, to state an exception of this nature in the draft Covenant.

/She drew the

She drew the attention of the Committee to the resolution of the Second Session of the General Assembly of 21 November 1947 wherein the International Law Commission was directed to have for its object in the framework of the promotion of the progressive development and codification of international law the formulation of the principles established by the Nuremberg Judgment and the Charter of the International Military Tribunal. It would therefore appear that the Committee was usurping the work of another organ of the United Nations.

Mr. ORDONNEAU (France) declared that he concurred in the views of the representative of the United Kingdom. He pointed out that the representative of the Soviet Union had had difficulties in obtaining adequate translations and therefore a re-examination of this question should be permitted.

Mr. PAVLOV (Union of Soviet Socialist Republics) interpreted the statement of the Chairman to mean that no proper place for the principle expressed in paragraph 2 could be found in the Covenant. This was contrary to his idea that this principle would be included elsewhere. He had had no objection to this latter idea, but would support the retention of paragraph 2 in Article 14.

Mr. WILSON (United Kingdom) did not think that paragraph 2 constituted an exception to the rule of ex post facto law. Rather it seemed to be a clarification of what was found in paragraph 1. He drew the attention of the Committee to the fact that this was prevented by the wording "at the time when it was committed" which was in both paragraphs. However, whereas paragraph 1 was concerned only with domestic law, paragraph 2 states that the application might be either to domestic or international law.

/Mr. SANTA CRUZ

Mr. SANTA CRUZ (Chile) stated that it did constitute an exception. The exception did not apply to the first principle laid down in paragraph 1 because here it was stated that no person should be held guilty of any offence on account of any act or omission which did not constitute such an offence at the time when it was committed. In paragraph 2, the intention was to punish the commission of an act, which at the time it was committed, was considered to be criminal.

Paragraph 2 had in mind the prosecution of war criminals. However, another organ of the United Nations had been entrusted with the task of drawing up a code of penal law which would make it possible in future for war criminals to be punished. Under the circumstances he considered it best to maintain the Article as it was.

A discussion ensued as to whether a vote should be taken on the re-consideration of Article 14, the representatives of France and the United Kingdom supporting the idea that a precedent had been established in the re-consideration of Article 11, and that re-examination of the article could also be based on the fact that the representative of the USSR did not have the appropriate translations before him.

The inclusion of paragraph 2 in Article 14 as it stood was accepted by a vote of five for to two against with one abstention.

2. DISCUSSION OF ARTICLE 15

The CHAIRMAN was not quite certain of the meaning of this Article but inasmuch as there was no comment from the Committee, it was accepted for transmission to the Commission on Human Rights as it stood.

3. DISCUSSION OF ARTICLE 16

Mr. MALIK (Lebanon) stated that the representatives of France, Lebanon and the United Kingdom had worked on the re-draft of this Article.

/He pointed

He pointed out that the new text before the Committee was based on the Geneva text with a few minor differences, namely that there were four paragraphs instead of three, and that the text actually counted two words less than the Geneva text. His colleagues and he tried to incorporate the five points of view submitted in the comments from governments.

He thought that it would be advisable for the Committee to examine this article paragraph by paragraph and read the first paragraph of the new draft in document E/CN.4/AC.1/35.

He drew the attention of the Committee to the addition of the word "thought" in this article, an inclusion based on the remarks submitted by the Netherlands Government. The original Geneva text of the first paragraph of Article 16 had been broken into two paragraphs in the new text in order to separate inner belief and the idea of personal freedom of thought from actual practice.

Mr. PAVLOV (Union of Soviet Socialist Republics) said he would like to have a translation of the written text of this Article. Since, however, he had already heard the Russian translation, he pointed out that this Article seemed to oblige people to accept a religious belief, whereas there was such a thing as a scientific attitude to life. No one should be deprived of the liberty of choosing for himself whether he wished to accept a religion or not.

In the case of minors, as treated in the third paragraph of this Article, a parent or guardian was free to determine what religious teaching should be received. This contradicted the idea of freedom of conscience. Nevertheless, this re-draft text was a considerable improvement over the Geneva text. He would like, however, to propose the following text for the consideration of the Committee:

/"Every person

"Every person shall be allowed freedom of thought and freedom to engage in religious worship in accordance with the laws of the country and in accordance with social customs."

The CHAIRMAN asked the representative of the USSR whether his text could not be interpreted to mean that if a country did not wish to permit any religion, all it had to do was to pass such a law.

Mr. PAVLOV (Union of Soviet Socialist Republics) stated that such an idea was inadmissible because the article spoke of freedom of thought and freedom of worship. He was thinking of the forms in which religious worship could be carried on. In no way could it be implied that freedom of worship was not possible.

The CHAIRMAN requested the delegate of the USSR to submit any new draft amendments and proposals as soon as possible.

She suggested that the Committee vote on the new text as contained in/E/CN.4/AC.1/35 paragraph by paragraph and that the representative of the USSR reserve the right to present his draft to the full Commission.

The United States delegation would accept the first paragraph, receiving the right to examine fully the whole article in the full Commission.

Mr. SANTA CRUZ (Chile) requested that the Committee clarify what was meant by the word "belief". Heretofore the Committee had been dealing with freedom of conscience in a religious sense. With the inclusion of the word "belief" it would seem that the word covered persons whose beliefs were not those of any specific religion. He considered that it was difficult to draw the borderline between religion and philosophy, and that within the framework of philosophy even political beliefs could be introduced.

/Mr. MALIK

Mr. MALIK (Lebanon) replied that the word applied to every form of belief. He cited the words "including freedom to hold any religious or other belief." He pointed out that religious belief had been singled out because the article was based on the principle of religious liberty, but had been enlarged to include all forms of belief.

Mr. PAVLOV (Union of Soviet Socialist Republics) stated that it would be difficult for him to vote for or against this article without a translation of the text before him. He suggested that the Committee postpone discussion of this Article until after lunch.

Dr. HUMPHREY (Secretariat) stated that a semi-official translation could be prepared for the next meeting, but it would take some time to obtain an official translation.

It was agreed to postpone the discussion of Article 16 until the afternoon meeting.

4. DISCUSSION OF ARTICLE 17

Mr. PAVLOV (Union of Soviet Socialist Republics) stated that he had a textual amendment to Article 17.

In answer to a request from the representative of the USSR that the Chairman should not reject his amendments a priori, or to postpone their discussion until a meeting of the full Commission, the CHAIRMAN recalled the amount of work already done on the Covenant. This had to be taken into account. She pointed out that the representative of the Soviet Union had only recently presented definite texts.

The CHAIRMAN added that the Committee had already agreed to forward two alternative drafts to the Commission. However, since the Committee would have before it an amendment by the USSR, she felt that

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discussion on this article should be postponed until the afternoon meeting.

Mr. PAVLOV (Union of Soviet Socialist Republics) said that the Committee might reject these two alternatives in favour of the Russian text or else accept the Russian text as a third alternative. He read the text of the USSR amendment as contained in ^{document} E/CN.4/AC.1/34 adding that the direction of this draft was anti-nazi and anti-fascist. He considered also that it was not only a bare right that was being declared here, but that it was necessary to ensure the right to a free press by making available paper, printing presses, etc.

Discussion on Article 17 was postponed until the afternoon meeting.

5. DISCUSSION OF ARTICLE 18

Mr. WILSON (United Kingdom) stated he would like to replace the word "places" in sub-paragraph (b) by the word "property".

Mr. SANTA CRUZ (Chile) felt that the use of the word "property" in the singular might be misconstrued to mean property rights. He suggested that the plural "properties" would be more appropriate, since "properties" could only apply in the material sense.

It was finally agreed that the words "to ensure" should follow the word "necessary" at the end of the first paragraph, and that sub-paragraph (b) of this Article be worded as follows:

"(b) protection of persons or property;"

Mr. PAVLOV (Union of Soviet Socialist Republics) stated that the principle in this sub-paragraph was to protect the material property in which a meeting might be held. He considered that the entire concept of the right to assemble was endangered, because if it were felt that the

/building in

building in which the assembly was to be held is endangered, the right of assembly there might be denied. He considered that the danger of limitation here was very great.

He further added that the word "property" had a broad meaning in Russian and would like to see a good translation of the word.

6. DISCUSSION OF ARTICLE 19

The CHAIRMAN pointed out that Article 19 had been agreed upon by the Committee subject to further limitations.

Dr. HUMPHREY (Secretariat) drew the attention of the Committee to the fact that the English version of Article 19 agreed on by the Committee appeared in/E/CN.4/82/Add.8, page 11.
document

Mr. SANTA CRUZ (Chile) suggested that the examples as set out after the words "such as" in this Article should be omitted, and that some other wording be substituted.

Mr. WILSON (United Kingdom) felt that this difficulty could be solved by replacing the words "such as" by "including".

Mr. ORDONNEAU (France) pointed out that Article 16 mentioned in the first sentence should be Article 17 and that Articles 15 and 16 in the second sentence should be Articles 16 and 17.

Mr. MALIK (Lebanon) proposed the replacement of the word "prescribed" by the words "may be appropriate" since the word "prescribed" would seem to make the State the final arbiter in this matter. He felt that the Committee was interested in ensuring that the right was exercised in a manner not incompatible with the laws of the State.

/Mr. ORDONNEAU

Mr. ORDONNEAU (France) proposed the replacement in the French text of the word "prévues" by "conformément a la loi".

Dr. HUMPHREY (Secretariat) read the English and French texts with the proposed changes and amendments, as follows:

"The right of association is recognized provided that right is exercised in whatever form may be appropriate under the law of the State and is directed to lawful aims including the defence and protection of the legitimate interests of the members of the association of the dissemination of information under Article 17. Associations shall enjoy the rights and freedoms set forth in Articles 16 and 17."

"Le droit d'association est reconnu pourvu qu'il s'exerce sur quelque forme que ce soit conformément à la loi de l'état et la protection des intérêts légitimes des associés ou la propagation des informations prévues par l'article 17. Les associations jouiront des droits et libertés énoncées aux Articles 16 et 17."

Mr. PAVLOV (Union of Soviet Socialist Republics) stated that he would abstain from voting because he felt that a direct statement should be made here declaring that associations of a Nazi or Fascist nature were illegal.

Article 19 as read was accepted by seven votes for with one abstention.

7. DISCUSSION OF ARTICLE 20

The CHAIRMAN read the text of Article 20 as it had been approved

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by the Committee, as follows:

"Equal protection of the law with respect to the enjoyment of any of the rights and freedoms set forth in Part II of this Covenant shall not be denied to anyone on account of race (which includes colour), sex, language, religion, political or other opinion, property status, or national or social origin."

Mr. ORDONNEAU (France) stated that although he was a member of the drafting Sub-Committee, he did not wish it to be thought that he had renounced his belief that non-discrimination shall apply to all rights and not only to the rights mentioned in the Convention.

Mr. SANTA CRUZ (Chile) also believed that the protection of the law should be extended to all rights, and not merely to the rights covered by the Covenant. The argument that it was not possible to go beyond these rights covered by this Convention failed to convince him, because the principle of non-discrimination was a positive principle. All states were agreed on this principle, i.e., to eliminate from any legislation or official act the concept of discrimination which would give to all the equal protection of the law.

Mr. PAVLOV (Union of Soviet Socialist Republics) stated that deletion of the second sentence of Article 20 as contained in the Geneva text constituted a deterioration of the article. Incitement was a very positive part of the text, and its deletion had worsened the Geneva text. This Article should be broadened to include all discriminations. Consequently, he would abstain from voting.

The article as read by the Chairman was accepted by a vote of seven for with one abstention.

/The CHAIRMAN

The CHAIRMAN stated that it had been decided not to include Article 21 in the Covenant, and pointed out that Article 22 had already been accepted.

Mr. WILSON (United Kingdom) in answer to a request from the representative of the USSR, read the comments of his delegation on this document
Article as contained in/E/CN.4/85, page 91.

The meeting rose at 1:00 p.m.