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COMMISSION ON HUMAN RIGHTS

DRAFTING COMMITTEE

SECOND SESSION

SUMMARY RECORD OF THE THIRTY-THIRD MEETING

Lake Success, New York
Friday, 14 May 1948, at 10:30 a.m.

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

Rapporteur
and
Vice-Chairman: Mr. Charles MALIK Lebanon

Members: Mr. E. J. R. HEYWOOD Australia
Mr. H. SANTA CRUZ Chile
Mr. T. Y. WU China
Mr. P. ORDONNEAU France
Mr. A. P. PAVLOV Union of Soviet
Socialist Republics
Mr. E. WILSON United Kingdom

Representatives of Specialized Agencies:

Mr. O. F. NOLDE World Federation of
United Nations
Associations

Mr. P. LEBAR United Nations Educa-
tional, Scientific
and Cultural
Organization

Consultants from Non-Governmental Organization:

Miss Toni SENDER American Federation
of Labor

Secretariat:

Dr. J. P. HUMPHREY
Dr. E. SCHWELB
Mr. John MALE

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CONTINUATION OF THE DISCUSSION ON THE COVENANT

Article 1 (Documents E/CN.4/85, E/CN.4/AC.1/19, E/CN.4/82/Add.8)

The CHAIRMAN read the comments made by the Governments of the Netherlands, Brazil, the United Kingdom and the Union of South Africa on Article 1.

Mr. ORDONNEAU (France) said that the Geneva text of Article 1 was not clear and was incomplete. It would be dangerous to allow it to be thought that the theory of human rights began with the drafting of the Covenant. Reference should be made in Article 1 to the Charter, which laid down certain broad principles, and to the Declaration, as in the French draft (document E/CN.4/82/Add.8).

Mr. WILSON (United Kingdom) thought mention should be made of the Declaration and the Charter but in the Preamble rather than in Article 1. The last words of the Geneva text of Article 1 should be retained. They were taken from Article 38 of the Statutes of the International Court of Justice. Many international lawyers believed they represented the same principles as jus gentium. In the Covenant international law was being developed and made more clear and precise and it should therefore be linked up with the "general principles of law recognized by civilized nations." It would be unnecessary to amend "civilized nations" to "United Nations" until a change had been made in the Statutes of the International Court.

The CHAIRMAN proposed that the word "principles" should be amended to read "rights and freedoms", which was more concrete. The words "among the..." should be retained to make it clear that there were other rights and freedoms apart from those dealt with in the present Covenant,
/and which

and which might be embodied in another document in the future. The first Covenant should include only the basic rights and freedoms; this would allow as many States as possible to adhere to it. The French version was too broad.

Miss SENDER (American Federation of Labor) said the French text made it clear that the Covenant would be binding on all States which were bound by the Declaration and the Charter.

Mr. WILSON (United Kingdom) said that when the Declaration and Covenant were presented to the General Assembly there would have to be a resolution approving the documents and requesting Member States to accede to them. Some statements made in the preamble and the first article might be embodied in that General Assembly Resolution. Therefore to avoid duplication, the question of what they should contain should not be definitely decided until later.

Mr. ORDONNEAU (France) could accept a preamble containing the ideas expressed in the French text of Article 1, but added that there was no assurance that the General Assembly Resolution would include them. Even if they did appear in the Resolution they would not be made generally known, as only the Declaration and the Covenant would be published widely. The Preamble should therefore read: "The States parties hereto, being resolved to give effect to the general principles proclaimed in the United Nations Charter and specified in the International Declaration on Human Rights adopted on have agreed on the following:" "with Article 1 of the Geneva draft to follow.

Mr. WILSON (United Kingdom) accepted the French proposal, reserving his right to reopen later if necessary the question of whether the ideas in the Preamble and Article 1 should be expressed elsewhere. He preferred the deletion of "among the" but supported the substitution of "rights and freedoms" for "principles".

It was agreed to leave open the whole question of the Preamble and Article 1 until the following meeting.

Article 2 Paragraph (a) (Document E/CN.4/AC.1/26)

The CHAIRMAN read the comments by Brazil, the United Kingdom, the Union of South Africa and India on Article 2, and proposed a United States amendment to paragraph (a). It should be made clear that rights were not self-operative, and that it was the positive duty of each signatory to put the substantive rights into effect.

Mr. WILSON (United Kingdom) pointed out that the wording of paragraph (a) of the Geneva text was practically identical with that proposed by the United Kingdom. It was true, however, that countries having Constitutions should be allowed the same freedom of action as those having none. The words "contracting States" in the United States draft were unsuitable.

In reply to a question by the representative of the United Kingdom, the CHAIRMAN stated that there had been precedents for signing agreements for which there were at the time no provisions in the laws of the signatory State. In signing the Red Cross Convention the United States had agreed not to use the Emblem commercially, afterwards adding a Statute to cover the point.

Mr. WILSON (United Kingdom) in reply to a question by Mr. WU (China) said paragraph (a) of Article 2 had been drafted to

/apply to

apply to all individuals, irrespective of the papers they carried.

Mr. ORDONNEAU (France) said that Article 15 would not apply to stateless persons but to total deprivation of an individual's juridical personality, of which nationality was only a part.

The CHAIRMAN, supported by the Representative of CHINA, proposed that the United States of America text for paragraph (a) should be substituted for the Geneva text with the words "contracting parties" amended to read "every State party hereto".

In reply to a question by Mr. PAVLOV (Union of Soviet Socialist Republics) the representative of the UNITED KINGDOM said that the manner of external enforcement of the Covenant in countries which acceded to it had yet to be discussed. Internally it must remain within the powers of each acceding State to decide how it would give effect to the obligations imposed by its acceptance of the Covenant. No State could be party to the Covenant unless it guaranteed to carry out its provisions. In the United Kingdom, foreigners had as free access to the courts as citizens, and the independence of the judiciary was assured.

The CHAIRMAN said it might be clearer to insert "domestic" before "laws". The guaranteeing of the provisions of Article 2 would depend upon domestic law. In the event of a country's failure to comply, the implementing provisions of the Covenant would be invoked.

/Mr. HEYWOOD

Mr. HEYWOOD (Australia), s

Mr. HEYWOOD (Australia), supported by the representative of France, suggested that the addition of the words "...whether citizens, persons of foreign nationality or stateless persons" after "...respective jurisdiction" would eliminate all doubts as to the meaning.

Mr. ORDONNEAU (France) said the proposal of the United States of America was acceptable. The second sentence would call for the deletion of paragraph (b), as proposed by France.

The word "citizens" had too narrow a meaning and should be amended to read "nationals".

Mr. PAVLOV (Union of Soviet Socialist Republics) said the word "citizen" in Russian could be appropriately employed in the broad sense if "persons of a foreign nationality or stateless persons" were to follow it in paragraph (a).

Mr. WILSON (United Kingdom) pointed out that "their respective jurisdictions" should read "within its jurisdiction." He proposed that a footnote should be added to the effect that the Covenant should not be self-operating; that the principle laid down in Article 2 paragraph (a) had been accepted; but that the form and wording would be subject to further consideration.

Paragraph (a) of Article 2 was accepted by a vote of five to none with one abstention to read as follows, with the footnote proposed by the United Kingdom:

/"Every State,

"Every State, party hereto, undertakes to ensure through adequate laws and procedures to all individuals within its jurisdiction, whether citizens, nationals, persons of foreign nationality or stateless persons, the rights and freedoms set forth in Part II of this Covenant, and further undertakes that such rights and freedoms, where not now provided under existing laws and procedures, be given effect in its domestic law through the adoption of appropriate laws and procedures."

Article 2, Paragraph (b)

The proposal of the United Kingdom to delete paragraph (b) was adopted by a vote of five to none with one abstention.

Article 2, Paragraph (c)

The CHAIRMAN thought paragraph (c) was unnecessary.

Mr. WILSON (United Kingdom) supported by Mr. WU (China) said (c) contained an important idea in the second clause. The words "herein defined" should be inserted. It should be clear that no one could avoid responsibility for violating a person's freedom by claiming that he was acting on higher authority.

In reply to a question by the representative of CHINA, he said provisions should be made within the State to ensure remedial action. Rights violated in foreign territory would be dealt with when non-domestic jurisdiction was discussed.

It was agreed by a vote of three to one with two abstentions that paragraph (c) should be retained.

/Mr. MAQUIERA

Mr. MAQUIERA (Chile) being an alternate representative for the meeting and having no vote, reserved the right of the Chilean Delegation to return again to the question of paragraph (c).

It was agreed by a vote of four to none with two abstentions to retain paragraph (d) with the word "remedies" amended to read "remedy" in order to conform with the wording of paragraph (c).

Article 2 paragraph (e)

After some discussion on the meaning of "police and executive officers" a phrase which varied between countries, it was decided by a vote of four to none with two abstentions to retain paragraph (e) of Article 2 in English as it stood, and that each representative would supervise the translation of "police" into the appropriate word in his native language.

Mr. WU (China) said that as the Committee had decided to retain paragraph (c) he regarded (d) and (e) as natural consequences and had therefore voted for their retention.

Redraft of Article 13 (Documents E/CN.4/AC.1/24Rev.1 and E/CN.4/AC.1.24 Rev.1/Add.1)

Mr. ORDONNEAU (France) pointed out that the "other safeguards" mentioned in paragraph 2(c) would vary from legislation to legislation. It should be deleted as redundant and vague.

The CHAIRMAN said the words referred to the right to call witnesses, etc. It was preferable to leave them in.

It was agreed by a vote of four to none with two abstentions to delete the words "other safeguards for his defence" in paragraph 2, sub-paragraph (c).

/Mr. WILSON

Mr. WILSON (United Kingdom) abstained from voting as he believed the question was already included under "fair hearing" in paragraph 1.

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Mr. PAVLOV (Union of Soviet Socialist Republics) abstained from voting. The last paragraph of the Soviet draft was preferable to paragraph (c) document E/CN.4/AC.1./24/Rev.1/Add.1., and should be submitted with the Sub-Committee draft. As a consequence, Mr. ORDONNEAU (France) retracted his vote in favour of paragraph (c) and asked that an abstention should be recorded for France.

Article 13 as a whole was approved by a vote of five to none with one abstention, with the deletion of "other safeguards for his defence" in paragraph 2 (c), as proposed by the representative of France.

The meeting rose at 1:00 p.m.