

COMMISSION ON HUMAN RIGHTS

DRAFTING COMMITTEE

FIRST SESSION

SUMMARY RECORD OF THE FOURTH MEETING

Held at Lake Success, New York, on Thursday, 12 June 1947, at 10:30 a.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)                              |
|                | Mr. Geoffrey Wilson    | (United Kingdom)                      |
|                | Prof. V. Koretsky      | (Union of Soviet Socialist Republics) |

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 Secretariat Draft Outline Of International Bill of Right continued (document E/CN.4/AC.1/3)

Article 6

The CHAIRMAN recalled that the Committee was to continue its examination of each article of the draft outline with a view to obtaining a general idea as to the substance to be included in the

/International

International Bill of Rights. She reminded members that it had been decided to group Article 5 either with Article 6 or with one of the articles which followed. She read Article 6 and drew attention to the alternate proposals of the United Kingdom (E/CN.4/AC.1/4) and of the United States (E/CN.4/AC.1/8). The United States draft, she felt, was clearer in that specific mention was made of the right to obtain witnesses. The CHAIRMAN asked each member to express his views as each article was read.

Prof. CASSIN (France) felt that the ideas expressed by Article 6 were reasonable but wished to have all articles on penal procedure grouped together

Mr. SANTA CRUZ (Chile) agreed in substance with the idea set forth in the article.

Mr. HARRY (Australia) felt the article should have a place in the Bill.

Dr. CHANG (China) pointed out that it would be necessary to clarify the term "national emergency" used in the Secretariat draft.

Dr. MALIK (Lebanon) agreed that the term "national emergency", being very elastic, would have to be carefully defined.

Prof. KORETSKY (Union of Soviet Socialist Republics) reserved his position and said he would comment at a later date.

Mr. WILSON (United Kingdom) called attention to Article 4 of the British draft (E/CN.4/AC.1/4) which made provision that, in case of emergency the Secretary-General of the United Nations would be fully informed of the measures taken and the reasons therefor.

The CHAIRMAN summarized the general feeling of the Committee that the substance of Articles 5, 6, and 7, all dealing with personal liberties, should be retained. What had been said of Articles 5 and 6, she felt, was also true of Article 7.

#### Article 8

Prof. CASSIN (France) felt that a text prohibiting slavery and what had been called compulsory labour must be included. He suggested that mention be made of servitude and inhuman exploitation. He felt that the Bill should proclaim the right of a man to contribute to the well-being of society by his work. He questioned whether the "contractual obligations,"

/spoken of

spoken of in the United States draft, included family obligations.

Mr. SANTA CRUZ (Chile) also agreed that the substance of the article should be included, and with the remarks of Prof. Cassin concerning the right of a man to contribute to the well-being of society by his work. At the same time, he said, labour had to be recompensed in a manner which would satisfy the needs of the individual.

Mr. HARRY (Australia) preferred the United States draft of Article 8 to that of the Secretariat. He thought the concept of the right to a livelihood conditioned by the duty to work, should not be stressed in this article which dealt with exploitation of man by man.

Dr. CHANG (China) also preferred the United States draft. He considered the phrase "prohibited by this Bill of Rights" unsuitable, and felt that reference to livelihood and work should be made at another point. "Contractual obligations," in his opinion, would have to be qualified inasmuch as laws relating to contracts differed throughout the world.

The CHAIRMAN explained that the United States did not consider family obligations contractual.

Dr. MALIK (Lebanon), although of the opinion that the United States redraft was more satisfactory than that of the Secretariat, felt that the vague concepts of work, slavery, and compulsory labour would need clarification. He called attention to the fact that the drafts submitted by the delegation of Chile and by the American Federation of Labor contained helpful ideas on this subject.

Prof. KORETSKY (Union of Soviet Socialist Republics) reserved his right to make a statement later.

Mr. WILSON (United Kingdom) believed that both drafts would require more particularity, and that this was not the right place to say anything about the right to work.

The CHAIRMAN stated that it seemed to be generally agreed that the substance of Article 8 should be included, but that perhaps certain drafting changes would be needed.

Article 9

Prof. CASSIN (France) pointed out that the right of movement might give rise to certain difficulties such as, for example, economic considerations. Factories could not be established wherever a worker wished to live. Also, there existed problems relating to this right which could be solved only on the international level. He agreed that the principle of equality of freedom of movement should be affirmed in the Bill of Rights.

Mr. SANTA CRUZ (Chile) felt that it would be more logical to follow the order suggested by the Secretariat, and study separately (1) the right to move freely within a country and (2) the right of immigration into another country.

Mr. HARRY (Australia) asked whether the second paragraph of the United States redraft was intended as a substitute for item 10 of the Secretariat draft. He felt that three concepts were under consideration: (1) liberty of movement within a State subject to general laws, (2) the right to leave a country, and (3) the facilitation of movement throughout the world.

The CHAIRMAN said that it was true that the second paragraph of the redraft might be considered virtually a new article.

Dr. MALIK (Lebanon) expressed a preference for the Chilean draft because it was clearer and less capable of misinterpretation. He asked the meaning of "equitable" and raised a question as to what status this item would have in a country where opposing customs prevailed.

The CHAIRMAN explained that "equitable" was used in the sense of "fair."

Prof. KORETSKY (Union of Soviet Socialist Republics) reserved the right to make a statement at a later date.

Mr. WILSON (United Kingdom) felt that this article primarily dealt with non-discrimination and was, therefore, within the province of the Sub-Commission on Prevention of Discrimination and Protection of Minorities. He doubted whether governments would give assent to an article which restricted their right to exclude people from their countries.

/Miss SENDER

Miss SENDER (AF of L) thought the problems of emigration and immigration should be treated separately.

The CHAIRMAN noted that the Committee apparently agreed that the substance of the first paragraph of the United States draft should be included in the Bill. The second paragraph might become a separate article.

#### Article 10

Prof. CASSIN (France) said that implementation of the right of freedom of movement of persons might be difficult. The right of emigration, he felt, did not carry with it the right to enter another country. The right of States to detain persons also would have to be considered in this connection.

Mr. SANTA CRUZ (Chile) and Mr. HARRY (Australia) approved the basic idea expressed in this article. Both felt it needed redrafting.

Dr. CHANG (China) said he believed liberty of movement to be fundamental. A statement of principle might be drawn up, he felt, but its implementation would have to be the concern of the individual countries.

Dr. MALIK (Lebanon) expressed a preference for the United Kingdom text because of its greater clarity and its inclusion of certain exceptions.

Mr. WILSON (United Kingdom) accepted the substance of the article, if limited as in the United Kingdom draft.

The CHAIRMAN observed that there seemed to be general agreement that something along the lines proposed in Article 10 should be included in the Commission's draft.

#### Article 11

Prof. CASSIN (France) said it would be necessary to draft two alternative texts on the question of arbitrary searches and seizures, depending on the form the Bill would finally take. The wording of an article on this subject, he felt, would be extremely important.

/Mr. SANTA CRUZ

Mr. SANTA CRUZ (Chile) pointed out that the Chilean draft separated the concepts of personal liberty and family relations, whereas, in the Secretariat and United States drafts they had been grouped as one. He favoured discussing them separately: (1) the inviolability of property and correspondence, and (2) freedom of family relations.

Mr. HARRY (Australia) agreed that the substance of the article had a place in the Bill. Neither the right to life nor liberty would be helpful if pressure could be put upon an individual through his family, he pointed out.

Dr. MALIK (Lebanon) questioned the meaning of the terms "arbitrary" and "unreasonable". He said both were vague and needed clarification. He also asked whether the word "secrecy" was intended to mean absolute secrecy.

Mr. WILSON (United Kingdom) agreed with Prof. Cassin that the form of the draft would determine the final wording of this article. He stated that the meaning of the words "arbitrary" and "unreasonable" would differ in accordance with prevalent customs, practices and ideas.

The CHAIRMAN summarized the general feeling of the Committee that the substance of the article should be included in the Bill in some form, but that it would have to be worded very clearly and carefully. She proposed that in considering other articles, only the representative wishing to sponsor the inclusion of that article in the Bill should speak.

#### Article 12

Prof. CASSIN (France) believed this article to be indispensable because persons existed who had no legal personality. A question which came to his mind was whether it should be left by itself or grouped with the other articles relating to civil rights.

#### Article 13

The inclusion of the substance of Article 13 was sponsored by Prof. CASSIN (France).

/Article 14

Article 14

The inclusion of the substance of Article 14 was sponsored by Dr. MALIK (Lebanon).

Article 15

The inclusion of the substance of Article 15 was sponsored by Prof. CASSIN (France).

Article 16

The inclusion of the substance of Article 16 was sponsored by Mr. HARRY (Australia) and Mr. SANTA CRUZ (Chile).

Article 17

The CHAIRMAN observed that the views of the Sub-Commission on Freedom of Information and of the Press would have to be taken into consideration when the drafting of this article was undertaken.

The inclusion of the substance of Article 17 was sponsored by Mr. WILSON (United Kingdom).

Article 18

The inclusion of the substance of Article 18 was sponsored by Mr. SANTA CRUZ (Chile). He said it was important to have such a provision.

Article 19

The inclusion of the substance of Article 19 was sponsored by Mr. WILSON (United Kingdom) and Dr. MALIK (Lebanon).

Article 20

The inclusion of the substance of Article 20 was sponsored by Mr. HARRY (Australia) and Dr. MALIK (Lebanon).

Article 21

The inclusion of the substance of Article 21 was sponsored by Dr. CHANG (China).

/Article 22

Article 22

The CHAIRMAN said that in her opinion there should be a provision along these lines. Prof. CASSIN (France) said he thought it should be grouped with the articles on civil rights.

Article 23

The inclusion of the substance of Article 23 was sponsored by Prof. CASSIN (France). He believed it might be joined to those articles on the subject of political guarantees.

Article 24

The inclusion of the substance of Article 24 was sponsored by Prof. CASSIN (France). He stated that in his opinion the Committee might have to draft a text defining the principle of equality.

Article 25

Prof. CASSIN (France) thought that the substance of this article should be retained and connected with the limitations of liberty already discussed.

Dr. MALIK (Lebanon) remarked that wording of the Secretariat draft was ambiguous. Certain things not prohibited by law are prohibited by other things. The law should not be considered the only law-giver.

Article 26

The inclusion of the substance of Article 26 was sponsored by Prof. CASSIN (France), who proposed that it be studied in conjunction with Article 6.

Article 27

The inclusion of the substance of Article 27 was sponsored by Prof. CASSIN (France).

Article 28

The inclusion of the substance of Article 28 was sponsored by Dr. CHANG (China). He pointed out, however, that what the United Nations could do about grievances would have to be made clear.

Article 29

The inclusion of the substance of Article 29 was sponsored by Mr. SANTA CRUZ (Chile). He stated that many great advances of humanity, politically and socially, had been based on the right to resist oppression.

Article 30

The inclusion of the substance of Article 30 was sponsored by Dr. MALIK (Lebanon).

Article 31

The inclusion of the substance of Article 31 was sponsored by Dr. CHANG (China). He felt, however, that a change of wording might be necessary.

Article 32

The inclusion of the substance of Article 32 was sponsored by Prof. CASSIN (France). He said, however, that he had reservations as to many points of detail.

Article 33

The inclusion of the substance of Article 33 was sponsored by Prof. CASSIN (France).

Mr. WILSON (United Kingdom) agreed with the principle expressed in the article and pointed out that if States were to be restricted as regards expulsion of aliens, they might be unwilling to accept them in the first instance.

Article 34

The inclusion of the substance of Article 34 was sponsored by Dr. MALIK (Lebanon) and Dr. CHANG (China).

Dr. MALIK explained that he was not sponsoring the text as it stood, but only the principle that political asylum is something sacred and ought to be preserved in the community of nations.

Article 35

The inclusion of the substance of Article 35 was sponsored by Mr. SANTA CRUZ (Chile). He added that he supported all of the articles referring to the social rights of individuals, beginning with Article 35 and ending with Article 44.

Article 45

Mr. WILSON (United Kingdom), while supporting this article, stated that in the opinion of his government this question should be referred to the appropriate Sub-Commission.

The CHAIRMAN suggested that some members of the Committee might wish to suggest possible drafts of an article dealing with discrimination which could be passed on to the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities with the recommendation that that Sub-Commission recommend a final wording.

Prof. CASSIN (France) agreed that this suggestion satisfied him, but raised the question of the possible necessity of alternate texts, one to be used in a Declaration, another to be included in a convention.

Article 46

The inclusion of the substance of Article 46 was sponsored by Dr. MALIK (Lebanon).

Article 47

Dr. CHANG (China) pointed out that Article 47 dealt with a method of implementing the Bill of Rights. For this reason he felt that it should not be discussed immediately.

Article 48

The CHAIRMAN agreed that discussion of both Articles 47 and 48, since they dealt with implementation, should be deferred. However, Dr. MALIK (Lebanon) said that since the principle stated in Article 47 was already included in the Charter of the United Nations, its substance should be included somewhere in the Committee's draft, at least in the Preamble.

The CHAIRMAN asked whether the Committee wished to begin drafting the Bill of Rights immediately. Whether it did so or not, she said, it would have to decide very soon if it was writing a Declaration or an "Act of Parliament." Her own government's attitude had always been that since the International Bill of Rights had to be considered by the General Assembly it should first be in the nature of a Declaration, followed by conventions on particular subjects which might have the binding force of treaties.

Dr. CHANG (China) envisaged three distinct documents: one a Declaration, drafted in simple phrases; the second a commentary on each Article of the Declaration; the third a series of proposals for implementation.

The CHAIRMAN proposed that further discussion of this question be postponed until the next meeting. She hoped that at that meeting, the representative of the Soviet Union might present his views on the questions under consideration.

The meeting adjourned at 1:00 p.m.

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