

COMMISSION ON HUMAN RIGHTS

DRAFTING COMMITTEE

INTERNATIONAL BILL OF RIGHTS

FIRST SESSION

SUMMARY RECORD OF THE NINTH MEETING

Held at Lake Success, New York, on Wednesday, 18 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 Harry	(Australia)
	Mr. H. Santa Cruz	(Chile)
	Prof. René 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 document E/CN.4/AC.1/W.2/Rev.1: Suggestions Submitted by the Representative of France for Articles of the International Declaration of Rights.

The CHAIRMAN opened the meeting by giving the substance of the telegram received from Agudah Israel World Organization, which requested the Drafting Committee to add, after the words "the practice of a private or public worship" appearing in Article 20, the words "and religiously ordained observances".

/Article 26

Article 26

The CHAIRMAN read Article 26. Prof. CASSIN (France) explained that different rules in various States as to the participation of the citizens in the formation of law were the reason for the length of Article 26, which was essentially a combination of Articles 29 and 30 of the Secretariat Outline.

The CHAIRMAN, speaking as a Member, drew the attention of the Committee to the fact that Article 26 did not mention non-self-governing territories. She suggested that the words "effective part" be substituted for "equal part," and that the words "and territories" be added after the word "State". She suggested also that somewhere it should be stated that Government derives its just powers from the consent of the governed.

Mr. SANTA CRUZ (Chile) emphasized the necessity of having verbatim records made of all the Drafting Committee's discussions, for they would be of great importance for the future debates. He was strongly supported by several Representatives. Prof. HUMPHREY (Secretariat) explained that verbatim reporters were not always available because of the number of meetings held simultaneously at Lake Success. Certain organs, such as the Security Council, were given priority in the assignment of verbatim reporters.

Mr. SANTA CRUZ (Chile) suggested that a provision concerning the right to form political parties be added to Article 26.

Article 27

The CHAIRMAN read Article 27. Miss SENDER (American Federation of Labor) stated that in her opinion this Article should conclude with the words "and by secret ballot".

Prof. CASSIN (France) pointed out that as far as the Chilean suggestion relating to Article 26 was concerned, the liberty to form political parties already had been mentioned in Article 23, on freedom of peaceful assembly and of association for political and other purposes.

Mr. HARRY (Australia) felt that the Committee should consider rights of
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men rather than duties of States. He therefore suggested that Article 27 be modified to read "Every citizen has a right to participate in democratic elections," etc.

Dr. MALIK (Lebanon) asked if it were possible to have the sound recordings of the proceedings transcribed, so that the verbatim records of the meetings of the Committee would be available in a couple of weeks. The CHAIRMAN agreed to ask the Secretary-General to do so. Speaking as a Member, she said that she would present a redraft of Article 27 in written form.

Article 28

The CHAIRMAN read Article 28. Mr. WILSON (United Kingdom) felt that this Article was not necessary in a Declaration. He pointed out that some portions of it might be considered as abridging the right of conscientious objectors not to take part in military service. The CHAIRMAN, speaking as a Member, stated that in her opinion military service was neither a human right nor a freedom; therefore she felt that the Article did not belong in the Declaration. She also mentioned the fact that there was a growing feeling of sympathy towards conscientious objectors, who would be directly affected by such an Article.

Mr. HARRY (Australia) shared the views of the Representative from the United Kingdom, and stated that he would support the elimination of Article 28. He added that he would like to include, under the general heading of freedom of conscience, the protection of the conscientious objectors.

Prof. CASSIN (France) pointed out that Article 28 consisted of two separate parts. The first one, he felt, obviously touched upon human rights. He considered it essential to state that the police force was for the benefit of the people, and not the contrary. The second part, he agreed, had to be formulated with great caution. He felt that it was necessary to mention military service somewhere.

/Article 29

Article 29

The CHAIRMAN read Article 29. She pointed out that the English translation did not exactly correspond to the French text. She reminded the Committee that the words "public functions" were to be understood as "public employment". Speaking as a Member, Mrs. ROOSEVELT (United States of America) said that she would prefer to delete the second sentence of Article 29. Dr. CHANG (China) stated that he would prefer to replace the last sentence of Article 29 by the second part of Article 31 of the Secretariat draft Outline (document E/CN.4/AC.1/3), reading: "Appointments to the Civil Service shall be by competitive examination". He stressed the fact that as public functions grew more and more numerous and important, all men should have the right to participate in the public life by holding public office. He reviewed the experience of China in this matter and pointed out that competitive examination for public jobs had existed in his country for centuries. In his opinion "free competitive examinations" should be considered as one of the ways to a truly free democracy.

Mr. SANTA CRUZ (Chile) stated that although he could understand the reasons advocated by Dr. Chang, he thought that since the Committee was dealing with "fundamental rights" it would be unadvisable to go into too many details. In his opinion, it was sufficient to establish the principle of non-discrimination in the filling of public offices. He suggested the substitution of the text of the last paragraph of Article XIII of the Chilean draft (document E/CN.4/AC.2) reading: "No person shall be denied the right to hold public office or to be appointed to any of the public services of the State of which he is a national, upon grounds of race, religion, sex or any other arbitrary discrimination; and the administration of the public services of the State shall, in respect to appointments and terms and conditions of service, be without favour or discrimination".

Dr. MALIK (Lebanon) asked whether the Article meant that all appointments to public office would have to be made through competitive
/examination.

examination. He wondered whether it would be possible, for instance, for a State to appoint an Ambassador without such a competitive examination. In his opinion, the Chilean delegate was right in stating that the principle of non-discrimination in appointments to public office had to be preserved. He himself felt that in drafting Article 29, the Committee could be inspired by the wording of Article 101 of the Charter, paragraph 3 of which reads:

"The paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence and integrity".

Prof. CASSIN (France) expressed his agreement with Dr. MALIK. He emphasized that three basic ideas were to be included in the Articles: (1) that there should be equal rights to public office; (2) that the public office does not belong to the civil servant; and (3) that it is necessary to recruit civil servants on the basis of their qualifications in order to find the best persons. Prof. CASSIN (France) thought that competitive examination could be mentioned in the Article, but not in its present form.

Prof. KORETSKY (Union of Soviet Socialist Republics) asked Dr. CHANG whether or not the complexity and the number of competitive examinations in China had not in part eliminated from public office the common man, who was not able to get the education necessary to be able to pass such examinations. Dr. CHANG (China) explained that this, in his opinion, was not a correct interpretation of Chinese history. He thought that a competitive examination was one way, in settled community life, to give an equal chance of access to public office. Mr. HARRY (Australia) thought that a real equality of opportunity should be given to people to enable them to gain access to public service. He did not feel, however, that a Declaration should specify exactly how appointments should be made. He felt that it would be enough to state the general principle of equal opportunity of access to public office in Article 29, eliminating the last part of the Article.

Article 30

The CHAIRMAN read Article 30.

/Dr. MALIK (Lebanon)

Dr. MALIK (Lebanon) expressed the opinion that this Article did not deal with a human right. Mr. WILSON (United Kingdom) thought that the substance of the Article could be considered later for inclusion in a Convention. He was not opposed, however, to having the principle stated in the Declaration as well. He drew the attention of the Committee to Article 2 of the United Kingdom draft (document E/CN.4/AC.1/4) reading: "Every State is, by international law, under an obligation to ensure: that its laws secure to all persons under its jurisdiction, whether citizens, persons of foreign nationality or stateless, the enjoyment of these human rights and fundamental freedoms....."

Mr. SANTA CRUZ (Chile) stated that he had no particular opinion as to where the Article should be placed, but thought that such a provision should be embodied in the Declaration, and that it should deal not only with the "authors.... or their accomplices," but with all degrees of criminality. Prof. CASSIN (France) stated that the Chapter under consideration dealt with relationship between the citizen and the State. It emphasized the fact that the public office was not created for the civil servant but that the civil servant occupied that office for the benefit of the community. Human rights were protected either through responsibility of the civil servant or by the penal law. The matter dealt with in Article 30 might be considered as a method of enforcement, but he could not see how it could be treated in a Convention. He was of the opinion that it would be difficult to impose upon a State regulations concerning its political organization.

Dr. CHANG (China) called the attention of the Committee to Article 27. In this Article "elections" were mentioned as a method of achieving human rights. He felt that competitive examinations were also a method of achieving human rights, and should therefore be mentioned.

The CHAIRMAN, speaking as a Representative, expressed the opinion that although Article 30 dealt with implementation, it was within the province of the Drafting Committee. She thought, however, that the Article should

/be considered for

be considered for inclusion in a Convention rather than in the Declaration.

Article 31

The CHAIRMAN read Article 31. Mr. SANTA CRUZ (Chile) emphasized that in dealing with the right to a nationality, the Drafting Committee was dealing with a basic human right. He felt that the first sentence should be retained, and the second expanded. He referred to Article IX of the Chilean proposal (document E/CN.4/AC.2) reading:

"Every person has the right to a nationality.

No State may refuse to grant its nationality to persons born upon its soil of parents who are legitimately present in the country.

No person may be deprived of his nationality of birth unless by his own free choice he acquires another nationality.

Every person has the right to renounce the nationality of his birth or previously acquired nationality, upon acquiring the nationality of another State."

Dr. MALIK (Lebanon) felt that Article 31 should be retained. Mr. WILSON (United Kingdom) agreed in principle with the Chilean delegate but thought that only the first sentence had to be retained. He explained that the problem created by stateless people could not be ignored. He felt that while the principle had to be stated in the Declaration, the details had to be worked out in a Convention. Prof. CASSIN (France) pointed out that in drafting the text of Article 31 he had taken into account the observations made by the Representative of the United Kingdom. He emphasized that such a complex question as the one of nationality could not be solved in a Declaration. However, he felt that the principle could not be left out and that the right to change nationality had to be specified.

The CHAIRMAN, speaking as a Member, thought that the phrase "Everybody shall have the right to a nationality" should be sufficient.

Article 32

The CHAIRMAN read Article 32. Mr. WILSON (United Kingdom) expressed the opinion that the substance of this Article might better be dealt with in a Convention.

/Prof. KORETSKY

Prof. KORETSKY (Union of Soviet Socialist Republics) asked why only political refugees had been mentioned and pointed out that the right of asylum should be extended to refugees on religious and scientific, as well as political, grounds.

The CHAIRMAN, speaking as a Member, felt that Article 32 could be left to Conventions. She agreed that the Declaration should state the right of asylum to refugees on religious grounds.

Prof. CASSIN (France) stated that he was in agreement with the Representatives of the United Kingdom and of the Union of Soviet Socialist Republics. He pointed out that he had used the present wording because he meant to exclude the common criminals. He felt that the principle should be mentioned in the Declaration.

Prof. KORETSKY (Union of Soviet Socialist Republics) thought that Article 129 of the Soviet Constitution might be taken into account in drafting Article 32. Dr. MALIK (Lebanon) thought that the principle of asylum must have a place in the Declaration. Modality and applications of the principle could however be dealt with in a Convention. He objected to the text of Article 32, and thought that it might be improved as follows: "States are at liberty to grant asylum to refugees". He pointed out that minorities that are persecuted and are refugees will not be abolished easily, and that they should be able to find refuge somewhere.

Mr. HARRY (Australia) felt that the Article should be formulated from the point of view of human rights rather than the rights of the State. He favoured the Article in the Cuban proposal. Mr. SANTA CRUZ (Chile) pointed out that the principle of asylum had always guided his country, and that he was in favour of including it in the Declaration. Prof. CASSIN (France) proposed the following text: "Every one has the right to flee from persecution and to try to find asylum on the soil of such a country as is willing to grant it to him". Dr. CHANG (China) stated that he would like to see the individual's right to asylum and the State's right to grant asylum stated in the Declaration.

Article 33

The CHAIRMAN read Article 33. Mr. WILSON (United Kingdom) pointed out that if the international organization were to guarantee too many privileges to aliens in a given country, they might find great difficulty entering that country. Prof. CASSIN (France) agreed with Mr. WILSON. A distinction should be made, he felt, between residents of foreign extraction and aliens recently admitted. Two aspects had to be considered: guarantees for the aliens and the interests of the State. Mr. WILSON (United Kingdom) pointed out that the provisions of Article 33 were stronger than those in any Constitution he knew of. It would lead States to grant the right of entry to aliens only for a temporary stay, or to require aliens entering their territory to agree to leave upon request. The CHAIRMAN, speaking as a Member, stated that her Government felt that the Article could be deleted. However, if it were to be retained, she felt that it might be reworded to conform to the United States draft (document E/CN.4/AC.1/11), reading: "No alien who has been legally admitted to the territory of a State may be expelled therefrom except in pursuance of a judicial decision or recommendation as a punishment for offences laid down by law as warranting expulsion".

Mr. WILSON (United Kingdom) stated that he would prefer to see the Article deleted. Mr. HARRY (Australia) pointed out that it was very difficult to determine what human right was described in Article 33. He proposed that the Article be omitted. Prof. CASSIN (France) thought that the Article might be divided in two parts. One of these parts could be dealt with in the Declaration, where the United States text could be retained. The other one could be the subject of a Convention. He thought that the Drafting Committee had to take into account that there were people who were expelled from country to country, who needed protection.

The CHAIRMAN thought that the Article could be considered for inclusion in the redrafting of Article 5. Prof. CASSIN (France) pointed out that the matter dealt with in Article 33 would not be in its proper place if included in Article 5.

Article 34

(The text of this Article was not ready for discussion.)

Article 35

The CHAIRMAN read Article 35. Mr. HARRY (Australia) stated that he would like to study the Article before offering any comment, but wished to make a statement on Chapter VIII as a whole. Social, Economic and Cultural Rights, he said, were given effect in Australia by a body of laws. However, he thought that it was difficult to spell out in detail different rights involved. In his opinion two or three Articles in the final draft should be sufficient to cover the broad principles. Their exposition and development could be left to a later stage. Mr. WILSON (United Kingdom) agreed with the Representative of Australia. He felt that two or three general principles should be stated. These principles would be worked out at a later stage by the United Nations and its Specialized Agencies. Besides, in the opinion of Mr. WILSON, the matter dealt with in Article 35 was already taken care of by Article 2.

Mr. SANTA CRUZ (Chile) thought that if the Drafting Committee did not introduce economic and social rights into the Declaration, it would not appear to the world to be acting realistically. He disagreed with the Representatives of Australia and the United Kingdom. He felt that social and economic rights should be mentioned not only in the Articles of the Declaration but also in its Preamble, in order to give them adequate importance. He thought that every right mentioned in Prof. CASSIN's draft should be included in the Declaration.

Dr. MALIK (Lebanon) thought that Articles 35 to 44, dealing with economic and social rights, could not hold true in all States. Some of them would be true in a *socialistic form of society*, others would not. Since the Declaration had to be universal, he felt that only fundamental principles should be stated, such as the right to education, the right to participate in cultural life, the right to property, the fact that human labour is not a merchandise, etc.

/The CHAIRMAN,

The CHAIRMAN, speaking as a Member, reminded the Drafting Committee that the Economic and Social Council had stressed the importance of the inclusion of these rights to be considered. She agreed with the Representative of Chile that these rights could not be omitted. However, she also agreed, on certain points, with the Representative of Lebanon. For instance, the "duty to work" could be considered in certain countries as leading to forced labour. Therefore she thought that while principles had to be stated, they could not be expanded too much in a Declaration.

Article 36

The CHAIRMAN read Article 36. Speaking as a Member, she expressed the opinion that it was too detailed. Dr. MALIK (Lebanon) thought that this Article might be construed as a restriction on a man's personal freedom. If he wanted to be a slave, it was his right. Miss SENDER (American Federation of Labor) felt that servitude to a State or to a group should be covered by the Article. Prof. CASSIN (France) emphasized that he had tried loyally to embody all suggestions made by Members of the Drafting Committee in his draft. He was, however, of the opinion that the details of this matter might better be dealt with by a Convention, while the principle could be stated in the Declaration. He pointed out that the Declaration had to protect man not only against external abuses but also against his own weaknesses. In his opinion Article 36 could be abridged, but had to appear in the Declaration.

Article 37

The CHAIRMAN read Article 37. Speaking as a Member, she drew the attention of the Drafting Committee to the United States rewording on page 43 (document E/CN.4/AC.1/11) reading: "Every one has a right to a decent standard of living; to a fair and equal opportunity to earn a livelihood; to wages and hours and conditions of work calculated to insure a just share of the benefits of progress to all; and to protection against loss of income on account of disability, unemployment or old age.

/"It is the duty

"It is the duty of the State to undertake measures that will promote full employment and good working conditions; provide protection for wage earners and dependents against lack of income for reasons beyond their control; and assure adequate food, housing, and community service necessary to the well being of the people."

The meeting adjourned at 1:15 p.m.
