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MASTER FILE

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(E/800, E/CN.4/311, E/CN.4/312) (discussion continued)

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	Mr. SAGUES	Chile
	Mr. SOERENSEN	Denmark
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	Mr. CASSIN	France
	Mr. GARCIA BAUER	Guatemala
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	Mr. INGLES	Philippines
	Mr. KOVALENKO	Ukrainian Soviet Socialist Republic

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Members:

Mr. PAVLOV	Union of Soviet Socialist Republics
Mr. ALLEN	United Kingdom
Mr. SIMSARIAN	United States of America
Mr. MORA	Uruguay
Mr. VILFAN	Yugoslavia

Also present:

Mrs. KENYON	Commission on the Status of Women
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Consultants from non-governmental organizations: category B

Mr. FRIEDMAN	Co-ordinating Board of Jewish Organizations
Mrs. GRANT)	International League for the Rights of Man
Mr. SCOTT)	
Mr. MOSKOWITZ	Consultative Council of Jewish Organizations
Mr. CRUICKSHANK	Inter-American Council of Commerce and Production
Mrs. AIETA	Catholic International Union for Social Service
Mr. NOLDE	Commission of the Churches on International Affairs

DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS (E/800, E/CN.4/311, E/CN.4/312) (discussion continued)

Article 20

The CHAIRMAN stated that the French, Philippine and United States delegations had submitted a joint text for article 20 (E/CN.4/311).

However, the words "and to" in the first sentence of that proposal should be replaced by the words "in the enjoyment of" so that the text would read: "Everyone is entitled to equal protection of the law in the enjoyment of all the rights and freedoms, etc.".

Mr. Charles MALIK (Lebanon) pointed out that the first part of the second paragraph of the proposal was a repetition of the first paragraph; only the second part of the second paragraph contained a new idea, that of protection "against any incitement to such discrimination".

The text should therefore be redrafted so as to avoid any unnecessary repetition.

Mr. CASSIN (France) said that, however justified the Lebanese representative's remarks might be, the French delegation would hesitate to amend the text, as it was based on articles 2 and 7 of the Declaration of Human Rights.

Moreover, the first paragraph of the joint proposal represented a compromise between the original proposals of France and the United States, while the second paragraph reproduced the second part of article 7 of the Declaration of Human Rights, as the original Philippine proposal had done.

Mr. INGLES (Philippines) pointed out that the first paragraph of the joint proposal was based on the first sentence of article 7 of the Declaration and that the second paragraph was based on the second sentence of that article. Consequently, it was hardly possible to oppose the text of the joint proposal without seeming to question the terms of article 7 of the Declaration of Human Rights.

Mr. Charles MALIK (Lebanon) recalled that he had not opposed the substance of the joint proposal; he had merely emphasized that the first part of the second paragraph was redundant.

The CHAIRMAN pointed out that the first sentence of article 7 of the Declaration of Human Rights, which stated: "All are equal before the law and are entitled without discrimination to equal protection of the law", went far beyond the idea contained in the first paragraph of the joint proposal, which spoke only of the "protection of the law in the enjoyment of all the rights and freedoms defined in this Covenant."

He consequently thought that the solution might be to repeat, in article 20, the first sentence of article 7 of the Declaration; the provisions of the joint proposal would then be included in article 20.

Mr. SIMSARIAN (United States of America) proposed that, in order to avoid any repetition, the words "against any discrimination in violation of this Covenant and" in the second paragraph of the joint proposal might be deleted.

Mr. SOERENSEN (Denmark) supported the United States representative's proposal because he had not been convinced by the Philippine representative's explanations. If some articles of the Declaration contained unnecessary repetitions, it was obvious that such redundancy should be avoided in drafting the covenant.

The CHAIRMAN thought that it was possible to reach a compromise solution between the views of the different delegations by drafting article 20 in the following manner: the first sentence of article 7 of the Declaration should be used, followed by the words "without discrimination of any kind, such as race..." and without mentioning "the rights and freedoms defined in this Covenant".

Finally, a paragraph should be added concerning "protection against any discrimination in violation of this Covenant".

Mr. Charles MALIK (Lebanon) thought that the two suggestions submitted by the Chairman were quite acceptable, and, if one of those suggestions became a formal proposal, he was ready to support it.

Mr. HOOD (Australia) noted that the Chairman's suggestion had made it possible to distinguish very clearly the three ideas under consideration: first, the protection of law in the enjoyment of the rights and freedoms defined in the covenant; secondly, protection against any incitement to discrimination and, lastly, as the Chairman had pointed out, the general question of the protection of the law, according to the provisions of the first sentence of article 7 of the Declaration.

For that reason, Mr. Hood supported the Chairman's proposal.

On the other hand, since the covenant was an enforceable instrument, those provisions should be stated categorically; he therefore proposed, in the case under consideration, the use of the affirmative form: "everyone shall have the right to" or of the negative form: "no one shall be deprived of the right..."

Mrs. MEHTA (India) thought that a distinction existed between the ideas expressed in article 2 and those expressed in article 7/ in fact, of the Declaration;

according to article 2, everyone was entitled to all the rights and freedoms set forth in the Declaration, whereas article 7 stipulated that all were equal before the law.

For that reason, Mrs. Mehta proposed that article 20 should first include a sentence restating the terms of the first sentence of article 7 of the Declaration, and then a sentence bearing on the right to equal protection before the law in the enjoyment of the rights and freedoms set forth in the covenant. Finally, there should be a paragraph regarding protection against any incitement to discrimination.

Mr. CASSIN (France) recalled that the discussion had originally been based on a text proposed by the Drafting Committee. That text had simply mentioned protection of the law in the enjoyment of the rights and freedoms set forth in the covenant, without any discrimination, and protection against any incitement to such discrimination.

In the course of the meeting, the idea of absolute equality of rights, according to the first sentence of article 7 of the Declaration, had been introduced into the discussion and had been the subject of a proposal to include in the text of article 20 provisions regarding absolute equality before the law as a general principle.

Mr. Cassin recalled that the States which had accepted that the idea of absolute equality before the law should be stated in the Declaration of Human Rights, would perhaps have some difficulty in accepting that that same idea should be repeated in the covenant on Human Rights, which was an enforceable legal instrument, binding the signatory parties. In fact, certain countries might be faced with insurmountable difficulties if, from one day to the next, they had to change radically the legal provisions, if not the customs and traditions prevailing on their territory, in order to respect the provisions of the Covenant. In that connexion, he pointed out how difficult it would be for the French Government, which had, however, always been a pioneer in the defence of human rights and fundamental freedoms for all, to apply laws relating to the family in a completely uniform and equal manner in the case of Moslem and other families.

However, the French Government intended to respect scrupulously the provisions of the covenant. For that reason, it could not accept that that instrument should contain provisions relating to rights and

/freedoms,

freedoms, which were not expressly provided for in the covenant. That did not mean that the principles set forth in the Declaration of Human Rights were not recognized, but it did mean that the rights and freedoms which were not dealt with in that covenant could later be the subject of other enforceable international instruments.

That was why, in spite of the repetition pointed out by the representative of Lebanon in the joint draft, Mr. Cassin felt that there was grounds for retaining the text in its original form. The first paragraph of that text dealt with the relationship of the individual to the legislator, whereas the second paragraph dealt with relations between individuals under the protection of the legislator.

The CHAIRMAN pointed out that the Commission was therefore seized of two texts: one being the joint draft of the Philippines, France and the United States (E/CN.4/311), and the other the Indian draft (E/CN.4/312).

Mr. Charles MALIK (Lebanon) supported the proposal of the representative of Australia regarding the categorical form which the proposals of the covenant and, in particular, those of the article under discussion should assume.

On the other hand, Mr. Malik did not understand the fears of the French representative with regard to the inclusion in article 20 of the first sentence of article 7 of the Declaration of Human Rights.

In that connexion he recalled that, when article 7 of the Declaration was being drafted, some members had gone so far as to state that the sentence "all are equal before the law and are entitled without any discrimination to equal protection of the law", was sufficient in itself to exclude and condemn any idea of discrimination. Consequently, it should be possible to incorporate that same sentence in an article, the purpose of which was to prevent any discrimination in the application of the law.

Mr. PAVLOV (Union of Soviet Socialist Republics) felt some surprise at the fears expressed by the representative of France, since his country, which grouped together more than sixty different populations,

without counting some hundred less important groups, was quite prepared to accept the inclusion in the draft covenant of the general principle of equality before the law.

The USSR delegation was of the opinion that that fundamental principle should definitely appear in the draft covenant. In fact, if equality before the law were only to be provided for in connexion with the rights and freedoms guaranteed by the covenant, and if certain of those rights and freedoms proclaimed by the Universal Declaration of Human Rights were not restated in the draft covenant, those rights and freedoms would lose all effective value, and the meaning of the Universal Declaration would as a result be considerably modified.

Practically speaking, the adoption of the restrictive provisions proposed jointly by the Philippines, the United States and France (E/CN.4/311) would justify racial or other discrimination in all the fields not specifically mentioned in the draft covenant. The examples of racial, political and other types of discrimination in all fields of human activity were too numerous for such an omission to be tolerated. It was sufficient to recall, as an example, the case of the Indians in Canada and of the negroes in the United States of America, who were more or less completely deprived of their electoral rights.

It was therefore necessary to take up again the provisions of articles 2 and 7 of the Universal Declaration and to affirm solemnly that all men were equal before the law and were entitled to equal protection by the law, without any discrimination for instance as to race, colour, sex, language, religion, political or other opinion.

Mr. SOERENSEN (Denmark) thought the principle of equality before the law could be understood in several ways. If it was taken to mean that the law, whatever its nature, should be applied uniformly, it seemed that that principle was self-evident, and that it was useless to state it expressly.

On the contrary, if such an expression meant that the law of a country was to be applied without distinction to all those who came under the jurisdiction of the said country, the question had to be approached with the greatest prudence. In fact, the introduction of such a provision could raise numerous difficulties for governments. The representative of France had stressed some of those difficulties. He

recognized another: if the principle of absolute equality before the law were to be applied to taxes, for instance, all the inhabitants of a given country might be obliged to pay the same part of their income, however large, in taxes. In such a case, it seemed that absolute equality resulted in real injustice. Other examples of that type could certainly be found.

It would therefore be extremely imprudent for the Commission to decide to extend the principle of equality before the law to fields with which it was not familiar, and in which the effective application of that principle might have the most serious consequences. For that reason, while recognizing the fact that discrimination was an evil which should be energetically opposed, the delegation of Denmark thought that the Commission should limit itself to affirming the equality of all before the law only in connexion with the rights and freedoms guaranteed by the draft covenant.

Mr. Charles MALIK (Lebanon), replying to the remarks made by the representative of Denmark, pointed out that in his opinion, the expression "all are equal before the law" did not refer to the substance of the law itself, but to the conditions in which the law was to be applied. It signified that the law should be applied without any arbitrary distinction regarding any individual or group of individuals.

Under those conditions, Mr. Malik did not very well understand the fears expressed by the French representative, in particular with regard to the family system. The application of the principle of equality before the law to that particular element would mean, not that the same family legislation should be applied to the monogamous as well as to the polygamous family, but simply that, for instance, two Moroccan Moslem families would be governed by the same legislative provisions.

Mr. SOERENSEN (Denmark) pointed out that, if the interpretation given by the Lebanese representative was correct, he would not object to the declaration of a principle so understood, but he did not think that there were grounds for including it in a legal instrument of the type which the Commission was in the process of drawing up.

Mr. CASSIN (France) stressed that his country recognized, without any reserve, the principle of the equality of all before the law, but he thought, on the other hand, that the appropriate place for that principle was not in the draft international covenant on human rights, which was a legal instrument, all the provisions of which the

signatory States would have to apply scrupulously. The Commission could not decide a priori, that that principle was to apply in practice and absolutely, to all fields without exception, when it did not know what repercussions such a measure would have in certain of those fields, in particular in the field of labour legislation, which it had not yet had the opportunity to study.

The Commission should not venture into the unknown and allow itself to be carried away by principles. Rather it should be satisfied, for the time being, with affirming the equality of all before the law only in connexion with the rights and freedoms guaranteed by the draft covenant. Later, when the Commission drew up other covenants concerning other rights and freedoms, it could extend that principle of equality before the law in the enjoyment of those new rights and freedoms.

Mr. PAVLOV (Union of Soviet Socialist Republics) thought, on the contrary, that it was quite useful to restate in the draft covenant the fundamental principle of the equality of all before the law, since that equality was not respected in some countries where some sections of the population were the victims of discriminatory measures. In addition to the examples of racial discrimination which he had already quoted, Mr. Pavlov pointed out that in some countries of Latin America certain groups had been deprived of their electoral rights because of their political opinions.

On the other hand, with reference to the Indian proposal (E/CN.4/312), Mr. Pavlov stated that the expression "rights and freedoms defined in this Covenant", was not satisfactory, in view of the fact that the draft covenant was not yet completed, that its final contents were not yet known, and that the delegations could not take a decision without knowing what they were undertaking. The USSR delegation could only vote in favour of such a provision if the draft covenant restated in full all the rights and freedoms defined in the Declaration. For those reasons, the USSR delegation proposed either to leave a blank provisionally, or to replace the word "Covenant" by the word "Declaration".

Mr. SIMSARIAN (United States of America) shared the fears expressed by the French representative. In his opinion, it was already easy to foresee that the strict application of the principle of equality

before the law might, in certain cases, raise difficulties and prove very awkward. Thus, in the field of labour legislation, would that principle have to be respected to the extent of abolishing all special measures for the protection of women and children? To give another instance, would that principle oblige States to grant the same protection to foreigners as to their nationals?

Many other examples could be quoted to show how dangerous it might be to include in the covenant such a provision which, when implemented, might impose upon the signatory States obligations of unforeseeable and ill-defined proportions. There was no doubt that the statement of principle in the Universal Declaration was fully justified; it would, however, be out of place in a legal instrument which should contain nothing that was not perfectly clear and precise, inasmuch as the signatory States would be bound to observe scrupulously all its provisions.

In conclusion, he said that his delegation would support the second and third paragraphs of the Indian amendment, but would, for the reasons he had just stated, be unable to vote for the first paragraph.

Mr. INGLES (Philippines) fully supported the proposal that article 20 of the covenant should proclaim the general principle of the equality of all before the law rather than state that everyone was entitled to equal protection by the law only in the enjoyment of the rights and freedoms defined in the covenant; the original Philippine amendment had affirmed the equality of all before the law and the Philippine delegation had consented to omit that statement from the joint amendment only in the hope of placing before the Commission a compromise text liable to muster a majority.

The Constitution of the Philippines, like that of the United States of America, proclaimed the principle of equality before the law which in the Philippines had the same legal value as in the Anglo-Saxon law. That principle permitted certain classifications of citizens, but prohibited any arbitrary differentiation.

With reference to the examples mentioned by the French and Danish representatives Mr. Ingles remarked that there was no intention of subjecting all citizens without distinction to the same law. The members of any group of citizens to which a law applied, however, should be equal before that law.

Mr. Charles MALIK (Lebanon) agreed that the Commission should not adopt a text which either was unclear or could be interpreted in different ways for different individuals. He agreed with the Philippine representative regarding the meaning of the expression "equality before the law" and failed to see the reason for the fears of the representatives of France and the United States especially as that principle appeared in the Constitutions of both those countries. The French and United States representatives might at the very least accept the second part of the proposed sentence: "Everyone is entitled to equal protection of the law without discrimination".

Mr. MORA (Uruguay) thought that the representatives of France, Denmark and the United States should have no objection to the first paragraph of the Indian proposal, because the second paragraph of that proposal assured to everyone the equal protection of the law only in the enjoyment of the rights defined in the covenant. In his opinion, the second paragraph limited the principle stated in the first. That text therefore represented a compromise which ought to be generally acceptable.

Speaking at the CHAIRMAN'S invitation, Mrs. KENYON (Commission on the Status of Women) requested the Commission, before proceeding to a vote, to make clear the meaning of the words "or other status" which appeared at the end of the list of the kinds of discrimination to be forbidden. As some representatives had referred to different family systems, Mrs. Kenyon drew the Commission's attention to the fact that in some parts of the world the status of married women was very close to servitude. Since the aim of the covenant was to protect the rights of all individuals without exception, the Commission on the Status of Women suggested that article 20 of the covenant should expressly forbid any discrimination against women on the grounds of marital status.

The CHAIRMAN explained that that idea was covered by the words "or other status"; it had not been stated in so many words in order to avoid re-opening a very old debate at that juncture.

Mr. SAGUES (Chile) thought that the whole discussion had arisen from a misunderstanding. If equality before the law was a basic human right, why did the Commission not treat that right

/like all

like all the others defined in the covenant, that is to say, by drawing up a list of possible exceptions? The French representative had mentioned certain cases; the Commission might find many others.

The Commission would have done well to confine itself to the compromise proposal which it had considered at first and which assured equal protection of the law to everyone: (a) in the enjoyment of the rights and freedoms defined in the covenant; (b) against incitement to discrimination. The first paragraph of the Indian text introduced the idea of equality before the law; such equality, as a general right, called for much more thorough study. He would be unable to vote for the first paragraph; he would, however, support the other two paragraphs of the Indian text which embodied the ideas of the joint proposal of the Philippines, France and the United States of America.

In reply to the USSR representative, he remarked that the covenant did not deal with political rights. He pointed out that Chile had excluded from the national community certain groups of citizens who had shown that they obeyed a foreign Power and who could consequently be regarded as foreigners. He asked whether the right to nationality had been respected in Lithuania and in other territories incorporated in the Soviet Union.

Mrs. MEHTA (India) thought that the interpretation of the first paragraph of her proposal offered no difficulties; whatever the law might be, it applied equally to all. She did not fully understand the point of view of the representatives of France and of the United States. Since the sentence in question seemed a little ambiguous to some members, however, Mrs. Mehta suggested that its meaning should be clarified in one way or another in the article so that the basic principle could be retained in article 20.

Mr. SIMSARIAN (United States of America) noted that, for the majority of the members of the Commission, the principle of equality in law allowed of a number of reasonable exceptions. He would probably support the suggestion of the representative of India if that suggestion were worded specifically.

The CHAIRMAN stressed that the proposed text read "the law" and not "the laws," and that it was evident that all those affected by the law were equal before that law.

/Mr. CASSIN

Mr. CASSIN (France) noted with satisfaction that the members of the Commission did not contemplate a law which would be strictly the same for everyone everywhere. He nevertheless maintained that an initial international legal convention on human rights was not the proper place for a declaration of the equality of all before the law, a principle which had long been recognized by France.

Mr. PAVLOV (Union of Soviet Socialist Republics) recalled that, when the Declaration was being drafted, the Commission had agreed that the word "discrimination" did not apply to the distinctions established by law between citizens, but to any arbitrary distinction between members of a group subject to the same law. For example, no discrimination was practised when a wealthy citizen paid higher taxes than a poor citizen, but there was discrimination when, in the case of two citizens receiving equal incomes, one paid higher taxes because of his colour or his race.

In reply to the representative of Chile, Mr. Pavlov stressed the fact that, although the covenant did not at the moment deal with political rights, the Declaration nevertheless did prohibit any discrimination on the basis of political beliefs and that, furthermore, the USSR delegation had submitted a proposal to include political rights in the covenant. Mr. Pavlov explained that Lithuania was one of the sixteen republics of the USSR and that its citizens enjoyed exactly the same rights as the citizens of the fifteen other republics. The Constitution of the USSR forbade all discrimination; in the USSR, discrimination and incitement to discrimination were punished by law.

The meeting rose at 1.10 p.m.