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COMMISSION ON HUMAN RIGHTS

Third Session

SUMMARY RECORD OF THE SEVENTY-FOURTH MEETING

Hold at Lake Success, New York,
on Tuesday, 15 June 1948, at 2.30 p.m.

<u>Chairman:</u>	Mrs. Franklin D. ROOSEVELT	United States of America
<u>Rapporteur:</u>	Mr. MALIK	Lebanon
<u>Members:</u>	Mr. HOOD	Australia
	Mr. STEYAERT	Belgium
	Mr. STEPANENKO	Byelorussian Soviet Socialist Republic
	Mr. LARRAIN	Chile
	Mr. CHANG	China
	Mr. LOUFI	Egypt
	Mr. ORDONNEAU	France
	Mrs. Mehta	India
	Mr. AZKOUL	Lebanon
	Mr. de QUIJANO	Panama
	Mr. LOPEZ	Philippines
	Mr. KLEKOVKIN	Ukrainian Soviet Socialist Republic
	Mr. PAVLOV	Union of Soviet Socialist Republic
	Mr. WILSON	United Kingdom
	Mr. FONTAINA	Uruguay
	Mr. VILFAN	Yugoslavia
<u>Also Present:</u>	Mrs. LEDON	Commission on the Status of Women
<u>Representative of a Specialized Agency:</u>	Mr. LEBAR	United Nations Educational, Scientific and Cultural Organization

* Alternate

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Consultants from Non-Governmental Organizations:

Miss SENDER	American Federation of Labor
Mrs. DRENNAN	Catholic International Union for Social Service
Mr. PRENTICE	Commission of the Churches on International Affairs
Mr. NOLDE	
Mr. BROTMAN	Co-ordinating Board of Jewish Organizations for consulting with the Economic and Social Council
Miss SCHAEFER	International Union of Catholic Women's Leagues
Mr. BIENENFELD	World Jewish Congress

CONTINUATION OF THE CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE TO THE COMMISSION ON HUMAN RIGHTS (document E/CN.4/95): CONSIDERATION OF THE DRAFT DECLARATION AND AMENDMENTS SUBMITTED BY VARIOUS DELEGATIONS

Article 30

The CHAIRMAN asked whether the Commission wished to consider the addition to article 30 of the Declaration of certain texts submitted by members of the Commission.

The Commission decided by 10 votes with 4 abstentions to consider the additions to article 30.

The CHAIRMAN recalled that two proposals had been made, one by the USSR representative and the other by the representative of the Lebanon.

She put the proposed USSR addition to article 30 to the vote.

The addition was rejected by 8 votes to 4, with 3 abstentions.

The CHAIRMAN asked for observations on the additional text proposed by the Lebanese representative, which read as follows: "Cultural groups shall not be denied the right to free self-development."

Mr. LOPEZ (Philippines) observed that the expression "cultural groups" was ambiguous and that in the context of article 30 it might mean any cultural, literary or musical organization.

~~MR. FONPAINA~~

Mr. FONTAINA (Uruguay) supported the Philippine representative's objection; he considered the addition proposed by the Lebanese representative unnecessary, since the principle it introduced was a political and not a legal one.

Mr. MALIK (Lebanon) stated that the text he had submitted already represented, in an attenuated form, the idea he would like to see embodied in the Declaration. He had deliberately drafted that idea in a form which would be acceptable to the Commission. There was some truth in the objection raised by the Philippine representative, but the ambiguity might perhaps be an advantage in the present case, since it would indicate that the text had no controversial meaning.

Miss SENDER (American Federation of Labor) suggested replacing the words: "cultural groups" by "groups of common cultural background". If the Philippine representative accepted that suggestion, the ambiguity to which he had referred might disappear.

Mr. MALIK (Lebanon), and Mr. LOPEZ (Philippines) accepted that suggestion.

Mr. PAVLOV (Union of Soviet Socialist Republics) suggested replacing the words: "cultural groups" by: "groups of common ethnical background". National minority groups must at least be guaranteed the right to retain the culture associated with their ethnical origin.

Mr. HOOD (Australia) pointed out that the words: "free self-development" were even more ambiguous. Did they refer to cultural development or to national emancipation?

Mr. CHANG (China) remarked that the ambiguity was caused by the fact that the word "cultural" could have two meanings; it could refer either to the practice of science and the arts, or to the ethnical origin of a community. There could be no doubt that in article 30 the word "cultural" was

used in the former sense, and in the context the words: "cultural groups" could mean nothing but "cultural organizations". That article was perhaps not the best place to insert the text proposed by the Lebanese representative.

After a brief discussion, the CHAIRMAN, at the request of the Lebanese representative, decided to put to the vote the additional text submitted by him and the proposed amendments to that text.

The Chairman first put to the vote the amendment proposed by the Philippine representative, which proposed replacing the words: "cultural groups" by: "groups of common cultural background".

The amendment was rejected by 8 votes to 6, with 2 abstentions.

The CHAIRMAN put to the vote the amendment proposed by the representative of the Soviet Union, which proposed replacing the words: "cultural groups" by: "groups of common ethnical background".

The amendment was rejected by 10 votes to 6.

The CHAIRMAN put to the vote the original text submitted by the representative of the Lebanon.

The text was rejected by 7 votes to 4, with 5 abstentions.

Mr. MALIK (Lebanon) suggested that, in view of the Chinese representative's remarks, it would perhaps be more appropriate to add his text to the new article 18 of the Declaration (formerly article 19). He asked the Chairman to put that proposal to the vote.

The CHAIRMAN asked whether the Commission was prepared to consider the addition of the text to article 18.

The proposal was rejected by 6 votes to 3, with 4 abstentions.

Article 31

The CHAIRMAN observed that, in her view, the amendment furthest removed from the original proposal appeared to be that of China, India and the United Kingdom, which proposed the deletion of the article.

Mr. PAVLOV (Union of Soviet Socialist Republics) said that the Commission, having rejected every provision which guaranteed the rights of national minorities, still had an opportunity, by deciding that the amendment to article 30 submitted by the representative of the Soviet Union should become a separate article 31, to declare that those minorities were entitled to the preservation of their culture, to the use of their mother-tongue in scholastic establishments, and generally speaking to protection. He therefore made a formal proposal that the amendment to article 30 submitted by him should become a new article 31.

Mr. STEPANENKO (Byelorussian Soviet Socialist Republic) observed that that proposal would be in harmony with the suggestion of the Chinese representative that it would be inappropriate to include those ideas in article 30.

The CHAIRMAN put to the vote the deletion of article 31, and remarked that, if it were deleted, the Commission would not have to decide upon the replacement of article 31 by the text proposed by the representative of the Soviet Union.

It was decided by 10 votes to 6 to delete article 31.

Mr. CHANG (China) pointed out that the Commission should not give the impression that it had completely ignored the question of the protection of special religious or ethnical groups. In the article relating to the right to education there was a provision in favour of religious minorities.

/Mr. PAVLOV

Mr. PAVLOV (Union of Soviet Socialist Republics) remarked that the Declaration contained no provision relating to the right of national minorities to have schools in their mother-tongue. Furthermore, the Commission had just decided to delete article 31 of the text approved at the second session of the Commission, but he urged that the USSR proposal should be put to the vote.

The CHAIRMAN put the USSR proposal to the vote.

The proposal was rejected by 10 votes to 5.

Article 32

The CHAIRMAN, speaking as representative of the United States of America, pointed out that in many cases the Commission might have inserted a sentence or an article in the Declaration merely because no one had had sufficient reason to vote against its inclusion. In general, the Commission had followed the course of stating fundamental rights very briefly, so as to distinguish the Declaration from the Covenant. Such, for example, had been the case with the proposed amendment to the article on arbitrary detention. That amendment had been rejected, not because the Commission was opposed to the rights it set forth, but because the majority had considered the list too detailed.

Article 32, on which the Commission had to take a decision, certainly expressed an idea that could hardly be opposed. There was no doubt that all laws should be in conformity with the purposes and principles of the Charter in so far as they dealt with human rights. But what would be gained by including that article in the Declaration? The Declaration was in no way binding, so that the article could not appropriately be included. Moreover, the words: "purposes and principles of the Charter" were very difficult to define when the question of their application to specific laws arose.

/The United States

The United States delegation would therefore vote against the inclusion of article 32, since it might lead to misunderstanding and would be out of place in the Declaration.

The CHAIRMAN put the deletion of article 32 to the vote.

The proposal was adopted by 9 votes to 1, with 4 abstentions.

Article 33

The CHAIRMAN supported the proposal put forward by India, the United Kingdom and China, for the deletion of the article. It was vague and lacking in precision, its application did not seem clear and it would be unwise to include in the Declaration an article that obscured its meaning.

Mr. PAVLOV (Union of Soviet Socialist Republics) was against the proposal supported by the Chairman. During the discussion of the articles of the Declaration, whenever there had been any question of inserting provisions designed to eliminate the remains of nazism or fascism, the Commission had rejected those provisions on the pretext that they would be covered later by a general article. But the Commission was at present deleting those general articles. The USSR representative urged that even though the relevant USSR proposals had been rejected, the Commission should retain article 33, which had been adopted during the Geneva session and which provided, although in a restricted form, the indispensable elements of defence against the possible rebirth of nazism or fascism. He emphasized that that article was the only one which could be used as a weapon against nazism and favoured the French text which seemed to express the idea best. Consequently, he appealed to the Commission to consider its responsibilities before rejecting the article, which might in future serve as a weapon against nazism and fascism.

/Mr. ORDONNEAU

Mr. ORDONNEAU (France) thought it essential that the Declaration should at least recall the dangers of nazism; such a reference would also have a legal value of its own, for as the USSR representative had said, it would be a weapon against any possible recurrence of that doctrine. It was wrong to deny a possible recurrence, and the danger against which article 33 was aimed was a serious one. The cautious wording of the article had also been emphasized by the USSR representative. The French text differed only in drafting from the text adopted at Geneva.

The CHAIRMAN proposed putting to the vote the deletion of article 33, that being the amendment farthest removed from the original.

Mr. PAVLOV (Union of Soviet Socialist Republics) said that a proposal for deletion could not be considered as the farthest removed from the original. Negation was not an amendment; the only amendment was the French one. Moreover, if the deletion were put to the vote first, the Commission could not know which text was being deleted, the text adopted at Geneva or the French one.

The CHAIRMAN pointed out that she was conforming to the procedure always followed by the Commission so far without any objection arising. However, she was prepared to put the French amendment to the vote; those in favour of deleting the article should vote against it.

Mr. ORDONNEAU (France) observed that the Chairman's ruling seemed perfectly logical. The practice of moving the deletion of an article was bad. Logically, the vote must be against an article, not in favour of its deletion. Those wishing the article to be deleted could vote against each part of it or against the whole.

Mr. STEPANENKO (Byelorussian Soviet Socialist Republic) recalled that the USSR representative had twice drawn the Commission's attention to

/that

that point. Moreover, Rule 54 of the Rules of Procedure was quite clear on the matter. He favoured the French text of article 33 and supported the views expressed by the USSR representative.

Mr. AZKOUL (Lebanon) said that, since he was not allowed to vote as an alternate, he wished to state his delegation's views on article 33. That article was necessary. As article 2 contained a reference to the limitation of human rights in the general interest, the possibility of abusing that reference and violating human rights under cover of the general interest, must be prevented. His delegation was also in favour of the French text.

The CHAIRMAN put the French amendment to article 33 to the vote.

The amendment was adopted by 10 votes to 1, with 2 abstentions.

Preamble

The CHAIRMAN read out the draft preamble prepared by the Committee on the Preamble, composed of the officers of the Commission (document E/CN.4/138). She requested the members of the Commission to express their views regarding that text.

Mr. PAVLOV (Union of Soviet Socialist Republics) proposed a shorter text (document E/CN.4/139).

The delegation of the Soviet Union thought that the text it proposed was more suitable than the one prepared by the Committee on the Preamble, because it was concise and contained all the elements that should appear in the Preamble to a Declaration on Human Rights.

Mr. CHANG (China) stressed the importance of the Preamble and the necessity of taking the utmost care in drafting it, and suggested that the consideration of the two texts submitted to the Commission should be deferred until the following day.

/Mr. WILSON

Mr. WILSON (United Kingdom) pointed out that it would be advisable to decide without delay which of the texts the Commission would take as a basis for its discussions. Although the delegation of the United Kingdom had itself prepared a draft preamble, it proposed that the text of the Committee on the Preamble should be chosen as a working document, since the text had been drafted with due regard to all the suggestions that had been made.

Mr. ORDONNEAU (France), supported by Mr. CHANG (China), concurred with that proposal.

Mr. PAVLOV (Union of Soviet Socialist Republics) pointed out that it would be premature to decide, without previous consideration, which of the two texts submitted to the Commission should serve as a basis for discussion. The Commission should study on an equal footing all the proposals that were submitted to it. It could discuss the Preamble on the basis of the two texts that had been submitted, and adopt certain clauses from one text and certain ideas from the other. It could not decide before studying those texts that it would not consider one of them.

Mr. ORDONNEAU (France) recalled that the Commission had instructed the Committee on the Preamble to draft a text on the basis of all the proposals which had been made with regard to the Preamble. For that reason the Committee's text appeared to have priority over the drafts submitted by the various delegations. That did not mean, however, that the latter texts would not be considered by the Commission; they would constitute amendments or variants to the Committee's text.

The CHAIRMAN confirmed that the text prepared by the Committee was the result of the examination of all the drafts that had been submitted; the latter could be proposed again by the delegations.

/The Commission

The Commission decided to defer the discussion of the Preamble to the Declaration until the following day.

Article 2, paragraph 2.

Mr. LOUTFI (Egypt) submitted the following text for article 2, paragraph 2, which his delegation had drafted in consultation with the delegations of France and the United Kingdom:

"In the exercise of all the rights and freedoms enumerated in this Declaration, everyone shall be subject only to such limitations as are necessary to secure due recognition and respect for the rights of others and to the requirements of morality, of general welfare and of public order in a democratic society."

The CHAIRMAN pointed out that there were only two differences between that text and the draft prepared by the Style Committee: (1) the beginning of the sentence was shorter in the latter draft, being couched as follows: "In the exercise of his rights, everyone shall be subject only..."; (2) the words: "morality" and "public order" had been added to the expression: "general welfare" which alone appeared in the Style Committee's text.

Mr. LOUTFI (Egypt) agreed to revert to the wording adopted by the Style Committee for the beginning of the sentence, but he insisted on the addition of the words: "morality" and "public welfare".

In reply to a question by Mr. CHANG (China), he pointed out that, according to the French and Latin idea, the expression "general welfare" did not include morality and public order.

Mr. WILSON (United Kingdom) said that in English that expression included both morality and public order. Since that was not the case in French, his delegation had not opposed the insertion of the three terms so

/that the French

that the French might be more accurate. However, since the expression "general welfare" had a wider significance than the expression "public order", he suggested that the order of the terms should be transposed and that the text should read as follows: "...and to the requirements of morality, public order and general welfare in a democratic society."

Mr. FONTAINA (Uruguay) drew attention to the danger of using an expression such as "public order" which, given a wide definition, might lend itself to various interpretations. He pointed out that arbitrary acts could be committed under the pretext of defending public order. He suggested the use of the expression: "security for all", which appeared in the draft submitted by the delegations of India and the United Kingdom (document E/CN.4/99).

Mr. ORDONNEAU (France) stated that the English expression: "general welfare" was untranslatable and had very little meaning in French. It was in order to solve the translation difficulty that the French delegation had added "la morale" and "l'ordre publique" to the expression "bien-etre general", so as to cover everything that was contained in the English idea of "general welfare".

He pointed out that there was no danger to individual liberty in the expression "public order"; public order was, in fact, intended to preserve public security. Moreover, the French delegation had taken the precaution of stating that it was public order "in a democratic society", so as to leave no room for any restrictive interpretation.

Mr. HOOD (Australia) preferred the word "order" without any qualification, since the expression "public order" generally conjured up the idea of arbitrary measures.

/Mr. ORDONNEAU

Mr. ORDONNEAU (France) said that the word "ordre" would make the French text incomprehensible. If the English expression "general welfare" corresponded to the French idea of "l'ordre public", the former could be used in the English text and the latter in the French.

Mr. CHANG (China) supported that suggestion. He pointed out that, in the article which dealt with limitations to which human rights were to be subject, it would be well to avoid any enumeration which might give the impression that the Commission was inclining towards too much restriction.

Mr. WILSON (United Kingdom) saw no valid reason why the three expressions should not be retained. In that connexion, he remarked that the terms "peace", "order" and "good government" were to be found together in several federal Constitutions and expressing the same idea.

Mr. FONTAINA (Uruguay) repeated his objection to the use of the expression "public order". The meaning of words changed according to the use that was made of them; that use sometimes became abusive, as in the case of the word "propaganda", which had acquired a pejorative meaning and could no longer be used to mean "publicity". So many crimes had been committed in the name of public order that the meaning of the expression had been distorted. The fact that the text spoke of public order "in a democratic society" did not solve the difficulty, since there were many different ideas of democratic society.

Mr. Fontaina urged the Commission to adopt the more simple expression "security for all", which was not open to misinterpretation.

Mr. AZKOUL (Lebanon) supported the remarks of the representative of Uruguay regarding the expression "public order". He proposed the following text: "...and to the requirements of general welfare and interest".

/Mr. PAVLOV

Mr. PAVLOV (Union of Soviet Socialist Republics) emphasized that it was the laws of States that fixed the limits for the exercise of human rights and freedoms. He suggested, therefore, that the following phrase should be added to the text proposed by the Egyptian representative: "in accordance with the just requirements of the democratic State".

Mr. FONTAINA (Uruguay) proposed to be guided by article 28 of the Declaration of Human Rights adopted by the Inter-American Conference at Bogota, according to which the exercise of human rights was subject only to such limitations as were necessary in order to respect the rights of others, the security of all and the just requirements of the democratic State.

Mr. ORDONNEAU (France) stressed the special interest his delegation attached to the article dealing with limitations to the exercise of human rights. He reminded the Commission that, during the course of its discussions, it had deleted the provisions concerning limitations to certain rights from the text of the articles in question, because those limitations would be expressed in general terms in one single article. Thus, for example, the Declaration proclaimed freedom of conscience, of association and of assembly, without a single reservation. It was absolutely essential to re-establish the balance between the various provisions of the Declaration.

Mr. Ordonneau repeated that in French the idea of public order was in no way associated with political theories; it had a purely administrative significance, and corresponded to public morality, peace and security. Since the Declaration was a legal text, it was better to adopt an expression such as "public order", which had a definite legal meaning, rather than use vague philosophical and literary terms, such as those proposed by the Lebanese representative.

/Replying

Replying to the remarks of the USSR representative, Mr. Ordonneau pointed out that freedom was not exercised only within the framework of the State, but also, for example, within that of municipalities. For that reason, the French delegation had preferred to use the expression "democratic society", which covered communal groups.

The CHAIRMAN put to the vote the USSR proposal to add the following words to the text submitted by the Egyptian delegation: "in accordance with the just requirements of the democratic State".

The USSR proposal was rejected by 11 votes to 4, with 1 abstention.

The CHAIRMAN put to the vote the Uruguayan proposal to substitute the expression: "security for all" for the expression: "public order".

The Uruguayan proposal was rejected by 6 votes to 5, with 5 abstentions.

The CHAIRMAN then put the text proposed by the Egyptian delegation to the vote.

The text proposed by the Egyptian delegation for paragraph 2 of article 2 of the Declaration was adopted by 8 votes to 1, with 7 abstentions.

CONSIDERATION OF THE REPORT OF THE SUB-COMMITTEE ON VOTING PROCEDURE (document E/CN.4/118)

The CHAIRMAN read the report of the Sub-Committee, composed of the representatives of China and Yugoslavia, which contained a recommendation to the Economic and Social Council to amend rule 11 of the rules of procedure of functional Commissions of the Council (document E/CN.4/118).

Mr. ORDONNEAU (France) stated that he had received instructions from his Government to ask to have the amendment of rule 11 of the rules of procedure put on the agenda of the present session. He thought that the amendment recommended by the Sub-Committee would satisfy his Government.

/The report

The report of the Sub-Committee on Voting Procedure was approved unanimously.

CONSIDERATION OF THE REPORT OF THE SUB-COMMITTEE ON THE RECONSIDERATION OF THE TERMS OF REFERENCE OF THE SUB-COMMISSION ON THE PREVENTION OF DISCRIMINATION AND THE PROTECTION OF MINORITIES (document E/CN.4/130)

The CHAIRMAN read the report of the Sub-Committee, composed of the representatives of India, the Ukrainian Soviet Socialist Republic, the United Kingdom and the United States of America, which contained a recommendation to the Economic and Social Council to postpone reconsideration of the terms of reference of the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities, and to place the question on the agenda of the next session of the Commission on Human Rights (document E/CN.4/130).

The report was approved unanimously.

The meeting rose at 5.30 p.m.