

United Nations

Nations Unies

UNRESTRICTED

ECONOMIC
AND
SOCIAL COUNCIL

CONSEIL
ECONOMIQUE
ET SOCIAL

E/CN.4/AC.1/SR.26
14 May 1948

ORIGINAL: ENGLISH

DRAFTING COMMITTEE OF THE
COMMISSION ON HUMAN RIGHTS

SUMMARY RECORD OF THE TWENTY-SIXTH MEETING

Lake Success, New York
Monday, 10 May 1948, at 2 p.m.

Chairman: Mrs. Franklin D. ROOSEVELT United States of America
Rapporteur: Mr. Charles MALIK Lebanon
Members: Mr. E.J.R. HEYWOOD Australia
Mr. H. SANTA CRUZ Chile
Mr. T.Y. WU China
Mr. ORDONNEAU France
Mr. A.P. PAVLOV Union of Soviet Socialist
Republics
Mr. G. WILSON United Kingdom

Representatives of Specialized Agencies:

Mr. R.W. COX International Labour Organization

Consultants from Non-Governmental Organizations:

Miss Toni SENDER American Federation of Labor

Secretariat:

Mr. J. HUMPHREY
Mr. C. Le BOSQUET
Mr. J. MALE

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DISTRIBUTION OF DOCUMENTS

In reply to the dissatisfaction expressed by Mr. ORDONNEAU (France) and Mr. PAVLOV (Union of Soviet Socialist Republics) regarding the delay in the distribution of documents and especially of translations, Mr. Le BOSQUET (Conference and General Services Department) explained that in view of the fact that the staff was severely limited by the budget, the emergency caused by a special session of the General Assembly during a period when the work-load was already quite heavy could not fail to have unfortunate consequences. In spite of tremendous efforts, the eighteen man-units of staff could not do the forty-three man-units of work. Everything possible would be done, however, to furnish the documents absolutely necessary.

Mr. Le Bosquet stated that the order had been given that as far as possible documents in both working languages should be produced simultaneously.

CONTINUATION OF THE CONSIDERATION OF THE DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS

Article 16

The CHAIRMAN read comments on article 16 that had been made by the Governments of the Netherlands and of Brazil (document E/CN.4/85, pages 78 and 79).

Mr. ORDONNEAU (France) said that, without wishing to change the substance of the present draft, his delegation proposed a new text to read as follows:

"La liberté personnelle de pensée et de conscience, celle de professer une croyance ou d'en changer, constituent des droits absolus et sacrés.

"Toute personne a le droit, seule ou en commun, de manifester ses croyances dans le respect de l'ordre public, par leur enseignement et leur pratique et par le culte et l'accomplissement des rites."

/s/ Mr. SANTA CRUZ

Mr. SANTA CRUZ (Chile) stressed that in view of the delicacy of the question, every effort should be made to achieve a text that would be generally acceptable. With that in mind, his delegation was ready to support either the proposed French text or the United States draft as suggested in document E/CN.4/AC.1/19.

The CHAIRMAN, speaking as the United States representative, said that her delegation would support the French proposal with slight drafting changes. She would like the second sentence of the French text to be put in the negative form and the words "welfare, morals and the rights and freedoms of others" to be added after the word "public order".

Mr. WILSON (United Kingdom) thought the original draft adequate. That text had been studied at length by religious organizations in various countries and was apparently satisfactory to them. He saw no reason therefore to change it.

Mr. WU (China) fully realized the importance of article 16 although in his own country, there was complete religious freedom. He wished to see the English text of the French draft before definitely stating his approval of it. The original draft also seemed satisfactory, but his delegation doubted the wisdom of including either paragraph 2 or 3.

Mr. MALIK (Lebanon) thought article 16 dealing with the important question of religious freedom deserved the closest attention. Both the French and the United States proposals had the merit of being brief. He wondered, however, why the French text had not included the word "religion". The words "absolus et sacres" in the French text were particularly valuable and he hoped that they would be retained in whatever version was finally adopted.

/Mr. Malik

Mr. Malik approved the Netherlands suggestions to insert the word "thought" after the words "freedom of" in the first paragraph and to insert in the second paragraph the phrase "and to endeavour to persuade others of the truth of his belief." The latter idea had been in the original text considered at Geneva, and had been dropped by the vote of a very small majority.

Mr. Malik suggested that the Chairman might appoint a small sub-committee of which the representative of France would be a member, to try to prepare a single text that would use the best ideas contained in the various drafts.

The CHAIRMAN appointed the representatives of France, Lebanon and the United Kingdom as a sub-committee for the purpose suggested.

She pointed out that the Committee might submit to the Commission both the present draft and the French draft with the minor changes suggested by the United States, unless the newly-appointed Sub-Committee brought in a more satisfactory text.

Mr. WILSON (United Kingdom) asked for an expression of the Committee's opinion on the Netherlands suggestion in regard to mentioning the freedom to persuade others of the truth of one's beliefs.

The CHAIRMAN, speaking as the representative of the United States, felt that the idea was included in the words "religious teaching". In general, her delegation preferred as condensed a form as possible. It also favoured an over-all clause of limitation rather than mention of specific limitations.

Mr. ORDONNEAU (France) explained, in reply to the Lebanese representative, that the French text had used the word "croyance" because

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it was broader than the word "religion". Certain beliefs which could not be called religious should nevertheless be protected.

The French delegation agreed with the United States that a general clause of limitation was preferable. If, however, no such general clause were finally adopted, his delegation would not object to the inclusion of paragraph 3 of the present article 16.

The CHAIRMAN stated that a decision on article 16 would be postponed until the Sub-Committee had presented its report.

Article 17

The CHAIRMAN drew attention to the fact that the Commission on Human Rights had decided not to elaborate the final text for article 17 until it had before it the views of the Sub-Commission on the Freedom of Information and the Press and of the United Nations Conference on Freedom of Information. The views of those two bodies were given in document E/CN.4/85, pages 82 and 83 respectively. Comments by the Netherlands, Brazil and the Union of South Africa were also included in the same document. Moreover, a French draft for article 17 had been submitted in document E/CN.4/82/Add.8, page 12, under the heading "Article XVI".

In view of the prolonged discussions that there had been and might again be on article 17, the Chairman, speaking as the United States representative, thought it would be better to include a general statement of limitations in conformity with the precedent that would probably be adopted in connection with article 16, rather than to attempt to list the limitations. For that reason her delegation would be willing to support the proposed French text.

Mr. PAVLOV (Union of Soviet Socialist Republics) said that he would abstain from taking part in any decision on article 17. He

/emphasized

emphasized however that the article as proposed would not prevent the enemies of the democratic order from working to undermine democracy and that human rights were therefore imperiled. The remnants of nazism and fascism would have an opportunity to disseminate propaganda since there were no concrete provisions against such action. The article should specifically state the necessity for preventing propaganda by nazis or fascists or propaganda based on racial or religious discrimination.

Mr. ORDONNEAU (France) recalled the sufferings that his country had endured at the hands of the nazis and fascists and emphasized its determination to protect itself from any remnants of these elements. He felt, however, that the terms "Nazism" and "Fascism" belonged to the past and that both the French draft and the original draft made sufficient provisions for guarding against dangers such as those words had signified in the past as well as against dangers that might arise in the future.

Mr. WILSON (United Kingdom) said that his Government supported the article adopted by the Conference on Freedom of Information and still considered it necessary to state clearly the limitations to be placed on freedom of speech. The time already spent by various bodies in the discussion of article 17 showed how difficult it would be to find a draft that would be satisfactory to everybody. He recalled that Governments had been asked to comment on the draft adopted by the Conference on Freedom of Information for a convention on the subject. As an article of the Convention was practically identical with the draft of article 17 suggested by the Conference for the Covenant on Human Rights, there seemed little advantage in discussing article 17 further until the comments from the various Governments had been received.

/Mr. WU

Mr. WU (China) agreed with the United Kingdom representative that, at present, further debate on article 17 was useless.

The CHAIRMAN, speaking as representative of the United States, thought it was the duty of the Committee to make to the Commission specific recommendations on article 17. She again expressed approval of the French proposal and suggested that it might be included as one of the recommendations to the Commission.

Mr. SANTA CRUZ (Chile) also supported the French proposal. If the numerous limitations that had been suggested by various bodies were included in article 17, that article would be out of proportion to the rest of the covenant. Moreover, such details would probably not be needed as the proposed convention on freedom of information would almost certainly include a list of specific limitations.

Mr. Santa Cruz agreed with the French representative that it was unnecessary to adopt the USSR suggestion to include the words "Fascists" and "Nazis", as both the original and the French drafts contained ample provisions to ensure protection against such elements.

Mr. EBYWOOD (Australia) said that his Government had not changed its position since the Conference on the Freedom of Information at Geneva.

Mr. WILSON (United Kingdom) reminded the Commission of the thorough study that had been made of a text for article 17 by both the Sub-Commission on Freedom of Information and of the Press and by the Conference on Freedom of Information. Both of those representative bodies had reached similar conclusions concerning the best methods of drafting the article and it would seem unwise to reject the results of such prolonged discussions in favour of the condensed French version which had

/just been

just been distributed to the members of the Committee. He therefore proposed that the Committee should send to the Commission on Human Rights the text proposed by the Conference of Freedom of Information, with the statement that it had had no time to consider the article thoroughly.

Mr. WU (China) suggested that the Committee might send to the Commission both the text adopted by the Conference on Freedom of Information and a text which the Committee itself might agree upon.

Mr. MALIK (Lebanon) referred to the Committee's terms of reference and pointed out that the Committee could not constitutionally ignore the views submitted by the Sub-Commission on Freedom of Information and by the Conference. He agreed with the Chinese representative that two possible drafts might be submitted to the Commission, but in any case the Committee would have to transmit the proposals adopted by the Sub-Commission and by the Conference.

The CHAIRMAN said that the text adopted by the Conference was a redraft of the Sub-Commission's text and might therefore be considered representative of the views of both those bodies. That draft and the French draft might be submitted to the Commission.

Speaking as the United States representative, the Chairman said that if it were decided to list the limitations, the United States delegation wished to suggest additional limitations which were given in a document soon to be distributed. The United States delegation also wished to register its objection to paragraph (h) of the Conference text.

/Mr. ORDONNEAU

Mr. ORDONNEAU (France) observed that the French draft did not modify in any way the substance of the Conference draft and that the French delegation had not changed the position it had adopted at the Conference.

Mr. WILSON (United Kingdom) reserved the right to comment further on the French draft after he had had an opportunity to consider it in greater detail.

The Committee decided to submit to the Commission on Human Rights the text of article 17 as proposed by the Conference on Freedom of Information, the French proposal for article 17, the United States comments to be circulated, the comments by the Netherlands, Brazil and the Union of South Africa contained in document E/CN.4/85, and the comments by the Conference of Freedom and Information in regard to further limitations.

Article 18

The CHAIRMAN, speaking as the representative of the United States, expressed willingness to accept the French text of the article, provided the words "security" and "public welfare" were added.

Mr. ORDONNEAU (France) read out the French text as follows:

"Le droit de réunion est reconnu. Il n'est soumis qu'aux restrictions nécessaires pour assurer la sécurité des personnes ou des lieux, l'ordre ou la circulation;"

In reply to a question from Mr. WILSON (United Kingdom) concerning the omission in the French version of the clause in the Geneva draft reading: "...including the discussion of any matter on which under Article 17 any person has the right to express and publish his ideas", Mr. Ordonneau explained that his delegation had considered it useless to repeat in the first part the restrictions already listed in the second part of the article. Otherwise, the French alterations were merely drafting changes.

However, Mr. WILSON (United Kingdom) was not convinced that they were merely drafting changes and agreed with Mr. HEYWOOD (Australia) that the Geneva draft should be retained intact. Moreover, he shared Mr. Heywood's view that the phrase "public welfare" which had been suggested as an addition by the representative of the United States, was too broad and might be misinterpreted to restrict free assembly; the idea intended might be covered by the words "national security", or "public health", if that was agreeable to the representative of the United States.

The CHAIRMAN, speaking as the representative of the United States, pointed out that public welfare covered many important factors,

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such as the preservation of morals, the safety of children, etc.

Mr. ORDONNEAU (France) explained that the French text had omitted the clause beginning "...including the discussion..." in order to emphasize that all meetings were not held for purposes of discussion; the French concept was wider and included such meetings as sports events. Furthermore, Mr. Ordonneau thought the term "public welfare" was too broad and should be replaced by "national security" or "public security". In reply to Mr. MALIK (Lebanon), who pointed out an error in the French translation of the Geneva text, he said that the sense was not changed, despite the error, and that it was unnecessary to specify that the right of assembly included the right of free speech. Therefore, the French text, although a more general statement, adequately covered the needs.

Mr. SANTA CRUZ (Chile), while he did not object to retaining the clause, as the representative of Lebanon had suggested, preferred the shorter French text and the added phrase suggested by the United Kingdom representative. He proposed, however, the addition of the phrase "prescribed by law" in the Geneva draft after the words "other than those" in the second sentence.

Mr. PAVLOV (Union of Soviet Socialist Republics) thought that the salient defect of both the Geneva draft and the French text lay in their failure to state concretely the precautions that would be taken to prevent meetings of a fascist nature, detrimental to a democratic regime. In order to emphasize the fact that fascism still presented a real and immediate danger which should be dealt with by concrete measures, he cited examples of police action taken against persons attempting to break up a fascist meeting in the United Kingdom and of action taken by fascists in Greece and Spain. He would therefore abstain from voting on the article

/unless it

unless it was amended to include specific precautions against any resurgence of fascism.

Mr. WILSON (United Kingdom) replied that, while he was aware of the event referred to by Mr. Pavlov only from newspaper reports, such political processions had since been banned in the United Kingdom. He would welcome a clear and precise definition of fascism from the USSR representative. He further explained that the authority of the state to enforce the right to free assembly was stated in sub-paragraph (e) of Article 2 of the draft covenant.

Mr. MALIK (Lebanon) thought that Article 22 of the draft covenant fully met the objections raised by the USSR representative, for it made it impossible for any person or State to engage in activities aimed at the destruction of the rights and freedoms prescribed in the Covenant.

Mr. SANTA CRUZ (Chile) also felt that the Covenant contained adequate safeguards against threats to freedom and was prepared to accept any draft which would restrict the rights of free speech, religion and assembly of those who attempted to destroy a democratic regime of government.

After a brief exchange of views during which Mr. WU (China) suggested deletion of the words "peaceably" and "lawful" in the first sentence and Mr. WILSON (United Kingdom) agreed to add the words "or morals" to sub-paragraph (a), the CHAIRMAN reread the first part of the article, in its amended form, as follows:

"All persons shall have the right to assemble for any purpose including the discussion of any matter on which under article 17 any person has the right to express and publish his ideas. No restrictions shall be placed on

/the exercise

the exercise of this right other than those prescribed by law and necessary for national security..."

Miss SENDER (American Federation of Labor) then called attention to the proposal of the Netherlands delegation to replace the phrase "the prevention of disorders" (sub-paragraph (b) of the Geneva draft) by "the repression of disorder".

In the course of the ensuing discussion, Mr. SANTA CRUZ (Chile) stressed the need to retain the term "prevention" because he felt that it did not imply an infringement of the right of free assembly; by law, Governments already had the right to repress disorder as soon as a meeting no longer was being held for a lawful purpose.

The CHAIRMAN suggested that the difficulty might be met by deleting sub-paragraphs (b) and (c) of the Geneva draft and adding to sub-paragraph (a) the words "morals and public order".

Mr. MALIK (Lebanon), supported by Mr. WILSON (United Kingdom), stressed that the protection of public order was not the same as the prevention of disorders. The first expression was not specific enough and did not adequately embody the essential idea that only when disorders occurred could the right to assemble be restricted. Mr. Wilson added that the authorities should not have to wait for disorder to break out before exercising their legal power.

Mr. ORDONNEAU (France) agreed with Mr. WU (China) that the term "prevention" as well as "repression" should be used in sub-paragraph (b). Both terms were applicable; the first when disorders could be expected; the second, in order to put an end to disorders which might occur at authorized meetings. Moreover, the more general French text

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circumvented the difficulty and combined both ideas.

If the word "peaceably" were retained in the first sentence, Mr. MALIK (Lebanon) thought there was no need to mention "repression". In reply to a query by Mr. WU (China), he explained that the State enjoyed the elementary right to prevent disorderly meetings. Although the covenant could not instruct States with regard to the exercise of that right, it could exhort people to assemble peaceably.

With the approval of Mr. ORDONNEAU (France), he proposed the following redraft of the French text:

"Le droit de réunion est reconnu. Il n'est soumis qu'aux restrictions imposées par la loi et nécessaires pour assurer la sécurité nationale, la sécurité des personnes ou des lieux, ou la circulation."

The CHAIRMAN, speaking as the representative of the United States, suggested the further addition of the phrase "and the preservation of health and morals", after "national security, the security of persons and places". The United States also reserved the right to urge that the specific limitations listed should eventually be merged in a general limitation clause.

The Committee, with the exception of the USSR representative, agreed on the substance of both the French and English versions of article 18, as amended, subject to final drafting changes to be made by the Rapporteur.

Article 19

The CHAIRMAN, speaking as the representative of the United States, proposed the following redraft:

"No one should be denied freedom of association with others,
in whatever form may be appropriate under the law of the State,

/for the

for the promotion and protection of their legitimate interests
and for the promotion of any other lawful object."

Mr. MALLIK (Lebanon) objected to the deletion of the second part of the article which extended to associations or groups the rights and freedoms guaranteed to individuals. He stressed the importance of safeguarding corporate expressions of opinion.

Mr. SANTA CRUZ (Chile) also wished to retain the second part for he felt that it adequately covered all freedoms of association. In reply to a request for clarification from Mr. WILSON (United Kingdom), he explained that the Commission on Human Rights was bound by a resolution adopted by the Economic and Social Council at its fourth session, and later ratified by the General Assembly, to include the right to form trade unions in the concept of freedom of association. The Commission was to determine which of the trade union rights could be incorporated in the convention on human rights and in the international bill of rights. Article 19, as it stood, was not detrimental to those conventions, nor to the special convention to guarantee trade union rights now being drawn up by the International Labour Organization. However, he preferred the French text of the article.

Mr. WU (China) thought that the word "constitute" in the Geneva draft was inadequate because it did not specifically include the right to join associations. He could not accept the article as it stood.

Mr. WILSON (United Kingdom) on the other hand thought that it stated very positively the right of individuals to band together to give more effective expression to their opinions, and Mr. MALLIK (Lebanon) pointed out that the final wording adopted for article 16 might be

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applied in article 19 to meet the objections raised by the Chinese representative.

When Mr. ORDONNEAU (France) had pointed out that the French text was identical in substance with the Geneva draft and seemed more likely to gain unanimous acceptance, Mr. WILSON (United Kingdom) and the CHAIRMAN, the latter in her capacity as United States representative, agreed to accept it in principle. They reserved the right to make the necessary alterations in the English text.

Mr. PAVLOV (Union of Soviet Socialist Republics) said he would abstain from voting on either the French or English versions of the article.

With that exception, the drafting committee agreed on the substance of the following French text of article 19:

"Le droit d'association est également reconnu pourvu qu'il s'exerce dans des formes prévues par la loi et qu'il ait un but licite tel que la défense et la protection des intérêts légitimes des associés ou la propagation des informations prévues à l'article XVI. Les associations jouiront des droits et libertés énoncés aux articles XV et XVI."

Article 20

The CHAIRMAN, speaking as the representative of the United States, proposed the following redraft:

"Equal protection of the law with respect to any of the rights and freedoms set forth in part II of this covenant shall not be denied to any one on account of race (which includes colour), sex, language, religion, political or other opinion, property status, or national or social origin or on account of any other arbitrary discrimination."

/She agreed

She agreed with the proposal of the Brazilian representative to reword paragraph 3 of article 16 and add it to article 20.

Mr. WILSON (United Kingdom) found article 20 puzzling and pointed out that there were fundamental differences between the French text and the United States and Geneva drafts. The word "arbitrary" appeared unnecessary in any case. The United States text referred only to rights and freedoms set forth in the covenant and seemed to countenance other forms of discrimination. He preferred the more general wording of the French text.

Mr. MALIK (Lebanon) expressed willingness to accept the United States draft with the addition of the words "the enjoyment of" before "any of the rights and freedoms...".

On the other hand, Mr. SANTA CRUZ (Chile) wished to retain the last sentence of the Geneva draft. He felt that it was in the spirit of the United Nations Charter to protect individuals against incitement to discrimination.

Mr. Santa Cruz also queried the omission from the draft covenant of provisions for each country to choose its own form of government and other safeguards of political rights. He shared the opinion of Miss SENDER (American Federation of Labor) that provisions should also be inserted with respect to economic and social rights, as had been suggested by the representative of Australia.

Mr. MALIK (Lebanon) replied that the Commission on Human Rights had limited its work in Geneva to the consideration of fundamental personal and legal rights. Such questions as nationality, political, economic and social rights would have to be dealt with in future conventions.

The meeting rose at 6:03 p.m.