

COMMISSION ON HUMAN RIGHTS

DRAFTING COMMITTEE

FIRST SESSION

SUMMARY RECORD OF THE EIGHTH MEETING

Held at Lake Success, New York, on Tuesday, 17 June 1947, at 2:30 p.m.

Present:

Chairman:	Mrs. Eleanor Roosevelt	(United States of America)
Vice-Chairman:	Dr. P. C. Chang	(China)
Rapporteur:	Dr. Charles Malik	(Lebanon)
Members:	Mr. Ralph L. Harry	(Australia)
	Mr. H. Santa Cruz	(Chile)
	Prof. René Cassin	(France)
	Prof. V. Koretsky	(Union of Soviet Socialist Republics)
	Mr. Geoffrey Wilson	(United Kingdom)

Non-Governmental Organizations:

	Miss Toni Sender	(American Federation of Labor)
	Mrs. H. Fuhrman	(International Co-operative Alliance)
Secretariat:	Prof. J. P. Humphrey	(Secretary of the Committee)
	Mr. Edward Lawson	

1. Draft International Declaration of Rights Submitted by Working Group, Preamble and Articles 1-6. (Document E/CN.4/AC.1/W.1)

The CHAIRMAN told the press that the working papers might be used for background information, but that since the proposals contained therein were not in final form, they should not be quoted. She asked the members to agree to limit their discussion on the various items contained in the working papers to three minutes on each item. Mr. KORETSKY (Union of Soviet Socialist Republics) did not object to reading the articles from the working paper,

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but did object to the three-minute limitation. Mrs. ROOSEVELT stated that she would not insist upon such a limitation, but hoped that an effort might be made by each member to restrict his comments on any one item to that length of time.

Article 1

The CHAIRMAN read Article 1. She stated that the United States government was not satisfied with the present wording, and invited the members to suggest possible revisions. Dr. CHANG (China) thought that there should be added to the idea of "reason," the idea which in a literal translation from the Chinese would be "two-man-mindedness." The English equivalent might be "sympathy" or "consciousness of his fellow men." This new idea, he felt, might well be included as an essential human attribute. The CHAIRMAN agreed that Article 1 might be changed to read in substance: "All men, as members of one family, must be free and equal in dignity and rights. Being endowed with reason, they must have the additional sense of understanding of their fellow men about them." She felt that the wording of this would need revision.

Professor CASSIN (France) thought that in order to perfect the text Members might submit their own improvements on the original draft. He explained that his text alluded to the three fundamental questions of liberty, equality, and fraternity because, during the war, these great fundamental principles of mankind had been forgotten. The text was trying to convey the idea that the most humble men of the most different races have among them the particular spark that distinguishes them from animals, and at the same time obligates them to more grandeur and to more duties than any other beings on earth.

He added that there were still one or two ideas not yet mentioned, the concept of man as a reasonable being and the concept of reciprocal duties among men. These concepts, developed on the juridical plane, would concern mutual obligations or mutual rights or solidarity. However, he felt that

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men generally would understand the expression "men are brothers" more easily than a juridical expression concerning "mutual rights and obligations."

Mr. HARRY (Australia) suggested that the first four or five Articles might be combined into one, which would constitute an introduction. The CHAIRMAN called to his attention the fact that although an Article 4 appeared in the document, the working group had recommended that if the first paragraph of Article 3 were accepted, the alternative and Article 4 would be deleted. Mr. HARRY suggested a formula along the following lines: "All men, without distinction as to race, sex, language or religion, have certain inalienable rights fundamental to their existence as free men in free societies and as members of the international community. These rights are subject only to the rights of others as individuals and to the just requirements of the society through which they are enabled to develop in wider freedom."

The CHAIRMAN said that his suggestion would be considered.

Article 2

The CHAIRMAN read Article 2. There were no comments.

Article 3

The CHAIRMAN read Article 3 and the alternative form, including Article 4. There were no comments.

Article 5

The CHAIRMAN read Article 5. She commented that the Government of the United States felt that the last sentence, "Everything that is not prohibited by law is legally permitted," unnecessary, and should not be included.

Article 6

The CHAIRMAN read Article 6. Dr. CHANG suggested that the word "dignity" be used instead of "life" so that the first sentence would read: "There shall be respect for human dignity." He also felt that the sentence in Article 5 which the United States considered unnecessary might be eliminated.

The CHAIRMAN pointed out that in the United States proposal there

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appeared certain ideas that might be included in the Preamble of the Declaration. Among these were: (a) "The State is created by the people for the promotion of their welfare and the protection of their human rights. In the exercise of his rights, everyone is limited by the rights of others"; and (b) "The State may impose only such limitations on such rights as are compatible with the freedom and welfare of all."

2. Suggestions Submitted by the Representative of France for Articles 7-44 of the International Declaration of Rights. (Document E/CN.4/AC.1/W.2/Rev.1)

Article 7

The CHAIRMAN read Article 7. Mr. HARRY (Australia) suggested the possibility of combining Articles 6 and 7 in a single Article, stating that "Everyone has the right to life and personal liberty," and dealing with "torture" separately. Professor CASSIN suggested that there might be a Chapter heading after Article 5, to mark the end of the general provisions and the beginning of the treatment of particular liberties. He agreed that it was possible to group together everything having to do with life, physical inviolability, and liberty and personal security as one unified subject. The representatives of China and the United Kingdom supported this view.

Article 8

The CHAIRMAN read Article 8. She suggested that it might be improved if changed to read "There shall be inviolability of privacy, home, correspondence and reputation, protected by law."

Mr. WILSON (United Kingdom) suggested that Articles 8, 9, 10, 11, 12 and 13, which might be considered particular applications of the principle that the liberty of the individual shall be protected, should find a place in a Convention. The CHAIRMAN pointed out that if this view were accepted, those articles could be passed over for the time being. Mr. HARRY (Australia) supported the suggestion, provided that after the first article, in the subsequent articles dealing with life, physical integrity and personal liberty,

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there should be a second short article stating that no one should be deprived of his life or liberty, except in cases prescribed by law and after due process. He also felt that Article 8 might then follow, in a general statement, on the inviolability of home, correspondence, and reputation.

Dr. CHANG (China), while agreeing with Mr. WILSON's suggestion, felt that certain phrases or sentences appearing in Articles 6 to 13 might be extracted for use in the Declaration. Inclusion of the whole of these articles in the Declaration would make it too complex, he said.

Article 10

The CHAIRMAN stated that with respect to Article 10, the United States wished to suggest the use of the phrase "impartial tribunal" instead of "court of law." She also felt that the words "legally summoned" might not be understood. She pointed out that in the United States redrafts of parts of the Secretariat's outline, Article 7 had included several ideas: the right to be confronted by witnesses, the right of compulsory process for obtaining witnesses, and the right to be represented by Counsel. She pointed out that the third of these ideas was embodied in Article 19 of Professor CASSIN's draft.

Professor CASSIN said that the matter of compulsory processes for obtaining witnesses and counsel for defense should either be placed in a convention or else be considered as covered by the phrase "right to defense" used in the Declaration. He felt that the Committee should avoid including in the Declaration matters which are not principles but applications of principles.

Article 9

The CHAIRMAN read Article 9. There were no comments.

Article 11

The CHAIRMAN read Article 11. There were no comments.

Article 12

The CHAIRMAN read Article 12. She said that the United States felt that this Article should begin, "No one shall be held in slavery;" and that if

the second sentence were retained, it might lead to all kinds of injustices. The United States suggested the following wording: "No one shall be held in slavery nor be required to perform compulsory labour in any form other than public service equally incumbent by law upon all, or as part of punishment pronounced by a competent judicial tribunal... No person shall be imprisoned or held in servitude in consequence of the mere breach of contractual relations."

The representative of the American Federation of Labor expressed the opinion that compulsory labour should be mentioned in addition to slavery.

Dr. CHANG (China) recalled his previous proposal that in addition to a Declaration and one or more conventions there might be a third category - a commentary. He felt that there should be not more than twenty articles in the Declaration. The commentary would follow those articles which needed to be explained, but which could not be dealt with immediately in a convention. The CHAIRMAN agreed that his suggestion was a good one.

Article 13

The CHAIRMAN read Article 13 and the corresponding wording of the Secretariat outline and of the United Kingdom proposal. There were no comments.

The CHAIRMAN proposed that a small working group go over Articles 7-13, relating to personal liberties, and suggest what should go into a Convention and what into a Declaration. Mr. WILSON (United Kingdom) felt that this would not be possible; that no agreement could be reached on what should go into the Declaration until substantial progress had been made in drafting the convention. He therefore requested that the Committee as a whole consider what should go into the form of conventions, and later come back to the question of the contents of the Declaration.

The CHAIRMAN asked Mr. WILSON (United Kingdom) if he could draw up the preliminary draft of a convention and present it to the Committee on the following day. Mr. WILSON replied that the draft of a convention already was before the Committee in the form of the United Kingdom proposals.

/The CHAIRMAN

The CHAIRMAN pointed out that what she had meant was that he take the discussion into consideration and revise any part of the United Kingdom proposal that he felt required revision. Mr. WILSON (United Kingdom) replied that that would be difficult. He felt that the points should be considered as they stood, perhaps with the addition of texts on the subject of torture, the question of civil rights, and the right of asylum. He offered to prepare drafts on these three points.

Dr. CHANG (China) expressed the hope that by the following day a more concise Declaration could be prepared under the supervision of Professor CASSIN, and a proposed list of topics to be included on conventions by the Secretariat. Professor CASSIN, while agreeing, declared that in his opinion it was incorrect to start with the idea that the Declaration should contain a certain number of Articles it should contain a certain number of ideas and these ideas should determine the number of Articles.

Mr. HARRY (Australia) felt that Dr. Chang's proposal was a practical one. The CHAIRMAN expressed the view that the full Committee should first go through the rest of the Articles presented by Professor CASSIN. There was no objection to this procedure.

Article 14

The CHAIRMAN read Article 14. Dr. CHANG felt that the phrase "legal personality" was a little too technical. Professor CASSIN attempted to explain the philosophical basis of the articles appearing in Chapter IV, headed "Legal Status." The recognition of the juridical personality of all human beings is a second means of abolishing slavery, he pointed out. Slaves were once considered as instruments, as chattels, not as beings who could have rights. Also, just before the war there were instances when the right to marry was refused to refugees under the pretext that they did not have all the necessary papers and documents, that they did not have an authorization of residence, an official permit, and so forth, although they might have

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been living in a particular country for several years. Through such small detailed regulations the most fundamental human rights were denied. Chapter IV attempts to counteract that situation, he concluded, and in his opinion Article 14 should state that every human being has certain juridical and human rights regardless of whether or not he is a citizen, including the right to marry and the right to conclude contracts. The texts might be difficult to understand, he realized, but they touched upon the rights of millions of human beings in a most concrete and practical manner.

Articles 15, 16 and 17

Mrs. ROOSEVELT asked whether it would be possible to combine Articles 14 and 15. The United States felt, she added, that "mental incompetence" might be a better word than "mental condition;" and that the phrase "or other situation requiring protection" might be eliminated. The revised wording of Article 15 would then be: "No one shall be restricted in the personal exercise of his civil rights except by a general law for reasons based on age, mental incompetency or as a punishment for a criminal offense."

Professor CASSIN (France) stated that in his opinion Articles 14, 16, 19 and perhaps 17 could be combined, since they state the right of an individual to a legal personality. However, Article 15 was different it stated that although there are rights, there are certain persons who cannot exercise those rights personally. For instance, an infant can be a proprietor but he cannot go before a notary public to conclude a contract; an insane person has certain rights but he cannot exercise them personally; a criminal has certain rights but they must be exercised, for reasons of security of society, by a custodian. He felt that the phrase "or other situation requiring protection" should be retained because he did not feel that the list of cases in which men cannot act in their own right had been exhausted.

The CHAIRMAN said that she felt Articles 14, 16, 17, and 19 could be combined. She suggested certain changes as proposed in the United States redrafts of the Secretariat outline. She asked if there were any further comments on Article 15.

/Professor CASSIN

Professor CASSIN suggested that Article 19 might be combined with Article 14 as a development of the principle of the legal personality.

Article 18

The CHAIRMAN read Article 18, and suggested that the fourth paragraph, which seemed to her to be included in the first, did not appear to be necessary. Dr. CHANG (China) felt that the first two paragraphs might be taken to include the last two. He suggested that the first two might serve as a declaration of principle, the latter two as "commentary". Mr. WILSON (United Kingdom) agreed with Dr. CHANG, but felt that the Article might be limited still further, to the first paragraph, "Everyone has a right to own personal property". Regarding the second paragraph, he asked what would happen if a person were fined, by a court, an amount of money which involved selling his automobile. He would be deprived of his property, but whether or not this could be considered for the public welfare was a difficult question. He felt that it was impossible to go beyond saying, as a statement of principle, that a person should have the things he needs in order to carry on and to enjoy his everyday life.

The CHAIRMAN felt it would be wise to retain only the first sentence, but to alter it to read, "Everyone has a right to own real and personal property". Mr. SANTA CRUZ pointed out that an Article referring to the right to own property was a delicate one at a time when this right was subject to different legislation in the various countries which are Members of the United Nations. However, he thought it might be possible to arrive at a formula which would unite the different opinions, in the sense that everyone has the right to personal property in certain cases and that general property is subject to the interest of the community.

Professor CASSIN (France) agreed that the Committee should not try to evade difficulties, but to deal with them tactfully and with courage. He accepted the Chairman's idea of cutting paragraphs 3 and 4 from Article 18. He suggested that the Committee might say that the State may determine the

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rights and interests which are susceptible to private appropriation. That, he explained, would include real estate, industrial and commercial enterprises and any other objects, such as objects of higher culture or of an historical value which might be considered the patrimony of the whole nation. He warned that there were enormously different conceptions regarding the right to property, and suggested that if the Declaration were to deal with the effects which can be held in private ownership it should give guarantees to the proprietor; it should state that he shall not be deprived of his property except in the public interest and with just compensation. He felt that Article 18 could be reduced to three paragraphs, but he did not consider it possible to delete either the second or the third.

The CHAIRMAN summarized the consensus of opinion as being in favour of deletion of paragraph 4 because it is implicit in the third. Some members also wished to have paragraphs 2 and 3 deleted. She suggested that if any paragraphs were deleted, the first sentence might be changed to read, "Everyone has a right to own and transfer real and personal property".

Mr. HARRY (Australia) suggested that it might be better to eliminate any reference to property, in view of the difficulties sure to arise when an attempt was made to define what should and should not be owned, the differences between real and personal property, and so on. If it were left to the State to determine those things which are susceptible of private appropriation, he felt, the right expressed in the first paragraph would be worthless. Mr. WILSON (United Kingdom) said that if the Article in its final form stated the right of the State rather than the right of the individual, it would be better to omit it.

Dr. MALIK (Lebanon) stated that in his opinion the right of property was a fundamental right which must have a place in the Bill, and certainly in the Declaration. He felt that it was self-evident that man cannot live without personal property; that this particular right was as essential and as fundamental as almost any other right. He did not see how reference

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to such a right could be suppressed. He pointed out that the unlimited character of the ownership of private property could not be considered a fundamental right, but that even the most socialistic constitutions refer to the fact that a man must have something which is his own. He was in favour of retaining paragraph 1, properly modified, and the combination of paragraphs 1, 2, and 3 into a formulation which would indicate that man's right to property is not unlimited, but is limited by the will of society organized into the State.

Professor CASSIN (France) urged the importance of the question. It seemed impossible to him not to allude in the first paragraph to the principle of private property. Having done this, it would be necessary in a separate paragraph to stress the idea that the right of private property cannot be applied without limitation.

The CHAIRMAN suggested that the need for the limitation of property rights or the consideration of the rights of other people ought to be considered. This could be considered already covered either by Article 3 which stated that "the rights of each are, therefore, limited by the rights of others", or by the alternative formulation of Article 4, which states that "In the exercise of his rights, everyone is limited by the rights of others". Property rights of an individual, she felt, would implicitly be limited by the rights of others.

Mr. SANTA CRUZ (Chile) called attention to the Chilean proposal on this subject, which recognized the right of property and established the right of the State to co-operate with individuals so that they might have a minimum of private property in accord with their necessities, and the necessary decorum to enable them to maintain their dignity. The Chilean government, he said, did not only want property not to be limited, but would like the social function of property to be established. It would prefer a formula which would establish the right of a man to have private

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property, and also recognize the rights of the community with respect to all property.

Mr. WILSON suggested a rough rewording, as follows: "Everyone has the right to own such property as is necessary to enable him to maintain the average standard of life in the country in which he lives". That, he felt, was the sort of thing that could be usefully said, and beyond which it would be extremely difficult and possibly even dangerous to go.

Article 20

The CHAIRMAN read Article 20. She brought to the attention of the Committee a communication she had received from various religious groups, stating that they did not consider that just giving people the right to any form of worship was sufficient; that the right of teaching and freely discussing religious beliefs was also necessary. These communications would be circulated. She added that the view of the United States on Article 20 was that, in the second sentence of paragraph 2, the wording "manifestations of opposite convictions" is not necessary because it is implicit in freedom of conscience and belief. The second paragraph might be eliminated altogether.

Dr. MALIK (Lebanon) suggested that the titles of Chapters III and IV, "Public Freedoms" and "Personal Liberties" respectively, be exchanged. He felt that the rights enumerated under Chapter III should be called "Public Freedoms" because they deal for the most part with man's relation to the State; whereas the freedoms and rights under Chapter V dealt exclusively with man's inner convictions and beliefs. He asked if there had been a reason for the apparent inversion of title.

Prof. CASSIN replied that freedom of worship, of conscience of opinion are such intrinsic personal liberties that they might be included under that Chapter heading. They became public, he explained, only when they received a public manifestation in the exercise of a form of worship or through the communications of opinions. This proved, he felt, that the titles given

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to Chapters were not necessarily useful and might even be harmful. He suggested that since the CHAIRMAN found the wording "opposite convictions" shocking, the wording "various opinions" or "different opinions" might be used instead. The CHAIRMAN replied that she had not meant to say that this phraseology had shocked her; it had merely seemed a bit awkward.

Dr. MALIK (Lebanon) felt that the words "absolute and sacred" could be used in connection with the liberty of conscience, of worship, of thought, but not with any other liberty. He considered it important that the Committee recognize the fundamental human right for differing fundamental convictions, as in religion, to exist in the same national entity. The fact that a single nation is obligated, by international law, to recognize the diversity of fundamental points of view on ultimate matters should, he believed, be considered an essential and fundamental human right.

Mr. HARRY (Australia) hoped that the bracket of freedoms outlined in Chapter V could be expanded and given precise definition in a Convention, and condensed and crystallized for inclusion in the Declaration. Dr. CHANG (China) suggested as a drafting change that the word "morals" be eliminated, since it already was implied in the phrase "rights and freedoms of others"; and that the sentence might then read, in part, "...to protect public order and the rights and freedoms of others".

Article 21

The CHAIRMAN read Article 21. She pointed out that the phraseology might be a little awkward because it was a translation from the French. She suggested as a drafting change the rewording proposed by the United States: "Everyone is free to change, hold or impart, within or beyond the borders of the State, his opinion or to receive and discuss the opinions of others".

Article 22

The CHAIRMAN read Article 22, and expressed the view of the United States government that it would be difficult to hold publishers and

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editors responsible in just the manner suggested in the Article, and that perhaps some of the limitations could be omitted or stated in more general terms. She recalled the wording proposed by the Sub-Commission on the Freedom of Information and of the Press: "The objectives of those who disseminate information should be accuracy, objectivity, comprehensiveness and representative character".

Professor CASSIN (France) felt that it was impossible not to indicate that the freedom of writing implies a certain responsibility. He suggested ending the Article with the words, "...provided that there should be an organization of responsibility for the abuse of such rights". Clarification of this provision could be made in a Convention.

Article 23

The CHAIRMAN read Article 23, and expressed the view of the United States that it would be sufficient to say, "There shall be freedom of peaceful assembly". Dr. MALIK (Lebanon) called the attention to the fact that in the enumeration of the various objectives of association, religious association had been omitted. He asked whether that was an oversight. Professor CASSIN replied that apparently it was a typographical error which he had corrected on his own text.

Article 24

Professor CASSIN (France) felt that the right of petition might be included among the political rights of man. He suggested that Articles 20, 21, 22, and 23 might be grouped together in the Declaration. Dr. CHANG (China) agreed, and added that Articles 24 and 25 also might be grouped, as political rights. Mr. WILSON (United Kingdom) felt that the substance of Articles 20, 21, 22, and 23 should be included in a convention.

The CHAIRMAN read Article 24. Dr. MALIK (Lebanon) felt that the concept might well be enlarged by elimination of the words "for redress of grievances". The right to communicate in general with the United Nations, even apart from matters of redress of grievances, ought to be protected, he felt.

Article 25

The CHAIRMAN read Article 25, and the corresponding Article 29 of the Secretariat outline. Mr. SANTA CRUZ (Chile) said that he preferred the latter because it was simpler and recognized the right of an individual to resist oppression and tyranny. Professor CASSIN's wording, he felt, guaranteed the right to resist oppression only when a regime deprives its people systematically of their fundamental human rights and freedoms, and it might be very difficult to say when that happened. He suggested that the wording be: "Everyone has the right, either individually or with others, to resist oppression and tyranny." Professor CASSIN (France) said that the genuine duty for all citizens to obey the law could not be overlooked. He pointed out that there were two conceptions: first, that rights be obtained peacefully and normally, but secondly, that when there is a great crisis, the gravity of the violation of human rights calls upon itself the attention of all peoples. He agreed that possibly his text did not reconcile these two conceptions well enough.

The CHAIRMAN pointed out that Article 25 speaks of only one aspect of the right to resist tyranny, the aspect vis à vis governments. There are other aspects, she said, including the case of oppression imposed by non-governmental officers without cover of law.

Before adjourning, Mr. WILSON (United Kingdom) agreed to prepare for the next day's meeting a suggestion as to the subject matter concerning the question of torture, civil rights, and the right to asylum which might possibly be included in a convention.

The meeting adjourned at 5:16 p.m.
