
COMMISSION ON HUMAN RIGHTS

Third Session

SUMMARY RECORD OF THE SIXTY-SECOND MEETING

Held at Lake Success, New York,
on Monday, 7 June 1948, at 2.30 p.m.

Chairman: Mrs. Franklin D. ROOSEVELT United States of America

Rapporteur: Mr. MALIK Lebanon

Members:

Mr. HOOD	Australia
Mr. LEBEAU	Belgium
Mr. STEPANENKO	Byelorussian Soviet Socialist Republic
Mr. CHANG	China
Mr. LOUFI	Egypt
Mr. CASSIN	France
Mrs. MEHTA	India
Mr. QUIJANO	Panama
Mr. LOPEZ	Philippines
Mr. KLEKOVKIN	Ukrainian Soviet Socialist Republic
Mr. PAVLOV	Union of Soviet Socialist Republics
Mr. WILSON	United Kingdom
Mr. FONTAINA	Uruguay
Mr. VILFAN	Yugoslavia

Also Present:

Mrs. LEDON Representative of the Com-
mission on the Status of
Women

Representative of Specialized Agency:

Mr. LEBAR United Nations Educational,
Scientific and Cultural
Organization

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Consultants from Non-Governmental Organizations:

Miss SENDER	American Federation of Labor
Mr. van ISTENDAEL	International Federation of Christian Trade Unions
Mr. RUBINOW	World Federation of United Nations Associations
Mr. LEWIN	Agudas Israel World Organization
Mr. DRENMAN	Catholic International Union for Social Service
Mr. NOLDE	Commission of the Churches on International Affairs
Mr. JANNER	Co-ordinating Board of Jewish Organizations
Mr. BROTMAN	
Miss STRAHLER	International Committee of the Red Cross
Miss SCHAEFER	International Union of Catholic Women's Leagues

CONSIDERATION OF DRAFT INTERNATIONAL DECLARATION ON HUMAN RIGHTS, SUBMITTED BY THE DRAFTING COMMITTEE (Annex A of document E/CN.4/95)

Articles 21 and 22

Mr. WILSON (United Kingdom) explained that he had not been able to consult the Chinese representative with regard to a new text of Articles 21 and 22, but that he and the representative of India had agreed upon the following draft, which they submitted as Article 21:

"Everyone has the right to take part in the government of his country directly or through his freely chosen representatives.

Everyone has the right of access to public employment in his country."

It would be seen that the first sentence was the original Indian-United Kingdom draft, as in document E/CN.4/99, to which the second sentence had been added.

The CHAIRMAN put the above draft to the vote, as a substitute for the text proposed by the Drafting Committee.

The Commission approved the new text of Article 21 by eleven votes to four with one abstention.

/Mr. CASSIN

Mr. CASSIN (France) urged that the following sentence, which had been in the Drafting Committee text of Article 21, should not be dropped from the Declaration:

"The State shall conform to the will of the people as manifested by elections which shall be periodic, free, fair and by secret ballot."

Since, according to the rules of procedure, he could not propose it as an addition to Article 21, which had already been voted upon, he would ask to have it considered as Article 22.

After a short discussion of procedure, the CHAIRMAN asked the Commission to vote whether it wished to consider the inclusion of the above text as Article 22.

The Commission decided, by nine votes to three with four abstentions, to consider the inclusion of the above text as Article 22.

The CHAIRMAN, speaking as the representative of the United States of America, asked the French representative whether he would agree to redraft the beginning of the article as follows: "Everyone has the right to a government which will conform..." That would put the article in a declaratory form, and would be in keeping with the rest of the Declaration.

Mr. CASSIN (France) accepted that proposal.

Mr. WILSON (United Kingdom) expressed concern that the text in question, either in the original French draft or as amended by the United States representative, went beyond the original purpose of the Declaration. This was to state human rights, not the obligation of States. Article 21 contained all that was necessary, for, if government representatives were freely chosen, the government would in fact conform to the will of the people.

Moreover, the phrase "as manifested by elections which shall be periodic, free, fair and by secret ballot" went into matters of detail which

/the Commission

the Commission was expressly trying to avoid. It was sufficient to speak of "freely chosen representatives"; how they were to be chosen was a debatable subject. Mr. Wilson drew the attention of the Commission to the comment on Article 21 of the Draft Declaration on page 24 of document E/600, according to which the Commission had agreed at its second session, held at Geneva, that "the use of such balloting procedure as the secret ballot could not be imposed when its effect might be contrary to the intentions of Article 74 (b) of the Charter, or to the obligations contained in the relevant parts of the trusteeship agreements." The Commission would recall that the Trusteeship Council had recently sent a Visiting Mission to Western Samoa, where voting by secret ballot was not and never had been in operation: the Visiting Mission had agreed that that was in accordance with the Charter, since representatives were freely chosen. That principle was already maintained in the text just approved for Article 21, and Mr. Wilson urged that nothing more was necessary.

The CHAIRMAN declared that her delegation, too, was satisfied with Article 21. She had proposed an amendment to the French text, simply in order that the Article should be in a declaratory form if the Commission adopted it.

Mr. STEPANENKO (Byelorussian Soviet Socialist Republic) pointed out that many members had felt that Article 21, as adopted was inadequate. He supported the French proposal.

He could not agree with the United Kingdom representative that democratic principles were applicable to the metropolitan Powers only and not to non-metropolitan territories. In the former Italian colonies, for instance, a system of secret ballot had in fact been used, with satisfactory results. If such a system had not been universally applied heretofore, it was the duty of the Commission to see that in future it was made the right of all peoples in the world.

Mr. CASSIN (France) was willing to admit that Article 21 did perhaps include the essence of the principle he was now trying to incorporate. The Declaration should not, however, omit some reference to the will of the people. The Commission was not preparing a purely legal text, but was speaking for the masses of the world.

He did not wish the question of secret ballot to become the subject of controversy; there were other systems, as for example in the Swiss Confederacy, which were equally democratic. He would therefore withdraw the words "and by secret ballot", but hoped the Commission would retain the reference to the will of the people.

Mr. PAVLOV (Union of Soviet Socialist Republics) recalled that when the Commission had considered Article 2 of the Draft Declaration, he had urged that reference should be made to the democratic State. The Commission had, however, decided against it; and had consequently come upon great difficulties with regard to the question of arbitrary acts. The present discussion was another example of the result of that mistaken decision.

Mr. Pavlov agreed that the will of the people must be mentioned. While he thought the representative of France had been wrong to withdraw the reference to the secret ballot, he was willing to compromise and would agree to the words "and, where possible, by secret ballot". He would further wish to amend the French proposal to read as follows: "...elections which shall be universal, without discrimination, equal and direct, periodic, free, fair and, where possible, by secret ballot".

Mr. CHANG (China) wondered whether a simplified form would be acceptable, taking into consideration the general structure of the Declaration. He proposed some such simple formula as "The Government shall conform to the will of the people".

/Mr. HOOD

Mr. HOOD (Australia) supported the representative of China. It was possible that the Commission had proceeded too rapidly in its consideration of Article 21, and that some mention of the will of the people should be included somewhere in the Declaration. He would go even further than the Chinese representative, and would suggest that the Commission might go back to Article 21 with a view to including that phrase at the end of the first sentence, along the following lines: "...freely chosen representatives, to the end that the Government shall conform to the will of the people."

The CHAIRMAN, supported by Mr. FONTAINA (Uruguay), thought that the proper place for such a statement was not in an article, but in the Preamble.

Mr. CASJIN (France) could not agree that his proposal should be relegated to the Preamble.

Mr. FONTAINA (Uruguay) suggested that, before a vote was taken upon the actual text, the Commission should vote whether it was to be included in the Preamble or as a separate article.

After a short discussion, in which Mr. CHANG (China) pointed out that if the text was rejected as an article, members would still have the right to reintroduce it when the Preamble was discussed, Mr. FONTAINA (Uruguay) withdrew his suggestion.

The CHAIRMAN proposed to take the vote in the following order: the first part of the French proposal, namely "Everyone has the right to a government which shall conform to the will of the people", should be voted upon first, since it was practically the same as the USSR proposal; the USSR amendment to the second part would next be voted, and if that was rejected, the remainder of the French proposal would be put to the vote.

/Mr. PAVLOV

Mr. PAVLOV (Union of Soviet Socialist Republics) pointed out that his proposal for the first part was the wording of the text, adopted at the second session of the Commission, namely, "The State shall conform...", a broader form than the French draft, which by using the word "government" narrowed the sense of the article.

After a brief exchange of views, in which Mr. CASSIN (France) pointed out that the French translation of "government" was "pouvoirs publiques", which was all-inclusive, and Mr. LEBEAU (Belgium) stated his preference for the word "State", as covering all degrees of authority, the Commission decided to vote upon the proposal in two parts, taking the USSR amendment first in each case.

The Commission rejected the first part of the USSR amendment by six votes to four, with five abstentions.

The Commission approved the first part of the French proposal by eight votes to three with five abstentions.

The Commission rejected the second part of the USSR amendment by nine votes to six, with one abstention.

Mr. WILSON (United Kingdom) explained that he would vote against the second part of the French proposal, on the ground that it was the duty of the government to conform to the will of the people, however that will was expressed. It was unnecessary to specify the means whereby the will of the people was to be manifested.

The Commission rejected the second part of the French proposal by nine votes to six, with one abstention.

The CHAIRMAN announced that Article 22 would thus read:

"Everyone is entitled to a government which shall conform to the will of the people."

/Mr. MALIK

Mr. MALIK (Lebanon) asked whether the text approved could not be attached to Article 21, as the representative of Australia had proposed. It belonged in substance to that Article.

The CHAIRMAN suggested that that decision should be left to the style Committee which was to go over the final draft.

Mr. WILSON (United Kingdom), as a member of that Committee, thought the matter far too delicate to be decided by the Committee and asked for a ruling from the Commission.

The Commission decided, by eleven votes with four abstentions, to attach the text to Article 21.

Mr. PAVLOV (Union of Soviet Socialist Republics) asked the Commission to consider the addition of a new article, to the effect that everyone had the right to participate in the elections of the governing body of his country.

The Commission decided, by seven votes to four, with three abstentions not to consider the inclusion of such an article.

Article 13

The CHAIRMAN read a paper on the order of voting on proposals and amendments concerning Article 13, prepared by the Secretariat at the request of the Commission (document E/CN.4/106).

Mr. CASSIN (France) said that if the United States delegation would accept the inclusion in their amendment of "the right to found a family", and reference to the age of puberty, he would withdraw his own proposal.

Mr. WILSON (United Kingdom) wished, in deference to ideas expressed at a previous meeting by the French representative, to insert the words "have the right to marry and" in his amendment, after the words "Men and women".

/At the request

At the request of the Uruguayan representative, he replaced the words "are entitled to" by "have", as that would facilitate translation into Spanish.

Mr. FONTAINA (Uruguay) was opposed to the addition of the words "have the right to marry and". If that right were mentioned expressly, it would be only logical to mention the right to the dissolution of marriage, which the text failed to do.

Mrs. MEHTA (India) remarked that she would support the United States text, if the Egyptian amendment to it, deleting the words "deriving from marriage", were approved. While, in most cases, a family derived from marriage, the text as it stood could not be applied to adopted children.

Mr. MALIK (Lebanon) stated that, according to the very criteria set up by the Secretariat in document E/CN.4/106, the United States amendment should be put to the vote before that submitted by India and the United Kingdom; the United States amendment was farthest removed from the original in that it not only deleted four ideas contained in the original, as did the other amendment, but introduced one new idea.

Mr. WILSON (United Kingdom) agreed with the Lebanese representative.

Mr. PAVLOV (Union of Soviet Socialist Republics) pointed out that, according to rule 54 of the rules of procedure, "the most far-reaching proposal or amendment" was to be put to the vote first. The Secretariat had proceeded to determine the most far-reaching proposal on the quantitative basis of the number of words deleted. Mr. Pavlov felt that the determination should have been made on a qualitative basis, and that the extent to which ideas contained in the amendments were removed from the

/original

original should have been given primary consideration. In that case, the USSR amendment would have to be put to the vote first.

It was obvious that the USSR proposal went farther than that of the United Kingdom, since it contained three ideas: equal rights for men and women to enter into marriage, during married life, and to dissolve the marriage, in countries where divorce existed. That last clause could be added to the USSR amendment to meet the previously made objection that in some parts of the world divorce was not permitted.

Mr. Pavlov stressed the need to introduce equality between men and women in all matters relating to marriage. According to the rules of procedure, the USSR amendment should be put to the vote first; those opposed to the principle of equality between the sexes could then cast a negative vote.

After a brief procedural discussion, the Commission decided to consider the United States amendment first.

Mr. CASSIN (France) proposed the following amendments to the United States text:

1. Change the first sentence to read: "Men and women of full age have the right to marry and to found a family and are entitled to equal rights as to marriage."

2. In the second sentence, delete the words "deriving from marriage".

The Egyptian amendment was thus included in the second French proposal.

The Commission approved the first French amendment by ten votes to one, with four abstentions.

The Commission approved the second French amendment by seven votes to three, with four abstentions.

/The CHAIRMAN

The CHAIRMAN explained that the United States text, as amended by the French representative, was intended as a substitute for Article 13 in document E/CN.4/95. If adopted, it would become the new Article 13.

The Commission approved the United States text as a whole, as amended by the French representative, by eight votes to one, with six abstentions.

Mr. PAVLOV (Union of Soviet Socialist Republics) called attention to the fact that the Commission had, no doubt inadvertently, left out of the new article the idea that marriage was to be entered into only with the full consent of both parties. It had, in fact, approved an article permitting young girls, in parts of the world where such customs still prevailed, to be forced into marriage.

In order to remedy that situation, Mr. Pavlov wished to propose the following: "Marriage may be entered into only with the full consent of both spouses; men and women shall have equal rights both during the marriage and in its dissolution." The statement that men and women should have equal rights in the dissolution of marriage was intended to protect the woman from the loss of property which she frequently incurred as a result of divorce.

Mr. Pavlov remarked that, if the Commission were unwilling to reopen the discussion of Article 13, his proposal might constitute a new article.

Mr. CASSIN (France) observed that the concept of full consent still existed in Article 13 as approved by the Commission. The phrase in that article, "the right to marry" struck at the very root of the problem, as the original draft adopted at the second session of the Commission had not done; the right to marry meant that no one was obliged to marry, save of his own free will.

/Mr. WILSON

Mr. WILSON (United Kingdom) requested that the USSR proposal might be put to the vote in two parts. He would support the first part (up to the semi-colon); the second part he thought unnecessary, as the words in Article 13 approved by the Commission, "equal rights as to marriage", covered all stages of marriage, including divorce.

The Commission approved, by eleven votes to none, with four abstentions, the first part of the USSR proposal, reading as follows: "Marriage may be entered into only with the full consent of both spouses".

The Commission rejected the rest of the USSR proposal by seven votes to six, with two abstentions.

The Commission decided, by fourteen votes to none, with one abstention, that the approved portion of the USSR proposal would become part of Article 13.

Article 16

Mr. MALIK (Lebanon) reported that the drafting sub-committee, composed of the representatives of France, Lebanon, the United Kingdom and Uruguay, and entrusted with the consideration of Article 16 and its relations to Articles 17 and 18, unanimously recommended the following text: "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others, in public or private, to manifest his religion or belief in teaching, practice, worship and observance." The sub-committee also recommended that the word "thought" in Articles 17 and 18 should be replaced by "opinion", and that Article 16 should precede those articles.

Mr. CASSIN (France) called attention to the fact that the word "observances" in the French text of proposed Article 16 should be replaced by "rites", and that other drafting changes in that text were desirable.

/The Commission

The Commission approved Article 16 by eleven votes to none, with four abstentions.

Articles 17 and 18

Mr. JANNER (Co-ordinating Board of Jewish Organizations) said that he was aware of the Commission's desire to formulate principles of a general character in the Declaration, rather than draft a detailed statement of principles. While his organization would be the last to advocate any unnecessary limitation to the freedom of expression and imparting information, it wished to call attention to the danger of expressing those freedoms in too general terms. A most fundamental human right, that to freedom from fear, might be imperilled thereby.

Freedom of expression and imparting information should not mean freedom of incitement to hatred and violence against racial or religious groups. Mr. Janner recalled that, for precisely such incitement against the Jews, Streicher had been condemned to death by the Nuremberg Tribunal. Consequently, incitement to hatred and violence had been recognized as a crime under international law. The Declaration of Human Rights should prevent such incitement from being carried on under the guise of free expression, and should provide security from continual fear.

In particular, Mr. Janner felt that close attention should be given to the words "by any means" in the text of Articles 17 and 18 submitted by the United Nations Conference on Freedom of Information (document E/CN.4/95). To avoid the dangers he had indicated, they might be amended in some such manner as: "by any means consistent with the fulfillment of this Declaration". Although the words "by any means" might refer simply to the technical media of imparting information, that safeguard was necessary. Even in the post-war world, incitement to hatred against racial, religious and national groups occurred,

/It might

It might be considered that the appropriate place for specific limitations was the Covenant. Nevertheless, the Declaration should be drafted in such a manner as to permit the insertion of such limitations in the Covenant. It should be made clear that, under the Declaration, no man had the right to incite others to violence against any group of human beings.

The meeting rose at 5.40 p.m.