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COMMISSION ON HUMAN RIGHTS

SECOND SESSION

WORKING GROUP ON THE DECLARATION ON HUMAN RIGHTS

SUMMARY RECORD OF THE THIRD MEETING

Held at the Palais des Nations, Geneva,
on Saturday, 6 December 1947, at 10 a.m.

Present:

Chairman:	Mrs. Franklin D. Roosevelt (United States of America)
Rapporteur:	Professor Cassin (France)
Members:	Mr. Stepanenko (Byelorussian S.S.R.) Mr. Amado (Panama) General Romulo (Philippines) Mr. Bogomolov (Union of Soviet Socialist Republics)
Representatives of the Commission on the Status of Women:	Mrs. Begtrup Mrs. Uralova
Secretariat:	Miss Kitchen
Specialized Agencies:	Mr. Bessling (ILO) Mr. Havet (UNESCO)
Non-Governmental Organizations:	
Category A:	Mr. Robinet de Clery (Inter- Parliamentary Union) Mr. Vanistendael (International Federation of Christian Trades Unions)
Category B:	Mr. Easterman (World Jewish Congress)

Mr. CASSIN (France) stated that he had given up the idea of submitting a new draft embodying the idea of "rule of law" in Article 3. As regards Article 1, he had been unable to consult the Representative of the Philippines and would submit a new draft of that Article at the second reading.

Mr. AMADO (Panama) submitted the following amendment to Article 3:

"Every one has the right to protection against arbitrary discrimination in the provisions and application of the law because of race, religion, sex or any other reason."

Mr. STEPANENKO (Byelorussian S.S.R.) supported the proposal submitted by the Representative of Panama and was in favour of its insertion in Article 3.

The CHAIRMAN pointed out that this text would replace the whole of the Article 3 already adopted and in substance would overlap with the provisions of Article 6 concerning which the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities was to make a recommendation. She suggested therefore that the Commission defer its decision on this proposal until the Sub-Commission's Report had been submitted. The text proposed by the Representative of Panama could then be incorporated in Article 6 which would no doubt also contain other provisions. Article 6 could then even be incorporated in Article 3, if the Working Group so desired.

General ROMULO (Philippines) moved a point of order. The Commission had adopted Article 3 subject to changes in form but not in substance. But this text represented a change in substance. Furthermore, before envisaging the fusion of Article 6 with Article 3, he thought it necessary to know what the Drafting Committee's intention had been with regard to these Articles.

Mr. CASSIN (France) stated that the original Article 6 of the Drafting Committee's Report contained two ideas, the idea of

equality and the idea of the prevention of arbitrary discrimination. In its present form Article 3 had only retained the idea of equality. The amendment submitted by the Representative of Panama was therefore appropriate. He proposed that it should be retained, as far as substance was concerned, as being appropriate in the present Article, and that the Working Group should wait until it had seen the recommendations of the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities before deciding on its final form.

Mr. BOGOMOLOV (Union of Soviet Socialist Republics) considered that account should be taken of the Sub-Commission's recommendations in the case of Article 6 which dealt with discrimination in general. But Article 3 dealt with courts of law and there were cases where discrimination occurred in courts of law. It was therefore important that the principle of non-discrimination should be emphasized in that Article.

The CHAIRMAN pointed out that it was not possible to go back on the decision taken by the Working Group. Therefore, they could not proceed to change the substance of Article 3. This did not exclude the possibility of including the proposal of the Representative of Panama in Article 6 and if necessary, of incorporating Article 6 in Article 3 when the Report of the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities came up for consideration.

General ROMULO (Philippines) supported the proposal submitted by the Representative of Panama and stated he would vote in favour of it, if it were incorporated in Article 6, subject to the following slight modification:

"Every one has the right to protection against arbitrary discrimination in the provisions of the law and their application because of race"

Mr. AMADO (Panama) accepted this modification.

The CHAIRMAN stated that Article 3 would therefore be left as it stood, subject to drafting changes. The Working Group would refer to the plenary meeting on 8 December the examination of Article 4, i.e. the original Article 6 of the Drafting Committee's Report and consideration of the amendment submitted by the Representative of Panama together with the possibility of incorporating the text adopted in Article 3.

General ROMULO (Philippines) drew the Working Group's attention to the danger which might result from a wrong interpretation of the second sentence of Article 3 in the absence of an exact definition of the nature of the law envisaged. He therefore proposed the insertion between Article 3 and Article 4 of an Article worded as follows:

"All laws, decrees and ordinances and all judicial and administrative acts in any State shall be in conformity with the purposes and principles of the United Nations as embodied in the Charter."

The wording of this Article had been suggested to him after perusal of the memorandum submitted by the World Jewish Congress. Moreover, that undertaking on the part of Governments did not differ in substance from the one they had already given as Members of the United Nations under the terms of Article 2, paragraph 2 of the Charter. He strongly urged the Working Group to take note of the proposal he had just submitted when the time came to examine Article 6.

Mr. CASSIN (France) pointed out that three different ideas had been put forward during the present discussion. First, the conformity of national laws with the principles of the Charter. Secondly, the idea of equality before the law. The amendment submitted by the Representative of Panama, if it were incorporated

in Article 3, would involve certain changes in the text adopted, as it would be necessary to bring the two texts into line, since one mentioned status and activities and the other sex, race and religion. Thirdly, the idea of the "rule of law". It was impossible to introduce all these ideas into Article 3. The proposal submitted by the Representative of the Philippines, in particular, was not bound up with Article 3 or Article 6, but was concerned with good laws and could be inserted elsewhere.

Mr. AMADO (Panama) supported the proposal submitted by the Representative of the Philippines and agreed with the Representative of France that it was a question of position. He sought an understanding that his proposal would be examined in relation to Article 3 and jointly with Article 6.

Examination of Article 7:

Mr. CASSIN (France) stated that it had been the Drafting Committee's intention to confine themselves to the ideas of liberty and personal security whereas the alternative texts submitted by Chile and Lebanon (E/CN.4/21 (Annex F)) appeared to expand considerably the idea expressed in this Article. He himself was in favour of the Drafting Committee's proposal and he knew the Working Group on the Convention also took the same view.

The CHAIRMAN proposed the retention of the text submitted by the Drafting Committee, substituting in the English text the words "security of the person" for the words "personal security."

Mr. AMADO (Panama) wished, on behalf of his Government, to make a statement concerning the whole of the provisions of the Declaration. The recognition and guarantee by Governments of human rights were one of the characteristics of the twentieth century. The most far-reaching work accomplished in this field had been carried out under the auspices of the American Law Institute by a group of 24 jurists under the direction of Dr. William

Draper Lewis, Those jurists had agreed to define in 18 Articles the minimum rights which each State should guarantee to the individual whether he was a citizen or resident of that State or not. This Declaration of fundamental human rights, known as the "Declaration of Philadelphia" was clear, precise and brief. At the San Francisco Conference Panama had submitted this Declaration for adoption by the United Nations. The First Committee, which was responsible for examining that proposal, recommended in a Resolution that the General Assembly should examine the text proposed and give it an effective form. (See Report of the Rapporteur of the First Committee dated 1 June 1945, Document 944, I-I, 34). In 1946, Panama had again proposed the adoption of the "Declaration of Philadelphia", but that proposal had been referred to the Commission on Human Rights. It was to be feared that, owing to lack of time, the text finally adopted by the Commission would be inferior to that contained in the Philadelphia Declaration. Without underestimating the value of the work performed by the Drafting Committee, he wished to submit on behalf of his Government the following proposal on which a vote might be taken:

"That in any redrafting by the Commission at this session of a declaration or convention, the International Declaration of Fundamental Rights and Freedoms of Man which was presented to the Commission pursuant to the resolution of the General Assembly, 1st Session, Second Part, should be given special consideration."

The CHAIRMAN pointed out that the Declaration of Philadelphia had been used by the Secretariat in drawing up its first draft Declaration. She supported the proposal submitted by the Representative of Panama and suggested that the Declaration

proposed by the Delegation of Panama, which appeared in Document A/148, be considered jointly with the Drafting Committee's text. She put this proposal to the vote.

General ROMULO (Philippines) pointed out that his Delegation had already supported the proposal of Panama in the First Committee of the San Francisco Assembly and would support it again.

Decision: The proposal submitted by the Representative of Panama was unanimously adopted.

Mr. VANISTENDAEL (International Federation of Christian Trades Unions) wished to submit an observation concerning Article 7. In the text proposed by the Drafting Committee, the right to life was affirmed without any specification of the biological moment when human life began. The majority of laws included measures protecting life born or conceived. This idea, which was expressed in the supplementary text proposed by the Lebanon should, he thought, be taken up. Secondly it should be stated that everyone had the right to life, regardless of physical or mental condition. Finally, it was important that it should be stated that individuals should be able to live their lives in conditions worthy of the human race. Such a statement would contribute to the spiritual liberation of the working class by raising it to a spiritual level equal to that of the other members of human society. He therefore proposed the following text:

"Every one has the right to life, to personal liberty and to personal security.

The individual acquires these rights, regardless of his physical or mental condition, from the first moment of his physical development. This includes the right to conditions of life enabling him to live a dignified life and to develop his personality adequately."

Mrs. BEGTRUP (Representative of the Commission on the Status of Women) pointed out that the Commission on the Status of Women had not yet had an opportunity of meeting to examine the Draft Declaration of the Drafting Committee and reserved the right to revert to this matter at a later session. Mr. Vanistendael's proposal could not be reconciled with the provisions of certain advanced legislations which in certain cases provided for the right of abortion.

The CHAIRMAN considered that the text submitted by the Drafting Committee covered all the aspects mentioned and proposed that a vote be taken on Article 7 which read as follows: "Every one has the right to life, to personal liberty and to personal security."

Decision: The Commission adopted Article 7 by 4 votes with 2 abstentions.

Mr. CASSIN (France) pointed out that more detailed provisions on this subject could be included in a Convention and that all matters relating to the development of human life in society should be dealt with elsewhere. If such were not the case, he would not be opposed, at second reading, to mentioning in this Article the right to conditions of life enabling the individual to live a dignified life and develop his personality adequately.

Examination of Article 8

The CHAIRMAN pointed out that there was an alternative form of this Article in Article 8 of the Declaration submitted by Panama and in Article 6 of the Declaration proposed by the United States.

General ROMULO (Philippines) stated that his Delegation supported the United States draft because it aimed at preventing arbitrary detention, the idea of which was not included in the text submitted by Panama.

Mr. CASSIN (France) pointed out that the article contained in the United States draft had the advantage of mentioning the necessity for trial within a reasonable time. The article proposed by the Drafting Committee however contained another idea, that of verification of the conditions of detention, inspired by the Soviet Constitution. He proposed therefore that the article be retained but supplemented in one particular by the American draft. The article would then read: "No one shall be deprived of his personal liberty or kept in custody except in cases prescribed by law and after due process. Everyone placed under arrest or detention shall have the right to immediate judicial determination of the legality of any detention to which he may be subject and to trial within a reasonable time or to be released."

Mr. EASTERMAN (World Jewish Congress) drew the Group's attention to the danger of using the word "law" in the first sentence of the article. Strictly speaking, the actions of the Nazis were legal. The amendment submitted by the Representative of the Philippines if adopted could avert this danger, but it would perhaps be better to substitute for the word "law" in the article the words "laws in conformity with the principles of the United Nations".

Mr. BOGOMOLOV (Union of Soviet Socialist Republics) observed that the meaning to be attached to the word "law" appearing in texts of the Declaration was the laws of the State or of democratic society the first duty of which was to develop and consolidate democracy.

The CHAIRMAN supported the Representative of the Union of Soviet Socialist Republics and stated that the question would be gone into more fully when the Group came to examine the

amendment submitted by the Representative of the **Philippines**. She put to the vote Article 8 as submitted by the Representative of France.

DECISION

Article 8 was adopted by 4 votes in favour with 2 abstentions.

Examination of Article 9

The CHAIRMAN pointed out that this article corresponded with Article 7 of the Declaration submitted by Panama. In order to facilitate the Group's work the United States Delegation had prepared a synoptic table of the United States proposal and the Drafting Committee's text. The article proposed by the United States (Article 7 of its Declaration) was given in this document (E/CN.4/36.Add 2) at the top of p.4.

Mr. AMADO (Panama) supported the text included in the Declaration submitted by Panama and pointed out that the most important words in that article were: "by fair public trial by a competent tribunal". The standards by which it was determined whether or not the trial were public and fair were those found in all Constitutions of civilised States.

Mr. CASSIN (France) observed that the Drafting Committee's text only had in view criminal proceedings whereas the article submitted by the United States dealt with the rights belonging to an individual accused of crime and the right to justice in general. The two ideas were separate. The Working Group must choose which it preferred.

The CHAIRMAN thought that this article should cover both civil and criminal proceedings.

Mr. STEPANENKO (Byelorussian S.S.R) said that the article ought to contain provisions concerning the right of the accused to use his own language in court.

Mr. CASSIN (France) pointed out that this right was provided for in Article 36. Moreover Article 9 mentioned that the accused should be given "all necessary guarantees", which included the use of his own language. These guarantees could be specified in a Convention on the subject.

General ROMULO (Philippines) supported the proposal of the Representative of Byelorussia. He was in favour of the article proposed by the United States, with the addition after "fair hearing" of the words "in fair public trial and in his own language."

Mr. BOGOMOLOV (Union of Soviet Socialist Republics) said it was dangerous to harness the work of this Group to that of the Group working on the Convention. What would happen if the General Assembly adopted the Declaration only? It was important for this Group to accomplish its task without reference to the work of the other Groups.

Mr. STEPANENKO (Byelorussian S.S.R.) pointed out that Article 36 dealt with language in relation to national minority groups, not to non-self-governing countries that should be covered by the article now under discussion.

Mr. CASSIN (France) thought that if the Group wished to deal in this article with the right to justice it might perhaps be as well to take the articles proposed by the United States as a starting point. If, on the other hand the Group intended to deal with criminal proceedings the Article proposed by the Drafting Committee seemed to him preferable.

Perhaps in order to avoid repetition it would be best in this article to deal with the right to justice.

General ROMULO (Philippines) wished to emphasise that the proposal of the Representative of Byelorussia dealt not only with the national minorities, but with persons belonging to trust territories and non-self-governing regions as well as with

foreigners. He himself preferred the following text in place of the amendment that had been proposed: "in fair public trial and in a language he understands". His Delegation thought that this Article should deal with the right to justice and that the proposal submitted by the United States should be adopted in its amended form.

The CHAIRMAN stated that the drafting of this article could be left until the next meeting. She put to the vote the question whether the Group wished to restrict this Article to criminal proceedings or to extend it to all proceedings whether civil or criminal.

DECISION:

The Group decided by 4 votes in favour and 2 abstentions that the article in question should deal with the right to justice in general.

Mr. CASSIN (France) stated that in the light of this decision he would be able to draw up an Article on the right to justice in general, and in the case of criminal trials in particular, the right to the necessary guarantees, including the use of the individual's own language. A distinction must be made between civil proceedings, in which the accused was entitled to counsel for the defence and criminal proceedings in which the accused appeared in person and the question of language was fundamental to enable him to grasp the proceedings.

The Meeting rose at 1.p.m.