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Fifth Session

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on Tuesday, 7 June 1949, at 2.30 p.m.

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(discussion continued) (E/CN.4/272, E/CN.4/300, E/CN.4/301)

<u>Chairman:</u>	Mrs. ROOSEVELT	United States of America
<u>Rapporteur:</u>	Mr. Charles MALIK	Lebanon
<u>Members:</u>	Mr. HOOD	Australia
	Mr. STEYAERT	Belgium
	Mr. SAGUES	Chile
	Mr. CHANG	China
	Mr. SOERENSEN	Denmark
	Mr. LOUTFI	Egypt
	Mr. CASSIN	France
	Mr. GARCIA BAUER	Guatemala
	Mrs. MEHTA	India
	Mr. ENTEZAM	Iran
	Mr. INGLES	Philippines
	Mr. KOVALENKO	Ukrainian Soviet Socialist Republic
	Mr. PAVLOV	Union of Soviet Socialist Republics
	Miss BOWIE	United Kingdom
	Mr. MORA	Uruguay
	Mr. VILFAN	Yugoslavia
<u>Secretariat:</u>	Mr. LAWSON	Secretary of the Commission
	Mr. HESSEL	Office of the Assistant Secretary General

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Miss SENDER	American Federation of Labor (AF of L)
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Consultants from Non-Governmental Organizations: (Category B)

Mr. FRIEDMAN	Co-ordinating Board of Jewish Organizations
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Mr. MOSKOWITZ	Consultative Council of Jewish Organizations
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Mr. LEWIN	Agudas Israel World Organization
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Miss SCHAEFER	International Union of Catholic Women's Leagues
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Mr. HALECKI	Pax Romana
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Dr. NOIDE	} Commission of Churches on International Affairs
Mr. STEINER	

Mrs. VERGARA	Catholic International Union for Social Service
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DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS: ARTICLE 16 (discussion continued) (E/CN.4/272, E/CN.4/300, E/CN.4/301)

In answer to complaints from Mr. PAVLOV (Union of Soviet Socialist Republics) and Mr. GARCIA BAUER (Guatemala) that the Sub-Commission on Freedom of Information and of the Press was being given priority in matters of simultaneous interpretation over its parent body, the Commission on Human Rights, Mr. HESSEL (Secretariat) explained that the afternoon's arrangement to use consecutive interpretation was merely a temporary expedient occasioned by the unforeseen meeting of a General Assembly Committee, and that, in view of the short time remaining at the Commission's disposal, every effort would be made to see that in future simultaneous interpretation was provided as usual.

Mrs. MEHTA (India) said that article 16 of the Covenant touched on the extremely delicate subject of freedom of religion on which she did not for the moment care to enlarge. Although religion was a unifying force, there had been too many examples of its power, when distorted, to set men against each other. Since article 18 of the Declaration of Human Rights contained an agreed formula for the expression of the right to that freedom, she felt it was best to repeat it, without further details, in the instrument for the application of the Declaration, the Covenant on Human Rights. She was therefore in favour of the French proposal (E/CN.4/229) to replace paragraphs 1, 2 and 3 of the Drafting Committee's text of article 16 of the Covenant by article 18 of the Declaration. In that way much discussion and many difficulties would be avoided.

/Mr. HOOD

Mr. HOOD (Australia), on the other hand, thought that the reasons put forward in favour of the amendment proposed by Lebanon ought to convince the Commission. Representatives of important religious organizations had that morning added their arguments in support of that proposal and due weight should be attached to their opinions.

He reminded the Commission that the Covenant on Human Rights was to serve as a guide to peoples and Governments in applying the principles of the Declaration. Whereas bare statements of principle were in place in the Declaration, the Covenant must, in order to be effective, interpret them in a form adapted to legal and administrative purposes.

With regard to the additional clause proposed by the Lebanese representative concerning religious education for children, he recalled that there had been some misunderstanding in the earlier discussions. He wished to make it clear that there was no question of imposing religious education but merely a negative provision that parents who wished to have their children brought up in some religious faith should not be deprived of their right to do so. That was a valuable principle, and he would support the whole of the more explicit and detailed version of article 16 proposed in the Lebanese amendment (E/CN.4/226).

Mr. INGLES (Philippines) said that the first part of the amendment submitted by his delegation (E/CN.4/300) tallied exactly with the first part of the proposals put forward by the French and United States delegations (E/CN.4/229 and E/CN.4/170/Add.4).

The second paragraph was concerned with the religious education of children. It was again a negative provision, designed not to enforce religious education but to protect the rights of parents who wished to pass on their own faith to their children. The Philippine amendment also contained an additional safeguard against imposition, in the words, "religious teaching, if any". Nor would the children be prevented, should they wish to do so, from changing in time the faith in which their parents had brought them up, since the Declaration affirmed everyone's right to change his religion.

Lastly, the amendment took into account the case of orphans, in connexion with whose education the presumed will of the parents regarding religious matters would be considered. That clause would be useful in giving a general directive to the law in such cases.

Mr. STEYAERT (Belgium) said that, although he was not entitled to vote, he wished to express his support of the Lebanese amendment, for the reasons already expressed by the representatives of Lebanon, Australia and the United Kingdom.

Miss BOWIE (United Kingdom) wished to allay the anxiety expressed earlier by the representative of the USSR lest the Lebanese amendment should be taken to imply compulsory religious education for children. She therefore proposed the insertion of the words "if any" after "what for" in the additional sentence in point 3 of the Lebanese amendment (E/CN.4/226).

Mr. MALIK (Lebanon) recalled that he had no fundamental objection to the adoption of the text of article 18 of the Declaration as article 16 of the Covenant. Nevertheless, he believed that the expanded version in the Drafting Committee's text, with his own amendments, was preferable to the condensed statement in the Declaration. It was right for the language of the Covenant to be more precise and legal than that of the Declaration.

With regard to the religious education of children, he agreed with the representatives of France, the United States and the USSR; religious education should not be imposed against the will of the parents. The text of the amendment was already clear on that point, and the representative of Australia had construed it as containing no suggestion of the imposition of religious education. However, he would willingly accept the United Kingdom representative's suggestion to insert the words "if any", in order to avoid all ambiguity. Those words already appeared in the Philippine amendment and he would himself have proposed them, had Miss Bowie not done so. The whole purpose of the article was not to interfere between parent and child but rather to protect the family unit from outside interference, by the State for example. The State should not be allowed to prevent parents from giving their children a religious upbringing; neither should it be able to force them to do so against their wishes. The Declaration had already affirmed that the family was the natural group unit of society and had recognized the prior rights of parents in matters of education: the family therefore had certain fundamental rights in the eyes of the State. He hoped that the delegations of France and the United States would recognize the purpose of his amendment and decide to support it.

/He had

He had experienced certain misgivings with regard to the Egyptian amendment (E/CN.4/233). He recognized the sincerity of the Egyptian representative's motives and wholly sympathized with his devotion to the interests of the Middle East. But he was unable to grasp the meaning underlying the proposal to eliminate the right of a man to change his faith. Either religious freedom was complete, including the freedom to change religion, or it was meaningless.

He read the Commission a passage from the speech made by Sir Zafrullah Khan, Foreign Minister of Pakistan, at a meeting of the first part of the third session of the General Assembly (A/PV 182, pages 11-15). Sir Zafrullah Khan had stated the position of Pakistan with regard to article 18 of the Declaration of Human Rights. He had quoted the Koran to prove that the Moslem religion admitted no compulsion in matters of faith and reserved its severest condemnation not for the unbeliever but for the hypocrite. Islam was a missionary religion and as such must admit man's freedom to change his beliefs. Since Islam unequivocally proclaimed freedom of conscience, Pakistan was able to support article 18 without reservation.

In view of that statement by one of the leaders of the Moslem world, Mr. Malik urged the Egyptian representative not to press his amendment and thus give the impression that Moslem opinion was divided. The world's verdict at the first part of the third session of the Assembly had been overwhelmingly against his contention, and, if he would be content to let the matter rest, he would undoubtedly have cause to be glad later on.

Mr. SAGUES (Chile) said that his delegation was in favour of the French proposal. It also supported point 2 of the United States proposal in place of paragraph 4 of the Drafting Committee's text. Although article 18 should be sufficient to prevent intolerance, it was impossible to take too many precautions, and by clearly defining what limitations could be placed on freedom of religion, the likelihood of further restrictions would be diminished. The formula in the USSR proposal (see E/CN.4/272), "in accordance with the laws of the country and the dictates of public morality", was too brief and left the way open for intolerance.

/He was

He was unable to support the amendments dealing with religious education; his delegation had not had sufficient time to consider them nor did it feel that such provisions were in place in article 16; they would be more appropriate in the articles concerning education. He further pointed out that the age of the children concerned was not defined: in Chile, legal minority lasted up to the age of 21, although a minor was mature enough to decide his own religious opinions long before that.

Mr. CASSIN (France) said that the course of the discussion had proved that his own objections to the Drafting Committee's text remained valid. No one had suggested any means of preventing the religious conflicts that might arise, and none of the formulae suggested for religious education would satisfactorily prevent that disintegration of the national fabric that could be caused by separate systems of education. Although he would hesitate to prevent the installation of such systems, he was against any provision which might actually encourage them. Article 18 was more satisfactory in that it was less precise. It answered the purposes of all the delegations, including that of the USSR which had urged that freedom of conscience should be guaranteed by the State.

Egypt was perhaps not satisfied with the text of the Declaration, but at least the text of article 18 was less offensive than the other proposals and Moslem sensibilities need not be offended by a new text.

He agreed with the principle of the fourth point of the Lebanese proposal, limiting the restrictions on the exercise of the rights and freedoms mentioned earlier to the prescriptions of the law, but considered that the second part of the United States proposal conveyed the idea more clearly. True freedom of conscience concerned man's inner life: it must remain untrammelled. It was no interference with true freedom of religion to impose certain restrictions on its external manifestations. At the same time, legal guarantees could only affect those external manifestations: legislation could not touch the inner conviction. Therefore, article 18 of the Declaration, affirming the principle without legal details, together with a clause providing for certain limitations and guarantees in the externals, would answer the purpose of the whole Commission.

He suggested that, if the Commission did not accept the closely assimilated United States and French proposals, it should study the Drafting Committee's text paragraph by paragraph, unless of course the USSR proposal was adopted first.

Should that procedure be adopted, the French delegation had a compromise proposal to put forward in connexion with religious education, but in order not to complicate the discussion, it would withhold it until after the voting on the first parts of article 16.

Mr. PAVLOV (Union of Soviet Socialist Republics) had listened with great attention to the persuasive arguments advanced by the representative of Lebanon in favour of his proposal. He had not been convinced, however, since it appeared from his explanations that the representative of Lebanon intended to widen the formula concerning minors to include all children, whereas in the opinion of the USSR, article 26 of the Universal Declaration of Human Rights which constituted an important precedent, clearly referred to young children only. The untoward consequences of the Lebanese amendment should be obvious to the Commission. Furthermore, if the Commission wished to state the principle that parents were free to educate their children in the religion of their choice, it should also say explicitly that parents were free to educate their children in a secular school.

He could support many of the principles which the representative of Lebanon had mentioned, but he could not agree with the conclusions the latter had drawn from those principles. He too thought that there should be no compulsion in matters of religious education but he did not feel that the United Kingdom amendment to the Lebanese text was sufficient to obviate the danger of compulsion implicit in the text. It should be clearly stated that a parent had the right to provide religious education or to provide non-religious education for his children. It should also be made clear that when the Covenant spoke of children, it referred to that group of children covered by article 26 of the Universal Declaration of Human Rights.

It had been argued that there was no need to be seriously concerned with the dangers of indirect compulsion. In Cuba, for instance, the President had forbidden the dissemination of opinions over the radio which were not in accordance with Catholic doctrine; that constituted a direct intervention on the part of the State in violation of the principle of freedom of conscience. The Government had placed itself at the service of a specific religion and had assisted the dissemination of ideas which had no scientific basis. A similar

/illustration

illustration was the case of a church official in Brazil who had been silenced because his views had not been in conformity with the dogma of the Catholic Church. Members of the Commission well knew the role played by the Catholic Church throughout history, and for those reasons the USSR thought it would be prudent to carefully consider the possible effects of indirect compulsion. Accordingly, it would prefer a brief article which introduced no debatable points, such as the precise and clear USSR proposal (E/CN.4/272). If that proposal were not accepted, he suggested that the Commission should revert to the text of article 18 of the Universal Declaration of Human Rights. That article, if included in the Covenant, could be followed by the necessary restrictive clause.

He was aware that every member was obliged to decide for himself on the merits of each issue before the Commission and vote accordingly. He was surprised, however, that the representative of Belgium, whose Government was composed of representatives of many parties, should have chosen to express in the Commission the views of only one party.

Mr. LOUTFI (Egypt), in reply to the representative of Lebanon, did not consider that there were two schools of thought in the Moslem world. He pointed out, however, that, unlike the Universal Declaration of Human Rights, the Covenant was a legal document and would have to be considered with a view to its incorporation in the national legislation of Member States. Those considerations might possibly have altered the opinion of the Foreign Minister of Pakistan.

The Egyptian delegation considered that the Covenant should be restricted to fundamental principles and should offer only the basic guarantees on freedom of religion, thought and conscience. He pointed out that in the Middle East certain religious organizations had done much good. Many of the Moslem Governments feared, however, that, if the right to change a belief or religion were stressed unduly, those organizations might redouble their zeal in fields other than that of education. He agreed with the representative of the USSR that it was preferable to adopt a simple text which avoided minute details. Such a text would be universally acceptable. He could not, as the representative of Lebanon had suggested, withdraw his amendment to article 16 because, without it, he felt that it might be difficult for many countries to ratify the Covenant.

Mr. BAUER (Guatemala) thought that article 16 was extremely important. His delegation would prefer the text of the Universal Declaration of Human Rights to that contained in document E/800. For that reason he would support the French and United States proposals to adopt article 18 of the Universal Declaration and the limitations on that article contained in article 16, paragraph 4 (E/CN.4/272).

Mr. KOVALENKO (Ukrainian Soviet Socialist Republic) was in favour of complete freedom of thought, conscience and religion but he was opposed to a situation whereby freedom of religion became a restriction on thought. He was afraid that article 16 as contained in document E/800 might facilitate a reversion to fascist ideas and other forms of intolerance.

Furthermore, the statement of the principle of freedom of religion should have as a logical corollary a statement of freedom not to believe in any particular religion. Religious training should not be made obligatory although such might be the result if the Lebanese amendment to article 16 were adopted.

He thought that the age of children for whom parents could exercise decisive authority in the choice of religion was perfectly clear in article 26 of the Universal Declaration, but he was afraid that the text of the Lebanese proposal might lead to abuses. In that connexion he mentioned the case of certain countries in the Orient where one of the basic tenets of the religious belief was respect and care for parents and he illustrated the absurd results which might arise in such a religion if there were no limitation as to how long parents could exercise complete authority over their children.

Freedom of religion and freedom to practice a particular belief should however be guaranteed and he thought that the USSR text was completely satisfactory in that respect. He would also support the limitations contained in the second part of the USSR proposal, which was brief, concise and comprehensive.

The CHAIRMAN, speaking as the representative of the United States of America, thanked the representative of Uruguay for supporting the original United States formula, but stated that her Government had decided to accept the French suggestion to formulate the text in the affirmative and had also accepted the French amendment to paragraph 2 as explained in document E/CN.4/301.

The amendment to article 16, paragraph 2 (E/CN.4/301) had only been accepted provisionally, however, on the understanding that, should a general limiting clause be inserted in article 4, the French amendment would become unnecessary. The United States wished to reserve its right to reconsider the question should that situation occur.

Speaking as Chairman, she suggested that the Commission should vote on the various texts and amendments to article 16 which were before it.

Mr. CHANG (China) stated that a very interesting field had been opened up by the representative of the Ukrainian SSR but he would reserve his remarks on freedom of religion in China, where persons had complete liberty to change their beliefs.

He thought that it would be best to adopt article 18 of the Universal Declaration which had been discussed by fifty-eight nations at the first part of the third session of the Assembly. Such a text, if incorporated in the Covenant, would be more acceptable to the General Assembly than a more detailed and possibly more controversial draft.

Mr. MORA (Uruguay) was pleased that it had been possible to combine the French and United States suggestions into one single text. His delegation would accept that text and would vote in favour of it. The Uruguayan delegation would also vote in favour of the French amendment to paragraph 2 of the United States proposal contained in document E/CN.4/301.

The USSR proposal of a text for article 16 (E/CN.4/272) was put to the vote.

The USSR text of article 16 was rejected by 9 votes to 4, with 3 abstentions.

The CHAIRMAN put to the vote the Egyptian amendment to the United States draft of article 16 to delete the words "to change his religion or belief, and..."

The Egyptian amendment to the United States text was rejected by 7 votes to 2, with 7 abstentions.

The CHAIRMAN pointed out that there was no need to take a separate vote on the French amendment to paragraph 2 of the United States text since the United States had accepted that suggestion.

/Mr. CHANG

Mr. CHANG (China) proposed that the Commission should vote first on paragraph 1 of the joint France-United States text of article 16.

Mr. PAVLOV (Union of Soviet Socialist Republics) requested that the text should be read aloud.

It was so agreed.

Paragraph 1 of the joint France-United States text of article 16 was put to the vote.

Paragraph 1 was adopted by 11 votes to none, with 4 abstentions.

Mr. MALIK (Lebanon) pointed out that he had reserved the right to move an amendment to article 16. He therefore proposed that the following paragraph should be added to article 16:

"In case of children, their parents shall not be denied freedom to determine what, if any, form of religious teaching they shall receive."

That proposal, if adopted, would become paragraph 2 of article 16.

Mr. INGLES (Philippines) reminded the Commission that his delegation had presented an amendment to the United States and French amendments to article 16 as contained in document E/CN.4/300. He moved that the following text should be incorporated as paragraph 2 of article 16:

"In the case of a minor, the natural parents shall be free to determine what religious teaching, if any, he shall receive. In the case of an orphan, the presumed will of the parents as regards the religious teaching to be given to him, shall be taken into consideration."

The CHAIRMAN decided that since the Philippine text was the further removed, it would be voted on first.

Mr. GARCIA BAUER (Guatemala) requested that each sentence of the Philippine text should be voted on separately.

Mr. MALIK (Lebanon) suggested that, if the words "or guardian" were inserted after the words "the natural parents" in line 1 of the Philippine amendment, the second sentence would become unnecessary.

/Mr. INGLES

Mr. INGLES (Philippines) accepted that suggestion.

Sentence 1 of the Philippine amendment (E/CN.4/300/Sub.3) was rejected by 9 votes to 5, with 2 abstentions.

Sentence 2 of the Philippine amendment (E/CN.4/300/Sub.3) was rejected by 10 votes to 4, with 1 abstention.

The Lebanese amendment to article 16 was rejected by 8 votes to 4, with 4 abstentions.

Mr. MALIK (Lebanon) suggested that the word "reasonably" should be deleted from the French amendment to article 16, paragraph 2 (E/CN.4/301). Although he had heard the explanations in support of that word during the previous meeting, he still considered that it might provide a means whereby the article could be circumvented.

The CHAIRMAN pointed out that the third line of the French amendment in the English translation should read "public order, health, morals or the fundamental rights..."

Speaking as the representative of the United States of America, the Chairman suggested that a separate vote should be taken on the word "reasonably" and on the rest of the text.

Mr. CASSIN (France) agreed to delete the word "reasonably" if the United States of America also accepted that suggestion.

The CHAIRMAN, speaking as the representative of the United States of America, preferred to have a vote on the two parts.

The meeting rose at 5.55 p.m.