

## COMMISSION ON HUMAN RIGHTS

## SECOND SESSION

## WORKING GROUP ON CONVENTION ON HUMAN RIGHTS

## SUMMARY RECORD OF THE SIXTH MEETING

Held at the Palais des Nations, Geneva,  
on Tuesday, 9 December 1947, at 10.10 a.m.

## Present:

Chairman:	Lord Dukeston (United Kingdom)
Rapporteur:	Dr. Charles Malik (Lebanon)
Members:	Dr. C.H. Wu (China)
	Mr. Omar Loutfi (Egypt)
	Dr. V. Ribnikar (Yugoslavia)
Observers:	Mr. H. Plaine (United States of America)
	Mr. T. Jordan Clarke (Australia)
	Sir Dhiven Mitra (India)
	Mr. M. Klekovkin (Ukrainian S.S.R.)
Secretariat:	Professor John P. Humphrey
Specialized Agencies:	Mr. Jean de Givry (I.L.O.)
	Mr. Weis (I.R.O.)
Non-Governmental Organizations:	
Category A:	Miss Toni Sender (American Federation of Labor)
	Mr. P.J. Serrarens (International Federation of Christian Trades Unions)
Category B:	Dr. Bienenfeld (World Jewish Congress)
	Mr. A.G. Brotman (Co-ordinating Board of Jewish Organizations)
	Mr. Milton Winn (Consultative Council of Jewish Organizations)
	Mrs. Louise Van Eeghen (International Council of Women)

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Article 11 (Former Article 9)

The CHAIRMAN read out Article 9 of Document E/CN.4/21, Annex G, which had become the new Article 11.

- "1. Every person shall be free to express and publish his ideas orally, in writing, in the form of art, or otherwise.
2. Every person shall be free to receive and disseminate information of all kinds, including both facts, critical comment and ideas by books, newspapers, or oral instruction, and by the medium of all lawfully operated devices.
3. The freedoms of speech and information referred to in the preceding paragraphs of this Article may be subject only to necessary restrictions, penalties or liabilities with regard to: matters which must remain secret in the interests of national safety; publications intended or likely to incite persons to alter by violence the system of Government, or to promote disorder or crime; obscene publications; (publications aimed at the suppression of human rights and fundamental freedoms); publications injurious to the independence of the judiciary or the fair conduct of legal proceedings; and expressions or publications which libel or slander the reputations of other persons."

He wondered whether it would not be advisable to have a general discussion of that Article before examining it paragraph by paragraph.

Mr. PLAINE (United States of America) recalled that there was in existence a Sub-Commission on Freedom of Information and that an International Conference was shortly to be held on this subject. He thought the Group might refer either the British draft or the United States draft or both to the Sub-Commission on Freedom of Information. A note might be added to the Report explaining that the present text was not a final version but only a draft which was to be given a final form later.

Mr. LOUTFI (Egypt) and Dr. RIBNIKAR (Yugoslavia) supported that view.

Dr. RIBNIKAR (Yugoslavia) felt that the text of paragraph 3 of the Article in the British draft contained so many restrictions that it might be asked whether there was any freedom of information left. He proposed that Article 13 of the American draft and the first two paragraphs of the British draft be taken as a basis of discussion. The Sub-Commission might examine those two documents and decide what restrictions it wished to suggest.

The CHAIRMAN stated that the restrictions provided under paragraph 3 of the United Kingdom draft, included some on which everyone agreed. He recalled that the Co-ordinating Board of Jewish Organizations had submitted to him a text advocating restrictions on information and propaganda of a Fascist nature. He thought the latter point should not be overlooked; otherwise freedom of information might be interpreted as an encouragement to subversive propaganda.

Mr. LOUTFI (Egypt) supported this proposal, but considered that the Co-ordinating Board of Jewish Organizations might transmit its amendment or its proposal directly to the Sub-Commission on Freedom of Information which was to meet in March 1948.

He thought, however, that the Group should consider in general the restrictions provided for in the United Kingdom draft in conjunction with Article 16 of the United States draft which supplemented Articles 12 and 13.

Dr. RIBNIKAR (Yugoslavia) supported the Chairman's view as regards the proposal made by the Co-ordinating Board. The Group should also take into consideration the two Resolutions adopted by the General Assembly concerning freedom of information. Those Resolutions were also to be examined by the International

Conference and by the Sub-Commission on Freedom of Information. In his view the Group should not make a point of determining what restrictions should be applied to freedom of information.

Dr. WU (China) approved any limitations of freedom of information provided they put a stop to any form of discrimination. In his view paragraph 3 of the United Kingdom draft was more in the nature of a statute than a convention. He had no objection to the text as a statute, but he could not approve it as the clause of a convention. He proposed that the Group should take Article 13 of the United States draft as a basis of discussion for the purpose of clearly establishing the rights and should then draw up a limitative clause in a form similar to that of Article 16 of the American draft, together with a paragraph preventing discrimination.

Dr. MALIK (Rapporteur) approved the idea of referring the text to the Sub-Commission, but in order to avoid creating the impression that the Group had not been able to formulate an opinion, he invited the Working Group to discuss principles which the International Conference and the Sub-Commission might take into account.

Without wishing to go into matters of substance, he would like to emphasise that the texts of the two proposals were merely a vague affirmation of the freedoms of information and expression. They did not include any measures for enforcing those freedoms. The Convention should contain a clause binding States to ensure the effective implementation of freedom of information, expression and speech.

Dr. WU (China) did not think Dr. Malik's observations called for any discussion. It would suffice for a note to be added to the Report requesting the International Conference and the

Sub-Commission to make suggestions for ensuring the implementation of the principles of freedom. It would be for the Commission, however, to decide what should be done with those Articles. The Group could not act as a forwarding agency.

The CHAIRMAN pointed out in correction that it was a case of referring the texts to the Sub-Commission on Freedom of Information which was a subsidiary organ of the Commission on Human Rights. That Sub-Commission would examine the Group's suggestions without excluding any other suggestion it might receive. In the last instance, it would be the Commission on Human Rights which would establish the final text.

Dr. RIBNIKAR (Yugoslavia) recalled his proposal that the Sub-Commission should also examine the two Resolutions adopted by the General Assembly. He noted that paragraph 3 of the United Kingdom draft took no account of these Resolutions. Further, he wondered why the Secretariat had not communicated them to the members of the Group.

Professor HUMPHREY (Secretariat) pointed out that those Resolutions were mentioned in Document E/CN.4/33. That document, though not quite up to date, contained the summary record of the discussions in the Committee of the General Assembly.

Dr. RIBNIKAR (Yugoslavia) added that if the Group decided to refer those texts to the Sub-Commission, the latter should take account of what had been said in the General Assembly.

Dr. MALIK (Rapporteur) proposed that, when the texts were referred to the Sub-Commission, the following observations should be added:

"The Commission on Human Rights resolves:

1. that freedom of expression and of information is, in its opinion, one of the most fundamental freedoms;

2. that this freedom must be included in a Convention on Human Rights;
3. that the Commission, having before it two texts on this subject, one submitted by the United States of America, and one by the United Kingdom, decides not to elaborate the final text of the Convention on this question until it hears the views of the Sub-Commission on Freedom of Information and of the Press and of the International Conference on Freedom of Information, and remits to them these two texts for their consideration;
4. that, in their consideration, the above-mentioned two bodies should take into account the two Resolutions of the General Assembly on this question (Document A/C.1/228 "Measures to be taken against Propaganda and the Inciters of a new War" and Document A/C.3/180 "Slandorous Information");
5. that they should also consider the social, economic and political conditions which will render this fundamental freedom real."

Dr. WU (China) supported this proposal, but wanted the text to be supplemented by the note submitted by the Co-ordinating Board of Jewish Organizations.

Mr. LOUTFI (Egypt) approved Dr. Malik's proposal. He felt however, that the note of the Co-ordinating Board contained a restriction which, though possibly desirable, should nevertheless be defined by the Sub-Commission, together with the other restrictions.

Dr. WU (China) proposed that the Group should transmit to the Sub-Commission the whole of the text of the United Kingdom draft, with a restriction protecting minorities. In his view it was for the Co-ordinating Board itself, and not for the Group to transmit the note in question to the Sub-Commission.

The CHAIRMAN attached great importance to the note from the Co-ordinating Board and thought that, if it were transmitted by the Group to the Sub-Commission, it would carry even more weight.

Dr. MALIK (Rapporteur) proposed that the text of the note from the Co-ordinating Board be taken up as a sixth point in his

proposal, but after the enumeration of the causes of discrimination, he would like to add the words "political opinion":

"6. that they be requested also to consider the possibility of excluding from this freedom any publication or other media of public expression which aim to inflict injury, or incite prejudice or hatred, against persons or groups because of their race, language, religion, or national origin."

The CHAIRMAN thought that to discuss the words "political opinion" at this juncture would be rather a delicate matter; it would be preferable to submit the question to the Sub-Commission on the Prevention of Discrimination which would deal with the problem. He asked the Group to decide whether it wished to refer to the Sub-Commission the text proposed by Dr. Malik, the United Kingdom draft, Article 13 of the United States draft and the text submitted by the Co-ordinating Board of Jewish Organizations.

Mr. LOUTFI (Egypt) asked for a separate vote to be taken on the sixth point.

The CHAIRMAN put the first five points of Dr. Malik's proposal to the vote.

Decision: The five points were adopted by a unanimous vote of the five members. The sixth point was adopted by four votes with one abstention. The Working Group decided by a unanimous vote of the five members to transmit to the Sub-Commission on Freedom of Information the text of the new Article 11 (Former Article 9 of Annex G and former Article 14 of the United Kingdom draft) and the text of Article 13 of the United States draft.

At the request of Mr. PLAINE (United States of America) the Chairman confirmed that the Working Group's Report to the Commission on Human Rights would contain a note explaining the decisions taken.

#### Article 12 (former Article 10)

Dr. MALIK (Rapporteur) considered that the words "for any lawful purpose" were meaningless, since provision was to be made

for restrictions. In his view the second sentence should be left until the end as the Group had decided to postpone the examination of restrictions. He proposed that they should now discuss either the first sentence of the British draft without the words "for any lawful purpose" or Article 14 of the United States draft.

The CHAIRMAN pointed out that, if discussion of all the restrictions in the draft were left until the end, it would be necessary to redraft the Articles and draw up a new Article to embody all the restrictions. He would prefer to provide for restrictions where necessary within the Article itself. He recalled, moreover, that the Group had already provided for restrictions in the Article relating to freedom of religion.

Dr. WU (China) thought there were two ways of examining that problem. The Group might envisage either an enumeration of restrictions or a general limitative clause, in a form similar to that of Article 16 of the United States draft. The first method would ensure the more effective protection of individual rights, but on the other hand, the interests of groups should not be overlooked. The former could be protected by municipal law, whereas the latter should be protected by a Convention. Such a Convention should simply set certain standards to which the States should conform.

The CHAIRMAN was afraid a general limitative clause might have the effect of imperilling the very principles of freedom. The restrictions provided in the former Article 10 of the draft were those which existed in the majority of legislations permitting, however, the enjoyment of wide freedoms. Their sole purpose was to restrict the use of freedom for abusive ends, such as obstruction. He recalled, however, that the Group's



task was to lay down the freedoms and that the texts would have to be referred to the Governments which would make any observations they thought fit.

Mr. PLAINE (United States of America) concluded from the discussion that the problem of general or special limitations was of a very serious character. The purpose of the restrictions in the British draft was no doubt laudable, but it would be impossible to avoid using general terms to express restrictions. Everything depended on the good faith of the peoples, but he wondered how the difficulties could be solved if the peoples or Governments lacked good faith. In his view the more restrictions there were, the harder it would be to draw up a Convention and the more hesitation certain States would feel about ratifying it.

Dr. MALIK (Rapporteur) proposed that, in drawing up the limitative articles, the Group should follow the same procedure as in the case of the former Article 4, namely examine the exceptions at the end of the discussion of the draft and include in the Articles such restrictions as might prove necessary.

Dr. WU (China) emphasised the importance of the observation made by Mr. Plaine regarding the good faith of Governments. The latter could in fact abuse the restrictions for the purpose of creating or even provoking disorders. He was afraid the examination of the restrictions applicable to each Article would give rise to a confused discussion without any practical result.

The CHAIRMAN considered that Dr. Malik's suggestion was the most practical. He put to the vote the text of Article 12 (former Article 10):

"All persons shall have the right to assemble peaceably for any lawful purpose including the discussion of any matter, on which under Article 11 any person has the right to express and publish his

ideas. No restrictions shall be placed on the exercise of this right other than those necessary for the protection of life and property, and to prevent disorders, the obstruction of traffic and of the free movement of others."

Decision: This Article was adopted by three votes with two abstentions.

Dr. MALIK (Rapporteur) feared the words "for any lawful purpose" might be abused. He saw no necessity for retaining these words, since the provisions of Article 11 were recalled in the Article.

The CHAIRMAN pointed out that British law contained those words, but he saw no major objection to deleting them. He called for a vote on Dr. Malik's amendment proposing the deletion of the words "for any lawful purpose".

Decision: The amendment was rejected by two votes to one with two abstentions.

#### Article 13 (former Article 11)

The CHAIRMAN read the text of the Article:

"All persons shall be free to constitute associations, in whatever form may be appropriate under the law of the State, for the promotion and protection of their legitimate interests and of any other lawful object, including the dissemination of all information of which under Article 11 the dissemination is unrestricted. The rights and freedoms set forth in Articles 10 and 11 shall be enjoyed by such associations."

Decision: This Article was adopted by four votes to one.

#### Article 5 (former Article 4)

The CHAIRMAN proposed that discussion be resumed on paragraph 4 of the former Article 4 (new Article 5).

Dr. MALIK (Rapporteur) stated that discussion had enabled the field of application of the restrictions to be reduced. He proposed that they should take up the Article paragraph by paragraph and see to what extent restrictions were necessary;

exceptions should be provided only in the case of paragraph 3 (former paragraph 2). In his view the exception provided in point (i) of the former paragraph 4 was redundant, as there was no need to provide for an exception in the case of deprivation of the liberty or the lawful detention of a person already sentenced after conviction. He proposed the deletion of point (i).

The CHAIRMAN thought that this guarantee should be maintained to cover the case of persons sentenced to the payment of a fine and subsidiarily to the penalty of imprisonment. If the person did not pay the fine immediately, he could be kept in detention until it was paid.

Dr. WU (China) thought the Group should examine the introductory clause of the former paragraph 4: "The preceding provisions of this Article do not apply to...". This could not be applied to the provisions of the new paragraph 2.

Dr. MALIK (Rapporteur) proposed that, since all the exceptions referred to the new paragraph 2, the exceptions in the former paragraph 4 should be listed in the new paragraph 2, which would then read as follows:

"No person shall be deprived of his liberty save in the case of:

(i) the arrest of a person effected for the purpose of bringing him before a court on a reasonable suspicion of having committed a crime or which is reasonably considered to be immediately necessary to prevent his committing a crime;

(ii) the lawful detention of a person sentenced after conviction to deprivation of liberty;

(iii) the lawful detention of persons of unsound mind;

(iv) the lawful custody of minors or

(v) the lawful arrest and detention of a person to prevent his effecting an unauthorized entry into the country."

The CHAIRMAN invited the Group to vote on this paragraph, point by point.

Decision: The first clause was adopted by a unanimous vote of the five members. The second clause was adopted by four votes to one. The third clause was adopted by a unanimous vote of the five members.

Mr. PLAINE (United States of America) asked what was meant by "the lawful custody of minors". Did that mean physical detention?

The CHAIRMAN explained that this Clause referred to the case of unruly children who ran away from home, committed thefts and were sentenced by juvenile courts. However, instead of being confined in reformatories, such children were handed over to their parents who undertook to keep them under constant supervision.

Mr. PLAINE (United States of America) proposed that the words "lawful custody of minors" be replaced by "the parental custody of minors".

Dr. RIBNIKAR (Yugoslavia) reminded the Group that its task was to draw up a Convention. He saw no reason for a particular clause of British law to be inserted in the present Convention, since such a clause did not exist in all countries. If the Group adopted this method of working, he did not see why it should not consider clauses referring to other cases contained in the law of countries other than the United Kingdom. Such details were superfluous.

The CHAIRMAN replied that it was not proposed to impose any clause. The draft Convention would be submitted to Governments for their observations. Not until these had been received would the text be finally drawn up. The replies of Governments would show what other cases might have to be provided for.

Mr. LOUTFI (Egypt) urged that the report should state that the restrictions enumerated in the former paragraph 4 of the former Article 4 were not exhaustive. He proposed that the words "or quasi-parental" be added to the text of the clause (iv) proposed by Mr. PLAINE.

The CHAIRMAN put to the vote the following text of clause (iv): "the parental or quasi-parental custody of minors".

Decision: This clause was adopted by four votes to one.

He put to the vote the text of clause (v): "the lawful arrest and detention of a person to prevent his effecting an unauthorized entry into the country."

Dr. WU (China) was afraid that in such a case detention might be of inordinate length.

Mr. PLAINE (United States of America) wondered whether that provision was really necessary. He thought it was covered by clause (i).

Decision: This clause was adopted by four votes with one abstention.

The CHAIRMAN stated that he had received a proposal to insert a clause (vi) worded as follows: "(vi) the lawful arrest and detention of a person against whom deportation proceedings are pending".

Decision: This clause was adopted by a unanimous vote of the five members.

Dr. MALIK (Rapporteur) sought the insertion of a restriction concerning persons undermining the principles of the United Nations, e.g. the activities of neo-fascist groups, like that of Oswald Mosley. He proposed the following text which would become clause (vii) of the second paragraph of the new Article 5: "(vii) the lawful arrest and detention of a person carrying on a subversive activity aimed at the

destruction of the rights and freedoms enumerated in this Convention".

Dr. WU (China) seconded that proposal.

Dr. RIBNIKAR (Yugoslavia) recalled his statement to the effect that the term "democratic institutions" was more precise than the words "rights and freedoms enumerated in this Convention". He formally moved its substitution.

The CHAIRMAN wondered whether such a case should not be regarded as a crime, which would then come under clause (i).

Dr. MALIK (Rapporteur) recalled that the Chairman had himself stated that at first Mosley's activities had not been regarded as a crime. Although fascism had been destroyed, new organizations were preaching the same doctrines, but in a somewhat less blatant form. The Group considered it a crime to deprive someone of his liberty, but subversive activities involved doctrines which aimed at depriving other citizens of their liberty.

Mr. EVANS (Legal Adviser of the British Delegation) stated, at the request of the Chairman, that it would be dangerous to insert such a clause in that part of the Convention, as there was a risk that some Government or other might make use of it in order to arrest someone on the pretext of subversive activities. It was for each State to enact legislation under which such activities were regarded and prosecuted as crimes. In his view it would be preferable to make provision for the case raised by Dr. Malik in the Article of the Convention dealing with freedom of assembly and freedom of information.

Dr. RIBNIKAR (Yugoslavia) supported Mr. Evan's view.

Dr. MALIK (Rapporteur) pointed out that his chief aim was to establish limitations on any freedom which might

be used for subversive ends.

Mr. LOUTFI (Egypt) thought that the question should be referred to the Working Group on Implementation.

The CHAIRMAN proposed that the discussion be continued at the afternoon meeting.

The meeting rose at 1.05 p.m.