

COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

Strasbourg, 16th August, 1956

Confidential

DH (56) 14

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EUROPEAN COMMISSION OF HUMAN RIGHTS
PREPARATORY WORK ON ARTICLE 9
OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS

Information Document

prepared by the Secretariat of the Commission

1. Article 9 of the European Convention on Human Rights is worded as follows:

"Article 9

- "(1) 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 and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
- "(2) Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

2. The Universal Declaration of Human Rights, adopted on 10th December, 1948, by the General Assembly of the United Nations includes an Article 18 worded as follows:

"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 and in public or private, to manifest his religion or belief in teaching, practice, worship and observance."

3. In August, 1949, when the Consultative Assembly of the Council of Europe had obtained the inclusion in its Agenda of "measures for the fulfilment of the declared aim of the Council of Europe, in accordance with Article 1 of the Statute, in regard to the safeguarding and further realisation of Human Rights and Fundamental Freedoms", M. Teitgen, the Rapporteur, laid before the Committee on Legal and Administrative Questions certain proposals including, in particular, this passage (1):

"The Convention and the procedure to be determined later by the Committee will guarantee the fundamental rights and freedoms listed below to every person residing within the metropolitan territory of a Member State:

"....."

"The Freedom of religious practice and teaching, as laid down in Article 18 of the Declaration of the United Nations"

"....." (Doc. A.116) (2)

(1) Translation; original English text unavailable. ./.

(2) The drafts of the European Movement, by which the Consultative Assembly was considerably influenced (cf. Official Report of the Consultative Assembly, 1949, II, p.410), provided for the guarantee of "freedom of religious belief, practice and teaching". (Doc. INF/2/E, February 1949, and Doc. INF/5/E/R, Article 1(e), p.6, June 1949).

At the meeting of the Committee on 30th August, 1949, Mr. Ungeod-Thomas (United Kingdom) suggested replacing this last paragraph by the following text:

"freedom of thought, conscience and religion, as laid down in Article 18 of the Declaration of the United Nations."

The Committee agreed to this amendment by 19 votes (Doc. A.167, p.2).

4. Article 2, para. 5, of the draft submitted to the Consultative Assembly by the Committee on 5th September, 1949, was worded as follows:

"In this Convention, the Member States shall undertake to ensure to all persons residing within their territories:

"....."

"(5) Freedom of thought, conscience and religion, in accordance with Article 18 of the United Nations Declaration" (Doc. AS (1) 77, p.204; cf. also Doc. 290, p.10) (1).

Regarding this text, the Report presented by M. Teitgen on behalf of the Committee explained:

"... in recommending a collective guarantee not only of freedom to express convictions, but also of thought, conscience, religion and opinion, the Committee wished to protect all nationals of any Member State, not only from 'confessions' imposed for reasons of State, but also from those abominable

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(1) In Doc. A.290 the passage read: "All Member States, signatories to the Convention, shall bind themselves to ensure to all persons residing within their territories:

5 Freedom of thought, conscience and religion, in accordance with Article 18 of the Declaration of the United Nations.

"methods of police enquiry or judicial process which rob the suspected or accused person of control of his intellectual faculties and of his conscience" (Doc. AS (1) 77, para. 12, p.200).

Article 2, para. 5, of the Committee's draft did not give rise to any particular discussion in the Assembly, and was embodied without change in the Assembly's Recommendation of 8th September, 1949 (Doc. AS (1), 108, Article 2, para. 5, p. 262).

5. The Committee of Ministers of the Council of Europe then submitted the Assembly's Recommendation to a Committee of Experts on Human Rights which it had decided to convene (November 1949).

The Committee's terms of reference stated that: "due attention should be paid to the progress which had been achieved in this matter by the competent organs of the United Nations" (Doc. AS (1) 116, para. 6, pp. 288 and 289).

6. The "draft International Covenant on Human Rights" prepared by the United Nations Commission on Human Rights at its 5th Session held at Lake Success from 9th May to 20th June, 1949, contained an Article 16 worded as follows:

"1. 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 and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

"2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are pursuant to law and are reasonable and necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others" (Doc. E/1371, p.21).

7. The Secretariat-General of the Council of Europe had prepared for the Committee of Experts on Human Rights a "Preparatory Report on the draft Convention of Collective Guarantee of Human Rights". Part II of the Report, devoted

to a "comparison between the draft International Covenant on Human Rights and the draft of the Consultative Assembly", contained the following comments on Article 16⁽¹⁾ of the draft Covenant of 1949:

"The first paragraph of this provision is covered by paragraph 5 of Article 2 of the Strasbourg draft and Article 18 of the Universal Declaration.

"With regard to the second paragraph, the combination of Article 2, paragraph 5, with Article 6⁽²⁾ of the resolution does not cover this entirely, inasmuch as a restriction is imposed through the control both of the aim and of the nature ('reasonable and necessary' measures) of State regulations on freedoms" (Doc. B.22, p.20).

8. At the first meeting of the Committee of Experts on Human Rights (Strasbourg, 2nd to 8th February, 1950), a number of members submitted proposals.

The first three, while retaining the wording of paragraph 5 of Article 2 of the Assembly's draft, suggested extending the paragraph by one of the following additions:

"subject to reservations concerning legislative measures to prevent attempts being made once again to suppress these freedoms" (Amendment proposed by the Turkish Experts, Doc. A.775),

or:

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(1) Quoted above, p.4

(2) General clause of limitation (recognition of an respect for the rights and freedoms of others; just requirements of public morality, order and security in a democratic society).

"This provision does not affect existing national laws as regards rules relating to religious practice and membership of certain faiths" (Amendment proposed by M. Salen (Sweden), Doc. A.777),

or finally:

"Subject to reservations as regards the measures required for ensuring security and public order, as well as those restrictions which, for reasons of history, it has been considered necessary, by the States, signatories of this Convention, to place on the exercise of this right" (Amendment proposed by M. Cavat Ustun (Turkey), Doc. A.787).

Sir Oscar Dowson (United Kingdom) suggested replacing Article 2, paragraph 5, of the Assembly's draft by a new Article identical with Article 16⁽¹⁾ of the 1949 draft Covenant:

- "1. 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 and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.
- "2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are pursuant to law and are reasonable and necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others" (Doc. A.798).

9. A sub-committee was then instructed to undertake a preliminary examination of Amendments relating to the various provisions of the Assembly's draft, including the Amendments quoted above. The Sub-Committee considered it advisable

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(1) Quoted above, p.4.

"to examine firstly the Amendments to Articles 5, 6, and 7⁽¹⁾ and those which, although formulated with reference to Article 2, nevertheless relate to the definition of the limits of the rights enumerated under this Article" (Doc. A.796, p.1).

The Sub-Committee's Report to the Committee stated that:

"With regard to the Amendments relating to the text of Articles 5 and 6, the Sub-Committee firstly examined two Amendments moved by M. Ustun and M. Salen (A.787 and A.777) which both refer to limitations to be imposed on freedom of religion. These Amendments were prompted by the desire to retain certain restrictions as laid down under existing legislation which it would be difficult not to retain for the time being.

"After discussion, MM. Ustun and Salen agreed to move the following Amendment:

"This provision does not affect existing national laws which contain restrictive regulations concerning religious institutions and endowments or membership of certain faiths."

"Since the above Amendment applies equally to Article 5 and to Article 6, it seemed advisable to the Sub-Committee to re-examine the wording of both these Articles. It would have been wiser perhaps to combine them into one single Article in which the Amendment of MM. Ustun and

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(1) On Article 6, see p. 5, footnote (2). Article 5 corresponded to present Article 14 of the Convention. Article 7 contained a general reference to "the general principles of law as recognised by civilised nations".

Salen could have been incorporated, as well as any other limitations" (Doc. A.796, pp. 1 and 2) (1).

10. The preliminary draft Convention prepared by the Committee of Experts at its first meeting provided, in Article 2, para. 5, which was identical with Article 18⁽²⁾ of the Universal Declaration, that:

"(5) 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 and in public or private, to manifest his religion or belief in teaching, practice, worship and observance" (Doc. A.833, p.3; cf. also Doc. A.809, Article 3, para. 5, p.4).

The preliminary draft also contained an Article 7(b) clearly based on the Amendment⁽³⁾ proposed by MM. Ustun and Salen:

"(b) Nor may these provisions⁽⁴⁾ be considered as derogating from already existing national rules as regards religious institutions and foundations or membership of certain confessions" (Doc. A.833, p.5; cf. also Doc. A.809, Article 8 (b), p.7).

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(1) At Sir Oscar Dowson's own request, the Sub-Committee decided to postpone the discussion of his Amendment "until the Committee could examine the proposals moved by" (Sir Oscar Dowson) "all together as a whole". (These proposals, unlike Article 2 of the Assembly's draft, were based on the method of precise definition of rights and freedoms). (Doc. A.796, p.3).

(2) Quoted above, p.2.

(3) Quoted above, p.7

(4) That is "the preceding provisions" (in particular, those of the general clause of limitation in Article 6).

In this connection the Committee of Experts explained, in its preliminary draft Report to the Committee of Ministers, that:

"paragraph (b) was introduced at the request of the Swedish and Turkish representatives, by reason of the existence in their countries of certain national laws which might be considered contrary to the right of the free exercise of religion (Article 2, 5^c).

"This paragraph, of course, only applies to already existing laws and may not be invoked to justify new restrictions which might be imposed on the free exercise of religion at a future date" (Doc. CM/WP 1 (50) 1, pp. 13 and 14).

11. At the second meeting of the Committee of Experts, held at Strasbourg from 6th to 10th March, 1950, a new British Amendment was submitted worded as follows (1):

"1. 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 and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

"2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are (2) necessary in the interests of public safety, or for the protection of public order, health, or morals, or for the protection of the (3) rights and freedoms of others" (Doc. CM/WP 1 (50) 2, pp. 4 and 5).

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(1) The differences from the first British Amendment (quoted above page 6) are underlined.

(2) Deletion of the words "reasonable and".

(3) Deletion of the word "fundamental".

12. The British Amendment was submitted to a Drafting Committee consisting of Sir Oscar Dowson and Mr. Le Quesne (United Kingdom), M. Dons Moeller (Denmark) and M. Salen (Sweden). The Committee reworded it as follows (1):

"1. 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 and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

"2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in the interests of public safety, or for the protection of public order, health, or morals, or for the protection of the rights and freedoms of others, provided that nothing in this Convention may be considered as derogating from already existing national rules as regards religious institutions and foundations, or membership of certain confessions" (2)
(Doc. CM/WP 1 (50) 10, p.3).

13. The draft Convention submitted to the Committee of Ministers by the Committee of Experts at the close of its proceedings contained two Articles corresponding to the present Article 9 of the Convention.

Article 2, para. 5, in Alternatives A and A/2 (method of enumeration of rights and freedoms to be safeguarded)

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(1) The alterations made to the second British Amendment (page 9) are underlined.

(2) Cf. Article 7 (b) of the preliminary draft Convention of the Committee of Experts (quoted above p.8).

was almost ⁽¹⁾ an exact repetition of Article 2, para. 5, of the preliminary draft of the Committee of Experts ⁽²⁾, and therefore of Article 18 of the Universal Declaration ⁽³⁾. It was supplemented by an Article 7(b) identical with that of the preliminary draft ⁽⁴⁾ (Doc. CM/WP 1 (50) 15 appendix, pp. 2 and 3; cf. also Doc. CM/WP 1 (50) 14, Alternative B, Articles 2, para. 5, and 7(b), pp. 9 and 10).

On the other hand, Article 9 in Alternatives B and B/2 (method of precise definition of rights and freedoms to be safeguarded) followed exactly the wording of the Article 10 ⁽⁵⁾ adopted by the Drafting Committee (Doc. CM/WP 1 (50) 15 appendix, pp. 8 and 9; cf. also Doc. CM/WP 1 (50) 14, Alternative A, Article 9, p.5).

Regarding Article 7(b) in Alternatives A and A/2, the Report of the Committee of Experts to the Committee of Ministers contained the following explanations:

"Paragraph (b) was introduced at the request of the Swedish and Turkish representatives, by reason of the existence in their countries of certain national laws which might be considered contrary to the right of the free exercise of religion (Article 2, 5^o).

"This paragraph, of course, only applies to already existing laws, and may not be invoked to justify new restrictions which might be imposed on the free exercise of religion at a future date.

"The representative of the Netherlands asked for the deletion of this paragraph. He pointed out, in support of his argument, that there would appear to be a sort of contradiction between the provisions of

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(1) "To manifest his religion" became "to manifest this religion".

(2) Quoted above, p. 8.

(3) Quoted above, p.2.

(4) Quoted above, p. 8.

(5) Quoted above, p. 10.

"Article 5⁽¹⁾ and those of paragraph (b) of Article 7, if it were maintained. He also stressed the fact that the guaranteeing of certain situations of fact, which this provision tends to ensure, does not justify the incorporation in the text of the Convention of a derogation of such considerable extent, in spite of the importance they might have. The maintenance of this paragraph might be interpreted as meaning the collective responsibility of the signatories for exceptional situations which relate, in fact, to only two countries, Turkey and Sweden. While understanding the reasons which lead Turkey to impose restrictions on certain religious activities in the interests of the cultural recovery of the country, the Netherlands representative stated that, for his part, he could not associate himself with the general reservations contained in paragraph (b) of Article 7.

"It seemed to him that it would be more appropriate to delete paragraph (b) of Article 7, while introducing into the text of the Convention either a provision similar to that of Article 2 of the United Nations draft Covenant (2) - it being understood that the

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⁽¹⁾ This Article corresponded to present Article 14 of the Convention.

(2) This Article was worded as follows:

"1. Each State party hereto undertakes to ensure to all individuals within its jurisdiction the rights defined in this Covenant. Where not already provided by legislative or other measures, each State undertakes, in accordance with its constitutional processes and in accordance with the provisions of this Covenant, to adopt within a reasonable time such legislative or other measures to give effect to the rights defined in this Covenant.

"2... (This paragraph corresponded to Article 13 of the European Convention)."

The United Nations Commission on Human Rights had decided that it would adopt this Article provisionally pending the completion of its work on Part II (corresponding to Section I of the Convention) of the Covenant (Doc. E/1371, p.17).

"expression "within a reasonable time" should be interpreted broadly - or else a provision on the lines of the proposal put forward by the Danish representative to the United Nations (1) at the time when the draft Covenant on Human Rights was being framed.

"The United Kingdom representative agreed with this point of view.

"The Swedish delegate, adopting the opposite point of view, considered that the maintenance of paragraph (b) of Article 7 was justified not only by considerations concerning certain situations existing in this or that Member State of the Council, but also because of the wider idea which the Consultative Assembly, in drawing up its draft Convention, had not intended to derogate from the age-old institutions or traditions of these countries. He stated that the place occupied in the Swedish State by the Lutheran faith had its origin in the distant past, and that this did not impede the right, freely recognised in that country, to adopt another faith, provided that the person concerned joined some other religious community. If the great homogeneity of the Swedish population in the matter of religion appeared to render the inconveniences of this situation almost negligible,

(1) This proposal (comparable with present Article 64 of the Convention) was worded as follows:

"If the existing laws of a State regarding any of the specific rights and freedoms defined in this Covenant do not give full effect to the provisions of the Covenant, such State may, by an express statement made to that effect on deposit of its instrument of ratification or accession, reserve its right to maintain its existing law on the subject.

"Any State making such a reservation shall furnish the Secretary-General of the United Nations with full information on its domestic law regarding the questions covered by the reservation, and the Secretary-General shall bring such information to the attention of other States parties to the Covenant. Furthermore, a State making any such a reservation undertakes to examine the possibilities of modifying its legislation, within a reasonable space of time, with a view to giving full effect to the provisions of this Covenant. The competent organs of the United Nations may request the State to inform them what progress is being made in this respect" (Doc. E/1371, p.31).

it could not be overlooked that there were considerable obstacles, both constitutional and others, which would oppose any attempt to modify it. The Swedish delegate therefore asked for the maintenance of the reservation contained in paragraph (b) of Article 7 of the draft" (Doc. CM/WP 1 (50)15, pp. 18 and 19).

The Turkish representative made the following reply to the objections raised by the Netherlands representative:

"The above-mentioned remarks of Professor Beaufort have made my task much easier. Indeed, there is little I can add further since the only representative who voiced any opposition to our Amendment - or at least, the only one who expressed strong objections - has now recognised the justice of our views by stating, with the most praiseworthy frankness, that after hearing my words he himself is convinced that our Amendment is an unavoidable necessity.

"I would however like to state here, for what it may be worth, that the legislative measures relating to the 'tekkés', the 'médressés' and the Moslem religious orders are in no way intended to place restrictions on freedom of religion. I must emphasise that this freedom has always been respected in Turkey to the widest possible extent. A large number of writers from Western countries have borne testimony to this fact. It must, however, be pointed out that in the course of our history a number of attempts at reform and modernisation have been frustrated by stubborn resistance on the part of certain persons or groups of persons who wished to keep the population in ignorance for their own ends.

"In its determination to go through with those reforms which have justly won the sympathy of the whole world, the Republic of Turkey has therefore been obliged to start by abolishing the Moslem orders and their archaic institutions. If it had neglected to take this necessary step, its efforts would doubtless be doomed to failure once again, and my country would not be entitled to take its place among the Member States of the Council of Europe and share with them their fundamental conception of modern European civilisation" (Addendum 2 to Doc. CM/WP 1 (50) 15).

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Finally, the Report of the Committee of Experts included the following comments on Article 9 in Alternatives B and B/2:

"Article 9 - paragraph 2

"The provision at the end of this paragraph was intended to cover those reasonable restrictions on the eligibility for public office of members of certain religious faiths which are prescribed in the constitutions of certain States and which, it was recognised, could not be removed immediately.

"It is also intended to cover similar regulations regarding the membership and the activity of certain religious institutions (See comments on Article 7(b) of Alternatives A and A/2)" (Doc. CM/WP 1 (50) 15, p. 22).

The Committee of Experts had agreed that it was not competent to choose between Alternatives A, A/2, B and B/2, since such a choice "depended on considerations of a political character" (Doc. AS (2) 8, para. 58, p. 571).

14. In these circumstances, the Committee of Ministers decided at its third Session (Strasbourg, 30th March to 1st April, 1950) "to convene a meeting of Senior Officials, who, on the instructions of their Governments, would have the task of preparing the ground for the Ministers' decision from the political point of view" (Doc. AS (2) 8, para. 59, p. 571).

15. The Conference of Senior Officials (Strasbourg, 8th to 17th June, 1950) succeeded in "amalgamating Alternatives A and B of Section I of the Committee of Experts' draft Convention", while adopting Alternative B (method of precise definition) as the basis of its work (Doc. CM/WP 4 (50) 19, p. 13).

The "new draft of Alternatives B and B/2" contained an Article 10 worded as follows (1):

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- (1) The alteration made in the text of Article 9 of the draft Convention of the Committee of Experts in Alternatives B and B/2 (quoted above, p.10) is underlined.

"(1) 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 and in public or private, to manifest his religion or belief, in teaching, practice, worship and observance.

"(2) Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in the interests of public safety, or for the protection of public order, health or morals in a democratic society (1) or for the protection of the rights and freedoms of others, provided that nothing in this Convention may be considered as derogating from already existing national rules as regards religious institutions and foundations, or membership of certain confessions" (Doc. CM/WP 4 (50) 9, p. 5).

Finally, agreement was reached on an Article 9 worded as follows:

"Article 9(2)

"(1) 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 and in public or private, to manifest his religion or belief, in teaching, practice, worship and observance.

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(1) According to the report of the Conference (Doc. CM/WP 4 (50) 19, p.13), the reference to a "democratic society" was introduced into Article 9, as well as Articles 8, 10 and 11, in order to "make Alternative B more acceptable to the supporters of Alternative A". Indeed, Article 6 (general clause of limitation of rights and freedoms) of the Consultative Assembly's draft (Doc. AS (1) 108) and of Alternative A of the Committee of Experts' draft (Doc. CM/WP 1 (50) 14 and 15 appendix) contained a similar reference to this concept.

(2) An alteration made in Article 10 of the "new draft of Alternatives B and B/2" quoted above, p.16) is underlined.

"(2) Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society (1), in the interests of public safety, or for the protection of public order, health or morals, or for the protection of the rights and freedoms of others"(2) (Doc. CM/WP 4 (50) 19 appendix, p.6; cf. also Doc. CM/WP 4 (50) 16 appendix p.6).

The Report of the Conference of Senior Officials to the Committee of Ministers (Doc. CM/WP 4 (50) 19) contained no comments on this Article.

16. After the conclusion of the work of the Conference of Senior Officials, the United Kingdom delegation proposed the following alteration in the English text of paragraph 2 of Article 9:

"Delete the comma after the words 'democratic society' and delete the word 'or' after 'public safety'"
(Doc. A.1690, p.2).

17. On 7th August, 1950, the Committee of Ministers agreed on the text of a "draft Convention of Protection of Human Rights and Fundamental Freedoms", which it decided to send to the Consultative Assembly for opinion.

Article 9 of the draft was identical with present Article 9 and worded as follows:

"Article 9

"(1) 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 and in public or private, to manifest his religion or belief, in worship(3), teaching, practice and observance.

"(2) Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by

(1) Note the displacement of these four words.

(2) Deletion of the words "provided that... certain confessions".

(3) Note displacement of the word 'worship'.

law and are necessary in a democratic society (1) in the interests of public safety (2), for the protection of public order, health or morals, or for the protection of the rights and freedoms of others" (Doc. CM (50) 52, p.6; cf. also Doc. AS (2) 11, Appendix A, Article 9, p.606).

18. In its Recommendation of 25th August, 1950, regarding the draft Convention for the protection of Human Rights and Fundamental Freedoms, the Consultative Assembly proposed no change in Article 9, which received no particular mention during the debate (Doc. AS (2) 104, Article 9, pp. 1032 and 1033).

19. Article 9 thus received its final text, embodied without further change in the Convention as signed on 4th November, 1950.

A study of the preparatory work on the Convention reveals certain affinities between Article 9 of the Convention and Article 18 of the draft International Covenant on Civil and Political Rights (3).

The Secretariat of the Commission has accordingly deemed it useful to attach to this document the relevant extract from the Annotation on draft Covenants, prepared by the Secretary-General of the United Nations in 1955 at the request of the United Nations General Assembly (Doc. A/2929, pp.136 to 143, Appendix) (4).

(1) Deletion of comma.

(2) Deletion of 'or'.

(3) Article 16 until 1949; Article 13 in 1950 and 1951; Article 15 in 1952; Article 18 since 1953.

(4) On this subject, see Doc. DH (56) 4, pp. 10 and 11.

A P P E N D I X

ARTICLE 18

Freedom of Thought, Conscience and Religion

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to maintain or to change his religion or belief, and freedom either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to maintain or to change his religion or belief.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

105. The debate on this article seemed to focus on three main issues: the nature or concept of "freedom of thought, conscience and religion", the right "to change" or "to maintain" one's religion or belief, and the scope of legitimate limitations of "freedom to manifest one's religion or belief".

Freedom of thought, conscience and religion: 35/

106. During the debate on this article, freedom of thought, conscience and religion was frequently characterized as "absolute", "sacred" and "inviolable". The first clause of the article therefore declared in clear and simple terms, and without qualifications, that "everyone shall have the right to freedom of thought, conscience and religion". No restrictions of a legal character, it was generally agreed, could be imposed upon man's inner thought or moral consciousness, or his attitude towards the universe or its creator; only external manifestations of religion or belief might be subject to legitimate limitations.

35/ E/CN.4/AC.1/SR.10, 26; E/CN.4/SR.116, 117, 319;
E/CN.4/82/Rev.1, 82/Add.2, 85, 528; E/L.68;
A/C.3/SR.289.

107. The question was raised whether the words "thought" and "belief" in this article were intended to be different concepts. The question was also raised whether there was any clear-cut distinction between "the right to freedom of thought" in this article and "the right to hold opinions without interference" in the next article.

Freedom to maintain or to change one's religion 36/

108. The first drafts of the article contained a provision to the effect that everyone should have "freedom to change his religion or belief". Against this provision, it was argued that the right to change one's religion was already implicit in the concept of "freedom of religion" and therefore need not be mentioned specifically. It was also argued that the covenant should not lend its support to any religious body in its proselytising or missionary enterprise, nor should it be instrumental in creating any doubt in the mind of any believer of the truth of his belief. Furthermore, a provision in the covenant on the right to change one's religion, it was contended, would create uncertainty and difficulty for those States whose constitutions or basic laws were religious in origin or in character. It was also thought that, since the article as a whole dealt with freedom of "thought", "conscience" and "religion" any elaboration of freedom of "religion" without a corresponding elaboration of freedom of "thought and "conscience" would make the article somewhat unbalanced.

109. On the other hand, the opinion was expressed that the right to change one's religion should be specially emphasized in view of the fact that there were religious bodies which discouraged religious conversions, and laws which recognized State religions and discriminated against non-believers of such religions. Failure to recognize the right to change one's religion, it was maintained, would be tantamount to a denial of that right, and would by implication tend to abridge the right of any religious body to carry its message to any corner of the earth.

36/ E/CN.4/AC.3/SR.5; E/CN.4/SR.116, 117, 161, 319;
E/CN.4/82/Rev.1, 85, 233, 272, 300, 382, 515/Add.16,
528, 528/Add.1; E/CN.4/L.187; E/2059/Add.6;
A/C.3/SR.288-290, 302, 306, 367, 371, 563, 565, 566,
571, 576; A/C.3/L.75/Rev.1. Amendments on this point
were submitted during the first reading of the draft
covenants at the ninth session of the General Assembly
(GA (IX), a.i. 58, A/C.3/L.422).

110. As a compromise it was agreed that freedom "to maintain" as well as freedom "to change" one's religion, two facets of freedom of religion, should both be written into the article. A further provision was added that "no one shall be subject to coercion which would impair his freedom to maintain or to change his religion or belief". It was understood that the word "coercion" in this context should not be construed as applying to moral or intellectual persuasion, or to any legitimate limitation of freedom to manifest one's religion or belief.

111. There was another proposal that "any change of religion made unlawfully or to evade obligations under the law governing the personal status of the person concerned shall be declared null and void". This proposal was not adopted, for it was thought that the question of religious conversion as such should be distinguished from the question of personal status, the former being spiritual in character, the latter being a legal matter.

Limitations clause^{37/}

112. The limitations clause of article 18 on freedom of thought, conscience and religion, and those of article 19 on freedom of opinion and expression, article 20 on the right of peaceful assembly and article 21 on freedom of association were drafted, revised and adopted at different times and were consequently couched in varying terms as regards such expression as "national security", "public order", "public health or morals", etc. It was urged that these clauses should be drawn up in a uniform manner, except where a difference in substance was intended, in order that no serious issues of interpretation and application would arise in the future. However, no action on this matter was taken.

113. The English expression "public order" and the French expression "l'ordre public" gave rise to considerable discussion. It was observed that the English expression "public order" was not equivalent to - and indeed was substantially different

37/ E/CN.4/NGO/10, 21, 26; E/CN.4/AC/3/SR.5; E/CN.4/AC.1/SR.26; E/CN.4/SR.116, 117, 119, 160, 319; E/CN.4/82/Add.2, 85, 170, 272, 301, 365, 515/Add.12, 13, 524, 528; E/L.68.

from - the French expression "l'ordre public" (or the Spanish expression "orden publico"). In civil law countries "l'ordre public" is a legal concept used principally as a basis for negating or restricting private agreements, the exercise of police power or the application of foreign law. In common law countries the expression "public order" is not a recognised legal concept and is ordinarily used to mean the absence of public disorder. The common law counterpart of "l'ordre public" is "public policy" rather than "public order". The use of the expression "public order" or "l'ordre public" in the limitations clause would create uncertainty and might constitute a basis for far-reaching derogations from the rights guaranteed. One proposal was made to change the "protection of public order" to the "prevention of public disorder". Another proposal was to add after the expression "public order" a modifying clause "in a democratic society".

114. The limitations clause of article 18 contains the expression "public safety", that of article 19 the expression "national security", and those of articles 20 and 21 the expression "national security or public safety". It was noted that these expressions were not consistent. It was also observed that the terms "national security" and "public safety" were not sufficiently precise to be used as a basis for the limitation of the exercise of the rights guaranteed.

The right of parents^{38/}

115. There were several proposals to the effect that in the case of a minor the parent or guardian should have the right to determine what form of religious education he should receive. Against these proposals, it was stated that the age at which a minor ceased to be a minor varied in different countries. It was further stated that if the right of the parent to determine what form of religious education the minor should receive were written into the article, the right of the parent to give the minor a purely secular education should also be guaranteed. While there was general agreement that religious education should not be imposed upon the minor against the will of the parent, it was thought that the proper place for such a provision would be in an article on education.^{39/}

^{38/} E/CN.4/NGO/10, 12; E/CN.4/SR.116, 117, 160, 161; E/CN.4/226, 272, 300, 429.

^{39/} See para. 3 of article 14 of the draft covenant on economic, social and cultural rights.

Rights of religious bodies 40/

116. Proposals were made that freedom of religion should include freedom of religious denominations or communities to organize themselves, to perform missionary, educational and medical work, to enjoy civil or civic rights, etc. Two attitudes regarding such proposals were evident. On the one hand, it was emphasized that any religious sect or order, as a corporate body, should have an inherent right to perpetuate its own mode of life and to propagate its doctrine. On the other hand, it was argued that the missionary society of one religion often tended to undermine the fundamental faith of another religion and might therefore constitute a source of inter-religious misunderstanding or friction. No decision was made on the proposals and the article did not contain any provision on rights of religious bodies. Another proposal was made that "every person of full age and sound mind" should be free "to endeavour to persuade other persons of full age and sound mind of the truth of his beliefs". This proposal, once accepted, was eventually rejected.

Acts contrary to religious observance or practice 41/

117. A proposal that no one should be required to do any act which was contrary to his religious observance or practice was not adopted. Although there was no objection in principle to the proposal it was thought that it might not always be possible to apply such a provision especially in countries where many different religions were practised. Another proposal which was not adopted was that "persons who conscientiously object to war as being contrary to their religion shall be exempt from military service". 42/

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40/ E/CN.4/AC.3/SR.5; E/CN.4/AC.1/SR.10, 26; E/CN.4/SR.37, 116, 117; E/CN.4/82/Rev.1.

41/ E/CN.4/NGO/1 and Add.1, 11; E/CN.4/AC.3/SR.5; E/CN.4/SR.116, 117, 161; E/CN.4/365.

42/ See article 8 of the draft covenant on civil and political rights for a provision on conscientious objectors.

A proposal for a briefer article ^{43/}

118. A briefer article was proposed which read as follows:
"Every person shall have the right to freedom of thought and freedom to practice religious observance in accordance with the laws of the country and the dictates of public morality". This text was considered too brief and the clauses "laws of the country" and "dictates of public morality" were thought to be too general.

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DOCUMENTATION

<u>Organ. and session</u>	<u>Records of discussion</u>	<u>Other documents</u>	<u>Art. No.</u>
CHR, DC (I)	E/CN.4/AC.1/SR.10	E/CN.4/AC.1/4; E/CN.4/21, annex G, art. 8	
CHR (II)	E/CN.4/AC.3/SR.5	E/CN.4/37, 56; ESC (VI), suppl.1, annex B, part II, art.16.	8 15
CHR, DC (II)	E/CN.4/AC.1/SR.26	E/CN.4/AC.1/19, 33, 35; E/CN.4/95, annex B	16
CHR (III)	E/CN.4/SR.37	E/CN.4/82/Rev.1, 82/Add.2 85; ESC (VII), suppl.2, annex B	16
CHR (V)	E/CN.4/SR.116, 117, 119	E/CN.4/170, 226, 229, 233, 272, 300, 301; ESC (IX), suppl. 10, annexes I and II	16
CHR (VI)	E/CN.4/SR.160, 161	E/CN.4/353/Add.1, 3; 358, 365, 382, 429; E/CN.4/L.5; E/CN.4/NGO.1 and Add.1, 10-12; ESC (XI), suppl.5, annexes I and II, art.13.	16
ESC (XI)	E/AC.7/SR.147 and 148	E/L.68	13
GA (V)	3rd. Com., 288th-91st, 301st, 302nd, 305th, and 306th mtgs.	A/C.3/L.75/Rev.1, 99	13
CHR (VII)		E/CN.4/515/Add.12, 13, 16; 524, 528, paras.168-199; ESC (XIII), suppl.9 annexes I and III	13
ESC (XIII)		E/2059/Add.6	13
GA (VI)	3rd. Com., 367th and 371st mtgs.		13

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<u>Organ and session</u>	<u>Records of discussion</u>	<u>Other documents</u>	<u>Art. No.</u>
CHR (VIII)	E/CN.4/SR.319	E/CN.4/528/Add.1, paras. 100-104; 660; E/CN.4/668/Add.7. E/CN.4/L.143, 155, 187; ESC (XIV), suppl.4, paras. 231-37, annex I.B, art.15	13
CHR (IX)		674; ESC (XVI), suppl.8, annex I.B, art.18	15
CHR (X)		E/CN.4/694/Add.5; ESC (XVIII), suppl.7, annex I.B, art.18	18
GA (X)	3rd. Com., 563rd, 565th, 566th, 571st and 576th mtgs.		18