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EUROPEAN COMMISSION OF HUMAN RIGHTS

PREPARATORY WORK ON ARTICLE 11
OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS

Information Document
prepared by the Secretariat of the Commission

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1. Article 11 of the European Convention on Human Rights is worded as follows:

Article 11

"(1) Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
"(2) No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

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A.28.905
TE.126/AEG/WM

2. The Universal Declaration of Human Rights, adopted on 10th December, 1948, by the General Assembly of the United Nations, includes an Article 20 and an Article 23, para. 4, worded as follows:

Article 20

"(1) Everyone has the right to freedom of peaceful assembly and association.
"(2) No one may be compelled to belong to an association.

Article 23

"....
"(4) Everyone has the right to form and join trade unions for the protection of his interests".

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:

"....

"Freedom of meeting, as laid down in Article 20 of the Declaration of the United Nations.

"Freedom of association, as laid down in Article 20 of the Declaration of the United Nations.

"The right to combine in trade unions, as laid down in paragraph 4 of Article 23 of the Declaration of the United Nations." (Doc. A.116) (2).

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(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 association and assembly" (Doc. INF/2/E, February 1949, and Doc. INF/5/E/R, Article 1 (f), p.6, June 1949).

The Committee adopted these three paragraphs at its meeting on 30th August, 1949 (Doc. A.167, p.3).

4. Article 2, paras. 7, 8 and 9, 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:
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> "....
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> "(7) freedom of assembly, in accordance with Article 20 of the United Nations Declaration;
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> "(8) freedom of association, in accordance with Article 20 (paragraphs 1 and 2) of the United Nations Declaration;
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> "(9) freedom to unite in trade unions, in accordance with paragraph 4 of Article 23 of the United Nations Declaration" (Doc. AS (1) 77, pp.204 and 205; cf. also Doc. A.290, p.11)(1).

This text 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, paras. 7, 8 and 9, p.262).

5. The Committee of Ministers of the Council of Europe then resolved to entrust the examination of 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).

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(1) Doc. A.290: "All Member States, signatories to the Convention, shall bind themselves to ensure to all persons residing within their territories.
7) Freedom of meeting....Article 20 of the Declaration of the United Nations;
8) .....Declaration of the United Nations;
9) .....Declaration of the United Nations."

6. The "draft International Covenant on Human Rights" prepared by the United Nations Commission on Human Rights at its Fifth Session held at Lake Success from 9th May to 20th June, 1949, contained an Article 18 and an Article 19 worded as follows:

Article 18

"Everyone has the right to freedom of peaceful assembly. No restrictions shall be placed on the exercise of this right other than those prescribed by law and which are necessary to ensure national security, public order, the protection of health or morals, or the protection of the rights and freedoms of others.

Article 19

"1. Everyone has the right to freedom of association with others.
"2. This freedom shall be subject only to such limitations as are pursuant to law and as are necessary for the protection of national security, public order, public safety, health or morals, or the fundamental rights and freedoms of others.
"3. National legislation shall neither prejudice, nor be applied in such a manner as to prejudice, the guarantees provided for in the International Convention on Freedom of Association and Protection of the Right to Organise, in so far as States parties to that Convention are concerned" (Doc. E/1371, p.24).

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 Articles 18 and 19 of the 1949 draft Covenant (1):

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(1) Quoted above, p. 4.

Article 18

"Article 2, paragraph 7 and Article 6 (1) of the Resolution cover this provision, exoept for the reservations as above under Article 16 (2) regarding the control of State restrictions on this freedom.

Article 19

"This provision is covered by paragraph 8 of Article 2 and Article 6 (1) of tho resolution. However, the aim and character of the international control have been give a definition which is not found in Article 6 of the Resolution. As for paragraph 3, there is a choice to be be made between this Universal Declaration text to which paragraph 9 of Article 2 of the Resolution refers, and the provisions of paragraph 3 of the draft Covenant" (Doc. B.22, pp. 20 and 21).

8. The Committee of Experts on Human Rights was also called upon to examine the "comments of the Government of the United Kingdom received by the Secretary-General" (of the United Nations) "on 4th January, 1950".

This document contained the following remarks on Article 19 of the 1949 draft Covenant (3):

"1. It has been the consistent view of H.M. Government that the terms of the Covenant should define the obligations of States which accede to it in clear and precise terms.

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(1) General clause of limitation (recognition of and respect for the rights and freedoms of others; just requirements of public morality, order and security in a democratic society.)
(2) Article 16 of the 1949 draft Covenant concerned freedom of thought, conscience and religion. On this subject cf. Doc. DH (56) 14, para. 7.
(3) Quoted above, p.4.

H.M. Government consider it reasonable to provide for the possibility of certain restrictions on the full freedom of association of members of the armed forces, of the police and of the administration of the State and it does not seem clear that such restrictions are necessarily permissible under paragraph 2 of this Article as at present drafted.

"2. Further, His Majesty's Government consider that the language used to describe the limitations in this Article should be the same as that used in Article 18. They therefore propose that paragraph 2 should be amended to read:

'2. No restrictions shall be placed on the exercise of this right other than those prescribed by law and which are necessary to ensure national security, public order, the protection of health and morals or the protection of the rights and freedoms of others, provided that this Article shall not prevent the imposition of restrictions on the exercise of this right by members of the armed forces, the police or the administration of a State'"

(Council of Europe ref. Doc. A.770, pp.6 and 7, and U.N. ref. Doc. E/CN 4/353/Add. 2).

9. At its first meeting (Strasbourg, 2nd to 8th February, 1950), the Committee of Experts on Human Rights had before it an Amendment, proposed by Sir Oscar Dowson (United Kingdom), to replace Article 2, para. 7, of the Assembly's draft (1) by a new Article, identical with Article 18 of the 1949 draft Covenant (2), and providing that:

"Everyone has the right to freedom of peaceful assembly. No restrictions shall be placed on the exercise of this right other than those prescribed by law and which are necessary to ensure national security, public order, the protection of health or morals, or the protection of the rights and freedoms of others" (Doc. A.798, p.2).

10. The preliminary draft Convention prepared by the Committee of Experts at its first meeting provided, in Article 2, paras. 7, 8 and 9, almost identical with Articles 20 and 23, para. 4, of the Universal Declaration (3) that:

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(1) Quoted above, p. 3.
(2) Quoted above, p. 5.
(3) Quoted above, p. 2. Apart from the word underlined in Article 2, para. 9 below, the only difference was that, as in the Consultative Assembly's draft (supra, p. 3), freedom of assembly and freedom of association did not occur in the same paragraph.

"7. Everyone has the right to freedom of peaceful assembly.
"8. Everyone has the right to freedom of peaceful association. No one may be compelled to belong to an association.
"9. Everyone has the right to form and to join trade unions for the protection of his interests" (Doc. A.833, p.3; cf. also Doc. A.809, Article 3, paras. 7, 8 and 9, p.5).

The preliminary draft Report of the Committee of Experts to the Committee of Ministers (Doc. CM/WP 1 (50) 1) contained no special explanatory remarks on these three paragraphs.

11. At the second meeting of the Committee of Experts (Strasbourg, 6th to 10th March, 1950), the United Kingdom delegation submitted a new amendment relating to freedom of assembly (1):

"Everyone has the right to freedom of peaceful assembly. No restrictions shall be placed on the exercise of this right other than such as are prescribed by law and are necessary in the interests of national security or public safety, or for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others" (Doc. CM/WP 1 (50) 2, p.5).

At the same time the British experts proposed the insertion of an Article 13 devoted to freedom of association and worded as follows:

"1. (2) Everyone has the right to freedom of association with others.
"2. (3) No restrictions shall be placed on the exercise of this right other than such as are prescribed by law and (4) are necessary in the interests of national security (5)

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(1) The alterations made in the first British Amendment (quoted above p. 6) are underlined.
(2) CF. 1st paragraph of Article 19 of the 1949 draft Covenant (quoted above, page 5).
(3) CF. the amendment to paragraph 2 of Article 19 of the 1949 draft Covenant proposed in January 1950 by the British Government (quoted above, page 6). The alterations made in this text are underlined.
(4) Deletion of the word: "which."
(5) Deletion of the words: "public order".

or for the prevention of disorder or crime, for the the protection of health or morals, or for the protection of rights and freedoms of others; provided that this Article shall not prevent the imposition of restrictions on the exercise of this right by members of the armed forces, the police or the administration of the State" (Doc. CM/WP 1 (50) 2, page 5).

12. The British amendments were examined by a Drafting Committee consisting of Sir Oscar Dowson and Mr. Le Quesne (United Kingdom), M. Dons Moeller (Denmark) and M. Salen (Sweden), which combined them in a single article worded as follows (1):

"1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others.

"2. No restrictions shall be placed on the exercise of this right other than such as are prescribed by law and are necessary in the interests of national security, public safety (2)or for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others; provided that this Article shall not prevent the imposition of lawful restrictions on the exercise of this right by members of the armed forces, the police or the administration of the State (3) (Doc. CM/WP 1 (50) 10, p. 4).

13. The draft Convention submitted to the Committee of Ministers by the Committee of Experts at the end of its work contained two sets of provisions corresponding to present Article 11 of the Convention. Article 2, paras. 7, 8 and 9, in Alternatives A and A/2 (method of enumeration of rights and freedoms to be safeguarded) was merely a repetition of Article 2, paras. 7, 8 and 9, of the preliminary draft Convention of the Committee of Experts (4) /Doc. CM/WP I (50) 15, appendix, p.2; cf. also Doc. CM/WP I (50)/ 14, Alternative B., p.9/

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(1) The alterations made in the two British amendments (quoted above, pp. 7 and 8) are underlined.
(2) These two words already occurred among the restrictions on freedom of assembly but not among those on freedom of association.
(3) The clause "provided that ... of the State" now applies to freedom of assembly as well as freedom of association.
(4) Quoted above, p.7.

On the other hand, Article 11 in Alternatives B and B/2 (method of precise definition of rights and freedoms to be safeguarded) provided that(1):

"1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others.

"2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in the interests of national security, public safety or for the prevention of disorder or crime, for the protection of health or morals, for for the protection of the rights and freedoms of others; provided that this Article shall not prevent the imposition of lawful restrictions on the exercise of this right by members of the armed forces, the police or the administration of the State" (Doc. CM/WP I (50) 15 appendix, p.9; cf. also Doc. CM/WP I (50) 14, Alternative A, Article 11, p.6).

The Report of the Committee of Experts explained that:

"ARTICLE 11

"The rights defined in this Article include the right to associate in trade unions" (Doc. CM/WP I (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].

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(1) The alterations made in the text adopted by the Drafting Committee (quoted above, p.8) are underlined.

Agreement was reached on a text worded as follows(1):

"(1) Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.(2)

"(2) No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society(3), in the interests of national security, public safety, or for the prevention of disorder or crime, for the protection of health or morals in a democratic society(3), or for the protection of the rights and freedoms of others; provided that this Article shall not prevent the imposition of lawful restrictions on the exercise of this right by members of the armed forces, the police or the administration of the State" /Doc. CM/WP 4 (50) 19 appendix, p. 7; cf. also Doc. CM/WP 4 (50) 9, Article 12, pp. 5 and 6, and Doc. CM/WP 4 (50) 16 appendix, Article 12, p. 7/

The Report of the Conference of Senior Officials to the Committee of Ministers contained the following comment on this Article:

"In this Article, the Conference has introduced express reference to the right to form trade unions, so as to bring this Article into conformity with the United Nations Universal Declaration. This Declaration mentions the

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(1) The alterations made in the text of Alternatives B and B/2 of the Committee of Experts' draft Convention (quoted above, p. 8) are underlined.
(2) Cf. Article 23, para 4 (quoted above, p.2,) of the Universal Declaration.
(3) In Doc. CM/WP 4 (50) 9 (new draft of Alternatives B and B/2), these 4 words only occurred once, namely after the words "or morals". 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 11, as well as Articles 8, 9 and 10, 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 I (50) 14 and 15 Appendix/ contained a similar reference to this concept.

right to form trade unions as a right distinct from the right of association in general. Certain delegates considered, however, that the right to form trade unions was also included in the right of association.

"On account of the difficulties raised by the 'closed shop system' in certain countries, the Conference in this connection considered that it was undesirable to introduce into the Convention a rule under which 'no one may be compelled to belong to an association' which features in the United Nations Universal Declaration(1)" (Doc. CM/WP 4 (50) 19, p. 16).

16. After the conclusion of the work of the Conference of Senior Officials the United Kingdom Delegation proposed the following textual alterations in the English version of para. 2 of Article 11:

"Insert 'or' between 'national security' and 'public safety' (deleting the comma) and delete 'or' after 'public safety'" (Doc. A 1690, p.3).

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 11 of the draft, virtually identical with present Article 11, provided that(2):

"(1) Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

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(1) It should be recalled that this rule had been sanctioned implicitly in the Consultative Assembly's draft, by the reference to para. 2 of Article 20 of the Universal Declaration (supra p.3), and explicitly in para. 8 of Article 2 of Alternative A of the Committee of Experts' drafts (supra, pp. 7 and 8). On this subject, cf. also JACQUET (France), Official Reports of the Consultative Assembly, 1949, II, p. 458.

(2) The alterations made in the text adopted by the Conference of Senior Officials (quoted above, p. 10) are underlined).

"(2) No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety(1), for the prevention of disorder or crime, for the protection of health or morals(2) or for the protection of the rights and freedoms of others.(3) This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces(4), the police or(4) the administration of the State" (Doc. CM (50) 52, p. 7; cf. also Doc. AS (2) 11, Appendix A, Article 11, p.607).

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 alterations in Article 11, which received no particular mention during the debate (Doc. AS (2) 104, Article 13, p.1034).

19. On 3rd November, 1950, a Committee of Legal Experts made certain minor changes in the English text /see this page, footnote 4/; Article 11 was thus given its final form, confirmed the next day by the signing of the Convention.

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A study of the preparatory work on the Convention reveals certain affinities between Article 11 of the Convention, Articles 20 and 21 of the draft International Covenant on Civil and Political Rights(5), and Article 8 of the draft International Covenant on Economic, Social and Cultural Rights.

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. 155 to 159 and 160 to 165, Appendix/(6).

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(1) Deletion of: "or".
(2) Deletion of: "in a democratic society".
(3) Deletion of: "provided that".
(4) The Convention has: "of the police or of the administration."
(5) Articles 18 and 19 until 1949; Articles 15 and 16 in 1950 and 1951; Articles 17 and 18 in 1952; Articles 20 and 21 since 1953.
(6) In this connection see Doc. DH (56) 4, pp. 10 and 11.

A P P E N D I X

ARTICLE 20

Right of peaceful assembly

The right of peaceful assembly shall be recognised. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.

Formulation of the right

139. There was general agreement on the desirability of including an article on the right of peaceful assembly in the draft covenant on civil and political rights but there was some discussion on the elements which constituted that right.58/ On the one hand, a proposal was made that the right should include "freedom to hold assemblies, meetings, street processions and demonstrations". On the other hand, the view was expressed that the right of peaceful assembly might not necessarily include freedom to hold pageants or processions in streets or public places. The majority was in favour of a general formulation. Although a suggestion was made that freedom of peaceful assembly should be protected only against "governmental interference", it was generally understood that the individual should be protected against all kinds of interference in the exercise of this right.

140. Various opinions were expressed as to how the right of peaceful assembly should be enunciated in the article.59/ A proposal that this right "shall be guaranteed by law" was rejected, on the ground that the general provisions of article 2 of the draft covenant on civil and political rights laid down the necessary guarantees for all the rights recognised in this instrument. One opinion was that the right should be enunciated as in Article 20 of the Universal Declaration and in various other articles of the draft covenant: "Everyone shall have the right to freedom of peaceful assembly". Such a formulation, it was thought, would make it clear that the right belongs to every person. Another opinion was that the right should be "recognised" as a fundamental human right,

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58/ E/CN.4/SR.121, 325; E/CN.4/82, 353/Add.1; E/CN.4/L.126

59/ E/CN.4/SR.120, 169, 200, 325; E/CN.4/353/Add.8; E/CN.4/L.126 ESC (IX), suppl. 10, annex I, art.18; ESC (XI), suppl. 5; annex I, art.15.

rather than granted under the covenant. The formulation, "The right of peaceful assembly shall be recognised", was finally accepted.

Limitations clause[60/]

141. It was generally agreed that the exercise of this right might be subject to restrictions. In the second sentence, the word "may" was used, instead of "shall", in order to make it clear that States parties would in no way be obliged to impose restrictions. Earlier drafts provided that all restrictions of freedom of peaceful assembly should be "prescribed by law". The words "imposed in conformity with the law" were subsequently preferred as allowing for legitimate administrative action. The objection was raised, however, that such a formula was inconsistent with the wording used in other articles of the draft covenant on civil and political rights.

142. Various opinions were expressed on the nature and scope of the necessary limitations. Some thought that only one fundamental restriction should be included in the article, namely: "all the activities of societies, unions and other organisations of a fascist or anti-democratic nature shall be forbidden by law, subject to penalty". The supporters of this proposal emphasised that the right of peaceful assembly should be recognised "in the interest of democracy". It was argued that, should the right of peaceful assembly be exercised by anti-democratic groups, all the rights recognised in the covenants might be jeopardised. On the other hand, it was said that, as a matter of principle, to deny certain groups freedom of assembly merely on account of their opinions would be contrary to the principles of freedom of opinion and expression recognised in the Universal Declaration and the draft covenant on civil and political rights. It was also observed that terms such as "fascist" or "anti-democratic" were not clearly defined and could lead to abuse. If the activities of any group became a public danger the laws for the protection of "public order", "national security" or "the rights and freedoms of others" could be applied.

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60/ E/CN.4/AC.1/SR.26; E/CN.4/AC.3/SR.6; E/CN.4/SR.120, 169, 325; E/CN.4/82, 272/Corr.1, E/CN.4/307, 308; E/CN.4/L.126, 145, 201.

143. The proposed grounds for restrictions - "in the interest of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others" - gave rise to criticisms similar to those which were expressed during the debates concerning articles 18 and 19 of the draft covenant.61/ Proposals were made to replace the term "public order" by "prevention of disorder"; to include in the list of limitations an additional ground "in the general interest". Both were rejected. There was a feeling that the use of vague concepts such as "public order" and "national security" might give rise to abuse, unless those concepts were properly qualified. The words "reasonable and" were proposed for inclusion before the word "necessary", but were not adopted. Another proposal was that all the limitations listed in the article be qualified by the words "necessary in a democratic society". The supporters of this proposal expressed the opinion that freedom of assembly could not be effectively protected if the States parties did not apply the limitations clause according to the principles recognized in a democratic society. To the objection that the word "democracy" might be interpreted differently in various countries, one answer was that a democratic society might be distinguished by its respect for the principles of the Charter, the Universal Declaration and the covenants on human rights. The words "necessary in a democratic society" were finally adopted.62/

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61/ See paras. 112-114 of the annotation under article 18, and para. 132 of the annotation under Article 19.

62/ For general comments on such expressions as "national security", "Public order", and on the desirability of adopting a uniform limitations clause for articles 18, 19, 20 and 21, see paragraphs 112-114 of the annotation under article 18 above.

DOCUMENTATION

Organ and Session	Records of discussion	Other documents	Article Number
DC (I)	E/CN.4/AC.1/SR.3	E/CN.4/21, annex A, art. 19 annex B, art. 15 annex C, art. 23 annex G, art. 10	
CHR (II)	E/CN.4/AC.3/SR.6; E/CN.4/SR.39	E/CN.4/37 56, art. 17; ESC (VI), suppl.1, annex B, art. 18	10
DC (II)	E/CN.4/AC.1/SR.26,31	E/CN.4/AC.1/19,34; E/CN.4/82 and Add. 4, 8, 12; E/CN.4/95, annex B, art. 18	18
CHR (III)		E/CN.4/89	18
CHR (V)	E/CN.4/SR.120,121	E/CN.4/170 and Adds. 1 and 4; E/CN.4/188, 222, 272/Corr.1, E/CN.4/306, 307, 308; ESC (IX), suppl. 10, annex I art. 18, annex II, art. 18	18
CHR (VI)	E/CN.4/SR.169, 200	E/CN.4/353/Add.1, 3, 8, 10; E/CN.4/NGO/7; ESC (XI), suppl.5, annex I, art. 15, annex II, art. 15	18
ESC (XI)	E/AC.7/SR.147		15

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DOCUMENTATION (cont'd)

Organ and Session	Records of discussion	Other documents	Article Number
GA (V)	3rd com., 288th, 289th, 290th, 291st mtgs.	A/C.3/L.77 and Rev. 1, A/C.3/L.96	15
CHR (VII)		E/CN.4/515/Add. 11, 13, 15; E/CN.4/528, paras 179-198 and 208; E/CN.4/563 and Rev.1; E/CN.4/ NGO.21; ESC(XIII), Suppl.9, annex III, art.15	15
CHR (VIII)	E/CN.4/SR.325	E/CN.4/528/Add.1, paras.102,114-115; E/CN.4/L.126, 145, 201; E/CN.4/NGO/39; ESC (XIV), suppl. 4 paras.248-250, annex I B, art.17	15
CHR (IX)		E/CN.4/674 para.47; ESC (XVI), suppl.8, annex I B, art. 20	17
CHR (X)		E/CN.4/694/Add.6; E/CN.4/702, sect. II; ESC (XVIII), suppl.7, annex I B, art. 20.	20
GA (IX)	3rd com., 569th mtg.		20

ARTICLE 21

Right of Association

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of this right by members of the armed forces or of the police.

3. Nothing in this article shall authorise States Parties to the International Labour Convention of 1948 on Freedom of Association and Protection of the Right to Organise, to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

144. It was agreed that the right of association should be included in the draft covenant on civil and political rights. Although it was recognised that this right and the right of peaceful assembly were closely related, a proposal to deal with both of them in a single article was rejected. The majority opinion was that there were substantial differences justifying separate treatment.63/

Formulation of the right64/

145. It was generally agreed that the right of association included the right to form as well as the right to join associations. A proposal to add a sentence, "No one may be compelled to join an association", was not accepted. It was

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63/ E/CN.4/SR.121, 325; E/CN.4/L.126; ESC (XIII), suppl. 9, annex III, art. 16.

64/ E/CN.4/AC.1/SR.26; E/CN.4/SR.171, 172, 325, 326; E/CN.4/164 and Add. 1, E/CN.4/263, 353/Add.1, 8; E/CN.4/L.126, 146, 202, 203; E/C.2/410.

recognised that this sentence, taken from article 20 of the Universal Declaration, stressed an important aspect of freedom of association, but the opinion was expressed that its application might not always be in the interest of trade unions.

146. There was some debate on whether the right to form and to join trade unions should be specifically mentioned in the article. It was recalled that trade union rights were dealt with in Article 8 of the draft covenant on economic, social and cultural rights; should trade union rights also be mentioned in the draft covenant on civil and political rights, the right to form and to join trade unions would be subject to two different sets of limitations, i.e., the general limitations clause in Article 4 of the draft covenant on economic, social and cultural rights and the limitations clause contained in paragraph 2 of this article.

On the other hand, it was emphasised that failure to mention trade union rights in the draft covenant on civil and political rights could lead to an erroneous interpretation that these rights were not civil rights as well as economic or social rights. It was decided that the right to form and to join trade unions should be mentioned in the article.

147. With regard to the expression, "for the protection of his interests", one view was that such a clause, couched in general terms, was better than the formula used in Article 8 of the draft covenant on economic, social and cultural rights: "for the protection of his economic and social interests". It was observed that trade union organisations must often struggle for the protection of the civil rights as well as the economic and social interests of their members.

148. As was the case during the debates concerning the right of peaceful assembly, a proposal that the right of association, including trade union rights, should be protected only against "governmental interference" was rejected.

149. There was some discussion on the question whether the right of association should be "recognised", or whether the article should specify that "everyone shall have the right to freedom of association". The latter formulation was accepted. Attention was drawn, in this connection, to a discrepancy between the opening sentences of Articles 20 and 21.

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Limitations clause 65/

150. The general limitations on the right of association were the same as those on the right of peaceful assembly, excepting that, while the words "imposed in conformity with the law" had been included in Article 20, the words "prescribed by law" were used in Article 21. 66/

151. A proposal was made that nothing in the article should prevent the imposition of lawful restrictions on the exercise of the right of association by members of the armed forces, of the police, or of the administration of the State. Some argued that there was no ground for further restrictions to the prejudice of such persons, except perhaps with respect to the right to strike. At any rate, general limitations in the interest of "national security" and "public order" seemed to afford sufficient safeguards to States. On the other hand, it was observed that the necessity of such a provision was recognised in the laws of many States. The proposal was not intended to deny the enjoyment and exercise of the right of association to certain persons, but merely to limit their choice of associations and particularly the extent to which they might engage in trade union activities. This additional limitations clause was adopted with respect to members of the armed forces or of the police, but not with respect to other members of the administration of the State.

International Labour Convention on Freedom of Association and Protection of the Right to Organise. 67/

152. It was proposed that "Nothing in this article shall authorise States Parties to the International Labour Convention of 1948 on Freedom of Association and Protection of the Right to Organise, to take legislative measures which would prejudice,

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65/ E/CN.4/AC.1/SR.31; E/CN.4/SR.39, 121, 171, 172, 325, 326; E/CN.4/170, 227, 353/Add.2, 3, 8, 10; E/CN.4/L.126, 146, 202.

66/ With regard to the suggested prohibition of "societies, unions or other organisations of a fascist or anti-democratic nature", the meaning of the word "may" and of such terms as "public order", "national security", "reasonable", "necessary in a democratic society", reference is made to paragraphs 142-143 of the annotation under Article 20 above. General comments on the terms "public order", "national security", etc. and the desirability of a uniform limitations clause for Articles 18, 19, 20 and 21 are summarised in paragraphs 112-114 of the annotation under Article 18 above.

67/ E/CN.4/SR.121, 171; E/CN.4/230, 453.

or to apply the law in such a manner as to prejudice, the guarantees provided for in that convention". According to one opinion, there was no point in adopting such a proposal, since well established principles of international law would prevent any conflict arising between the two treaties. When ratifying the covenant, the States parties to the 1948 convention would still be bound by the obligations laid down in that convention. They would not be at liberty to apply Article 21 of the covenant in such a manner as to prejudice the guarantees provided for in the convention. The view was also expressed that cross-references to special conventions were not appropriate in a general legal instrument. In support of the proposal, it was emphasised that failure to make the suggested cross-reference could be interpreted as an indication that the United Nations overlooked or underestimated the progress achieved in safeguarding trade union rights in international law. The proposal was finally adopted as paragraph 3 of the article.

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DOCUMENTATION

Organs and Sessions	Records of Discussion	Other documents	Article Number
DC (I)	E/CN.4/AC.1/SR.3	E/CN.4/AC.1/10; E/CN.4/21, annex A, art.20, annex B, art.16, annex C, art.23, annex G, art.11	
CHR (II)	E/CN.4/AC.3/SR.6; E/CN.4/SR.39	E/CN.4/23 and Add.1, E/CN.4/31, 37, 45, 56, art.18, ESC (VI), suppl.I, annex B, art.19	11
DC (II)	E/CN.4/AC.1/SR.26, 31	E/CN.4/AC.1/19, E/CN.4/82/Add.2, 4, 8, 12; E/CN.4/95, annex B, art.19	19
CHR (III)		E/CN.4/89, 100	19
CHR (V)	E/CN.4/SR.121	E/CN.4/156, 164 and Add.1; E/CN.4/170 and Add.4, E/CN.4/ 222,227,230,263, 296/Corr.1, ESC (IX), suppl.10, annex I, art.19, annex II, art.19	19
CHR (VI)	E/CN.4/SR.171, 172	E/CN.4/353/Add.1, 2, 3, 8, 10; E/CN.4/453; E/CN.4/NGO.7; ESC (XI), suppl.5, annex I, art.16, annex II, art.16	19

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DOCUMENTATION (continued)

Organs and Sessions	Records of Discussion	Other documents	Article Number
ESC (XI)	E/AC.7/SR.147, 148		16
GA (V)	3rd com., 288th, 289th, 290th, 291st mtgs.	A/C.3/L.77 and Rev.1, A/C.3/L.96	16
CHR (VII)		E/CN.4/515/Add.11, 13, 15; E/CN.4/528, paras. 179-198, 208-213; E/CN.4/563 and Rev.1; E/CN.4/NGO/21; ESC (XIII), suppl.9, annex III, art.16	16
ESC (XIII)		E/2057/Add.2	16
CHR (VIII)	E/CN.4/SR.325, 326	E/CN.4/528/Add.1 paras.102, 116, 118; E/CN.4/L.126, 146, 202, 203; E/CN.4/NGO/39; ESC (XIV), suppl.4, paras.245-297, 251-257, and annex 1, art.18	16
CHR (IX)		E/CN.4/674, para.47, ESC (XVI), suppl.8, annex IB, art.21	18
ESC (XVI)	E/C.2/365		21
CHR (X)		E/CN.4/694/Add.6; E/CN.4/702, section IX, E/CN.4/702/Add.1, section XXV; ESC(XVIII), suppl.7, annex IB, art.21	21
ESC (XVIII)		E/C.2/410	21
GA (IX)	3rd com., 565th, 568th, 575th mtgs.		21