

COMMISSION ON HUMAN RIGHTS

DRAFTING COMMITTEE

INTERNATIONAL BILL OF RIGHTS

FIRST SESSION

SUMMARY RECORD OF THE SEVENTEENTH MEETING

Held at Lake Success, New York, on Tuesday, 24 June 1947,
at 2:30 p.m.

Present:

Chairman: Mrs. Eleanor Roosevelt (United States of America)

(Dr. P. C. Chang presided over the first part
of the meeting)

Vice-Chairman: Dr. P. C. Chang (China)

Rapporteur: Dr. Charles Malik (Lebanon)

Mr. Ralph Harry (Australia)

Mr. H. Santa Cruz (Chile)

Mr. P. Ordonneau (France)

Mr. Geoffrey Wilson (United Kingdom)

Prof. V. Koretsky (Union of Soviet Socialist
Republics)

Mr. James Hendrick (United States of America)

(In the absence of Mrs. Roosevelt)

Continuation of the Discussion of the Draft Report of the Drafting Committee
to the Commission on Human Rights (Document E/CN.4/AC.1/14)

In the absence of the CHAIRMAN, Dr. CHANG, the Vice-Chairman,
temporarily presided.

Paragraph 13

The RAPPORTEUR read the amended text as drafted by Mr. HARRY (Australia)
and himself. Attention was drawn to the omission from the text as read, of
the phrase "while recognizing that the decision as to the form of the Bill
was a matter for the Commission" in the first line of the last sentence.

/Mr. WILSON

Mr. WILSON (United Kingdom) suggested the omission of the words "possible" and "readily" in lines 4 and 5 of the last sentence, which was accepted.

The last sentence was thus amended to read: "The Drafting Committee, therefore, while recognizing that the decision as to the form of the Bill was a matter for the Commission, decided to attempt to prepare two documents, one a working paper outlining a Draft Convention on those matters which the Committee felt might lend themselves to formulation as binding obligations."

The first part of the paragraph was adopted as read by the RAPPORTEUR.

Paragraph 18

The RAPPORTEUR read the amended text as drafted by the Representative of the United States and himself. This was accepted without comment.

Paragraph 19

The RAPPORTEUR read the text of the paragraph.

Mr. WILSON (United Kingdom) stated that in his recollection, agreement had been reached on the substance of matters for inclusion in the Convention with the understanding that all members reserved the right to make further comments after consultation with legal experts. He proposed that Part II of the United Kingdom Draft should be included under Annex E in the form in which it had emerged from the Committee, that is, with the addition of the United States text on compulsory labour and the two additions he had made relating to torture and the right to a legal personality.

Prof. KORETSKY (Union of Soviet Socialist Republics) referred to the last part of paragraph 19 concerning the United Kingdom Draft forming the basis for a draft Convention, and objected that this wording did not accurately correspond to the decisions of the Drafting Committee. It was contemplated that the United Kingdom Draft might serve as a working paper for a preliminary Convention if and when it had been decided to draft a Convention, a decision which must be left to the Commission on Human Rights. Prof. KORETSKY felt that the wording of this paragraph should be brought in

/line with

line with paragraph 18.

Dr. MALIK (Lebanon) suggested that this difficulty might be met if the phrase were reworded to read: ".....suggests that the United Kingdom proposal may form a working paper for a preliminary Draft Convention"

Mr. HARRY (Australia) referred to a proposed amendment submitted earlier by him and suggested that the status of the United Kingdom Draft would be clarified if the first sentence of this proposal were inserted: "The Drafting Committee decided that owing to the short time available, it could not prepare a complete Draft Convention for submission to the Commission on Human Rights".

Dr. MALIK (Lebanon) agreed that this would explain why the Convention had not been elaborated in as much detail as Prof. Cassin's Draft Declaration.

Mr. HENDRICK (United States of America) stated that the addition would be acceptable to him.

Prof. KORETSKY (Union of Soviet Socialist Republics) said that all additions should be in accordance with the opinions recorded in the Summary Records so that the Commission on Human Rights would take note of the comments.

Mr. WILSON (United Kingdom) proposed that a phrase might be included stating that members reserved their position until they could take legal advice.

Mr. HARRY (Australia) agreed to the principle of this suggestion, but felt that it should be a separate sentence or paragraph; it would explain to the Commission on Human Rights without reference to the Summary Records why the Convention had not been considered in as much detail as the Convention.

Prof. KORETSKY (Union of Soviet Socialist Republics) felt this point should not be mentioned. He considered that the Australian text indicated that the Drafting Committee had accepted the United Kingdom Draft as appropriate for inclusion in a Convention.

/The CHAIRMAN

The CHAIRMAN was also of the opinion that it should be made clear that the decision to draft a Convention rested with the Commission on Human Rights.

Dr. MALIK (Lebanon) felt that this was implicit in the words "which the Commission on Human Rights may wish to elaborate".

The CHAIRMAN felt that the shortness of time and the need to consult legal experts should be included in this paragraph. He was supported by Mr. WILSON (United Kingdom).

Mr. HENDRICK (United States of America) suggested that the Australian proposal be adopted and the last sentence amended to read "which the Commission on Human Rights may wish to consider and elaborate".

Prof. KORETSKY (Union of Soviet Socialist Republics) was opposed to the inclusion of the Australian text. He felt that it drew attention to technical reasons for delay in consideration of the Convention, which was inaccurate. At the present time it was premature to consider a Convention in detail: until a decision had been taken on whether or not there was to be a Convention it was impossible to decide on the contents of such a document. The Drafting Committee had considered Part II of the United Kingdom Draft but it had been repeatedly stated that no decisions were taken.

The CHAIRMAN pointed out that the shortness of time was already implied in the text before the Committee.

Mr. WILSON (United Kingdom) suggested an alternative text for paragraph 19 (which he submitted in written form later in the session) and the Committee passed to the consideration of the next item.

CHAPTER III, Paragraph 20

The RAPPORTEUR read the text of this chapter and explained the contents of the first paragraph: the terms of reference of the Drafting Committee contained no mention of implementation, but a discussion on implementation had taken place, occasioned by the discussion of the United Kingdom Draft.

/Paragraph I

Paragraph I explained to the Commission on Human Rights the reason why implementation had been discussed in the Drafting Committee.

The CHAIRMAN proposed the deletion of the word "again" on Page 6, paragraph (f), line 3, which was accepted.

Prof. KORETSKY (Union of Soviet Socialist Republics) objected that this section did not make it clear that some of the proposals mentioned had evoked strong objections. He referred particularly to paragraph (b) 1 concerning the establishment of an international court of human rights: he pointed out that the Charter provides other means for action against nations which, through their actions, seem to endanger peace and security.

Prof. KORETSKY (Union of Soviet Socialist Republics) objected further to the wording "The view was expressed". He felt that it should also be stated that there were objections from other members. There had been general discussion on the Australian proposal but the report gave no account of the objections.

Mr. HARRY (Australia) said that it was extremely important to explain why the question of implementation had been taken up: there were three reasons, (1) although it had not been mentioned in the resolution of the Economic and Social Council, when the Commission on Human Rights had originally envisaged the possibility of establishing a Drafting Committee, they had instructed it to review methods of implementation. (2) In the general discussion, especially in discussing a Convention, it had been found necessary to consider possible methods of enforcement. (3) The United Kingdom Draft contained new suggestions for enforcement which had to be considered. Mr. HARRY suggested a new wording as follows:

(At this point Mrs. Roosevelt arrived and presided over the remainder of the meeting.)

"Although the resolution of the Economic and Social Council of 28 March did not mention the problem of implementation as such

/the Commission

the Commission at its First Session had invited the drafting group then envisaged to explore the means of enforcement of the rights to be included in the International Bill of Human Rights and in that connection to study the Australian proposal (E/CN.4/15) and any other documents which had been or might be submitted to it. In practice the Committee throughout its work and particularly when considering the problem of a draft convention, found it necessary to take into account possible methods of enforcement. The Committee also devoted one session specifically to the question of implementation, taking as a basis for discussion a paper by the Secretariat (Annex F), covering previous proposals and the relevant portions of the United Kingdom Draft".

In answer to a question put by Mr. SANTA CRUZ (Chile), Dr. MALIK (Lebanon) said that he would prefer not to comment on the substance of the problem, but his general reaction was in favour of the shorter, less elaborate form of the Draft Report. In answer to Prof. Koretsky (Union of Soviet Socialist Republics), Dr. MALIK pointed out that it was not possible to go into detail in this section and not elsewhere; he felt that Prof. Koretsky's point was covered in Annex F of the Report, which made reference to the different points of view put forward by members of the Committee.

Mr. SANTA CRUZ (Chile) said that he found the section satisfactory after the statement by the RAPPORTEUR. He felt that, regarding the Australian proposal to establish an international tribunal, the view expressed by Prof. Koretsky, M. Cassin and himself, that the establishment of such a court was premature, should be noted. This might be included in the Annex.

Mr. SANTA CRUZ (Chile) referred further to the suggestion of the Representative of China that an organ be created whose purpose would be to
/promote

promote and further respect for human rights. He pointed out that the Chilean draft provided for such an organ. This, he thought should be included in the Report.

Prof. KORETSKY (Union of Soviet Socialist Republics) repeated that in his opinion, it was not sufficient to state certain views without indicating the objections made; these need not be listed, but it should be said that the rest of the Committee was not in accordance with certain views. He objected further that the items listed under paragraph 20 were not in logical sequence. Reference to the creation of material conditions which would ensure respect for human rights had been omitted; Prof. KORETSKY referred to the relevant clause in the Constitution of the Union of Soviet Socialist Republics. He suggested that the section should be reworded, listing the proposals and stating that they had called forth criticism, and the whole section should then be referred to the Commission on Human Rights.

Mr. WILSON (United Kingdom) objected that it was not only the discussion of the United Kingdom Draft which had occasioned the discussion on implementation, and he asserted that the first paragraph was therefore incorrect.

Dr. MALIK (Lebanon) replied to Mr. SANTA CRUZ by saying that the Chinese proposal regarding education and the promotion of human rights was embodied in (b) 2. In answer to Prof. KORETSKY, he proposed the addition of the words "material or otherwise" in (b) 2, to read: "..... and to create conditions material or otherwise under which respect for and promotion of human rights would be secured". In answer to Mr. WILSON, Dr. MALIK felt that the discussion of the United Kingdom Draft alone had occasioned the discussion on implementation, as there was no mention of implementation in the terms of reference of the Drafting Committee.

Mr. HARRY (Australia) felt that the discussion of drafting both a

/Declaration

Declaration and a Convention had promoted a discussion on implementation as well as consideration of the United Kingdom Draft. He said that it was most important to convey to the Commission on Human Rights the different suggestions that had been made, set out in logical order. He recognized the need for a statement that no suggestion had received the endorsement of the Committee.

He proposed the following text:

"(a) that a declaration of human rights and fundamental freedoms in a resolution of the General Assembly would have considerable moral weight.

(b) that rights in international law would be uncertain unless embodied in a convention and ratified by member governments.

(c) that signatories of a convention, in addition to recognizing the rights specified therein as rights in international law should be required to ensure that their domestic law was in full conformity and that the rights would be enforceable in domestic courts.

(The committee found that in this connection the position of federal states, of states without written constitutions and of states where law has not been completely codified would require special duty.)

(d) That neither a declaration nor a convention would in itself be fully adequate to ensure observance by member nations and that the United Nations should take further measures.

(e) That knowledge that violations or inconsistent domestic laws would be given publicity and might be internationally censured would act as a deterrent and that measures should be taken to promote such publicity including:

- (i) Petitions by individuals and groups to the United Nations
- (ii) Requests for information by the Secretary-General
- (iii) Discussion in the General Assembly.

/(f) That

(f) That the possibility should be studied of creating, within the framework of the United Nations, an organization to receive, sift, examine and deal with communications alleging the violations of human rights.

(g) That the terms of reference of the Commission on Human Rights might be re-examined by the Economic and Social Council with a view to granting greater responsibility in this field to the Commission.

(h) That a Convention should recognize the right of the United Nations to expel a member who had persistently violated human rights and fundamental freedoms.

(i) That an International Court of Human Rights should be established for judicial determination at the international level of cases involving possible violation of human rights and fundamental freedoms."

Mr. HARRY (Australia) proposed that there should then be a statement that none of these views were endorsed by the Committee, but were submitted for the information of the Members of the Commission on Human Rights.

Mr. HARRY (Australia) proposed further that paragraph (b) 2, of the Rapporteur's report should be the last paragraph and might be reworded as follows:

"There was general agreement among members of the Committee that human rights and fundamental freedoms could not be secured through enforcement alone, whether nationally or internationally, but that the United Nations should seek to educate the peoples of the world with regard to human rights and to create social and other conditions under which respect for and the promotion of human rights could be secured."

Dr. MALIK (Lebanon) felt that such a detailed exposé of the subject would over-emphasize implementation and would seem to indicate that more

/time

time had been spent on discussion of the problem than was the case. He was in favour of retaining the shorter form of the Report before the Committee.

Mr. SANTA CRUZ (Chile) thought the Union of Soviet Socialist Republics and Chilean observations might serve a practical purpose. He proposed that paragraph (c) should replace paragraph (d) and (d) be redrafted. It should be stated that the drawing up of an international convention had been supported by various delegates, and it was also suggested that an organ might be established to sponsor the protection of human rights.

Mr. WILSON (United Kingdom) approved the inclusion in the Report of a formulation of views on implementation on the lines suggested by Mr. HARRY (Australia) and did not feel that the Report would be thrown off balance when the Annexes were attached.

The CHAIRMAN (Mrs. ROOSEVELT) felt it was important to keep the Report in balance, and supported Mr. HARRY's proposal, but felt it should be shorter.

Prof. KORETSKY (Union of Soviet Socialist Republics) was of the opinion that as implementation was not in the terms of reference of the Committee, the Report should only list the suggestions and say that there had been objections.

Dr. CHANG (China) supported Mr. HARRY's text, and felt the substance should be retained, but was in favour of a shorter form. He proposed that the RAPPOORTEUR and Mr. HARRY should redraft this section.

Mr. SANTA CRUZ (Chile) supported him.

Mr. ORDONNEAU (France) supported the Australian proposal and the suggestion that it be redrafted.

It was agreed that the RAPPOORTEUR and Mr. HARRY (Australia) should redraft Chapter III, paragraph 20.

Paragraph 19

Mr. WILSON (United Kingdom) read his proposed revision of paragraph 19:

"The Committee found that owing to the short time available

/and the fact

and the fact that most Representatives had not had an opportunity of obtaining expert advice, it could not prepare a detailed draft convention for submission to the Commission on Human Rights.

However, the Drafting Committee used Annex I, Part 2 of the United Kingdom proposal as the basis for a general examination of the possible substantive contents of a draft Convention. The result of this examination is embodied in Annex G of this Report which is submitted to the Commission on Human Rights as a working paper for a preliminary draft of an International Convention on Human Rights."

Prof. KORETSKY (Union of Soviet Socialist Republics) objected to the reference to lack of time and opportunity of consulting legal experts as being the reason why the Committee had not considered a Convention in detail: the real reason was that the decision to draft a Convention must be left to the Commission on Human Rights.

The CHAIRMAN pointed out that it was generally felt that the Commission on Human Rights would need legal advice before the Convention could be drafted in any final form.

Dr. MALIK (Lebanon) proposed that the result of the Committee's examination of the United Kingdom Draft might be embodied in the Annex, as a working paper for the Commission on Human Rights: he suggested that these modifications could be presented in the form of footnotes to Annex B, which would contain the original United Kingdom document.

Mr. WILSON (United Kingdom) felt that a new Annex to show the changes in text of the United Kingdom Draft was necessary. He proposed, in order to meet some of the objections, that the phrase concerning expert advice be deleted from his amended text of paragraph 19.

Mr. HARRY (Australia) withdrew his original proposal in favour of the United Kingdom amendment.

/Dr. CHANG

Dr. CHANG (China) accepted the United Kingdom amendment, but wished to retain the phrase "which the Commission may wish to consider and elaborate" at the end. Mr. WILSON agreed.

There was a general consensus of opinion that the modified text of the United Kingdom Draft should be issued in a separate Annex.

ANNEX E

PREAMBLES

Mr. WILSON (United Kingdom) pointed out that there had been no discussion of the different proposals for a Preamble, comparable to the discussion of the Declaration and Convention, and suggested that they be included in separate paper.

The CHAIRMAN agreed that the suggestions should not be presented as coming from the Committee.

Mr. HARRY (Australia) thought the Preamble should be included in a separate Annex for the sake of clarity, and pointed out that a note would have to be added to paragraph 16 of the Report. He suggested that an explanatory note should be added to the United Kingdom Preamble to the effect that it was intended as the Preamble to a Convention rather than a Declaration.

Mr. SANTA CRUZ (Chile) supported the proposal for a separate Annex. He explained that the Chilean suggestions were not intended as a complete Preamble but as articles to be considered in the Draft of a temporary working group.

Mr. WILSON (United Kingdom) said that parts of the United Kingdom Preamble could be considered as the Preamble to a Declaration.

It was agreed that a note be appended, stating that the United Kingdom Preamble was intended as the Preamble to the United Kingdom Convention, but that it contained suggestions for a portion of the Preamble to the Declaration.

/Consideration

Consideration of Annex F of the Draft Report of the Drafting Committee to
the Commission on Human Rights

Article 1

The RAPPORTEUR read the text of the Article. There were no comments.

Article 2 and Articles 3 and 4

The RAPPORTEUR read the text of the Articles.

It was agreed to retain them as read, but the CHAIRMAN requested the addition of a footnote stating that the United States had suggested alternative Articles which appear under Annex C.

Article 5

The RAPPORTEUR read the text of the Article with the proposed Alternative text.

It was agreed to retain the Alternative Text as Article 5.

Article 6

The RAPPORTEUR read the text of the Article with the footnote.

It was agreed to accept the text with the substitution of the words "set forth in this Declaration" for "hereunder declared".

Article 7

The RAPPORTEUR read the text of the Article together with the Alternative Texts and footnotes. The CHAIRMAN requested the omission of the United States alternative. Mr. SANTA CRUZ (Chile) stated that the Chilean proposal represented an addition and not an alternative. Mr. WILSON (United Kingdom) said that the footnote applied to Articles 8, 9, and 10, and represented the consensus of opinion of several members and should be so listed. The text was adopted with the proposed changes.

Article 8

The RAPPORTEUR read the text of the Article and the footnotes. Dr. CHANG (China) requested the withdrawal of the footnote containing a Chinese amendment as he intended to present his amendment later to the Commission on Human Rights.

/Article 9

Article 9

The RAPPORTEUR read the text of the Article and footnote.

The CHAIRMAN wished to propose the addition of the words "or punished for any offence or crime" after the word "convicted" in line 1 of paragraph 1.

It was agreed to include this but to add a note for the information of M. CASSIN (France) that this addition had been made.

Article 10

The RAPPORTEUR read the text of the Article. There were no comments.

Article 11

The RAPPORTEUR read the text of the Article and footnotes.

The CHAIRMAN said that M. CASSIN (France) had accepted that "slavery in all its forms" should be stated. It was her opinion also that the second sentence should be included in a footnote with a note stating that the Committee had considered that its substance might be included in a Convention. Dr. CHANG (China) and Mr. WILSON (United Kingdom) agreed with the CHAIRMAN and the suggestion was adopted.

Article 11 then read: "Slavery, which is inconsistent with the dignity of man, is prohibited in all its forms".

The meeting adjourned at 5:05 p.m.
