

COMMISSION ON HUMAN RIGHTS

FIRST SESSION

SUMMARY RECORD OF THE SIXTEENTH MEETING

Held at Lake Success, New York, on Wednesday, 5 February 1947, at 2:45 p.m.

Present:

Chairmen:	Mrs. Roosevelt	(United States)
Vice-Chairman:	Mr. Chang	(China)
Rapporteur:	Mr. Malik	(Lebanon)
	Col. Hodgson	(Australia)
	Mr. Ebeid	(Egypt)
	Mr. Cassin	(France)
	Mrs. Mehta	(India)
	Mr. Ghani	(Iran)
	Mr. Malik	(Lebanon)
	Mr. Topliakov	(USSR)
	Mr. Dukes	(United Kingdom)
	Mrs. Roosevelt	(United States)
Substitutes:	Mr. Lebeau	(Belgium)
	Mr. Guardia	(Panama)

Representatives of Specialized Agencies:

Mr. Hutchison	(ILO)
Mr. Derchambeau	(UNESCO)

Consultant:	Miss Sonder	(AF of L)
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Non-Governmental Organizations:

Secretary of the Commission:

Mr. Humphrey	(Director, Human Rights Division)
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Draft Resolution for an International Court of Human Rights, Submitted by
the Representative of Australia (document E/CN.4/15)

Col. HODGSON (Australia), commenting on the Australian draft resolution,
recalled that the objection had been raised that the Commission could not

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consider implementing an international bill of rights before deciding on its contents. He believed, however, that the Commission had an obligation under Article 56 to implement those rights and freedoms already laid down in the Charter. It was necessary to establish effective machinery to make those human rights and fundamental freedoms a reality.

Moreover, it was not premature to consider machinery for implementation of the bill, since the definitive rights to be enforced would be known by the time the bill was submitted to the General Assembly. The various principles enunciated therein would subsequently be incorporated in an international convention for ratification by States members. Therefore, the elaboration and implementation of the bill constituted parallel processes.

Col. Hodgson also recalled that it had been suggested that the human rights and fundamental freedoms embodied in the bill should first be implemented by governments through national legislation. He considered, however, that this function belonged to an international tribunal, to which there could be appeal over and beyond national courts.

In conclusion, the representative of Australia stated that the Commission should not confine itself to abstractions but was bound to consider immediately effective machinery for implementing human rights and fundamental freedoms, in accordance with its solemn obligations. He moved, therefore, that the Australian proposal for the establishment of an International Court of Human Rights should be referred to the drafting group for consideration, with a view to reporting on the implementation of human rights and fundamental freedoms, as contained in the proposed bill of human rights, to the next session of the Commission.

Mr. MALIK (Lebanon) supported the motion of the Australian representative.

Mr. TEPLIAKOV (USSR) considered that the drafting group had been established to make a preliminary draft of the bill of rights on the basis of

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the instructions of the Commission, and the body as such had no authority to consider the question of documents, or drafting of documents, for implementation of the bill, at the present stage of the work of the Commission.

Mr. DUKES (United Kingdom) moved as an amendment to the Australian motion that the question of referring the implementation of the bill to the drafting group should be deferred for consideration to the second session of the Commission.

Mr. LEBEAU (Belgium) recalled the resolution of the Economic and Social Council adopted on 21 June 1946, which stated that the aims of the United Nations could only be implemented if provisions were taken to ensure respect for the rights of man and requested the Commission on Human Rights to elaborate the means of ensuring such rights.

He considered that the Commission should not express its opinion on the substance of the Australian proposal, but was absolutely empowered to submit it to the drafting body for study and exploration, together with proposals introduced by other representatives.

Mr. CASSIN (France) supported the view taken by the Belgian representative, and stated that he would vote for the Australian motion. He suggested the addition of certain amendments allowing the commission to submit to the drafting body not only the Australian resolution but all other documents concerning the same subject, and stating that, since the Commission was not in a position to give precise instructions, the drafting group should not prepare a positive draft but only undertake a task of exploration.

Mrs. MEHTA (India) maintained that the question of implementation of an international bill of rights had been placed on the agenda, in accordance with the instructions of the Economic and Social Council, and the Commission was required to take appropriate action.

Mr. DUKES (United Kingdom) explained that his amendment was motivated by

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the fact that he was not in possession of sufficient instructions regarding to the question of implementation. The fact that only one such a proposal had been received was an indication of the unpreparedness of more than one country in that respect. The United Kingdom Government supported the principle of implementation and would later submit its own concrete proposals.

Mr. MALIK (Lebanon), pointed out that the drafting group could consider at the present time the various points of view expressed. There was nothing to prevent the United Kingdom representative from submitting to the drafting group his own draft regarding implementation at a later date. Therefore, Mr. Malik suggested that the United Kingdom amendment should be amended to allow the drafting group to explore and consider, in addition to the Australian document, any suggestions for implementation of the international bill of rights that might be submitted to it between now and the next session of the Commission by any Government Member of the United Nations.

Col. HODGSON (Australia) pointed out that the problem of implementation had been exhaustively examined during the Paris Conference, where it had finally been decided that the question should be dealt with by the Economic and Social Council. All Governments had received advance agenda and had known that the Australian proposal was being referred to the Commission. Moreover, the Commission would be in a better position to consider the Australian proposal during its second session, if in the meantime, the drafting group had examined its contents and implications.

Mr. TEPLIAKOV (USSR) remarked that the Commission had authorized the drafting body to deal only with an international bill of rights. He therefore moved an amendment that the Commission should reverse its previous decision about the drafting body, and should appoint a new drafting Sub-Committee with powers to draft a preliminary international bill

of rights and explore methods of implementation.

Mr. CHANG (China) agreed that the drafting group had been entrusted with the task of drafting a bill of rights. If suggestions concerning implementation were also to be referred to that group, that fact should be clearly stated. In order to meet the different points of view expressed, the Chinese representative suggested that the Lebanese amendment should also state that the drafting group should be allowed to explore all aspects of the problem, including implementation.

Mr. GUARDIA (Panama) suggested that the membership of the drafting group should be increased, if it were instructed to fulfill additional functions in the field of implementation.

Mr. DUKES (United Kingdom) ~~recognized the~~ value of the Australian proposal. The United Kingdom Government was most anxious that any undertaking in connection with an international bill of rights should be effectively observed. He would support the Lebanese amendment, providing that it was clearly understood that the drafting group would only undertake a task of exploration, considering, in addition to the Australian document any other proposal that might be submitted.

Mr. MALIK (Lebanon) replied that his amendment was only intended to authorize the drafting body to consider and explore suggestions regarding implementation, in accordance with the instructions of the Economic and Social Council.

DECISION: The USSR amendment, which was voted on in two parts, was defeated.

Mr. CASSIN (France), with a view to reconciling divergent views, proposed the following amendment:

"The Commission on Human Rights, recognizing that it is not at present in a position to give precise directives with regard to the means of ensuring the observance of the rights to be embodied in the international declaration, invites the drafting group, in the

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forthcoming months, with the assistance of the Secretariat, to explore this field and to study the Australian proposal and any other documents which may be submitted to it so that the Commission at its second session may be able to work out proposals on this subject in conformity with the duties assigned to it by the Economic and Social Council".

Mr. MALIK (Lebanon) and Mr. DUKE (United Kingdom) accepted the French amendment.

Mr. HODGSON (Australia) pointed out that according to his resolution the drafting group was to be asked not only to study the Australian proposal for the establishment of an International Court of Human Rights, but also to report upon it.

Mr. CASSIN (France) replied that, any study by a subsidiary body should result in a report, which might be considered as a working document. He did not believe that the report should present any definite conclusions.

Mr. HODGSON (Australia) felt that it would be desirable for the drafting group to proceed as far as they could. Conclusions and to make recommendations, would be preferable to an abstract study. He therefore supported his original resolution.

DECISION: The French amendment was adopted by seven votes to three, and the Australian resolution fell automatically.

Mr. TEPLIAKOV (USSR) said that, since the functions of the drafting group had been changed from a technical to a substantial one, he withdrew his support of the first part of the Commission's resolution of 4 February with respect to that group.

Discussion of the Report of the Sub-Committee on the Handling of Communications
(document E/CN.4/14/Rev.1)

At the CHAIRMAN'S request, Mr. MALIK (Lebanon), Rapporteur of the Sub-Committee read its report (document E/CN.4/14/Rev.1).

Mr. CASSIN (France), speaking on a point of order, asked that in the

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future French translations of documents might be made available to Members of the Commission, to enable them to take part in the work.

With reference to the Sub-Committee's report he enquired whether examination of communications implied any action, and whether, in case a reply to a communication was contemplated, either the sub-committee the creation of which was proposed in the report or the Secretariat would have power to verify the facts stated in the communication.

Mr. DUKES (United Kingdom), Chairman of the Sub-Committee, stated that the task of his group had been merely to determine how the communications should be treated. The Sub-Committee had concluded that it would be sufficient to make the documents available.

The CHAIRMAN pointed out that at the present time neither the Commission nor any of its sub-committees were constituted as investigating bodies.

Mr. CASSIN (France) questioned whether the fact that there was no organ capable of replying to communications might not have an adverse effect on the prestige of the United Nations, especially in view of the great number of communications received.

Mr. DUKES (United Kingdom) said that the French statement raised a matter of policy which was not within the competence of the Sub-Committee.

Mr. HODGSON (Australia) pointed out that the Sub-Committee, instead of determining what action should be taken with respect to the communications already received, as the Commission had asked it to do, had merely stated what action should be taken in the future.

Mr. MALIK (Lebanon) replied that the Sub-Committee had adhered to its terms of reference, which were contained in the report.

Mr. CHANG (China) said that the chief function of the Commission was to draft the International Bill of Human Rights. Therefore all communications on that subject should be brought to the Commission's notice immediately. As regards all other communications, the Commission should therefore refrain from raising false hopes.

Mr. Chang accordingly suggested that paragraph 5 of the report might be

adopted at once, and that the question of the proposed sub-committee might be deferred to the next session of the Commission.

The CHAIRMAN stressed that while the Commission was free to decide how to treat the communications, it could not prevent them from being sent.

Mr. LEBEAU (Belgium) supported the Australian representative's interpretation of the Sub-Committee's terms of reference.

He felt that paragraph 5, section (d) in its present form might give rise to the mistaken impression that the Commission was a tribunal whose function was to redress wrongs. He proposed that section (d) should be deleted; if it were retained, the word "submitted" should be replaced by "transmitted" or "brought to the attention of".

Mr. DUKES (United Kingdom) once more called attention to the Sub-Committee's limited terms of reference. As regards paragraph 5, section (d) the Sub-Committee's unanimous opinion was that some acknowledgement, however non-committal, was due to all those who had taken the trouble to write to the Commission.

Mr. TEPLIAKOV (USSR) proposed the insertion in paragraph 3 of the report, after the words "examining the communications" of the words "received from the specialized agencies which have been brought into relation with the United Nations and from non-governmental organizations in Category A".

Mr. MALIK (Lebanon), speaking on a point of order, said that the USSR representative could not amend the Sub-Committee's report, which represented the opinions of the Sub-Committee. After the report had been accepted by the Commission, the USSR representative would be free to propose the creation of an organ of reception with the terms of reference which he had stated.

Mr. DUKES (United Kingdom) said that he did not object to the USSR suggestion. However, if the Commission found the report in its present form unsatisfactory, it would be preferable to return the report to the Sub-Committee, which would then amend it in accordance with the Commission's views.

/At the request

At the request of Mr. HUTCHISON (ILO), Mr. TETLIKOV (USSR) explained the purpose of his amendment. Under the Charter, the Economic and Social Council and its organs were authorized to accept and consider communications from specialized agencies and non-governmental organizations. The present Commission would be concerned with communications dealing with human rights.

Mr. HUTCHISON (ILO) thought that the communications in question were chiefly those from individuals. The agreements concluded by the United Nations with the specialized agencies contained specific provisions for communications to the organs of the United Nations from the specialized agencies.

The CHAIRMAN remarked that numerous letters were being received from private individuals, and it was desirable that receipt of those letters should be acknowledged in some manner.

Mr. CHANG (China) said that the functions of the Commission might be misconstrued by the general public unless the position were clarified.

He proposed that paragraph 5 should be adopted at once, section (d) being amended in the manner suggested by the Belgian representative and the words "before each meeting of the Sub-Committee" in section (a) being deleted. The rest of the report should be referred back to the Sub-Committee in accordance with the suggestion of the United Kingdom representative.

Mr. HODGSON (Australia) supported the Chinese proposal. He suggested that the words "by all organs of the United Nations" should be inserted after the words "communications received" in paragraph 5, section (a).

Mr. MALIK (Lebanon) pointed out that it would be difficult for the Sub-Committee to re-draft its report in accordance with the views of the Commission, since only two Members had raised strong objections to the proposed sub-committee to receive communications. The creation of that body was the Sub-Committee's main recommendation.

In answer to a question by Mr. HUTCHISON (ILO), the CHAIRMAN said that in her opinion formal communications from Governments, specialized agencies and

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non-governmental organizations did not fall in the category of the communications to be examined by the proposed sub-committee. The Secretariat should exercise discretionary powers to ensure that the communications of the first type reached the proper organ.

Mr. CASSIN (France) agreed that the report should be returned to the Sub-Committee.

Mr. MALIK (Lebanon) said that he was in favour of creating a sub-committee which would merely receive communications but would not be committed to take any action upon them. A commission whose concern was consequently the entire field of human rights could hardly stop at taking note of communications received, if those communications dealt with the non-observance of human rights.

Mr. CHANG (China) remarked that communications dealing with human rights would continue to arrive whether or not there was a special sub-committee to receive them. Many of those communications might contain the accounts of serious wrongs.

Mr. LEBEAU (Belgium) said it would be dangerous to create a sub-committee which would do nothing more than receive and examine communications, since the existence of such a body would produce the impression that the Commission was seized of the communications and was prepared to take action upon them.

The CHAIRMAN said that there had been a clear expression of the Commission's views.

It was agreed to return the report to the Sub-Committee, and to request it for another report.

The meeting rose at 5:05 p.m.