

UNITED NATIONS
ECONOMIC
AND
SOCIAL COUNCIL



Distr.
GENERAL

E/CN.4/SR.448
19 April 1954

ORIGINAL: ENGLISH

COMMISSION ON HUMAN RIGHTS

Tenth Session

SUMMARY RECORD OF THE FOUR HUNDRED AND FORTY-EIGHTH MEETING

Held at Headquarters, New York,
on Thursday, 25 March 1954, at 11 a.m.

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PRESENT:

<u>Chairman:</u>	Mr. AZMI	(Egypt)
<u>Rapporteur:</u>	Mr. INGLES	Philippines
<u>Members:</u>	Mr. WHITLAM	Australia
	Mr. NISOT	Belgium
	Mr. ORTEGA	Chile
	Mr. CHENG PAONAN	China
	Mr. GHORBAL	Egypt
	Mr. JUVIGNY	France
	Mr. CARAYANNIS	Greece
	Mr. RAJAN	India
	Mr. RIZK	Lebanon
	Mr. TYABJI	Pakistan
	Mr. BIRECKI	Poland
	Mr. ASIROGLU	Turkey
	Mr. SAPOZHNIKOV	Ukrainian Soviet Socialist Republic
	Mr. MOROZOV	Union of Soviet Socialist Republics
	Mr. HOARE	United Kingdom of Great Britain and Northern Ireland
	Mrs. LORD	United States of America
	Mr. MONTERO BUSTAMANTE	Uruguay

Representatives of specialized agencies:

Mr. MANNING	International Labour Organisation
Mr. ARNALDO	United Nations Educational, Scientific and Cultural Organization

Representatives of non-governmental organizations:

Category B:

Mr. NOLDE	Commission of Churches on International Affairs
Mrs. REGISTER	International Council of Women
Miss ARNOLD	World's Young Women's Christian Association
Mr. RONALDS	World Union for Progressive Judaism

Secretariat:

Mr. HUMPHREY	Director of the Division of Human Rights
Mr. SCHWELB'	Deputy Director of the Division of Human Rights
Mrs. BRUCE) Mr. DAS)	Secretaries of the Commission

ACCESS OF REPRESENTATIVES OF THE WORLD FEDERATION OF TRADE UNIONS TO UNITED
NATIONS HEADQUARTERS

The CHAIRMAN announced that the Secretary-General had informed him that the question of visas for representatives of the WFTU was being considered by high-level persons in the United States Government, in accordance with the terms of the Headquarters Agreement. Those persons had already held one meeting and would meet again on Friday, 26 March. Their decision would be transmitted to the Secretary-General, who would communicate it to the Commission at once.

Mr. BIRECKI (Poland) and Mr. MOROZOV (Union of Soviet Socialist Republics) thanked the Chairman for his information and expressed the hope that the question would be settled in accordance with the Headquarters Agreement and in time to enable the representatives concerned to attend at least the concluding part of the session.

DRAFT INTERNATIONAL COVENANTS ON HUMAN RIGHTS AND MEASURES OF IMPLEMENTATION (E/CN.4/696): CLAUSES RELATING TO THE ADMISSIBILITY AND NON-ADMISSIBILITY OF RESERVATIONS (E/CN.4/677; E/CN.4/L.345 and Add.1, 348 to 355) (continued)

Mr. NISOT (Belgium) withdrew his amendment (E/CN.4/L.350) to the United Kingdom draft article (E/CN.4/L.345).

Mr. MONTERO BUSTAMANTE (Uruguay) introduced a draft article on reservations (E/CN.4/L.354) and a draft resolution (E/CN.4/L.355) which his delegation had prepared jointly with the Chilean delegation. Since the purpose of the draft resolution was to transmit the pertinent documents to the General Assembly, the sponsors had prepared a draft article to the effect that no States parties to the covenant might make reservations to it, in order that that very definite point of view should be laid before the Assembly together with the other documents.

Mr. RAJAN (India) expressed his delegation's regret that the Commission was again avoiding a decision and was proposing to transmit the records of its frustration to a higher body. It had already decided to take no action on the article on the right of property and on the right of petition; the consideration of the federal State article had been postponed; in fact, the only concrete provisions that had been adopted were the articles on the system of periodic reports. The situation was, to a certain extent, comprehensible. At previous sessions, the Commission had discussed substantive articles and had tried to translate them as clearly as possible into legal commitments; now it was faced with the difficult problem of the extent to which governments would be able to give effect to those provisions. The question of the practical difficulties encountered by governments was perhaps not one which the Commission was in a position to decide.

Nevertheless, although a higher body might more appropriately deal with those questions, the Commission should not refer its difficulties to that body passively and without any evidence of its close scrutiny of the problems involved. The Commission should not be regarded as a mere post office but should be able to give definite opinions and advice on the alternatives with which the higher body would be confronted and to provide an evaluation of the debates that had taken place.

Thus, the Council and the Assembly should be informed of the Commission's general views. Ideally, no reservations should be permitted to any part of the covenants, because they dealt with fundamental human rights and any derogation from them would weaken the effect of the covenants and their objects and purposes. Nevertheless, certain practical difficulties of implementation existed and reservations must be admitted, but only on the grounds of practical compromise. Reservations must therefore constitute the minimum practicable in the existing circumstances. It was difficult for the Commission to estimate that minimum accurately, but it could submit the four alternatives that had been raised.

The first position was that taken by the Uruguyan and Chilean delegation, to the effect that the principle of the non-admissibility of reservations must not

be departed from even for practical reasons. The second view was that of the Philippines and the other sponsors of document E/CN.4/L.351, who considered that only reservations which were compatible with the objects and purposes of the covenants should be admissible. Thirdly, there was the United Kingdom view that reservations should be permitted to part III of the covenant only; that position was based on practical difficulties and not on principle. Finally, there was the USSR point of view, based on the principle of the sovereign rights of States, that reservations should be admissible to all parts of the covenants, without any restrictions.

His delegation did not intend to submit a formal proposal on those lines but it considered that it was not in keeping with the dignity of the Commission to continue merely to transmit its records to the Council and the Assembly. The Commission should adopt a more creative approach, even if it could not reach agreement on concrete and formal provisions.

Mr. MOROZOV (Union of Soviet Socialist Republics) said that he opposed the joint Chilean and Uruguayan draft article for the reasons he had given in his general statement on reservations. He would be prepared to vote on all the proposals if the Commission thought that that would achieve anything constructive, but he would have no objection to the adoption of the joint Chilean and Uruguayan draft resolution. The Indian representative's suggestion was unacceptable, because there would be almost insuperable difficulties in producing a compromise text composed of the parts of the various conflicting proposals that might be regarded as areas of agreement. Such a document, even if it could be drafted, would not reflect the conflicting views on the principles involved, and, since he would continue to adhere to the principles long held by his delegation on the subject of reservations, he would have to vote against it.

The CHAIRMAN said that he shared the Indian representative's misgivings and had been regretting the Commission's inability to achieve anything tangible ever since it had shelved the article on the right of property. The Commission was not wholly to blame, since the General Assembly, despite the strong representations made to it by the Egyptian delegation, had failed to give specific instructions on such important matters as the federal State and reservations clauses and the article on the right of petition. In the Assembly political considerations had prevailed; but the Commission was a functional organ, whose members sat primarily as experts and should accordingly regard the political aspects as secondary considerations. Simply to hand the matter back to the more political body would be regrettable.

Mrs. LORD (United States of America) felt that the Commission need not take too pessimistic a view of its achievements if it were to adopt the Chilean-Uruguayan draft resolution. The Commission had held a most useful and constructive debate on the highly complex question of the admissibility of reservations. That question had so many legal and political implications that it was only proper that it should be discussed by all Member States, in the light of the considerations advanced by the Commission. It would be far better to adopt the Chilean-Uruguayan draft resolution than to vote down all the proposals dealing with reservations or to adopt one by a very small majority. She therefore supported the draft resolution.

Mr. TYABJI (Pakistan) felt that after its exhaustive debate, the Commission should be in a position to make up its mind on the various proposals before it. Failure to do so might be interpreted as shirking or even abdicating its responsibilities, especially as the question of reservations had been referred to the Commission for a definite decision. There was nothing to prevent the Economic and Social Council or the General Assembly from resuscitating any proposal considered by the Commission, but the latter would have carried out its duty by giving unambiguous advice to those bodies.

If the Commission should, however, ultimately decide on the course suggested in the Chilean-Uruguayan draft resolution, it should at least append to the various proposals a clear statement of its general opinion, as proposed by the Indian representative.

Mr. NISOT (Belgium) pointed out that the Commission could not ascertain what its general opinion was without actually voting on the proposals before it, a course excluded by the draft resolution. The Pakistani representative's suggestion was therefore not feasible.

Mr. ORTEGA (Chile) said that it was obvious that the views were so divided that the Commission was unlikely to agree on any one of the proposals before it. If, however, it were to vote on the principles involved, rather than on the texts submitted, it might perhaps arrive at agreement. It would have to vote first on the admissibility of reservations to the draft covenants; the two extreme views on that question were represented by the USSR amendment (E/CN.4/L.349), which would permit all reservations, and the Chilean-Uruguayan proposal (E/CN.4/L.354), which would permit none. The next step - if reservations were to be permitted - would be to determine their scope. According to the USSR amendment, reservations could be made to all the provisions of the covenant, while according to the United Kingdom proposal (E/CN.4/L.345) they could be made to part III only. Lastly, the Commission would have to decide how the validity of the reservations was to be established: different procedures were suggested in the United Kingdom proposal and in the four-Power text (E/CN.4/L.351). He was well aware of the procedural difficulties involved in such an approach and, unless the Commission was prepared to face them, he felt that the best way out of the present impasse was that suggested in the Chilean-Uruguayan draft resolution.

Mr. JUVIGNY (France) recalled that the General Assembly had referred the question of the admissibility of reservations to the Commission not for any political reasons but because the Third Committee, not being a committee consisting mainly of lawyers, had not felt itself equal to the task of exploring that very complicated subject. As the United States representative had pointed out, the Commission had already performed a service by analysing the various issues involved for the benefit of the Third Committee.

If the Commission should adopt the Chilean-Uruguayan draft resolution, the Indian representative's suggestion could be given effect either through the adoption of a resolution containing the Commission's general views or through the recording of the debate in the Rapporteur's report. As a resolution of that nature would no doubt give rise to another prolonged debate, the second course would seem preferable.

He suggested that the Rapporteur might be well advised to follow the precedent established in the portions of the report of the ninth session dealing with the human rights committee and to concentrate as much on an analysis of the issues involved as on the views expressed. Such an approach would meet the point raised by the Indian representative. Some mention should also be made of the reason why the Commission had confined itself to discussing reservations to one covenant only and of the fact that the discussion in no way prejudged the situation with regard to the other covenant.

Mr. RAJAN (India) agreed with the French representative that giving a reflection of the Commission's views was a matter for the Rapporteur, since the Commission would have difficulty in agreeing on a suitable resolution.

He had sought to give the Rapporteur some guidance in the difficult task ahead, but since the USSR representative, and possibly other representatives, were not prepared to subscribe to the statement he had made, he wished that statement to stand as an expression of the views of the Indian delegation, and of any other delegations that might wish to associate themselves with it.

Mr. INGLES (Philippines), Rapporteur, pointed out that while the report would outline the main views expressed in the course of the debate, it would not indicate the position of particular delegations on each point at issue. Anyone seeking detailed information could always consult the summary records. Moreover, the report could not properly contain a statement of what any one delegation took to be the position of the Commission as a whole.

Speaking as the Philippine representative, he said that adopting the Chilean-Uruguayan draft resolution would certainly not mean that the Commission was abdicating its powers. The Commission had discussed the question before it exhaustively and all delegations had made their positions known. The Commission was not obliged to vote on the proposals before it; as it was not certain of being able to agree on any, it would be doing the right thing by referring them all to the Economic and Social Council and the General Assembly. He therefore supported the Chilean-Uruguayan draft resolution. He asked whether its authors would be prepared to insert the words "and the effect to be attributed to them" after the words "Measures of Implementation" in the first paragraph, thus restoring the complete wording used in General Assembly resolution 598 (VI).

Mr. MONTERO BUSTAMANTE (Uruguay) and Mr. ORTEGA (Chile) accepted that amendment.

Mr. CHENG PAONAN (China) thought that, if it was proposed to include the Belgian draft article on reservations to article 72 (E/CN.4/L.348) among the documents to be transmitted to the General Assembly in pursuance of the Chilean and Uruguayan draft resolution, the Belgian representative should consider seriously whether his text constituted a reservation in the real sense of the word and whether the proper place for such a proposal would not be in a discussion of territorial application.

Mr. NISOT (Belgium) pointed out that his draft article on reservations had not been ruled out of order when it had been submitted and that it had been discussed in the Commission. Hence, his text was not subject to discrimination. If the Belgian draft was excluded from the documents to be transmitted,

the same should apply to the USSR amendment (E/CN.4/L.349) which also covered article 72.

The CHAIRMAN observed that he had thought that the Belgian draft article on reservations to article 72 was out of order at the time it had been submitted, but had refrained from giving a ruling. In the first place, it was in effect a proposal closely affecting the substance of the territorial article which the General Assembly itself had drafted for mandatory inclusion in the covenant; the Commission was not competent to amend it in any way. Secondly, it dealt merely with one reservation relating to one specific article, whereas the Commission had been asked to make recommendations on the question of the admissibility or non-admissibility of reservations in general. The Belgian reservations could be made at a later stage if the General Assembly adopted the Soviet Union amendment to the United Kingdom proposal, since under it reservations would be admitted to all articles. The Belgian draft article was not pertinent. He accordingly ruled that document E/CN.4/L.348 should not be included amongst those transmitted to the General Assembly.

Mr. NISOT (Belgium) objected that there was no reason to declare that the Belgian reservation to a specific article was unacceptable simply because it was to a specific article; the United Kingdom amendment (E/CN.4/L.345) also concerned specific articles. He maintained that it was in order and should be transmitted to the General Assembly. The Commission should vote on the matter.

Mr. MCROZOV (Union of Soviet Socialist Republics) wholeheartedly supported the Chairman's ruling. He himself would go even further and would ask whether the Belgian proposal even constituted a reservation to article 72. The title of document E/CN.4/L.348 was quite irrelevant; it was the substance of the proposal that counted. Clearly the content was in direct opposition to that of General Assembly resolution 422 (V) embodying the territorial application clause. The dispute was one of long standing; it had arisen especially with regard to article XII of the Genocide Convention, when the General Assembly had at its third session rejected the Soviet Union proposal for a colonial clause, and the

Soviet Union delegation had entered a reservation. At its fifth session, however, the Assembly had rejected the view which the Belgian representative was now trying to reintroduce. The Belgian representative was not really endeavouring to make a reservation to article 72 but was trying to involve the Commission in a reversal of the stand on principle taken by the General Assembly. The Commission was not dealing with reservations to specific articles but with the general question of the admissibility of reservations. If the Belgian delegation felt strongly that the principle stated in article 72 was wrong, it could always make a reservation on its own responsibility and at its own risk. Certainly, few members of the Commission on Human Rights would wish to see the inhabitants of Non-Self-Governing, Trust or colonial Territories deprived of the opportunities and privileges they should enjoy under the covenants on human rights. The Belgian proposal was out of order. The Commission could not transmit it to the General Assembly, but the Belgian delegation was of course at liberty to try to reintroduce it in the Economic and Social Council or in the Assembly. The Chairman was correct with regard to both substance and procedure.

In the course of a procedural discussion, Mr. HOARE (United Kingdom) pointed out that it would be difficult to vote on the Chilean-Uruguayan draft resolution without knowing precisely what the "pertinent documents" mentioned in it were.

Mr. TYABJI (Pakistan) felt that the Commission needed some time to consider the whole matter. He therefore moved the adjournment of the meeting until the morning of 26 March.

The motion was adopted by 16 votes to none, with 1 abstention.

The meeting rose at 1.30 p.m.