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COMMISSION ON HUMAN RIGHTS

Third Session

SUMMARY RECORD OF THE FORTY-EIGHTH MEETING

Held at Lake Success, New York,
Wednesday, 26 May 1948, at 2.45 p.m.

<u>Chairman:</u>	Mrs. Franklin D. ROOSEVELT	United States of America
<u>Vice-Chairman:</u>	Mr. R. CASSIN	France
<u>Rapporteur:</u>	Mr. AZKOUL	Lebanon
<u>Members:</u>	Mr. HOOD	Australia
	Mr. LEBEAU	Belgium
	Mr. A. STEPANENKO	Byelorussian Soviet Socialist Republic
	Mr. P.C. CHANG	China
	Mr. LOUTFI	Egypt
	Mrs. H. MEHTA	India
	Mr. M. de J. QUIJANO	Panama
	Mr. LOPEZ	Philippines
	Mr. KLEKOVKIN	Ukrainian Soviet Socialist Republic
	Mr. PAVLOV	Union of Soviet Socialist Republics
	Mr. WILSON	United Kingdom
	Mr. MORA	Uruguay
	Mr. VILFAN	Yugoslavia

Representatives of Specialized Agencies:

Mr. LEBAR	United Nations Educational, Scientific and Cultural Organization
Mr. HOWELL	World Health Organization

Consultants from Non-Governmental Organizations:

Miss Toni SENDER	American Federation of Labor (AFL)
Mr. van ISTENDAHL	International Federation of Christian Trade Unions (IFCTU)
Miss STUART	World Federation of United Nations Associations (WFUNA)
Mr. GOLDSMITH	World Organization Agudas Israel
Mr. BROTMAN	Co-ordination Committee of Jewish Organizations
Miss STRABLER	International Red Cross Committee
Miss BURGESS	International Federation of Business and Professional Women
Miss ROBB	Liaison Committee of International Women's Associations
Mr. BIENENFELD	World Jewish Congress (WJC)

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Observer representing an Inter-Governmental Organization:

Mr. STONE

Preparatory Commission of the International Refugee Organization (IRO)

Secretariat:

Mr. HUMPHREY

Director of the Human Rights Division

Mr. LAWSON

Secretary of the Commission

The CHAIRMAN welcomed the representatives of the Byelorussian Soviet Socialist Republic and of the Ukrainian Soviet Socialist Republic and again expressed her regret for the circumstances which had delayed them.

She then announced that General Romulo, the representative of the Philippines, had been obliged to return to his country owing to the death of his mother. Doubtless, the members of the Commission would wish to join her in expressing their sympathy to General Romulo in his bereavement.

The Commission asked Mr. Humphrey (Secretariat) to send a telegram of condolence to General Romulo on its behalf.

The CHAIRMAN was happy to welcome Mr. Lopez, who had been appointed by the Philippines Government to take the place of General Romulo on the Commission.

Mr. KLEKOVKIN (Ukrainian Soviet Socialist Republic) said that he had learned that day of the letter sent by the Secretary-General to the permanent delegate of the Ukrainian SSR to the United Nations informing him that the Commission on Human Rights had decided not to embark upon the decisive stage of its work before the arrival of himself and Mr. Stepanenko.

Mr. Klekovkin saw evidence in that decision of the desire of the members of the Commission to stand by their Byelorussian and Ukrainian colleagues when an attempt had been made to subject them to discrimination and he thanked them for their effective and justified gesture.

Mr. STEPANENKO (Byelorussian Soviet Socialist Republic) associated himself wholeheartedly with the remarks of the representative of the Ukrainian SSR, especially with regard to the conclusions to be drawn from the Secretary-General's statement.

/The CHAIRMAN

The CHAIRMAN recalled that at its previous meeting the Commission had decided to reserve the right of the representatives of China, the Ukrainian SSR and the Byelorussian SSR, all three of whom were absent, to vote on the method of work suggested by the French representative. It had been made clear at that time that the Commission would take a second vote if the three representatives' votes should change the result.

The Chairman stressed that the Economic and Social Council had instructed the Commission on Human Rights to submit to it, in final form, a draft International Declaration, a draft Covenant and provisions for their implementation, and asked the members of the Commission whether they thought they would be able to fulfil the task imposed upon them by the Council at the present session.

The Commission decided that it would fulfil that task.

The CHAIRMAN then asked for the views of members of the Commission on the basic objective at which the proposed Declaration should aim. Such an expression of views could only serve to facilitate the actual drafting.

Mr. KLEKOVKIN (Ukrainian Soviet Socialist Republic) said that it would be difficult for him to take part in the discussion of the report of the Drafting Committee, which contained the texts of the draft Declaration and the Draft Covenant, as the Russian translation of that document had not yet been distributed.

Moreover, he wished to repeat what he had often said in the course of the second session of the Commission on Human Rights: in his opinion, the actual drafting should be preceded by a general discussion which would define the Commission's aims and enable it to settle points of

secondary importance without delay, while important matters of principle would be given the place due to them.

CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE (document E/CN.4/95)

The CHAIRMAN observed that the preliminary texts, which had been drafted at the Commission's second session, had already been transmitted to the Governments concerned. At the sixth session, the Economic and Social Council had asked the Commission on Human Rights to revise those texts in the light of the comments submitted by Governments and, especially, to draft the provisions for their implementation in proper form. Therefore, the Commission should complete the drafting work which had been begun, keeping in mind the directives it had received from the Economic and Social Council

Mr. AZKOUL (Lebanon), Rapporteur, explained that the French translation of the Drafting Committee's report was not ready on time owing to certain technical difficulties.

On the other hand, the Rapporteur and the Secretariat had done their best to include certain suggestions made by the USSR representative in the report. Unfortunately, it had not been possible to include all of them as they had not all been drawn up in one or other of the working languages.

Mr. Azkoul then indicated a few minor changes which should be made in the document:

On page 9, articles 21 and 22, deletion of the words "Geneva text", as the words "without discrimination on grounds of race, sex, languages, religious belief or social origin" had been added to the original text;

On page 14, the word "Note" to be centered so as to indicate that the note concerned the whole of the draft Declaration submitted by the

/representative of

representative of China, and not article 33;

Finally, on page 21, deletion of the last two paragraphs as well as of the explanatory note, as they already appeared in article 9 of the draft Covenant.

Mr. Azkoul announced that the Russian translation of the Drafting Committee's report would be ready shortly.

Mr. STEPANENKO (Byelorussian Soviet Socialist Republic) pointed out that the Russian language delegations were constantly hampered in their work because of failure to observe the rules of procedure relating to the translation of documents into the five official languages.

The CHAIRMAN pointed out that the Commission had not yet reached the stage of detailed discussion of the Drafting Committee's report. She hoped that it would be possible to distribute the different texts before the general discussion on the basic aim of the Declaration on Human Rights was concluded.

Speaking as the representative of the United States of America, the Chairman stated that in the opinion of her delegation the Declaration should serve two purposes:

1. To establish basic standards which would guide the United Nations in the realization, within the meaning of the Charter, of international co-operation in promoting and encouraging respect for human rights and fundamental freedoms for all;

2. To serve as a guide and inspiration to individuals and groups throughout the world in their efforts to promote respect for human rights.

The Declaration should not be in any sense a legislative document. The General Assembly was not a legislative body. The manner in which the United Nations could and would wish to undertake the task of promoting

/and encouraging

and encouraging respect for human rights and fundamental freedoms remained in large measure to be determined. Further, it was clear that the Declaration, as envisaged, did not create legal remedies or procedures to ensure respect for the rights and freedoms it proposed to the world; that ideal would have to be achieved by further steps taken in accordance with international and domestic law. The Declaration would have moral, not mandatory, force.

It was quite otherwise with the Covenant, which bound the parties legally. The Covenant was therefore the document which should contain measures of implementation.

The United States representative stated in conclusion that she could not better express her delegation's view of the nature and purpose of the Declaration than by quoting the words of Abraham Lincoln on the United States Declaration of Independence, and especially the following:-

"They (the authors of the Declaration) did not mean to assert the obvious untruth that all men were then actually enjoying that equality, or yet that they were about to confer it immediately upon them. In fact, they had no power to confer such a boon. They meant simply to declare the right, so that the enforcement of it might follow as soon as circumstances should permit."

Mr. CASSIN (France) shared the view of the United States delegation that the Declaration should be drafted on broad lines.

It was quite clear that the Declaration should bear above all an explanatory character. Human rights had existed before the United Nations Charter and did not exist any less since. It would therefore be useful for the Commission to list those rights which it considered to be the most essential attributes of every human being without distinction.

/The Declaration

The Declaration should, further, fulfil the functions of a guide. Some of these rights had grown out of national constitutions and belonged to the traditions of peoples. Others had grown only within the last fifty years. Finally, some rights had not yet been recognized at the international level, and it was especially with regard to them that the Declaration should act as a guide.

In its examination of fundamental human rights, the Commission should: 1) state the right in question, i.e. provide a concise definition of it; 2) name those to whom that right was due; 3) assure its enforcement, and 4) go on to the limitations upon it.

A list of rights and the designation of those to whom they were due was properly a part of the Declaration. Definition of the scope of those rights, however, must be incorporated in the Covenant, a separate document which would have to fulfil a much more detailed and precise legal function.

Among traditional rights were those connected with the ideas of freedom, physical freedom, freedom of opinion and of association. A preliminary instrument might define their scope and specify the means by which they could be applied. It was not certain, however, that certain economic and social rights, which ought to be mentioned in the proposed International Covenant, could be included in that preliminary instrument. Such rights would require longer study, being more difficult to define by their very nature. Moreover, certain specialized agencies might have to be consulted with regard to them. Decisions of a legal nature, which were more easily taken on the national plane, might cause difficulties on the international plane. That was all the more true when the recognized possessor of a right was a collective body such as the United Nations.

There were two conflicting views about the legal force of the Declaration. Some saw the Declaration purely as a document interpreting

the Charter and therefore vested with the same mandatory force as the Charter itself. Others saw it as a purely formal document, giving expression to a hope of a rather limited moral influence, and of no legal value until its principles had been embodied in one or several covenants.

The French delegation did not share either of those too strict and simple views. The French Government believed that the Declaration, which would in a sense be an explanation of human rights in existence before the Charter, rights which it was incumbent upon the Members of the United Nations to protect in accordance with the Charter, should to a certain extent bear an assertive character. Even in the absence of any Covenant, therefore, the principal organs of the United Nations would, in the opinion of the French delegation, be entitled to take cognizance of the fact if any State violated human rights. Moreover, there was legal precedent to support that opinion, as appeared when the General Assembly decided that the Indian complaint against the Union of South Africa was within its competence.

The Declaration should not, however, be of a purely assertive character. It should be a guide and, by that function, introduce new conventions. In so far as it assumed the role of a guide, it would be required to make a distinction between those obligations which applied to the United Nations as a whole and those which applied to each particular nation.

The United Nations Organization was subject to the obligations imposed by the General Assembly's resolutions. In respect of the United Nations as a whole, therefore, the mandatory force of the proposed Declaration would derive from the resolution the General Assembly might adopt on it.

/In respect

In respect of individual States, the new concepts which the Declaration would contain, such as the right of nationality or the right of asylum, would have only the value of a recommendation like the resolutions of the General Assembly.

The French delegation, then, envisaged the Declaration as a document shorter than the Covenant, without the legal value of a convention, but which would have the function of keeping the fullest possible list of human rights in everybody's mind. That list would have to contain not only those rights presently recognized, but also those which the Commission thought should be recognized. The Declaration would specify those to whom such rights were due and would refrain from setting strict limits to the scope and application of those rights. It would be left to the Covenant more precisely to define the scope and the methods of application of human rights, both on the national and on the international plane.

By expressing the general opinion of the Members of the United Nations on the protection of human rights in the Declaration, the Commission would create a framework for the provisions of the Covenant designed to defend those rights and to ensure that future generations would enjoy them.

Mr. ALKOUL (Lebanon), Rapporteur, stated that it was necessary to consider the difference between the Declaration and the Covenant in order to give those two documents their final shape.

The Declaration would proclaim and list those rights which human reason at the present stage of development of society considered inseparable from the conception of the human person. The Covenant, on the other hand, was the product of the will of States, and its provisions would be determined less by reason than by practical considerations.

/An essential

An essential difference between the two documents became apparent when the obligations involved were considered. In that respect, Mr. Azkoul supported Mr. Cassin's analysis of the mandatory force of the Declaration.

The Declaration, which summarized the rights considered essential to ensure the dignity of the human person, would thus merely indicate the general principles by which those rights were determined. In the case of certain new rights, which had not yet become traditional, however, the Declaration should specify those to whom such rights were due, and the Commission would have to exercise care not to frame it in the form of a convention.

The Covenant, on the other hand, would contain only those principles expressed in the Declaration which the Commission considered the signatory States to be willing to apply, and would be binding upon those States.

Mr. WILSON (United Kingdom) agreed with the representatives of the United States, France and Lebanon.

The United Kingdom delegation was of the opinion that the draft Declaration and draft Covenant should be submitted to the General Assembly accompanied by a resolution proposing its adoption and summing up the opinions of its authors.

Mr. Wilson submitted the following resolution to the Commission:

"THE COMMISSION ON HUMAN RIGHTS

RECOMMENDS that the General Assembly adopt, in the form of a Declaration, a statement of Human Rights and Fundamental Freedoms which States should do their utmost to realize through teaching and education and measures for the progressive development of the social and economic well-being of mankind."

The CHAIRMAN stated that the United Kingdom draft resolution would be discussed as soon as it was distributed to the members of the Commission.

She then asked for the views of the Commission on the manner in which it would consider the Declaration.

If the Commission decided to leave the preamble until later, it could first go on to a general discussion of the articles and entrust a drafting sub-committee with the working out of the final text of those articles.

Mr. WILSON (United Kingdom) agreed that consideration of the preamble of the Declaration should be postponed. He considered that the Commission should begin by examining the articles in numerical order.

With regard to the proposal that the articles should be referred to a drafting sub-committee, he did not think that that was a very practical solution. It was difficult to agree on a precise text, even when there was agreement on the principles which the articles should contain.

Mr. PAVLOV (Union of Soviet Socialist Republics) pointed out that the general discussion on the relationship between the Declaration and the Covenant - which he had requested at the previous meeting and in which the Commission had refused to engage before considering the Declaration and the Covenant themselves - had actually been opened during the present meeting. That discussion had developed on the question of the form of those two documents. Mr. Pavlov considered that it was very difficult to separate the questions of substance from those of mere form. He therefore reserved the right, after receiving the Russian translation of the Drafting Committee's report, to explain the USSR delegation's point of view on questions of form as well as of substance which went beyond the framework of the discussion of specific articles.

He then recalled that at its previous meeting the Commission had decided to permit the representative of the Ukrainian SSR and of the

/Byelorussian SSR

Byelorussian SSR to record their votes on the Commission's method of work. He considered that those representatives should be invited to state their views on the question; the discussion which would follow might induce the Commission to modify the decision it had taken (see document E/CN.4/SR.47).

The CHAIRMAN said that there could be no question of the whole Commission considering the working procedure anew.

She invited the representatives of the Ukrainian SSR and of the Byelorussian SSR to express their views on the proposal made by the representative of France at the preceding meeting.

Mr. STEPANENKO (Byelorussian Soviet Socialist Republic) said that like the USSR representative he considered a general discussion of the Declaration and of the Covenant, as well as of the relationship between them, to be absolutely necessary. The Commission should then examine the Declaration article by article, discussing at the same time those which were contained in both the Declaration and the Covenant.

Mr. Stepanenko stressed that such a procedure would have the advantage of saving the Commission's time and of facilitating the determination of the relationship between the Declaration and the Covenant.

Mr. KLEKOVKIN (Ukrainian Soviet Socialist Republic) stated that his delegation's point of view had not changed since the Commission's second session. Now, as then, his delegation considered that the Commission should concentrate its efforts on the Declaration and decide questions of principle of tremendous importance for the progress of mankind, which had suffered too much from the effects of fascism and was thirsting for peace.

Like the representative of Lebanon, Mr. Klekovkin thought that the Declaration constituted the basis on which the principles to be included

/in the

in the Covenant could be developed. The Covenant should contain such of the rights included in the Declaration as, in the Commission's judgment, should be vested with legal force. The articles which would appear in both the Declaration and the Covenant should be considered simultaneously.

With regard to the implementation of the Declaration and of the Covenant, it was obvious that the Commission could only consider the question after establishing what should be implemented and after determining the binding force of each of the two documents.

As to the way in which the Commission should consider the Declaration, the representative of the Ukrainian SSR felt that it would be premature to decide that the preamble would be considered at the end or that the articles would be examined one by one in numerical order. Discussion of the preamble could lead to the solution of several questions which certain articles raised; moreover, it might prove useful to group some articles of substance under one heading.

Mr. Klekovkin said that he had made these few observations without having studied the documents prepared by the Drafting Committee. He could only express an opinion after having examined them. He drew the Commission's attention to the fact that it had arrived at the final drafting stage of the Declaration and of the Covenant and that therefore it should not proceed too hastily.

Mr. PAVLOV (Union of Soviet Socialist Republics) requested that representatives who had not been present at the meeting of 24 May should be informed about the proposal which he himself had made during that meeting.

At the invitation of the CHAIRMAN, Mr. Pavlov gave an outline of his proposal (see document E/CN.4/SR.47), according to which the Commission should at first have a general discussion; then discuss the articles contained in both the Declaration and the Covenant; then discuss separately,

/the articles

the articles contained in one or other of the two documents; and finally consider the question of implementation.

He pointed out that his proposal did not seriously differ from the French proposal.

At the CHAIRMAN's request Mr. HUMPHREY (Secretariat) explained that under the terms of rule 31 of the rules of procedure English and French were the working languages of the Economic and Social Council. Rule 38 of the rules of procedure provided that all resolutions, recommendations and other official decisions of the Council should be communicated in the official languages. Those provisions applied to all the bodies of the Council.

Consequently, the delegations were entitled to request the translation into the official languages of the report of the Drafting Committee, since it was an "official decision" of that body. With regard to working documents, such as draft resolutions submitted by the various delegations, the Secretariat could just distribute them in English and French, but it had assured the Russian-speaking delegations that it would do its utmost to let them have those documents in Russian.

Mr. MORA (Uruguay) would not insist on a Spanish translation of all the Commission's documents, but he reserved the right to ask for it in certain cases.

Mr. CHANG (China) said that his delegation also reserved the right to ask for a Chinese translation of any resolution, recommendation or official decision if it considered that it needed that translation for the discussion.

He then asked whether "implementation" in the French proposal applied to the Covenant as well as to the Declaration.

/The CHAIRMAN

The CHAIRMAN recalled that the Commission had made certain suggestions concerning implementation at its second session. These suggestions had been submitted to the Economic and Social Council, which, by its resolution 116 F (VI), had invited the Commission on Human Rights to submit final recommendations on the question so that the draft articles dealing with implementation could be submitted to the Member Governments as soon as possible. It was because of the urgency of that question that the French representative had proposed that the Commission should consider the question of implementation immediately after examining the Declaration and before considering the Covenant.

Mr. PAVLOV (Union of Soviet Socialist Republics) said that in his opinion the expression "Declaration on Human Rights" used in resolution 116 F (VI) unquestionably meant the Declaration and the Covenant. Therefore, the question of implementation should be considered at the very end.

He asked the French representative whether he insisted on the working procedure which he had proposed.

Mr. CASSIN (France) gave an affirmative reply. He recalled that the Commission was far behind in its work on implementation. He pointed out that under the terms of his proposal the Commission was not called upon to take a definite decision on implementation at the beginning. It should proceed with a general discussion which would enable a sub-committee to draft the articles dealing with that question.

Mr. Cassin added that if the Commission had been beginning its work, it would have been more logical to adopt the procedure suggested by the USSR representative; the Commission had in fact followed that order during its first two sessions. The Commission was now in the final stage of its work, however, and it should consider the question of implementation without delay.

/Mr. STEPANENKO

Mr. STEPANENKO (Byelorussian Soviet Socialist Republic) supported the procedure proposed by the USSR representative. In his opinion implementation could not be discussed before the Covenant. If the Commission adopted a different method of work, it might later find it impossible to follow it.

The CHAIRMAN invited the representatives of China, of the Byelorussian SSR and of the Ukrainian SSR to vote on the proposal made by the French representative of the meeting of 24 May 1948.

Two representatives voted against the French proposal. The third abstained.

The CHAIRMAN announced that the record of the vote on the French proposal taken at the meeting of 24 May 1948 would be changed to read:

The working procedure proposed by the French representative was adopted by nine votes to four, with one abstention.

She then asked the members of the Commission whether they wished to examine the Declaration article by article at the meeting to be held next afternoon.

A decision to that effect was adopted by ten votes, with four abstentions.

Mr. PAVLOV (Union of Soviet Socialist Republics) explained that he had abstained from voting because he was not certain that the general discussion would necessarily be concluded during the morning meeting.

The meeting rose at 5.00 p.m.