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## COMMISSION ON HUMAN RIGHTS

## Fifth Session

## SUMMARY RECORD OF THE EIGHTY-EIGHTH MEETING

Held at Lake Success, New York,  
on Tuesday, 17 May 1949, at 10.30 a.m.

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- (2) Statement by the representative of the Co-ordinating Board of Jewish Organizations
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|------------------|----------------------------|-------------------------------------|
| <u>Chairman:</u> | Mrs. FRANKLIN D. ROOSEVELT | United States of America            |
| <u>Members:</u>  | Mr. G. JOCKEL              | Australia                           |
|                  | Mr. L. STEYAERT            | Belgium                             |
|                  | Mr. O. SAGUES              | Chile                               |
|                  | Mr. P. CHANG               | China                               |
|                  | Mr. M. SORENSEN            | Denmark                             |
|                  | Mr. O. LOUTFI              | Egypt                               |
|                  | Mr. R. CASSIN              | France                              |
|                  | Mrs. H. MEHTA              | India                               |
|                  | Mr. M. GOUDARZI            | Iran                                |
|                  | Mr. C. MALIK               | Lebanon                             |
|                  | Mr. J. D. INGLES           | Philippines                         |
|                  | Mr. V. KOVALENKO           | Ukrainian Soviet Socialist Republic |
|                  | Mr. A. P. PAVLOV           | Union of Soviet Socialist Republics |
|                  | Miss M. BOWIE              | United Kingdom                      |
|                  | Mr. R. FONTAINE            | Uruguay                             |

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|---------------------|--|--|
| <u>Category A:</u>  | Miss T. SENDER   | American Federation of Labor                         |
| <u>Category B:</u>  | Mr. B. FERNSTEIN<br>Mr. A. G. BROTHMAN<br>Mr. J. B. FRIEDMAN | Co-ordinating Board of Jewish<br>Organizations       |
|                     | Miss M. LEVY   | World Jewish Congress                                |
|                     | Mr. I. LEVIN   | Agudan Israel World Organization                     |
|                     | Mr. M. MOSKOWITZ   | Consultative Council of<br>Jewish Organizations      |
|                     | Miss B. MILLARD  | Women's International<br>Democratic Federation       |
|                     | Mr. E. F. CRUICKSHANK  | Inter-American Council of<br>Commerce and Production |
| <u>Secretariat:</u> | Mr. HUMPHREY   | Representative of the<br>Secretary-General           |
|                     | Mr. LAWSON   | Secretary of the Commission                          |

TERMS OF REFERENCE OF THE SUB-COMMISSION ON THE PREVENTION OF  
DISCRIMINATION AND PROTECTION OF MINORITIES (discussion continued)

Proposal submitted by Egypt (E/CN.4/189)

Mr. CASSIN (France) proposed two amendments to the Egyptian proposal: first, the deletion of the words "members of" after the word "authorize", as the Sub-Commission as a whole rather than its individual members should be authorized to participate in the visits to the Trust Territories; and, secondly, the substitution of the words "these Territories" for the words "Non-Self-Governing Territories including colonies", at the end of the proposal. Under the Charter, periodical visits were arranged by the Trusteeship Council only to Trust Territories and not to Non-Self-Governing or colonial territories. France could not accept the text as it was, since it was contrary to the Charter.

Mr. LOUTFI (Egypt) accepted the two amendments proposed by the French representative.

Mr. PAVLOV (Union of Soviet Socialist Republics) recalled that the principle of participation in the missions of the Trusteeship Council by members of the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities had first been proposed by the USSR delegation. The text of that delegation's proposal, (E/CN.4/185) had, however, been defeated, and the proposal submitted by Egypt was a very much weakened version of the same idea. According to the Egyptian proposal, participation of the Sub-Commission depended

upon a decision of the Trusteeship Council. While the USSR delegation was not opposed to the Egyptian proposal, it considered that in so important a matter as measures for the extension of the full enjoyment of human rights and fundamental freedoms, the stronger USSR draft would have been preferable.

Referring to the amendment suggested by the French representative, Mr. Pavlov agreed to the deletion of the words "members of" since it was both logical and juridically correct to allow the Sub-Commission itself to decide the way in which it would participate in the visiting missions. The new wording, moreover, was in keeping with the original Soviet Union proposal.

He could not, however, agree to the second French amendment. According to the original Egyptian text, there was no question of participation by members of the Sub-Commission in visits to Non-Self-Governing Territories. Mr. Pavlov agreed that under the Charter, no such visits could be organized by the Trusteeship Council. The purpose of the original wording, however, was to make plain that the Non-Self-Governing Territories, including colonies, should benefit from the results of the visiting missions to the Trust Territories. The French representative had no objection, it seemed, to having the Sub-Commission participate in visits to the Trust Territories with a view to the preparation of measures to extend the full enjoyment of human rights and freedoms to those areas. Mr. Pavlov could not understand, therefore, why the French representative seemed to object to international assistance in the extension of such rights and freedoms to the colonial territories. Certainly it could not be said that those rights were fully enjoyed in the Non-Self-Governing and colonial Territories. The objection of the French representative might have been made for reasons of prestige of the metropolitan Powers.

In the Trusteeship Council it had often been said that conditions in the Non-Self-Governing and colonial Territories were the same as those in Trust Territories, in so far as human rights and fundamental freedoms were concerned. It was therefore more than ever evident that the colonial Powers could receive considerable benefit from the results of the visits to Trust Territories and that the extension of human rights and fundamental freedoms to the Non-Self-Governing Territories would thereby be furthered. Mr. Pavlov repeated that no attempt whatsoever was being made to infringe upon the competence of Governments, and there was no idea of sending visiting missions to Non-Self-Governing Territories.

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Since the representative of Egypt had accepted the amendment proposed by the representative of France, Mr. Pavlov himself wished to propose the reinstatement of the last part of the Egyptian proposal, namely, the words "of Non-Self-Governing Territories including colonies".

Miss BOWIE (United Kingdom) fully supported both the amendments proposed by France. She recalled that the Egyptian proposal had been submitted in order to find a procedurally correct meaning of achieving the purpose of sub-paragraph (c) of the USSR proposal. Under Article 87 of the Charter, the Trusteeship Council had authority to provide for periodical visits only to Trust Territories. Moreover, under Article 91 it was for the Trusteeship Council to decide when it should avail itself of the assistance of other organs of the United Nations. It was natural to assume that the results of the visiting missions to Trust Territories would contain much material that would be valuable to all countries but there was no need to include a specific reference to the Non-Self-Governing and colonial Territories in the text under discussion.

Mr. JOCKEL (Australia) was not convinced of the advisability of adopting the Egyptian proposal. Many organs of the United Nations -- the Commission on Human Rights, the Social Commission, the Narcotics Commission, as well as many others -- might have equally valid reasons for wishing to participate in the periodical visits to Trust Territories. Article 91 of the Charter had been carefully drafted with the purpose of leaving the initiative in such matters to the Trusteeship Council itself, as it was that body which was clearly responsible for the economic, social and other conditions in Trust Territories. If certain representatives felt that the Trusteeship Council was not taking adequate steps to ensure the enjoyment of human rights and fundamental freedoms in the Trust Territories and that assistance was needed from the Economic and Social Council or from the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities, that point could be raised in the Trusteeship Council.

Mr. CHANG (China) observed that on the basis of previous experience, there was no reason to think that the Economic and Social Council expected any of its subsidiary organs to do more than make

studies; moreover, the words "the preparation of measures" in the Egyptian proposal confirmed that the purpose of the participation of members of the Sub-Commission in the visits to Trust Territories was to collect data and not to attempt to make changes of an administrative nature. If, then, the intention of the Egyptian proposal was that a study should be made, the field should be as wide as possible.

Mr. Chang therefore suggested that the words "to the self-governing populations" should be added after the words "the full enjoyment of human rights and fundamental freedoms" in the original Egyptian proposal. Thus, the Sub-Commission might participate in visits to Trust Territories in order to obtain scientific data, on the basis of statistical sampling, for a study of the general question of how the full enjoyment of human rights and fundamental freedoms could be extended to non-self-governing peoples everywhere.

Speaking of the expression "periodical visits" used in the Egyptian proposal, Mr. Chang proposed the deletion of the word "periodical". The Sub-Commission should not be expected to take part in any visits other than those which it considered useful for the furtherance of the study it was making.

Mr. LOUFI (Egypt) asked that the Chinese amendments should be voted on separately.

Mrs. MEHTA (India) fully appreciated the USSR representative's desire to have the conditions in the colonial territories studied by the Sub-Commission, since it was in those territories that human rights were often not observed. There was, however, no need for authorization from the Trusteeship Council for such a study. Consequently, the Egyptian proposal should refer only to the Trust Territories.

She agreed with the Chinese representative that the word "periodical" should be deleted. That word implied that the Sub-Commission was a permanent body, which it was not.

Mr. INGLES (Philippines) recognized that the competence of the Trusteeship Council was limited to Trust Territories, but the competence of the Sub-Commission was not limited in the same way. That body had the task of studying measures for the extension of the full enjoyment of human rights and fundamental freedoms to all territories, whether self-governing or not. Studies made in visits to the Trust Territories

would undoubtedly prove invaluable in connexion with the extension of human rights to Non-Self-Governing Territories.

Mr. Ingles therefore supported the USSR amendment and, as an alternative, would support the Chinese amendment.

Mr. KOVALENKO (Ukrainian Soviet Socialist Republic) could not agree with the Chinese representative that the chief purpose of the work of the Sub-Commission was to carry out scientific studies. Such studies could have no meaning unless they were followed by the adoption of specific measures to put an end to discrimination.

He supported the USSR proposal to reinstate the last part of the Egyptian proposal and pointed out that the reference made to the Non-Self-Governing Territories and colonies was independent of the first part of the proposal, which mentioned the periodical visits to the Trust Territories. There was no intention of infringing the rights of the Trusteeship Council or violating the provisions of the Charter. On the other hand, any attempt to extend to the Non-Self-Governing Territories, including the colonies, the full enjoyment of human rights and fundamental freedoms would be an attempt to implement some of the most fundamental provisions of the Charter.

Mr. CASSIN (France) said that his delegation fully recognized the competence of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities in the matter of further human rights and fundamental freedoms in all countries of the world, not merely in Trust or Non-Self-Governing Territories. The results of the Sub-Commission's participation in visits to Trust Territories would certainly be very generally useful. It seemed advisable, however, to limit the reference in the proposal under discussion to Trust Territories as the main object of the proposal was that members of the Sub-Commission should participate in the visits to those Territories.

The CHAIRMAN put to the vote the USSR amendment, to the effect that the Egyptian proposal should end with the words "populations of Non-Self-Governing territories, including colonies".

The USSR proposal was rejected by 4 votes to 5, with 4 abstentions.

The CHAIRMAN put to the vote the Chinese amendment to delete the word "periodical".

The amendment was adopted by 6 votes to 3, with 4 abstentions.

/The CHAIRMAN



The CHAIRMAN put to the vote the Chinese amendment to the effect that the Egyptian proposal should end with the words "to the non-self-governing populations".

The amendment was adopted by 9 votes to 3, with 1 abstention.

The CHAIRMAN then put to the vote the Egyptian proposal, with the French amendments which had been accepted by the Egyptian representative and with the Chinese amendments just adopted.

The Egyptian proposal as amended was adopted by 9 votes to 2, with 1 abstention.

STATEMENT BY THE REPRESENTATIVE OF THE CO-ORDINATING BOARD OF JEWISH ORGANIZATIONS.

The CHAIRMAN invited the representatives of the Co-ordinating Board of Jewish Organizations to speak.

Mr. BERNSTEIN (Co-ordinating Board of Jewish Organizations) appreciated the opportunity to present to the Commission the Board's views on some of the problems with which the Commission was faced, and thanked the Commission in the name of all the organizations participating in the work of the Board.

The Commission was about to begin work on the important problem of preparing a covenant of human rights and formulating procedures for implementing that covenant. Mr. Bernstein felt that, on the basis of even the most optimistic view of the situation, the drafting and discussion of the covenant by the Commission, by the Economic and Social Council, and finally by the General Assembly, would take several years. Even then, time would be required before the draft covenant was ratified by the various nations and became effective. It was therefore quite possible that only after some seven or eight years would there be a legally enforceable covenant to protect human rights.

There was also reason to feel that, during the process of the discussion of the covenant, the desire to obtain support for it from the citizens of Member States and from Member States themselves -- many of which held very different views -- might result in a tendency to water down the great principles contained in the Universal Declaration of Human Rights. Moreover, a covenant on human rights could not be

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projected successfully into a world where respect for those rights and laws, and procedures designed to protect them, both among peoples and among nations, had not already gradually been built up. The Commission had the responsibility of ensuring, during the period when the covenant was under consideration, that the foundations for the protection of human rights were safeguarded.

Governments and peoples seemed to forget quickly; they were constantly in need of being reminded of the importance of protecting human rights and fundamental freedoms. For that reason the Co-ordinating Board had submitted to the Secretary-General a memorandum entitled "Protection of Human Rights Pending Adoption of the Covenant", which set forth a modest programme of activity that could readily be carried out in connexion with the activities of the Commission, of the Secretariat and of the Member States of the United Nations.

With regard to the Member States, it was suggested that the United Nations might adopt a resolution asking those States to report to the United Nations on the laws and the practices in their respective countries that threw light on how human rights and fundamental freedoms were being protected, and asking them to indicate what measures had been taken or were to be taken to bring the standards up to those set forth in the Universal Declaration of Human Rights.

Moreover, the Assembly might ask the Member States to create permanent national commissions on human rights which would have the continuing responsibility of making studies and subsequent recommendations to their own Governments concerning steps that should be taken for the protection of human rights. The reports of such commissions would be of the greatest importance, both to the countries themselves and to the United Nations. Mr. Bernstein observed that the President of the United States had recently recommended to Congress that such a commission should be set up in the United States. Though that had not yet been done, there was reason to hope that it would be done. Certainly a resolution by the United Nations on the subject could be expected to encourage the adoption of Mr. Truman's proposal by Congress.



Much could be done by the Commission on Human Rights and by the Secretariat. Specific suggestions in that regard were set forth in the memorandum by the Co-ordinating Board, a summary of which was given in document E/C.2/189. The Board felt that, at its current session, the Commission might recommend to the Economic and Social Council the adoption of resolutions embodying certain specific proposals. For example, in replying to human rights communications, the United Nations should not state that it had no power to deal with human rights complaints. The declarations made in the Charter and in the Universal Declaration of Human Rights had led the people of the world to believe that the United Nations might be considered a forum of appeal in cases of violation of those rights, and only cynicism could result if the United Nations claimed to have no power to deal with the complaints submitted to it.

Another draft resolution which might be adopted by the Commission would authorize the Secretary-General to keep himself and the Commission fully informed concerning all matters relevant to the enforcement and observance of human rights in the Member States. He should be authorized to make independent studies as well as to study material submitted by the Member States. Furthermore, the members of the Commission should be authorized to examine and obtain copies of human rights communications. The Secretary-General should also be permitted to make such examinations and studies of human rights communications as the importance of the questions raised and the capacity of the Secretariat permitted, and should be authorized to bring to the attention of the Commission on Human Rights the communications he deemed worthy of its consideration. Lastly, the Commission on Human Rights should be authorized to study issues raised by communications on human rights and to develop a practical procedure for dealing with such matters.

Mr. Bernstein felt that the Commission had the opportunity at its current session not merely to produce a draft covenant on human rights, but to adopt a plan for the effective protection of human rights and fundamental freedoms in full conformity with the principles of the United Nations.

The CHAIRMAN thanked Mr. Bernstein for his statement.

DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS (E/800)

The CHAIRMAN directed the Commission's attention to article 4 of the draft covenant, which was open for discussion.

Pointing out that paragraph 1 of that article contained a general limitation clause, while paragraph 2 was to deal with implementation, she read the alternative texts for paragraph 1 submitted by the Drafting Committee and the remarks of the United States delegation on the subject (E/800).

Speaking as the United States representative, she said that she was prepared to accept the general limitation clause in paragraph 1 of the draft of article 4 proposed by the French delegation (E/CN.4/187). The United States' own proposal for that paragraph was to be found in document E/CN.4/170/Add.1, and its proposals for other articles in document E/CN.4/170.

Experience had shown that, unless a general limitation clause, such as proposed for article 4, was adopted, a great many specific limitations would have to be included in various articles. In the draft before the Commission there were, by actual count, 106 such limitations - to be found in articles 5, 9, 11, 17 and 18 - and there was nothing to prevent the addition of still further limitations. The covenant would then read not like a document proclaiming freedom but like one setting limitations on freedom. If, on the other hand, either the French or the United States suggestion were adopted, the Commission would be able to eliminate the numerous specific limitations and to produce a clear and concise document which devoted primary attention to safeguarding basic human rights and freedoms. The inclusion of a general limitation clause in article 4 would permit the use in subsequent articles of general limitation language, such as already appeared in article 11, paragraph 1; article 16, paragraph 4; and the second sentence of article 18.

She recalled that the same course had been followed with respect to the Universal Declaration of Human Rights, article 29 of which contained a general limitation clause which applied to the whole Declaration.

She consequently warmly supported the French proposal for paragraph 1 of article 4.

Mr. PAVLOV (Union of Soviet Socialist Republics), speaking on a point of order, recalled that the Commission had taken no decision on his previous proposal that the discussion of any of the articles in the draft covenant should be preceded by a general debate on the covenant as a whole.

He re-introduced that proposal, first, because he did not find it possible to discuss any specific article before all amendments to it had been submitted, and secondly, because the draft covenant as a whole should be discussed in the light of, and in relation to, the recently adopted Declaration of Human Rights.

The general debate should, he thought, be followed by a discussion of the various articles beginning with article 5; it was hardly possible to deal with article 4 until articles 1 and 2, to which it referred, had been adopted.

Mr. KOVALENKO (Ukrainian Soviet Socialist Republic) supported the proposal of the USSR representative.

The CHAIRMAN remarked that there was no question of adopting article 4 until all the amendments to it had been presented and considered. She had called for a general discussion of that article because it raised a fundamental issue the decision of which would affect the drafting of all subsequent articles. As the issue was a broad one, in the course of the discussion observations on the covenant as a whole could be made.

Mr. SCERENSEN (Denmark) suggested that, as the discussion of article 4 would undoubtedly develop into a general debate, there should be a general debate, in which remarks on article 4 could be included.

The Danish suggestion was adopted by 8 votes to none, with 4 abstentions.

Mr. C. MALIK (Lebanon) wished to offer several preliminary observations, reserving the right to make further remarks of a general nature later in the debate.

In its opening statement at the first meeting of the current session, the United States delegation had said that it would be preferable to have the covenant on human rights adopted by the General Assembly in 1950, and to use the intervening time to enlist Governments and public opinion in the covenant's favour. Those remarks had raised a crucial issue, which the Commission must squarely face.

Mr. Malik recalled that a number of the Commission's members had been more interested in the covenant than in the Declaration of Human Rights, and that when, more than two years previously, it had been agreed to prepare the Declaration first, there had been a definite understanding that the draft covenant would not be buried or postponed on that account. The United Kingdom, Australian and Lebanese delegations in particular had been anxious that work on the draft covenant should not be delayed. It would be most regrettable if the adoption of the Declaration caused any member of the Commission to lose interest in the covenant and if work on that most important and most urgent document were postponed from session to session and from year to year. If the Lebanese delegation had known that that would happen, it would most certainly not have voted to allow the Declaration to precede the covenant.

While Mr. Malik agreed that there were sound practical reasons for postponing the final adoption of the draft covenant for one year and would not oppose such a course, he felt that a decision could not be taken on the basis of assurances from individual delegations. The Commission - and later the Economic and Social Council - must give solemn assurances in a formal resolution that they would allow nothing to prevent them from submitting the draft covenant to the General Assembly at its 1950 session. On no other basis could the Lebanese delegation accept the postponement of work on a document which would put to the test the readiness of Governments to translate into law and abide by those lofty principles which they had laid down in the Declaration.

It would be tragic if some of the delegations which had taken a leading part in the drafting of the Declaration should falter now that the time had come to prepare the covenant, which was the crucial part of the bill of human rights. The importance of deciding at once by what date the covenant should be ready for submission to the General Assembly could not be over-emphasized; all the previous promises and commitments were on record, and the very honour of Governments was at stake. Mr. Malik wished to hear from other delegations which in the past had been anxious to produce a covenant on human rights as quickly as possible; and he appealed to the Commission as a whole not to permit gradual and imperceptible changes of attitude to divert it from its all-important task.

Turning to the problem raised by Mrs. Roosevelt with respect to the manner in which limitations should be made in the draft covenant, he said that, while both courses were fraught with danger, the specific limitations could be so organized, classified and condensed that repetition would be avoided and that they might be reduced to perhaps one-tenth their present number.

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The great danger of the general limitation clause, as drafted by the French and United States delegations, was that it might open the way to abuses by Governments, and thus nullify the provisions -- no matter how fine -- of all the other articles. That clause would, in fact, have enabled Hitler to sign the covenant and to proceed unhampered to all the violations of human rights of which he had been guilty.

The point at issue was to what extent national sovereignty was to be permitted to serve as an excuse for violation of human rights by Governments. If it was desired to translate a moral code of human rights into international law which transcended national sovereignty, the covenant should contain either a general limitation clause so phrased that the other articles retained their full force and that no tyrannical or dictatorial Government would be able to subscribe to it, or specific limitations which could be grouped together and greatly reduced in number. While Mr. Malik preferred the second course, his chief desire was to produce, by either means, an effective covenant which afforded real protection to the rights it was designed to safeguard and which removed at least some part of human rights and fundamental freedoms from the field in which arbitrary action by Governments was possible.

He pointed out that while the draft covenant would represent an important step forward in the field of human rights, it would not be the first convention in that field, as the Convention on Genocide and the Convention on the International Transmission of News and the Right of Correction had already been adopted by the General Assembly.

With reference to paragraph 2 of the French proposal for article 4, Mr. Malik said that he would shortly submit a list of rights which should remain inviolable at all times and should not be subject to any of the limitations which might be included in the covenant.

He agreed with the USSR representative that, in drafting the covenant, the Commission should keep in mind the provisions of the Declaration; he would consequently submit a plan of work ensuring co-ordination of the draft covenant and of any future convention on human rights with those provisions.

In conclusion, he urged the Commission to come to a decision with respect to the date of completion of the draft covenant and the question of limitations before proceeding with the rest of its work.

/The CHAIRMAN

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The CHAIRMAN said that the United States delegation had proposed that the covenant should be submitted to the General Assembly at its session in 1950 and no later. While she understood the Lebanese representative's fears with respect to a general limitation clause, she pointed out that it was proposed to implement the Covenant by setting up an international body to review the acts of States parties to the covenant. There would consequently be a safeguard against abuses by Governments.

Mr. SORENSEN (Denmark) remarked that his delegation had submitted suggestions on the subject of limitations (E/CN.4/186).

It might be useful for the Commission, when discussing the general limitation clause, to draw a distinction between measures which Governments might be permitted to take in cases of emergency and limitations inserted for the purpose of enabling a Government to sign the covenant without revising domestic legislation. The insertion of the second type of limitation clause in the body of the covenant might be avoided altogether by adopting the Danish suggestion to permit each State to sign the covenant with certain reservations covering its specific case. The general limitation clause would not then have to be reduced to the lowest common denominator and the general level of obligations assumed by States under the covenant would be higher. Moreover, provision could be made whereby States could gradually withdraw their reservations -- a much simpler process than the total revision of the covenant. Mr. Sorensen commended those suggestions to the Commission's attention.

The meeting rose at 1 p.m.