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ORIGINAL: ENGLISH

COMMISSION ON HUMAN RIGHTS

DRAFTING COMMITTEE

FIRST SESSION

SUMMARY RECORD OF THE SECOND MEETING

Held at Lake Success, New York, on Wednesday, 11 June 1947 at 11:00 a.m.

Present:

Chairman:	Mrs. Eleanor Roosevelt	(United States)
Vice-Chairman:	Dr. P. C. Chang	(China)
Rapporteur:	Dr. Charles Malik	(Lebanon)
	Mr. Ralph L. Harry	(Australia)
	Mr. H. Santa Cruz	(Chile)
	Prof. René Cassin	(France)
	Mr. Geoffrey Wilson	(United Kingdom)
	Prof. V. Koretsky	(Union of Soviet Socialist Republics)
Specialized Agencies:		
	Mr. J. Havet	(UNESCO)
Non-Governmental Organizations:		
	Miss Toni Sender	(American Federation of Labor)
Secretariat:		
	Prof. J. P. Humphrey	(Secretary of the Committee)
	Mr. Edward Lawson	

1. Discussion of Drafting Procedure

The CHAIRMAN invited the members of the Drafting Committee to express their opinions regarding the procedure to be followed in preparing the preliminary draft of an International Bill of Human Rights. She said that

/the United States

the United States would present in writing some alternatives to specific items in the outline of the Secretariat, but that since these written proposals were not yet ready for distribution she thought that it might be better to discuss the form and plan of the preliminary draft first. She proposed that if the Committee decided to use the Secretariat outline as the basis of its work its members might begin immediately and go through each of the items listed one by one, either accepting, eliminating, or changing them. She again stressed the preliminary nature of the Committee's work and pointed out that in its final report it might in some cases wish to submit two different conflicting ideas rather than a single wording on which all members could agree. She pointed out that it would be almost impossible to write the Preamble until a final determination had been made as to what was to appear in the draft; she therefore asked each member of the Drafting Group to note any ideas that might occur to him about the Preamble for later presentation to the Committee. She suggested that it might not be possible to get the Preamble written until a much later stage in the development of the draft.

Prof. CASSIN (France) complimented the outline of the Secretariat as a solid and interesting basis for the work of the Committee. He suggested that this outline might serve as a basis for discussion from a material point of view. If this viewpoint were accepted he proposed that two or three fundamental principles should be incorporated in the outline:

1. the unity of the human race or family;
2. the idea that every human being has a right to be treated like every other human being; and
3. the concept of solidarity and fraternity among men.

/He suggested

He suggested that the Committee might wish to consider first the rights defined both in the British document and the Secretariat outline, and secondly the rights mentioned in the Secretariat outline but not touched upon in the British draft, including especially civil rights and social and economic rights. He agreed that the Committee should not at the moment study the British proposals for implementation nor should it attempt to formulate a Preamble. It should, he felt, confine itself to the content and substance of the two drafts before it. He expressed the feeling that the British document grouped rights in a more rational and concise order than the Secretariat outline. The Secretariat outline, he said, has more rights and restrictions listed in it, but he wondered whether the Committee should discuss limits or restrictions or whether it should confine itself to rights and freedoms.

Mr. SANTA CRUZ (Chile) stated that in his opinion the Committee must draw up a Charter of Human Rights giving it not only legal form but real human content. He expressed the belief that the International Bill of Human Rights should not be just a Bill but rather a true spiritual guide for humanity enumerating the rights of man which must be respected everywhere. He suggested that the Committee begin by discussing the rights listed in the Secretariat document. The actual drafting, he felt, could be put off until after the members agreed on the substance.

Mr. HARRY (Australia) called the Secretariat outline a most useful and valuable quarry of principles and ideals which might find a place in the Bill of Human Rights. The United Kingdom draft, on the other hand, was the first complete draft outline before the Committee since it included a Preamble and provisions for entering its provisions into force. He agreed that the Preamble and the provisions for implementation should not be considered until a later date. He supported the French proposal that the

Committee consider first the principles appearing in the drafts of both the United Kingdom proposal and the Secretariat outline and then consider the principles appearing only in the latter. He said, however, that in the opinion of the Australian Government no finality in a draft could be reached until the question of implementation had been considered.

Dr. CHANG (China) maintained that the discussion should proceed from the concrete to the abstract, that it should start with articles in the Secretariat draft on which all members of the Committee could agree and then go on to consider other articles appearing either in the United Kingdom draft or in a proposal by one of the other members. He urged that the Committee attain as wide a perspective as possible and that it be always conscious of the historical context of the formulation of this International Bill of Rights. He particularly urged that it not be allowed to become a stale duplication of previous Bills of Rights.

Mrs. ROOSEVELT asked if the Secretariat was prepared to submit a document presenting the proposals of the United Kingdom Government and those of the Secretariat draft outline side by side. Prof. HUMPHREY replied that the Secretariat had distributed such a document (E/CN.4/AC.1/3/Add.3).

Dr. MALIK (Lebanon) congratulated the Secretariat on its draft outline and addressed two questions to the Secretary of the Committee:

1. were the Constitutions quoted in the Secretariat outline culled extensively or only for illustrative material; and

2. were the quotations from members of the Human Rights Commission exhaustive or only samples.

If the latter, he wished to know the basis for selection. Dr. Malik went on to speak of the Preamble. He stated that in his opinion the Secretariat document did not contain a sufficient reference to the dignity of man. This, he felt, ought to be made the basic woof of the Preamble. He stated that the four points

enumerated in the suggestions for Preamble made by the Secretariat were excellent ones but that even when all were considered together they somehow failed to bring out what is distinctive, fundamental and human about man. If these points were not included he felt the Preamble would lose its fundamental point. Dr. MALIK suggested that the United Kingdom document be used as a formal basis for discussion and that the Secretariat document be used as a material basis. The Committee, he said, ought to make extensive use of the proposals of the United Kingdom, and then turn to the Secretariat outline to fill out and complete its draft. He pointed out that the United Kingdom has no written Constitution and that therefore it would be an act of injustice not to give them a special chance to present their own ideas in writing and to utilize their proposals extensively. He said that in the course of the meeting he had been more and more struck by the importance of the question of implementation. From the Secretariat outline, he said, it is clear that most countries already have provisions in their Constitutions relating to fundamental human rights and freedoms. The question was whether or not these rights and freedoms were implemented.

Prof. KORETSKY (Union of Soviet Socialist Republics) pointed out that he had hardly begun to study the matters under discussion and that he was working under difficulties because of the fact that he was also a member of the General Assembly Committee on the Codification of International Law. Therefore, he was unable to state his opinions immediately but wished to thank the Secretariat for its very useful preliminary work.

Prof. KORETSKY put forward, however, a few personal impressions:

1. that it was most important to remember the inter-relation between internal and international law when formulating an International Bill of Rights;

2. that the International Bill of Rights must not create an international social system where international government does not exist;

/3. that the members

3. that the members of the Committee must not forget that one cannot oppose the individual to society and to government; and

4. that the principle of equality of men must be stressed more than it appeared to be stressed in any of the drafts before the Committee.

Prof. KORETSKY stated that he was opposed to the use of the word "civilized" as it appeared in one of the drafts. The artificial distinction drawn in the past between civilized and uncivilized people must be forgotten, he said, and all of the various existing civilizations must be studied. These principles, he added, would help the Committee to find a correct way to implement and enforce the rights enumerated in an International Bill of Right:

Mr. WILSON (United Kingdom), after apologizing for the absence of Lord Dukeston, stated that the United Kingdom draft was prepared because the Government had found it very difficult to get its mind clear on the form and content of the Bill. The draft, he said, consisted of five main parts:

1. a proposed draft resolution of the General Assembly;

2. a proposed Preamble;

3. a proposed definition of human rights and fundamental freedoms;

4. a proposal relating to the question of implementation; and

5. a proposal as to the method of bringing the Bill of Human Rights into operation.

He agreed that the two parts which might be usefully discussed at the time were (a) the proposed General Assembly resolution, and (b) the attempt to define human rights and freedoms.

Mr. WILSON raised a basic question as to whether the Committee was drafting a Manifesto or what in England would be called an Act of Parliament. It must be very clear on its intention, he said. He explained that in his opinion only those things which are enforceable in the near future should go into an Act of Parliament or into an International Convention. He said that he hoped that the Committee would be able to suggest both a Manifesto and an International Convention.

/He suggested

He suggested that, since the Secretariat outline contained a large number of items that did not appear in the Constitutions of certain States, it might be better if only those items which a member of the Committee positively suggested might be included should be considered by the Committee.

Prof. HUMPHREY (Secretariat) answering Dr. Malik's earlier question, said that the document prepared by the Secretariat was meant to be complete and if there were any omissions they were not intentional. He pointed out that the Secretariat had not attempted to draft a Preamble but had only made certain indications as to what might be included there. He also pointed out that in the forthcoming year book on Human Rights there will be a chapter relating to the laws of those countries which do not have written Constitutions.

The CHAIRMAN asked Prof. Koretsky whether it would be possible for someone to keep him informed of the proceedings of the Drafting Committee during the period when he was away attending the meetings of the General Assembly Committee on the Development and Codification of International Law. Prof. KORETSKY promised to be present at meetings of the Drafting Committee as much as possible.

The CHAIRMAN summarized the consensus of opinion of the Committee regarding the drafting procedure as follows:

1. The Preamble should not be written until a later stage

2. The question of implementation should remain in the back of the minds of the members of the Committee when they are considering things to be included in the preliminary draft;

3. The Secretariat outline should be used as a basis for discussion with the items of the United Kingdom draft being brought in for consideration wherever they resemble in substance an item in the Secretariat draft.

/Mrs. ROOSEVELT

Mrs. ROOSEVELT pointed out that as a Drafting Committee preparing only a first draft the Group was called upon to decide the final text of the International Bill of Human Rights. She agreed with the suggestion of Mr. Wilson that only the points which were suggested positively by a member of the Committee be included in the draft. She expressed the opinion that the Committee should present to the Human Rights Commission a document on which they might be able to make a final decision. As to whether it should be a declaration of principles or a Bill that could be implemented throughout the world, she felt that should be considered by the full Commission. She suggested that the Committee take as a basis of its work the articles presented in the Secretariat outline because this outline took into account many other documents in the form of Bills which had been submitted to the Commission on Human Rights. If necessary, she said, the Committee should err on the side of including too much.

With the exception of Prof. KORETSKY (Union of Soviet Socialist Republics) who reserved his position and stated that in the future he would want to present other data which was not at that time prepared, all of the members of the Committee accepted Mrs. Roosevelt's suggestions on the method of work procedure.

DECISION: It was decided to take the Secretariat outline as a basis for discussion, referring to other documents when there appeared to be a similarity between them. It was decided that the Committee was not to discuss the final wording of any item but only the principles and substance to be included.

2. Consideration of the Draft Outline of the Secretariat and of the Draft Proposed by the United Kingdom (Document E/CN.4/AC.1/3/Add.3)

The CHAIRMAN proposed that the discussion of the two draft outlines before the Committee begin with Article 3 since the similarity between the two drafts did not occur until that article was reached. Speaking as a representative of the United States she stated that her Government had prepared some alternative suggestions and had asked that these be printed and placed before all of the members. They had not been circulated as yet.

/She also stated

She also stated that in the opinion of the United States Article 1 of the Secretariat draft outline should not be included in a International Bill of Rights because it dealt with the right of a State rather than with the right of a human being.

Mr. WILSON (United Kingdom) reverted to the suggestion that if there was no recommendation for the inclusion of Article 1, it should not be included in the draft to be prepared by the Committee. He suggested, however, that the substance of Article 1 might possibly find a place in the Preamble.

Dr. MALIK (Lebanon) maintained that Articles 1 and 2 of the Secretariat outline dealt with limitations to Man's rights and freedoms rather than with the rights and freedoms themselves. He expressed the opinion that it was odd that such limitations should be placed at the very beginning of a Bill and expressed the opinion that they were not of such a nature as to be included in the Committee's draft.

Mrs. ROOSEVELT asked if there was any proposal that Article 1 be included in the Committee's draft. Dr. MALIK stated that the principle enunciated in Article 1 should not be eliminated altogether.
Prof. CASSIN (France) suggested that the discussion proceed to those articles in which there appeared to be similarity between the draft of the Secretariat and that of the United Kingdom, reserving Articles 1 and 2 for later discussion. Prof. KORETSKY (Union of Soviet Socialist Republics) felt that the proposal of the member from France might bring about a certain organizational confusion and that it might be better to consider each of the various articles and to express an opinion on them but not to vote either for or against their adoption. He stated that he felt it would not be quite appropriate to follow the method proposed by Prof. Cassin. Mrs. ROOSEVELT stated that in her opinion the Committee should first go through the common articles without making any decision thereon, and then return to discuss each article in turn, taking the Secretariat draft outline as its basis.

/Article 3

Article 3 of the Secretariat Draft Outline and Article 8 of the United Kingdom Draft

The CHAIRMAN read both articles and remarked that she understood that there is a movement underway in some States to wipe out the death penalty completely. She suggested that it might be better not to use the phrase "death penalty."

Prof. CASSIN (France) made two observations. For the first time, he said, we are confronted by a question of method: should we proclaim the right to life or should we rather state that authority cannot deprive men of life. Even countries which do not have the death penalty, he went on, must take into account that some countries are in the process of abolishing it. Therefore, he preferred Article 3 of the Secretariat draft to the corresponding Article in the United Kingdom draft. Secondly, he stated that if the principle of universal abolition of the death penalty could be adopted it should not impose a strict obligation on States which wished to maintain the death penalty. Dr. MALIK (Lebanon) pointed out a certain ambiguity in the word "everyone" and expressed the opinion that it might be advisable to use instead "every person." Mr. SANTA CRUZ (Chile) pointed out that the corresponding article in the draft submitted by the delegation of Chile expresses both ideas: first it establishes the right to life and secondly it establishes the duty of a State to watch over the implementation of this right. He felt that the article as submitted by Chile was more complete as it referred to the life of any being, born or unborn, and set forth that those who are unable to support themselves have the right to be supported and protected. He suggested that it might be better to include the text of the Chilean draft on this subject.

Prof. KORETSKY (Union of Soviet Socialist Republics) reserved the right to prepare another wording to replace the drafts under consideration. He remarked that the United Nations should not in any way signify approval of the death penalty. The Union of Soviet Socialist Republics, he said, has given up the death penalty. Mr. SANTA CRUZ (Chile) supported the view that the draft should not give the impression that the United Nations approved the death penalty. Prof. CASSIN (France) stated that he preferred to use the words "every human being" instead of "every individual" or "every person." He pointed out that in the period just passed there was wholesale denial of the right to life in a very light-hearted manner which outraged the conscience of all mankind. He added that the Chilean text has a section including certain positive obligations of governments which he considered worthy of study. Mr. WILSON expressed agreement with the view taken by the Soviet delegate: that the United Nations should not sanction the death penalty.

Article 6 of the Secretariat Draft Outline and Article 10 of the United Kingdom Draft.

The CHAIRMAN read the text of these two articles. Mr. WILSON (United Kingdom) made two formal proposals:

1. that Article 5 of the Secretariat outline be taken into account; and
2. that in the United Kingdom draft it should be noted that certain related provisions appear in the part proposed as a resolution of the General Assembly rather than in Article 10.

He also suggested that Article 7 of the Secretariat draft might be taken into consideration at the same time, along with paragraph 6 of Article 10 of the United Kingdom draft. Prof. CASSIN (France) felt that the discussion should be limited to one thing at a time. The representative of the American Federation of Labor pointed out that the present order of the articles in the Secretariat document is not logical but accidental and expressed her opinion that it might be better to use the United Kingdom draft as a basis for discussion.

Article 7 of the Secretariat Draft Outline and Article 10 of the United Kingdom Draft

The CHAIRMAN read the two articles and pointed out that the representative of the United Kingdom had already said that Article 10 of the United Kingdom draft was linked with the previous subject. Mr. HARRY (Australia) stated that the chief difference between the drafts is that the United Kingdom proposed that in addition to judicial determination there should also be the right to compensation. He stated that his Government did agree that the idea of compensation should be included. Prof. CASSIN remarked that the question of compensation with relation to unlawful arrest was a very serious matter and that in many countries it could not function in practice. If compensation is mentioned, he thought, the responsibility of arresting officers should also be spoken of. Mr. WILSON (United Kingdom) stated that his Government was not wedded to the remedy proposed in its draft but felt that there should be some enforceable remedy in cases of arbitrary arrest.

Article 8 of the Secretariat Draft Outline and Article 9 of the United Kingdom Draft

The CHAIRMAN read the two articles and asked for comments. Mr. WILSON (United Kingdom) stated that his Government had found the question of drafting this article to be very difficult and complex. He felt that at a later date he might be able to put forward a more adequate form of words. He agreed that the phrase "equally incumbent upon all" might be considered as ambiguous and added that it might be better to treat the question of public service separately and on its own account. Prof. KORETSKY (Union of Soviet Socialist Republics), although reserving his right to make further remarks later, pointed out that in his opinion the wording of the United Kingdom article seemed to be striking in its simplicity. It should, he said, be made more ample. He feared that the phrase "no form of slavery shall be permitted" suggested a consideration only for the future. He felt that this might be re-phrased to condemn slavery in general.

/Mr. WILSON

Mr. WILSON (United Kingdom) assured the representative of the Union of Soviet Socialist Republics that the phrase "shall be" had not been meant to connote a future tense. He explained that the English construction of this article was considered to imply no reference to time.

The meeting adjourned at 1:10 p.m.
