

COMMISSION ON HUMAN RIGHTS

Fifth Session

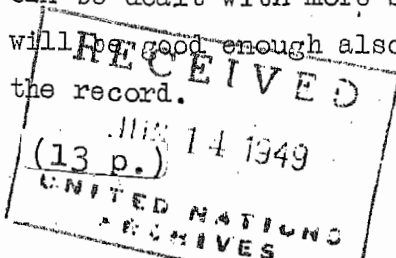
SUMMARY RECORD OF THE ONE HUNDRED AND ELEVENTH MEETING

Held at Lake Success, New York,
on Thursday, 2 June 1949, at 2.30 p.m.

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<u>Chairman:</u>	Mrs. F. D. ROOSEVELT	United States of America
Later	Mr. CASSIN	France
<u>Rapporteur:</u>	Mr. Charles MALIK	Lebanon
<u>Members:</u>	Mr. SHANN	Australia
	Mr. STEYAERT	Chile
	Mr. CHANG	China
	Mr. SOERENSEN	Denmark
	Mr. LOUTFI	Egypt
	Mr. GARCIA BAUER	Guatemala
	Mrs. MEHTA	India
	Mr. ENTEZAM	Iran
	Mr. INGLES	Philippines

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<u>Members:</u>	Mr. KOVALENKO	Ukrainian Soviet Socialist Republic
(Cont'd)	Mr. PAVLOV	Union of Soviet Socialist Republics
	Miss BOWIE	United Kingdom
	Mr. MORA	Uruguay
	Mr. VILFAN	Yugoslavia

<u>Secretariat:</u>	Mr. SCHWELB	Representative of the Secretary-General
	Mr. LAWSON	Secretary of the Commission

Consultants from non-governmental organizations:

Category A:

Miss SENDER	American Federation of Labor
Miss STUART	World Federation of United Nations Associations

Category B:

Mrs. AIETA	Catholic International Union for Social Service
Mr. NOLDE	Commission of the Churches on International Affairs
Mr. MOSKOWITZ	Consultative Council of Jewish Organizations
Mr. BERNSTEIN	Co-ordinating Board of Jewish Organizations
Miss SCHAEFER	International Union of Catholic Women's Leagues
Mrs. MUDGE	World's Young Women's Christian Association

SUGGESTIONS FOR MEASURES OF IMPLEMENTATION OF THE DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS (E/600, E/800, E/CN.4/168, E/CN.4/274, E/CN.4/276)
(discussion continued)

The CHAIRMAN noted that the Commission had before it a number of proposals made by Australia, China, the United States of America, France and India (E/800), and two new documents, one prepared by India (E/CN.4/276), and the other submitted jointly by the United States and the United Kingdom (E/CN.4/274). She suggested that the Commission choose one of these documents as a working basis for discussion.

Mr. PAVLOV (Union of Soviet Socialist Republics) thought such a procedure was hardly indicated, seeing that the basic texts referring to the Covenant and its implementation were to be found in documents E/600

/and E/800.

and E/800. All the proposals submitted after those fundamental texts departed from them to a greater or lesser extent, so that the obvious course would be to study the divergencies between the later texts and the basic ones. Mr. Pavlov reminded the Commission that it had decided to consider item 6 of the agenda; he would like to speak now, perhaps during the general discussion, on the measures of implementation. As regards the protocol on the implementation of the Covenant, there were three possibilities to choose from.

The CHAIRMAN called the members' attention to document E/800, Annex C, which stated that the Commission referred the Economic and Social Council to annex C of the report of the Commission's second session (E/600), and the additional suggestions brought forward before and during its third session. For that reason the Chairman thought that the Commission could use, as a basis for discussion, document E/600 and the proposals of Australia, China, the United States, France and India, as well as the new joint suggestions of the United States and the United Kingdom, and the new Indian proposal.

Mrs. MEHTA (India) pointed out that she had already suggested that the Commission use document E/CN.4/160 as the starting point of its discussion.

The CHAIRMAN drew attention to the end of part IV of the document in question (page 16), where there appeared a brief outline of a general protocol prepared by the Secretariat.

Mr. SOERENSEN (Denmark) supported the Indian suggestion, and agreed with the Chairman that the Secretariat's text was only an outline. Perhaps the various proposals submitted could be examined in conjunction with each item of the outline. The General Assembly would ultimately have to make the decision. The Commission, therefore, must draw up only such proposals as did not commit the various governments represented. Furthermore, the Secretary-General had made no final proposals in the document in question, so that it seemed wise for the Commission to use that outline in its work.

Mr. GARCIA BAUER (Guatemala) felt that the method suggested in document E/CN.4/168 might be a very useful one. He would consequently support the Indian delegation's proposal. He suggested that the Secretariat should draw up a table giving the subjects contained in the outline and listing the proposals made by the delegations under each subject. Such a table would be clear and convenient to use, thus making the work easier.

Mr. CASSIN (France) pointed out that the course suggested by the USSR representative would have been acceptable if the working group at Geneva had drawn up a form draft instead of producing merely a number of general statements. The Commission itself would therefore have to go into the substance of the principal proposals, and for that reason the Indian suggestion did not seem to be in accordance with the rules of procedure.

The CHAIRMAN put to the vote the Indian proposal to use document E/CN.4/168 as a basis for discussion.

The Indian proposal was adopted by 8 votes to none, with 6 abstentions.

The CHAIRMAN felt that the Commission was in agreement on asking the Secretariat to draw up the proposed comparative table; to begin with, however, it would be well to examine the various chapter headings of the outline in order to determine whether the existing form was suitable. She thought it might be advisable to vote on the Guatemalan representative's proposal.

Mr. GARCIA BAUER (Guatemala) did not think that a vote on his proposal would be necessary. He had merely suggested to the Commission that it might be useful to ask the Secretary-General to draw up a document of the kind he had indicated. There was no question of coming to a decision on each part of the outline and adopting the various subjects in it; it was simply desirable to have a document at hand which would make the work progress more easily.

The CHAIRMAN stated that, with the consent of the Commission, she would ask the representative of the Secretariat to have the table prepared.

/Mr. SCHWEIB

Mr. SCHWELB (Secretariat) said that he was quite ready to have it drawn up.

In answer to a question from Mr. Garcia Bauer, Mr. Schwelb made it clear that the existing Secretariat memorandum had been based on the proposals of the various governments and the working group.

Mr. GARCIA BAUER (Guatemala) remarked that it would be best to postpone the consideration of questions raised by chapter 1 of the outline, and to limit the discussion to chapters 2 and 3.

Mr. PAVLOV (Union of Soviet Socialist Republics) stated that the chapter headings should certainly be changed so as to say, for instance: "Questions concerning the right, etc...", in order not to consider anything as settled in advance, or to consider the particular right as already acquired.

The CHAIRMAN pointed out that only a comparative table was being considered, and that it might prove necessary to change the order of the chapters, according to the subjects they dealt with; at any rate, there was no question of going into the substance of the topics at the moment; what had to be decided was which subjects were to be included.

Speaking of the document in question, Mr. INGLES (Philippines) observed that care would have to be taken to avoid any uncertainty as to the nature of the Secretary-General's responsibility, and to make it quite clear that he would have the right to decide on the initiation of proceedings.

The CHAIRMAN thought that, in that case, it would be well to include that point specifically in part IV.

Mr. MORA (Uruguay), referring to part I, said that it would be well to discuss the initiation of proceedings, bearing in mind the three methods of starting an action.

Mr. Charles MALIK (Lebanon) pointed out that part I dealt solely with the initiation of proceedings and that all the questions bearing on that subject should be considered before going on to examine the suggested plan, however rudimentary it might be.

/Furthermore

Furthermore, only signatory States were mentioned; Mr. Malik thought that the United Nations should be just as concerned with non-signatory States.

The CHAIRMAN felt that measures of implementation should be included in the Covenant, and not appear in a separate protocol.

Miss BOWIE (United Kingdom) pointed out that two questions had not been thoroughly considered: the inclusion of measures of implementation in the Covenant, and relations between signatory and non-signatory States. It might therefore be advisable to have an additional chapter on the implementation of the Covenant in the case of non-signatory States.

The CHAIRMAN believed that those two questions ought to be settled by a vote.

Mrs. MEHTA (India) recalled that no decisions on the subject had been made at the previous meeting, so that the representatives might have more time to think over the issues.

Mr. GARCIA BAUER (Guatemala) emphasized once more that the discussion on the preparation of the proposed document by the Secretariat must be confined to questions of form.

Mr. Charles MALIK (Lebanon) observed that any decision reached thus far on the inclusion of measures of implementation in the Covenant would be provisional in character. A final decision would have to be taken, after a thorough examination of the question; originally the members had been thinking in terms of three distinct documents, but at the moment some foresaw only two. That was an important change on which a decision must be taken with full knowledge of the facts.

Mr. CASSIN (France) pointed out that it was not really necessary to know whether or not the Commission was in agreement. The Commission was in the process of examining a plan of work, and the fact that it wanted information on some particular point did not mean that it made up its mind about the question and adopted or rejected given proposals.

The French representative held that it would be an error to form an advance opinion on the question whether measures of implementation should be included in the Covenant or not. He observed in that connexion that the note concerning part IV, which appeared on page 18 of document E/CN.4/168 would serve as a safeguard. It was of importance, on the other hand, to know whether it was preferable to begin by examining the means of resolving disputes or whether the question of the persons or organs which might initiate proceedings should be considered first. Further, Mr. Cassin believed that it would perhaps be better to discuss parts II and III before part I, as it would be more logical to specify what organs might be had recourse to before determining who had the right to use such a procedure.

Mr. GARCIA BAUER (Guatemala) urged the Commission to request the Secretariat to prepare the list under discussion. While that was being done, the Commission could proceed to examine the questions which had been placed before it.

Mr. SOERENSEN (Denmark) noted that it might be advisable to give consideration, in part II, to the proposals of the United Kingdom and the United States of America, envisaging ad hoc committees or committees of inquiry, and to include a new chapter on that subject.

The CHAIRMAN believed that the Commission might simply request the Secretariat to frame the document in accordance with the outline, and to include in it all proposals, with, say, 6 June as the final date for presenting them. The Commission could study those questions in the order it judged best.

The Chairman believed, nevertheless, that the Commission should decide without further delay whether the measures of implementation should be included in the Covenant or not.

Mr. PAVLOV (Union of Soviet Socialist Republics) inquired as to what was meant by a separate protocol: did that mean a separate document or simply a portion of the Covenant in the form, perhaps, of an annex?

The CHAIRMAN recalled that the USSR delegation had always been opposed to the inclusion of measures of implementation in the Covenant.

If those measures were to appear in an annex A of the Covenant, they would be automatically ratified simultaneously with the Covenant. For that reason, a separate protocol would have the advantage of enabling States which so desired to ratify the Covenant without having to ratify the measures of implementation.

Mr. ENTEZAM (Iran) shared the opinion of the Chairman.

Mr. Charles MALIK (Lebanon) pointed out that the USSR delegation's attitude was that each signatory State should only be required to guarantee that its legislation was in conformity with the principles enunciated in the Universal Declaration of Human Rights and in the international Covenant. There was, however, another conception according to which an international system of control should be set up to ensure that human rights were indeed respected.

The representative of Lebanon observed that the United Nations was bound to assume certain responsibilities in that field. In particular, Article 55 of the Charter specified that "the United Nations shall promote...universal respect for, and observance of, human rights and fundamental freedoms..." The provisions of that Article demonstrated that the second viewpoint, the one set forth by the Lebanese representative, was correct.

Mr. Malik added that there were varying degrees in the implementation of a covenant. The provisions of the Charter already imposed a certain moral obligation upon the members of the United Nations, who were required, as far as possible, to guarantee respect for human rights and fundamental freedoms. Further, the United Nations could, through the General Assembly, itself ensure that a certain amount of supervision was exercised and bring to the attention of world public opinion the most flagrant violations of human rights. The discussion of the question of the treatment of Indians in the Union of South Africa was an example of such action.

The Universal Declaration of Human Rights represented a second stage. Despite the differences of opinion on the juridical nature of that Declaration, it could be considered in itself to have some executive force.

The adoption of an international covenant would represent a third stage. Even if the Covenant were to contain no reference to measures of implementation it would have the same power of enforcement as any treaty. That power might be enhanced by indicating the procedure to be followed in instances of violations of human rights; that was the purpose of the

proposal submitted by the United States and the United Kingdom. A new stage would be reached if it were decided to frame a separate protocol providing for definite measures of implementation. Finally, should the Australian proposal for an International Court of Human Rights be adopted, the most far-reaching step would have been taken in the matter.

He believed that the time was ^{not} at hand to take a final decision. The Commission should confine itself to giving the Covenant the greatest possible power of enforcement without excluding either the elaboration of a separate protocol or the examination of the Australian proposal.

Mr. INGLES (Philippines), without sharing the attitude of the USSR representative on the implementation of the Covenant, recognized none the less that a State which signed the Covenant thereby assumed the obligation to take all necessary steps to ensure respect for human rights. The Philippine delegation would desire the United Nations to endeavour to create conditions making possible the establishment of an International Court of Human Rights.

Mr. Ingles recognized, with the representative of Lebanon, that the Universal Declaration of Human Rights, supplemented by the Covenant, would already possess indisputable moral force, as the signatory States would pledge themselves to guarantee respect for human rights. However, it was advisable to adopt certain measures of implementation to reinforce that moral obligation.

The Philippine representative pointed, in that connexion, to the danger involved in incorporating measures of implementation in the Covenant, as certain States, opposed to that solution, might, if such a decision were adopted, take advantage of it to refrain from signing the Covenant. It was a matter of indifference to the Philippine delegation, however, whether the measures of implementation were included in the Covenant or became the object of a separate protocol.

The CHAIRMAN, speaking as representative of the United States of America, stated that the Covenant should include certain essential measures of implementation. She recognized, however, that a separate protocol would render it easier for certain countries to sign the Covenant.

Mr. LOUFI (Egypt) expressed the view that a Covenant which did not include certain measures of enforcement would be a dead letter.

Mr. CASSIN (France) stated that the pact must embody the necessary measures of implementation. However, he did not oppose the view of the Danish representative who thought it advisable to supplement the Covenant with a protocol. Mr. Cassin added that the discussion so far had demonstrated that the Governments could only arrive at a decision after they had studied the list of questions submitted to the Secretariat.

Mr. PAVLOV (Union of Soviet Socialist Republics) emphasized that the attitude of the USSR was in conformity with the principles of the Charter themselves: it assumed that the respective countries would take measures to guarantee respect for human rights. That was a realistic conception. There were other delegations which desired to establish an international system of coercion and pressure upon certain States. Those delegations did not attach sufficient importance to the sovereignty of States. It was enough to compare Article 1 of the Charter with Articles 55 and 56 to realize that the latter did not limit national sovereignty in the slightest degree.

Mr. Pavlov observed that the Lebanese representative had misinterpreted the provisions of Article 55. It was true that that Article affirmed that the United Nations must promote "universal respect for and observance of human rights", but that could be done without intervention in the internal affairs of a State and, therefore, without violating the provisions of Article 2, paragraph 7 of the Charter.

Mr. Pavlov granted without question, as did the French representative, that respect for human rights should ensure the conditions of international stability mentioned in Article 55. But if it were decided to raise to the international level every dispute in which an individual and a State were opposed to each other, the number of disputes among States might be very much increased. In that connexion, he would recall that the Chilean delegation had desired, during the first part of the third session of the General Assembly, to embark upon a long discussion on the question of Soviet wives. That attempt had failed, but it showed how matters of that kind could be used to launch a veritable crusade against certain countries and to bring about interventions in the internal affairs of those States which were nothing but another aspect of the "cold war".

The USSR representative believed that before deciding whether measures of implementation should be embodied in the Covenant or made the object of a separate protocol, the Commission must decide on the contents of the Covenant itself. Any other procedure would seem strange, to say the least. If, however, the Commission did adopt another procedure, it should have at its disposal a document prepared by the Secretariat showing the points of difference between the various proposals submitted thus far. Such a document would also indicate to what degree those proposals were contrary to the provisions of the Charter.

Mr. CASSIN (France) took the chair.

The CHAIRMAN, speaking as the representative of France, pointed out that, in the view of the USSR representative, the Covenant should be applied unilaterally by each signatory State and that the question of respect for human rights and fundamental freedoms was within the national jurisdiction of each State. But it was difficult to maintain such a position if the provisions of the Charter were borne in mind, particularly Article 56, which stated that "All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55". The force of that juridical argument was such that it was impossible to deny the competence of the United Nations in the matter of respect for human rights.

The nature of the violation of human rights should, of course, be taken into account; some insignificant violations fell solely within the competence of the State concerned, but when a violation involved danger to international order, it was natural that recourse should be had to the United Nations. Otherwise the position of the USSR delegation might unexpectedly turn against its advocates. Indeed, if a number of States agreed to have recourse to a friendly procedure in cases of violation of human rights, many disputes could be settled in a normal manner; but if such a procedure were rejected, there was a risk that such violations would be brought into the full light of day and judged by world public opinion.

France had always been concerned with its independence and would not voluntarily agree to indiscriminate intervention by the United Nations in its internal affairs,

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but the French delegation believed that it was essential for the Organization to intervene when a violation of human rights seemed capable of threatening the peace. In that connexion the Chairman recalled the precedent of the Hitler regime which had violated human rights in Germany from 1933 on. The outcome of that progressively expanding evil had been the second World War.

Mr. SAGUES (Chile) recalled the attitude of his delegation. Apart from setting forth provisions of an exclusively juridical character the covenant merely completed the Charter of the United Nations, which had as one of its purposes to encourage respect for human rights and for fundamental freedoms. The Charter had been drawn up at the end of a war intended to re-assert the value of and the respect due to human rights. It would be wrong, therefore, to say that the Declaration of Human Rights and the international Covenant were mere statements of principle and should have no concrete and practical value.

The USSR was constantly emphasizing the need for the full recognition of State sovereignty; the USSR delegation stated it would not allow any infringement of its country's right to deal itself with questions which were within its exclusive jurisdiction. Mr. Sagues admitted that the General Assembly obviously had means of ensuring respect for human rights and fundamental freedoms, but he felt that the procedure of complaining to the General Assembly was open to serious objections, because of its possible political repercussions.

He believed that the Covenant was useful in itself and represented a step forward because of the concrete and specific provisions it contained. A procedure should be worked out which States could set up and use without any hesitation, such as commissions sitting in camera to determine, first of all, the importance and seriousness of any given case. Such commissions would carry out investigations and propose possible solutions. Should such a procedure prove of no avail, it would always be possible then to refer the case to the International Court of Justice. Before having recourse to the latter, however, all other possibilities should be investigated.

Mrs. MEHTA (India) said her delegation had raised the question of the implementation of the Covenant because it felt that the United Nations should protect the fundamental rights and freedoms of the nationals of all Member States, whether signatories to the Covenant or not.

It was essential, therefore, to set up a system of control to ensure the observance of the principles contained in both the Declaration and the Covenant.

Mr. PAVLOV (Union of Soviet Socialist Republics) reminded members of the statement made by the Chairman, and said that Article 56 of the Charter should be examined in relation to the seven paragraphs of Article 2. It was for the various Governments to ensure respect for human rights. The United Nations could act only by addressing recommendations to Member States. Any other conception would be contrary to the principles of the Charter.

Referring to the example quoted by the Chairman, he emphasized that the second World War had not been caused by a violation of the German people's rights but by the policy followed by the United Kingdom, France and the United States. The aim of that policy had been to strengthen the German war potential and to incite Germany to attack the USSR. The Munich Pact, concluded after the Anschluss, had constituted a violation of the sovereignty of a State.

The establishment of a system of international control would be contrary to the principles of the Charter. The USSR would oppose any similar attempt to undermine the United Nations. In conclusion, Mr. Pavlov said that, in the question under discussion, the sovereignty of the State and of the peoples should be guaranteed in accordance with the provisions of the Charter.

The meeting rose at 5.30 p.m.