



UNITED NATIONS
ECONOMIC
AND
SOCIAL COUNCIL



GENERAL
E/CN.4/SR.176
20 May 1950
ORIGINAL: ENGLISH

COMMISSION ON HUMAN RIGHTS

Sixth Session

SUMMARY RECORD OF THE HUNDRED AND SEVENTY-SIXTH MEETING

Held at Lake Success, New York,
on Tuesday, 2 May 1950, at 11 a.m.

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General debate (continued)

<u>Chairman:</u>	Mrs. F. D. ROOSEVELT	United States of America
<u>Members:</u>	Mr. WHITLAN	Australia
	Mr. NISCI	Belgium
	Mr. VALENZUELA	Chile
	Mr. CHANG	China
	Mr. SORENSON	Denmark
	Mr. RAMADAN	Egypt



Members (continued): Mr. ~~CASSIN~~ France
Mr. ~~KISS~~ Greece
Mrs. MEHTA India
Mr. MALIK Lebanon
Mr. MENDEZ Philippines
Miss BOWIE United Kingdom of Great Britain and
Northern Ireland
Mr. ORIBE Uruguay
Mr. JEVREMOVIC Yugoslavia

Also present: Miss McCORKINDALE Commission on the Status of Women

Representative of a specialized agency:
Mr. LEMOINE International Labour Organisation (ILO)

Representatives of non-governmental organizations:

Category A: Miss SENDER International Confederation of Free
Trade Unions (ICFTU)

Category B: Mr. O. F. NOLDE) Commission of the Churches on
Mrs. E. J. NOLDE) International Affairs
Mr. MOSKOWITZ Consultative Council of Jewish
Organizations
Mr. HALPERIN Co-ordinating Board of Jewish
Organizations
Mrs. VANDENBERG) International Alliance of Women
Dr. RUDIN)
Miss TOMLINSON International Federation of Business
and Professional Women
Miss ROBB International Federation of University
Women
Mr. BEER International League for the Rights
of Man
Miss ZIZAMIA International Union of Catholic
Women's Leagues
Mr. PERLZWEIG World Jewish Congress

Secretariat:
Mr. SCHWELB Deputy Director, Division of Human
Rights
Mr. LIN MOUSHENG Secretary of the Commission

ORGANIZATION OF THE WORK

1. Mr. JEVREMOVIC (Yugoslavia), speaking on a point of order, thought that before proceeding with its consideration of measures of implementation, the Commission should decide how it intended to organize the work which remained to be done on the draft covenant. After completion of its work on implementation, it would normally resume discussion of article 22, which was the final article of part II of the draft covenant, as it appeared in the report of the fifth session. There were, however, several new additional articles which had been formally proposed at the fifth session and in the course of the present session, which had a direct bearing on part II and should be integrated in that section. It was for the Commission to decide when those relevant new proposals should be considered, whether it should be after article 22 or when the entire draft covenant had been completed. The Yugoslav delegation formally proposed that they should be discussed immediately after article 22. That was a reasonable and proper procedure and Mr. Jevremovic urged the Commission to adopt it. An immediate decision would settle the matter and guide members in the preparation of their work for future meetings.
2. Miss BOWIE (United Kingdom) was anxious to complete the work on the articles of the draft covenant, which had been before the Commission for three years, in the brief period which remained of the sixth session. If it should decide to interrupt that work for the consideration of new articles, it could not be expected to fulfil its pledge to submit a completed draft of the covenant to the Economic and Social Council at its forthcoming session. There were several articles in part I which had to be reconsidered, part III had not been dealt with at all, and the entire problem of measures of implementation was as yet in the initial stages of discussion. Time must also be found for a second reading. In view of these difficulties, the Commission should not commit itself to discuss new articles.
3. The CHAIRMAN agreed that the primary concern of the Commission should be the completion of the initial draft covenant for submission to the General Assembly at its fifth session. If time permitted, new articles might then be considered with a view to their inclusion either in that first covenant or another

/covenant

covenant to be drawn up at some later date. The decision requested by the representative of Yugoslavia could not be taken until consideration of article 22 had been completed and the Commission could gauge more accurately how much time remained to finish its work on the covenant.

4. Mr. MALIK (Lebanon) thought it was premature for the Commission to commit itself regarding the consideration of additional new articles. That was an important question and any decision on it should be taken only after thorough discussion. It entailed such problems as the nature of the additional articles, the time that should be devoted to their consideration, and whether they should be reserved for inclusion in a second covenant.

5. Mr. NISOT (Belgium) did not think that a decision should be taken at that stage on the question raised by the representative of Yugoslavia. He moved the adjournment of the debate on that question.

The motion for adjournment of the debate was adopted by 9 votes to 4, with 2 abstentions.

6. Mr. JEVREMOVIC (Yugoslavia) had voted against the motion for adjournment because he felt that it was perfectly reasonable for members to have some idea of the organization of future work. He had been surprised by the position taken by some delegations regarding the necessity of discussing the additional new articles proposed for inclusion in the covenant. There could be no equivocation on that matter: the Commission could not consider its work complete, technically or practically, unless it had discussed the new articles. Its refusal to decide when that discussion should take place jeopardized the work on the covenant.

7. Mr. MALIK (Lebanon) had voted in favour of the motion for adjournment of the debate without prejudging what items should be considered by the Commission after implementation. His vote should not be construed as a decision

on the substance of the question raised by Yugoslavia; he was simply not prepared to discuss additional articles at that stage; with prior notice, he would be quite ready to consider that complex question.

8. Mr. KYROU (Greece) had voted against the Belgian delegation's motion because he agreed that it was reasonable for the members to know in advance how the work which remained would be organized. Like the representative of Lebanon, however, he had taken no decision on the substance of the point raised by Yugoslavia and reserved his right to revert to that matter.

MEASURES OF IMPLEMENTATION (E/1371, Annex III, E/CN.4/366, E/CN.4/419, E/CN.4/164/Add.1, E/CN.4/358, chapter IX, E/CN.4/353/Add.10, E/CN.4/353/Add.11, E/CN.4/444, E/CN.4/452, E/CN.4/457)

General debate (continued)

9. The CHAIRMAN pointed out that two specific texts outlining measures of implementation were before the Commission: the United States-United Kingdom proposal (E/CN.4/444) and the French suggestions (E/CN.4/457). The delegation of India, in its paper on the subject (E/CN.4/452), raised several fundamental questions which might serve as a basis for a general discussion of the entire problem of implementation, before consideration of the two specific texts. As there seemed to be no adverse opinion on the first point, it could be assumed that the Commission agreed on the necessity of some international machinery to implement the covenant. Discussion was open on the second question: whether the measures of implementation should form part of the covenant or form a separate instrument.

10. Mr. CASSIN (France) considered it indispensable to include measures of implementation in the first covenant, which would represent a standard or model by which subsequent covenants would be guided. Those legal procedures would be

applied by the contracting States in all cases of violations of human rights where no special machinery already existed. For example, in violations of trade union rights, existing ILO procedures would apply; similarly, the provisions of the trusteeship system would be invoked for violations of rights in Trust Territories. In cases of violation of rights enumerated in the covenant, however, the signatory States would be obligated to resort to the measures of implementation expressly contained in that document.

11. States which had not signed the covenant still had recourse to the procedures recognized by the United Nations Charter in resolving all questions of observance of human rights. They could bring complaints to the General Assembly, the Economic and Social Council, or, where they considered violations a threat to peace and security, to the Security Council. States which were not prepared to accept and ratify the covenant might be persuaded to commit themselves to limited adherence to its provisions by submitting periodic reports to the Commission on Human Rights on the observance of human rights. That commitment might be embodied in a resolution of the General Assembly. Moreover, when, for technical reasons, States were not in a position to accept all the measures of implementation contained in the covenant, they might consent to be parties to a supplementary protocol. Finally, there was nothing to prevent the elaboration of other covenants to enforce rights not set forth in the first covenant. For example, the right to education and the elimination of illiteracy might be implemented by submitting cases of violation to UNESCO.

12. The position of the French delegation was categorical: failure to include measures of implementation in the covenant itself would leave the impression on world public opinion that it was merely a second Declaration of Human Rights with no provision for legal enforcement.

13. Miss BOWIE (United Kingdom) endorsed the views of the French representative.

14. The suggestion of the Indian delegation for a separate protocol on measures of implementation would not enlarge the area of the people benefiting from the guarantees given in the covenant; only States which accepted the covenant in every detail would be able to apply that protocol. As proof of the sincerity of its authors, the covenant must include measures for its implementation.

/15. MR. ORIBE

15. Mr. ORIBE (Uruguay) indicated that the delegations of India and Denmark had, for different reasons, proposed that implementation measures should be separated from the covenant itself. The position of the Indian delegation was that implementation measures were general in character and should apply to the covenant, and to the human rights provisions of the Charter in the case of States which did not sign the covenant. The Danish delegation contemplated implementation measures restricted to the covenant itself but felt that since some Governments might have difficulty in accepting the covenant and implementation measures in a single instrument, separation of the two was preferable.

16. It should be remembered that even if no specific implementation measures were inserted in the covenant itself, the general provisions of international law would automatically apply and the customary machinery for enforcement of treaties would be set in motion as a result of the adoption of the covenant. Since by its very nature a covenant implied implementation machinery, the issue before the Commission was to determine whether special machinery should be contemplated in addition to the traditional automatic machinery of international law. The ultimate decision in the matter would depend on the type of implementation system the Commission adopted. The Uruguayan delegation reserved its position pending further clarification of the question.

17. Mr. JEVREMVIC (Yugoslavia) noted that the Yugoslav Government had submitted written views advocating that measures of implementation should be contained in a separate instrument. It would therefore support the proposals of the Indian delegation.

18. The CHAIRMAN, speaking as the representative of the United States of America, concurred in the views of the representatives of France and the United Kingdom. Provisions for complaints by States against other States should be included in the covenant but provisions for petitions should be contained in a separate instrument open to separate ratification. In that way, States would be free to accept or reject machinery for petition since that machinery would not be a part of the covenant.

/19. She noted

19. She noted that the proposal of the United States and the United Kingdom on implementation dealt only with State to State complaints for the first covenant.

20. Mr. KYROU (Greece) endorsed the views of the representative of France and stressed the importance of psychological factors in the advancement of human rights. International public opinion must not be given the impression that the covenant was silent on measures for enforcement.

21. Mr. WHITLAM (Australia) stated that the Australian delegation was firmly convinced that measures for implementation should be included in the covenant. It agreed with the representative of France and felt that there were sound legal and psychological reasons for including implementation provisions in the same instrument rather than leaving the matter to the general operation of international law.

22. The question of the appropriate form for implementation in regard to additional articles should be decided separately. The Australian delegation was not thinking in terms of rigid formulation of implementation measures and was of the opinion that provisions for such additional machinery might appropriately be contained in whole or in part in a separate instrument.

23. Mr. MALIK (Lebanon) was concerned that in its important discussion on implementation the Commission might fail to determine precisely what type of implementation it envisaged. If the Commission's standards were low and it wished to adopt safe though inadequate proposals which merely set forth the principles of international law which would apply in any case, such a text would obviously be innocuous and could safely form a part of the covenant. The proposals of the United Kingdom, the United States and France would ensure ratification and were quite understandable in the light of the constitutional procedures of those countries for ratification of international agreements. If, however, the Commission set high standards and adopted implementation measures which went much farther than those envisaged by the United States, the United Kingdom and France, it was obviously in the interests of those countries to have such provisions placed outside the scope of the covenant.

/24. While the

24. While the Lebanese delegation would not advocate sweeping provisions which would make any State unable to ratify the covenant, it nevertheless felt that the cautious conservative approach should be modified somewhat to achieve worthwhile implementation provisions going beyond the general procedures of international law. If the Commission envisaged only State to State complaints and refused the right of petition to individuals and groups and even non-governmental organizations, its action would obviously merely facilitate and codify existing procedure on complaints but would mark no significant advance. The Commission must therefore first decide whether in principle it was prepared to go beyond prevailing practices under international law.

25. The representative of Lebanon pointed out that some types of convention were self-regulating in the matter of implementation. A breach of any commitment by a signatory State adversely affected other signatories and impelled them to take retaliatory measures. The Covenant on Human Rights was unique in that signatory States undertook specific obligations toward their own nationals. Violation of those obligations by a signatory State would not cause immediate and direct injury to other States. Damage would be restricted to the moral plane and, since States were unlikely to undertake action for such reasons alone, additional implementation machinery beyond the ordinary procedures of international law was indicated.

26. A second major question before the Commission was the determination of how far measures on implementation should go. While Mr. Malik considered the French proposal as vastly superior to the joint text of the United States and the United Kingdom, he was not convinced that either one was sufficiently far-reaching. Although he was willing to have either of those texts inserted in the covenant, he believed that the Commission must also provide additional machinery going beyond the existing machinery of international law. The right of petition should not be restricted to States but should at least be extended to non-governmental organizations. He felt, however, that measures on implementation in connexion with petitions should form a separate protocol.

27. Mr. KYROU (Greece) expressed the view that in judging the objectives of the Commission it must constantly be borne in mind that the highest ideological and spiritual aims would be thwarted if reality were disregarded.

28. The CHAIRMAN, speaking as the representative of the United States of America, felt that the objective of drafting an international instrument which could be ratified by the greatest possible number of States should not be qualified as aiming low. A basic question of judgment was involved: in an initial covenant was it appropriate to seek a broad basis of ratification as a cornerstone for the advancement of human rights? It must also be remembered that many morally recognized aspirations for the extension of individual rights were gradually being translated into enforceable law in various parts of the world.

29. The United States delegation agreed that basic provisions on implementation should be inserted in the covenant and that a separate protocol **might** be drawn up for separate ratification if States so desired.

30. While it was true that even if no special implementation provisions were included, the ordinary procedures of international law would apply in the case of complaints, the United States felt that in order to prevent use of the covenant as an instrument of propaganda by a State ratifying in bad faith, the covenant should make provision for fact-finding machinery to cover State to State complaints.

31. Mr. ORIBE (Uruguay) was gratified to note that the United States representative endorsed his belief that measures of implementation should be included in the covenant.

32. Reverting to his earlier remarks, he pointed out that international law provided for three possible types of recourse applicable to all treaties. Firstly, there were the traditional methods of arbitration and diplomatic negotiations which might lead to the denunciation of the treaty. Secondly, all States which had accepted the jurisdiction of the International Court of Justice were bound by its decisions under Article 36 of the Statute of the Court. Thirdly, there was the Charter. Experience had shown that the General Assembly could act in cases which involved the human rights provisions of the Charter. In the case of threats to international peace and security, the Security Council was empowered to act. Furthermore the Latin American States were bound to abide by the decisions taken at the Ninth Inter-American Conference at Bogota.

/33. Thus

33. Thus there was a vast body of international law covering the implementation of treaties which was applicable to all such instruments which would automatically apply to the international covenant on human rights. The inclusion of measures of implementation in the covenant should therefore create no obstacle for any State wishing to ratify the document. In those circumstances, the type of measures of implementation included in the covenant became less important. It might be possible, however, to take a step forward and provide for measures to promote conciliation or other methods of settling disputes which had not hitherto been contemplated in international law.

34. It should be made clear, however, that such measures, if incorporated in the covenant, were to be considered exceptional and supplementary, and were in no way intended to replace the existing procedures prescribed by international law.

35. For all those reasons he was in favour of including measures of implementation in the covenant. Irrespective of whether such measures were included in it or not, however, it should be borne in mind that ratification of the covenant in itself represented an important step forward in the implementation of human rights.

36. Mrs. MEHTA (India) agreed with the Uruguayan representative on the significance of the covenant. By becoming signatories to that instrument, States were undertaking to carry out the rights proclaimed therein. It was for that very reason that she felt the machinery for implementation should not be included in the document itself. Moreover, although a treaty, it was not an engagement between States, but rather an agreement between States and the United Nations and it should be for the world Organization to set up the necessary machinery to ensure that those rights were enforced. In the case of a dispute between State and State, the requisite machinery already existed but measures of implementation were needed to deal with disputes between the State and an individual.

37. If the measures of implementation were included in the covenant, however, they would have to be written into every treaty. For that reason, she thought it would be better to present such provisions in a separate instrument.

38. Mr. CASSIN (France) noted that the Lebanese representative had endorsed the solution advocated by the French Government, namely that the covenant should include certain measures of implementation, to be supplemented by a separate protocol.

39. With regard to the Indian proposals, he thought it would be unwise to draft an abstract instrument of implementation in the absence of any concrete provisions on the rights set forth in the covenant. He understood the technical argument raised by the Indian delegation, but thought that where an instrument proclaimed certain rights specific provision should be made for the implementation of those rights. Moreover, as the representative of Uruguay had pointed out, the mere signing of the covenant would represent considerable progress.

40. The French proposal suggested that a special body should be set up which would be responsible for ensuring respect of human rights and fundamental freedoms. That proposal should be combined with the covenant into an indivisible whole and with that as a basis, the Commission could consider what further progress could be made. He did not feel it would serve any useful purpose, however, to prepare one instrument setting forth human rights, and a separate document containing the measures of the implementation of those rights.

41. The CHAIRMAN suggested that the Commission should attempt to clarify its views on the general question of implementation. She noted that many members felt the covenant should contain measures of implementation with regard to disputes between State and State, and that there was some sentiment in favour of an auxiliary protocol containing supplementary measures of implementation, which States would be free to accept or reject as they wished.

42. She thought it would be difficult for the Commission to reach a conclusion on the third, fourth and fifth questions raised by the Indian delegation until a basic text was before the Commission.

43. In reply to Mr. RAMADAN (Egypt), Mr. CASSIN (France) thought the question of the relationship between the proposed United Nations organ and the International Court of Justice should be discussed when the Commission took up the French proposal to create such a body. The Commission should first decide the preliminary question whether an ad hoc body or a permanent organ should be set up before discussing any concrete proposals.

44. Mr. KYROU (Greece) agreed that the Commission should first take a decision on principle before acting on the Indian proposal.

/45. In reply

45. In reply to the CHAIRMAN, Mrs. MEHTA (India) said there was no need to vote on her proposals until the specific issues had been thoroughly debated. If necessary, a committee could then be set up to work out a draft for the Commission's consideration.

46. The CHAIRMAN thought the fourth question raised in the Indian statement could not be answered until detailed proposals were put before the Commission.

47. If the Commission could reach a consensus of opinion, it might be possible to prepare a joint text which would meet with general support.

48. Miss BOWIE (United Kingdom) said it could not be assumed that a sub-committee could prepare a text satisfactory to the entire Commission.

49. A decision on the third question put by the Indian delegation should be taken, for the entire discussion would depend on that decision. If the Commission thought it would be better to establish a permanent organ, the French proposal would be most suitable; but if it preferred an ad hoc body, the joint United States and United Kingdom proposal would seem to recommend itself. The advantages of a permanent organ should be expounded, however, before the Commission came to any conclusion on the question of principle.

50. Mrs. MEHTA (India) recalled that at a previous session the Australian delegation, like the Implementation Group, had been in favour of a permanent body.

51. Mr. WHITLAM (Australia) thought the final objective should be to establish an international court to handle infringements of human rights, but that need not necessarily be the Commission's immediate goal. Every aspect of the question should be considered, including the further steps which could be taken after the initial agreement had been laid down.

52. At a later stage his delegation intended to propose that the International Law Commission should be asked to give the matter further study. The basic question before the Commission, however, was what could be done at the present/^{time} to implement instruments of international law. He considered the proposals before the Commission as tentative suggestions on which to begin the debate.

/53. He felt

53. He felt there was a sincere desire on the part of the Commission to do everything possible to make the covenant a real instrument of international law. When it decided how far it could go at the present stage, it could consider ways and means of giving fuller satisfaction to the hopes and aspirations which the peoples of the world placed in the covenant.

54. The CHAIRMAN, speaking as the representative of the United States of America, said the joint United States and United Kingdom proposal favoured the creation of an ad hoc body to handle disputes between State and State. It was difficult to foresee the extent of that body's activity. The covenant could be amended to provide for the creation of a permanent body, if necessary.

55. Most countries, she felt, would be willing to begin implementation procedures in a modest way. Furthermore, the expense of creating a permanent institution might deter many States from adhering to the covenant. It would therefore seem wiser to adopt the joint proposal and modify that procedure in the light of future developments.

56. Mr. KYROU (Greece) thought it would be easier to reach a decision after the authors had fully explained the various proposals before the Commission.

The meeting rose at 1 p.m.