

COMMISSION ON HUMAN RIGHTS

SECOND SESSION

SUMMARY RECORD OF THE THIRTY-FIFTH MEETING

Held at the Palais des Nations, Geneva, on
Friday, 12 December, 1947, at 3 p.m.

PRESENT:

Chairman: Mrs. F.D. Roosevelt (United States of
America)

Rapporteur: Dr. Ch. Malik (Lebanon)

Members: Colonel W. Hodgson (Australia)
Professor F. Dehousse (Belgium)
Mr. A.S. Stepanenko (Byelorussia)
Mr. E. Cruz Coke (Chile)
Dr. C.H. Wu (China)
Mr. O. Loutfi (Egypt)
Professor R. Cassin (France)
Mrs. H. Mehta (India)
Mr. A.G. Pourevaly (Iran)
Mr. M. Amado (Panama)
General C.P. Romulo (Philippines)
Lord Dukeston (United Kingdom)
Mr. M. Klekovkin (Ukraine)
Mr. A.E. Bogomolov (Union of Soviet
Socialist Republics)
Mr. A.C.C. Victorica (Uruguay)
Dr. V. Ribnikar (Yugoslavia)

Representatives of Mrs. Begtrup)
the Commission on) (17 p.)
the Status of Women: Mrs. Uravola)

Secretariat: Professor Humphrey

Mr. Lawson

**Specialised
Agencies:**

Mr. J. de Givry (I.L.O.)

Mr. J. Havet (UNESCO)

Mr. Weiss (I.R.O.)

**Non-Governmental
Organizations:**

Category A:

Miss Toni Sender (American Federation
of Labour)

M. Robinet de Clery (Inter-parliamentary
Union)

Mr. Serrarens (International Federation
of Christian Trade
Unions)

Category B:

Mr. Brotman (Consultative Council of
Jewish Organizations)

Mr. Pilloud (International Red Cross
Committee)

Mrs. J. Eder (International Council of
Women)

Mr. Nolde (Commission of the Churches
on International
Affairs)

Miss de Romer (International Union of
Catholic Women's
Leagues)

Mr. Bienenfeld (World Jewish Congress)

Mr. de Felice (International Abolitionist
Federation)

Mr. Ennals (World Federation of United
Nations Associations)

1. Examination of Articles 3 to 6 of the Declaration
(E/CN.4/57).

Professor DEHOUSSE (Belgium) stated that the amendment submitted by the representative of India at the 34th meeting, to introduce the term "colour", did not seem to him scientifically accurate since, in his view, the concept of race included that of colour. He would, however, vote for this amendment. The amendment proposed by the Soviet representative (E/CN.4/Sub.2/21) was, he felt, unacceptable. There was no mention in the first paragraph of this amendment of "political opinion", as in the first paragraph of the proposed Declaration. The second paragraph of this amendment, relating to implementation, was, he considered, out of place in a Declaration which had no binding force. It also seemed inconsistent for the Soviet representative to oppose the implementation of the provisions concerning human rights when he agreed to their insertion in an Article of the Declaration. Finally, he did not feel it was possible to leave the responsibility of implementation to the States themselves. He proposed the following amendment, which would take into account the idea advanced in the second paragraph of the Soviet representative's amendment: at the end of paragraph 2 of Articles 3 to 6 of the proposed Declaration, add the words "and against any incitement to such discrimination".

Lord DUKESTON (United Kingdom) stated that the United Kingdom could not support the Soviet amendment because it did not protect the individual against discrimination on the grounds of his political opinions. In accordance with this amendment a one-party Government would not be obliged to take measures to safeguard the freedom of those professing a different political opinion from its own.

Mr. BOGOMOLOV (Union of Soviet Socialist Republics) said that it was logical for the terms "political or other opinion" to be omitted from the Soviet proposal. There were political opinions which tolerated not only the advocacy of racial or national hatred, but also the actions arising therefrom. Equal rights could not be granted to those who professed such opinions.

Mr. CRUZ COKE (Chile) wished to know whether this meant that the Soviet representative would approve of an individual being persecuted for his political opinions.

Mr. BOGOMOLOV (Union of Soviet Socialist Republics) replied that this question bore no relation to the problem under discussion, which was whether propaganda and actions based on national or racial hatred should or should not be permitted.

Dr. WU (China) suggested the following amendment to the Soviet representative's proposal: "Any advocacy of national, racial or religious hostility, designed to provoke violence, shall be forbidden under the law of the State". This amendment might be inserted in the Declaration or the Convention.

The CHAIRMAN pointed out that the Commission had before it the Soviet amendment, proposed for insertion in the Declaration. She asked the representative of China to explain whether his amendment was intended for insertion in the Declaration or in the Convention.

Dr. WU (China) stated that he would reserve his amendment for insertion in the Convention.

The CHAIRMAN called for a vote on the amendment proposed by the Soviet representative, to substitute for Articles 3 to 6 of the Declaration the proposal submitted by Mr. BORISOV to the Sub-Commission on the Prevention of

Discrimination and the Protection of Minorities (E/CN.4/
Sub.2/21).

Decision: The Commission rejected this amendment by ten votes to four, with three abstentions.

The CHAIRMAN put the Belgian representative's amendment to the vote.

General ROMULO (Philippines) proposed that this amendment be inserted after the words "arbitrary discrimination".

Professor DEHOUSSE (Belgium) accepted this proposal.

Decision: The Commission adopted this amendment by ten votes to none, with six abstentions.

The CHAIRMAN stated that the Commission had before it the amendment proposed by the representative of China, to add the word "colour" after the word "race", and the amendment submitted by the representative of India to add the words "(i.e. also colour)" after the word "race".

Mrs. MEHTA (India) pointed out that the amendment proposed by the representative of China implied that the concept of colour was not covered by that of race. She suggested that a vote be taken, in the first instance, on the proposal of the representative of India.

The CHAIRMAN put to the vote the amendment proposed by the representative of India.

Decision: This amendment was adopted by ten votes to none, with six abstentions.

The CHAIRMAN stated that the amendment proposed by the representative of China was consequently ruled out. Lastly the Commission had before it an amendment by the representative of Egypt to delete the words "political or other opinion" and the words "national or social origin" included in paragraph 1. She put this amendment to the vote.

Decision: The Commission rejected this amendment by eleven votes to one, with five abstentions.

2. Examination of Article 19 of the Draft Convention

Professor DEHOUSSE (Belgium) stated that it would be logical to re-introduce in this Article the amendment he had proposed in respect of Articles 3 to 6 of the Declaration. He therefore suggested the insertion in the second sentence of Article 19, after the words "under the law", of the words "against any incitement to such discrimination".

Mrs. MEHTA (India) proposed for the first sentence of Article 19 the amendment she had submitted for Articles 3 to 6 of the Declaration.

Dr. WU (China) proposed that the amendment he had suggested to the proposal by the Soviet representative be inserted at the end of Article 19.

Professor CASSIN (France) proposed that the whole of paragraph 2 of Article 3 of the Declaration should be substituted for the second sentence of Article 19 of the Convention. In point of fact Article 3, paragraph 2, expressed the idea of equality before the law, which was not contained in the second sentence of Article 19.

Mr. LOUTFI (Egypt) supported the proposal made by the representative of France.

Professor DEHCUSSE (Belgium) stated that he withdrew his amendment in favour of that proposed by the representative of France.

Colonel HODGSON (Australia) pointed out that there was a great difference between the wording of the corresponding articles of the Declaration and of the Convention. Article 19 involved an obligation on the part of the State,

whereas Article 3 laid down a principle. In order to coordinate the two texts, whilst maintaining the binding character of Article 19 of the Convention, he proposed the following amendment to the second sentence of this Article:

"Every person, regardless of office or status, shall be entitled to equal protection under the law and shall be protected by the law against any arbitrary discrimination and against any incitement to such discrimination in violation of this Declaration."

Mr. AMADO (Panama) remarked that Article 19 used the term "Bill of Rights" instead of "Convention". The English expression "Bill of Rights" had a sense which was not universally accepted and had, therefore, no international significance. He accordingly proposed that the words "Bill of Rights" be replaced by the term "Convention".

Lord DUKESTON (United Kingdom) pointed out that all the amendments proposed referred to the restrictions placed on freedom of expression or information. It was, however, stated in paragraph 3 of the draft Resolution on Freedom of Information (page 14 of Document E/CN.4/56) that these questions were to be remitted for consideration to the Sub-Commission on Freedom of Information and of the Press and to the International Conference on Freedom of Information. He proposed therefore that this Resolution should be adhered to and that there should be no discussion of these amendments.

Professor CASSIN (France) maintained that the amendment submitted by the representative of Australia would represent an undeniable improvement to the text of Article 19 of the Convention. Moreover, he did not feel that the text of the Resolution mentioned by the United Kingdom representative, and the new text proposed for the second sentence of

Article 19, were absolutely identical. The latter related not only to freedom of information but also to administrative or educational questions.

Professor DEHOUSSE (Belgium) suggested that the choice of a title for the document be referred to the Drafting Committee, on the understanding that the term "Declaration" connoted an undertaking that was not binding, and "Convention" an international treaty.

General ROMULO (Philippines) supported the amendment proposed by the representative of Australia.

Mr. AMADO (Panama) did not feel authorized to vote for an international instrument for which he was unable to furnish a concrete definition to his Government. He therefore asked that the question of the document's title be put to the vote.

The CHAIRMAN stated that she was prepared to call for a vote on the question as to whether this document should be called a "Bill of Rights" or a "Convention". Representatives who did not share the majority opinion might state their views in a note which would be annexed to the document.

Professor DEHOUSSE (Belgium) recalled that he had proposed the substitution of the word "Covenant" for "Convention". He asked that the vote should also cover this proposal.

Mr. VICTORICA (Uruguay) stated that if it was to be effective the Declaration should form part of positive international law. He saw no clear-cut distinction, either in form or in substance, between the Declaration and the Convention. Both documents had the same legal scope; nevertheless, it would be easier to examine the Declaration first, so as to establish the general principles and then to pass on to the Convention. He therefore submitted the following motion: The Commission should continue its

examination of the text of the Declaration; after this has been completed it will be in possession of adequate legal criteria by which to examine the Convention.

The CHAIRMAN explained that although it was to be hoped that the principles defined in the Declaration would be embodied in national legislation, this was not obligatory. Certain States might regard many of these principles merely as aspirations. In view of this, the Commission had split into three Working Groups in order to draw up, at the same time as the Declaration, a draft Convention which, once it had been ratified by States, would be binding. For the same reason the Commission had decided to proceed to a simultaneous study of the corresponding articles of the draft Declaration and the draft Convention.

General ROMULO (Philippines) stated that the Commission had become involved in a procedure which was inadmissible. It had decided on the parallel discussion of the articles of the Convention and the Declaration. He asked the Chairman to declare any motion contrary to this decision inadmissible. Furthermore, a number of representatives had received precise instructions from their Governments and therefore could not record their votes until the Commission had decided whether to call the instrument a "Declaration" or a "Convention". He felt that the proposal made by the Delegation of Panama to the effect that the Commission should decide between the titles "Convention" and "Bill of Rights" should be taken into consideration. He asked that the vote on this question be given priority.

Lord DUKESTON (United Kingdom) saw no objection, from a legal standpoint, to the use of the words "Bill of Rights"; the main point was the form given to the document, since it

would be its form and not its title which would give it the force of an international Convention involving legal obligations. Personally he preferred the term "Bill of Rights", not only on historical grounds, but also because the peoples for whom the Commission was preparing this instrument expected a Bill of Rights. He did not think the Commission could decide on a title merely on the strength of Article 19. Whatever the title adopted when a vote was taken on each article, the latter could be brought into conformity with the title at the end of the debate. In these circumstances he proposed that no decision on the title be taken until the actual contents of the document had been discussed.

The CHAIRMAN proposed, to avoid any further discussion, that all three terms be employed and the title considered at the end of the debate.

She called for a vote on the amendment proposed by the representative of France, and further amended by the Australian Delegation, to replace the last sentence of Article 19 by the following:

"Every person, regardless of office or status, shall be entitled to equal protection under the law and shall be protected by the law against any arbitrary discrimination and against any incitement to such discrimination in violation of this Declaration."

Dr. MALIK (Lebanon) held that three or thirty titles might be employed, but the one term that could not be adopted was "Declaration". The Commission had received its Terms of Reference from the Economic and Social Council, and these referred merely to a "Bill of Rights" and not to a Convention or Declaration.

Professor DEHOUSSE (Belgium) felt that the Commission would make no headway in its work unless it adopted the

Chairman's proposal. The whole question depended in fact on what was meant by the words "Bill of Rights." To him, the words meant "Convention" but he repeated that they could not be translated into French.

Mr. BOGOMOLOV (Union of Soviet Socialist Republics) pointed out that in Russian, "Bill of Rights" meant "English law".

Professor CASSIN (France) supported the proposal that the various terms be discussed after the articles had been considered.

The CHAIRMAN called for a vote on the amendment to Article 19, proposed by the French Delegation, and further amended by the Australian Delegation.

Decision: This amendment was adopted by eleven votes to one with four abstentions.

The CHAIRMAN called for a vote on the amendment proposed by the Chinese Delegation, to add a new paragraph to Article 19:

"Any advocacy of national, racial or religious hostility, designed to provoke violence, shall be forbidden under the law of the State".

Colonel HODGSON (Australia) felt that this text might throw Article 19, which dealt with discrimination, out of balance. The text of the amendment proposed by the representative of China contained a new idea which might be embodied in a separate article.

Dr. WU (China) accepted this proposal.

The CHAIRMAN proposed that consideration of this amendment be postponed until after the vote on the amendment submitted by the Delegation of India which, following the addition of the term "colour" to Article 3, called for the insertion in Article 19 of the words "(i.e. also colour)" after the word "race".

Decision: This amendment was adopted by eleven votes to none, with four abstentions.

Dr. WU (China) asked that the text of his amendment should be inserted immediately after Article 19, since it also related to one aspect of discrimination.

The CHAIRMAN put the amendment, in the form of a new article, to the vote.

Decision: The article was adopted by seven votes to two, with seven abstentions.

3. Article 7 of the Declaration and Article 4 of the Convention.

The CHAIRMAN declared discussion open on Article 7 of the Declaration and Article 4 of the Convention, concurrently.

Mr. SERRARENS (International Federation of Christian Trade Unions) felt that the purport of the second paragraph of Article 4 was exceptionally serious. Admittedly certain countries had laws authorising abortion, but the fact that such a law existed did not justify an act which was in itself unlawful. Furthermore, the majority of national laws forbade the practice of abortion, thus recognising morality born of the reasoning faculty given to man by the Creator. He trusted that paragraph 2 would be deleted.

Mr. CRUZ COKE (Chile) was amazed that the Working Group had adopted paragraph 2 of Article 4 of the Convention, since it sanctified an unscientific principle. The words in paragraph 2: "except in a case in which it is permitted by law" were a contradiction to the first line of paragraph 1 which read: "It shall be unlawful to deprive any person of his life". He pointed out that the Hitler regime had also adopted these practices "in good faith". The paragraph likewise provided for an exception in cases where it was necessary "to prevent the birth of a child of unsound mind". As a doctor, he declared that it could not be forecast before birth whether a child would

or would not be of unsound mind.

As regards the prevention, provided for in the paragraph, of the birth of a child "to parents suffering from mental disease", he pointed out that in some cases children of mentally deranged parents had become famous men or even geniuses. As regards pregnancy resulting from rape, experience had shown that the majority of women seeking abortion used rape as a pretext. In his view paragraph 2 of Article 4 was a shameful provision which should be deleted.

Mrs. BEGRUP (Chairman of the Commission on the Status of Women) stated that the question under discussion would be considered at the next session of the Commission on the Status of Women. However, she drew the attention of the Commission on Human Rights to the fact that the laws of a large number of civilised countries allowed abortion, in cases clearly specified by the law, in order to preserve the life of the woman. She felt that the deletion, pure and simple, of paragraph 2 would prevent the ratification of the Convention by certain countries.

The CHAIRMAN proposed that a vote should first be taken on Article 7 of the Declaration and that discussion should then be resumed of Article 4, taken paragraph by paragraph.

Mr. VICTORICA (Uruguay) felt that the expression "everyone" was too narrow. He would prefer a wider term which would include all human beings. He proposed the following amendment:

"Human life is inviolable. The State shall grant protection to all persons born or those suffering from incurable diseases and those physically or mentally deficient are also entitled to it.

The right to life includes the right of obtaining from the State minimum standards for a dignified and worthy life.

The death penalty shall never be applied to political offenders. With regard to criminal offenders, it shall only be applied after sentence rendered under existing laws after a trial with the necessary guarantees for a just sentence."

He stated that on philosophical, sociological and moral grounds many countries refused to apply the death penalty. His delegation would uphold the principle that the death penalty could never be imposed for a political offence.

Mr. CRUZ COKE (Chile) supported this proposal.

Professor DEHOUSSE (Belgium) asked for a separate vote on each part of the proposal, since the text submitted by the delegation of Uruguay contained several different ideas.

Mrs. THIRU (India) drew the Commission's attention to the fact that if it accepted the proposed text, paragraph 2 of Article 4 should be maintained, otherwise it would conflict with the facts, since exceptions might be made for "unborn persons."

The CHAIRMAN called for a vote on the text proposed by the delegation of Uruguay in the place of Article 7 of the Declaration.

Decision: The first paragraph was rejected by eleven votes to three, with four abstentions.

The second paragraph was rejected by ten votes to three, with four abstentions.

The third paragraph was rejected by nine votes to three, with five abstentions.

She put the original text of Article 7 of the Declaration to the vote.

Decision: This text was adopted by sixteen votes.

4. Article 4 of the Convention.

Professor CASSIN (France) pointed out that the expression "It shall be unlawful" had no meaning; he proposed that it should be replaced by "It shall be forbidden".

The CHAIRMAN explained that this was a provisional translation. She put the text of the paragraph to the vote.

Decision: This text was adopted by thirteen votes to none, with four abstentions.

The CHAIRMAN declared discussion open on the second paragraph of Article 4.

Lord DUKESTON (United Kingdom) said that paragraph 2 should be retained. As a member of the Working Group on the Convention, he explained that the Working Group had been obliged to recognise that the laws of many countries permitted abortion in certain well-defined cases. For this reason the Group had felt it should confirm this situation in the first three lines of paragraph 2.

In reply to the Chilian representative's observation with regard to abortion on medical advice to prevent the birth of a child of unsound mind, he stated that this was still a highly controversial question. As regards children born of mentally deranged parents, it had been established that many such children were affected by their parents' condition and although there might have been exceptional cases in which those children had become geniuses, these exceptions did not prove the rule. Finally, the argument that women used rape as a pretext did not prove that no genuine cases existed.

Furthermore, the Working Group had not sought to define cases in which abortion might be permitted, but had left this question to be settled by municipal law.

If the first part of paragraph 2 were deleted it was to be feared that many States, such as the United Kingdom, the Scandinavian countries and possibly even some Federal States of the United States of America, where this principle was already established by law, would have difficulty in ratifying the Convention. It was in this spirit that the Working Group on the Convention had finally arrived at a compromise.

Mr. CRUZ COKE (Chile) replied that the arguments advanced by the United Kingdom representative had not convinced him. In his view the deletion of paragraph 2 was in itself a compromise since silence on so grave a question as this showed great restraint.

The CHAIRMAN suggested that delegations in favour of the deletion of paragraph 2 should send in Comments for insertion in the Report. She called for a vote on the deletion of paragraph 2.

Decision: This proposal was adopted by ten votes to three.

It was decided that the Comments should be inserted in the Report.

Mr. AMADO (Panama) said that the Delegation of Panama opposed the provision contained in this paragraph for five reasons: (1) It did not rest on a scientific basis, since it advanced, under the semblance of a scientific truth, what was at best a mere hypothesis, in the general application of which a large number of medical authorities would not concur; (2) It was not legally admissible since it was at variance with a great juridical civilization, which condemned it; (3) It was not relevant, since there was no place in a Convention on broad international questions for a highly controversial point relating to forensic medicine; (4) It was not practicable, since the Constitution of many States would prevent their Governments from signing this Convention, if such a paragraph was retained; (5) It was dangerous in the highest degree, since the drafting of so loose a text as this in respect of so grave a matter would open the door to all kinds of abuses and offences, including genocide, whether on a large or a

small scale.

The Delegation of Panama also wished to state that it disagreed with the Chairman's decision to transfer this provision to the Commentary. A cursory review of opinions at present prevailing among the delegates strengthened the impression that the Panamanian proposal would probably have been adopted, and that in consequence this provision would have been removed from both the text and the Commentary.

The meeting rose at 6.20 p.m.