

COMMISSION ON HUMAN RIGHTS

SECOND SESSION

SUMMARY RECORD OF FORTYSECOND MEETING

Held at the Palais des Nations, Geneva, on Tuesday,
16 December, 1947 at 9 p.m.

Present:

- Chairman:** Mrs. Franklin D. Roosevelt (United States of America)
- Rapporteur:** Dr. Charles Malik (Lebanon)
- Members:** Col. W.R. Hodgson (Australia)
Mr. F. Dehousse (Belgium)
Mr. A.S. Stepanenko (Byelorussian S.S.R.)
Dr. C.H. Wu (China) (Alternate)
Mr. O. Loutfi (Egypt) (Alternate)
Mr. R. Cassin (France)
Mrs. Hansa Mehta (India)
Mr. A.G. Pourevaly (Iran)
Mr. M. Alekovich (Ukrainian S.S.R.)
Mr. A.E. Bogomolov (U.S.S.R.)
Lord Dukeston (United Kingdom)
Mr. J.J.C. Victorica (Uruguay) (Alternate)
Dr. V. Ribnikar (Yugoslavia)
- Secretariat:** Prof. J.P. Humphrey
Mr. E. Lawson
- Specialized Agencies:** Mr. J. de Givry (I.L.O.)
- Non-Governmental Organizations:**
- Category A:** Miss Toni Sender (American Federation of Labor)
Mr. Vanistendael (International Federation of Christian Trade Unions)
- Category B:** Mr. F.O. Nolde (Commission of the Churches on International Affairs)
Mr. J.F. Ennals (World Federation of U.N. Associations)
Mr. Rigner (World Jewish Congress)
Mr. Weill (Co-ordinating Board of Jewish Organizations)

1. Consideration of the Report of the Working Group on the Convention (Document E/CN.4/56) (Continued)

Article 5

The CHAIRMAN put Article 5 to the vote; it was adopted by 9 votes, with 3 abstentions.

Article 20

The CHAIRMAN explained that this Article was a suggestion that had been made by the United States Observer but which had not been adopted by the Working Group. She requested that the following statement of her Government's views should be inserted as a comment in the Report: "The United States believes that the Drafting Committee should seriously consider whether it is not better to have one overall limitation clause than to try to spell out every possible limitation in each Article."

She said that the representative of the American Federation of Labor had asked that the following statement on Article 20 be made on her behalf: "In both documents, the Declaration as well as the Convention, is a general clause taking care of the limitations of all Articles. In the Declaration it is Article 37 on page 17, and in the Convention it is Article 20 on page 12. The wording of both drafts on this point differs. As the clause is not meant to open loopholes, may I suggest that one choose for both Documents the same clause and the one that offers less chance for loopholes, namely Article 20 of the Convention on page 12."

Mr. WU (China) asked that his name should be inserted in the Report, as supporting the comment of the United States.

Mr. CASSIN (France) asked that the following comment regarding Article 20 be inserted in the Report: "In the opinion of the French Delegation, it is essential that the problem of a general clause defining the limitations of the rights and freedoms embodied in the

Convention should be considered. The text of such a clause remains to be drafted."

Col. HODGSON (Australia) said he was unable to understand why the suggestion for a general limitation clause which would avoid the necessity for detailed limitations in each of the substantive Articles had not been made before Article 20 was reached.

Mr. MALIK (Lebanon) pointed out that the majority of the Working Group had favoured the view that a general limitation clause was dangerous, in that it might afford opportunities for abuse. On the other hand, the United States Delegation had a right to ask that its views be included in the Report. There was in reality no Article 20; there was only a United States suggestion that a general limitation article should be included in the Convention at that point.

The CHAIRMAN stated, for the information of representatives, that when the Articles of Implementation were finally prepared they would appear in the Convention after Article 3.

Mrs. MEHTA (India) enquired why the social rights were not mentioned in Part II of the Convention.

Mr. MALIK (Lebanon), in reply, pointed out that the Convention had not been prepared in final form and could not therefore be considered as embodying every right and freedom. The representative of India, however, was free to make suggestions for Articles on social rights, either for inclusion in the Convention under discussion or in a further Convention to be prepared, if she desired to do so.

Mr. DEHOUSSE (Belgium), in connection with the point raised by the representative of India, recalled that his Delegation had made a suggestion earlier in the Session that there should be several Conventions on Human Rights. One of

those proposed was a Convention on economic and social rights, without which, in his opinion, no freedoms could exist in the world of to-day.

Lord DUKESTON (United Kingdom) requested that the following comment on Article 20 should be inserted in the Report: "The United Kingdom considers that nothing is more likely to bring the Convention and the United Nations into discredit than the production of a Convention rendered innocuous by a general limitation clause which would permit any signatory to continue all the abuses at present existing in its country.

"In the view of the United Kingdom the only way to achieve progress is by a fairly tightly drawn Convention which would prescribe as precisely as possible the limitations permissible in respect of each separate right and freedom.

"We appreciate that a Convention in so precise a form will not be easy to achieve but we believe that it is well within the bounds of possibility and abundantly worth the effort to achieve it.

"It might well be that only a limited number of members of the United Nations would subscribe immediately to such a Convention and it might not come into force for some time, but, when it did come into force, it would register great progress. Moreover, once such a Convention was in existence, there would be certain pressure on backward members who had not acceded to it to begin with, to put their house in order."

Mr. VICTORICA (Uruguay) wished to be recorded in the Report as supporting the United States comment on Article 20. While he favoured the insertion of a general limitation clause, he did not feel that specific limitations regarding each Article should be excluded.

Lord DUKESTON (United Kingdom) proposed that a new Article should be inserted after Article 3 (E/CN.4/65).

He felt that, if such a provision were not included, in time of war it might leave the way open for a State to suspend the provisions of the Convention. His Government thought it most important that steps should be taken to guard against such an eventuality.

The CHAIRMAN stated that the United States opposed the proposed Article. No provision for suspension of the Convention in time of war should be made, as, in her opinion, it might encourage violations of rights. The United Nations was an organization established with the object of preventing war; she did not feel, therefore, that an Article in which the possibility of war was implicit should be included.

Mr. DEHOUSSE (Belgium) said he would support the United Kingdom proposal if the words "or other public emergency" in line 1 were deleted. He considered such a reference to be obscure and also dangerous, as it might leave the determination of what constituted a public emergency to the State concerned. He supported the proposal otherwise because he felt that it was inevitable that certain rights should be limited in time of war.

Lord DUKESTON (United Kingdom) said he was not prepared to accept the Belgian amendment.

The CHAIRMAN therefore put the Belgian amendment to the vote. It was rejected by one vote to one and 5 abstentions.

The United Kingdom proposal was accepted by 4 votes to 3, with 8 abstentions.

Article 21

The CHAIRMAN wished to make a comment suggesting the deletion of the following words from paragraph 3 of the Article: "and by a solemn declaration made by the Government of the State concerned that full and complete effect to the provisions of Part II is given by the law of that State."

Mr. LOUFTI (Egypt) wished the CHAIRMAN's suggestion to be considered as an amendment and put to the vote. He felt that States would not be able to make the declaration at the same time as they deposited the instrument of accession as it was only after ratifying the Convention that they would begin to bring their legislation into conformity with it.

Mr. DEHOUSSE (Belgium) proposed that the whole paragraph be deleted. He thought that its provisions were useless both from a legal and a political point of view, as it was always understood that when a State ratified a Convention it intended to put its provisions into effect.

The CHAIRMAN put to the vote the Belgian proposal that the whole of paragraph 3 be deleted. The proposal was adopted by 8 votes to 1, with 6 abstentions.

The CHAIRMAN put paragraphs 1 and 2 of Article 21 to the vote. The Article was adopted by 10 votes, with 5 abstentions.

Article 22

The CHAIRMAN put the Article to the vote; it was adopted by 10 votes, with 5 abstentions.

Article 23

The CHAIRMAN put the Article to the vote; it was adopted by 11 votes, with 2 abstentions.

Article 24

Mr. CASSIN (France) stated that he would abstain from voting as the Article raised the question of the legal nature of the Convention. His Delegation wished to reserve its position on that point until the relationship between the Declaration and the Convention had been clearly established.

Mr. DEHOUSSE (Belgium) supported the inclusion of the Article. He pointed out that it was customary to include such Articles in all International Conventions and he thought that it was essential to provide for amendments which might be necessary in the future.

The CHAIRMAN put the Article to the vote; it was adopted by 7 votes, with 7 abstentions.

Article 25

The CHAIRMAN read the United States proposal to amend Article 25 to read:

"In construing the Articles of this Bill of Rights, the several Articles shall be regarded in their relation to each other."

As there were no observations she put the amendment to the vote; it was adopted by 10 votes, with 5 abstentions.

New Article Proposed by the Representative of Lebanon

Mr. MALIK (Lebanon) proposed adding the following Article at the end of the Convention (E/CN.4/75):

"Nothing in this Convention shall be considered to give any State or person the right to engage in any activity

aimed at the destruction of any of the rights and freedoms prescribed herein."

He pointed out that a similar Article had been adopted for the Declaration.

Mr. VICTORICA (Uruguay) said that he would abstain from voting because other provisions which were accepted by most Member Governments in their Constitutions had not been adopted by the Commission. He thought that the Convention should have included a general limitation clause and a statement to the effect that the laws regulating the exercise of rights should not be used to deprive people of those rights.

The CHAIRMAN put the Lebanese proposal to the vote; it was adopted by 7 votes with 8 abstentions.

Draft Resolution on Minor Communal Services (page 15)

Lord DUKESTON (United Kingdom) supported the draft resolution and mentioned that the governing body of the I.L.O. would be holding a meeting in March and would therefore have time to submit its opinion before the next session of the Commission.

Mr. DE GIVRY (ILO) pointed out that his organization was still bound by the provisions of the Forced Labour Convention of 1930. The governing body of the ILO would be pleased to study the subject at its meeting in March.

The CHAIRMAN put the Draft Resolution to the vote; it was adopted by 10 votes, with 4 abstentions.

The CHAIRMAN invited the Commission to decide on the name to be given to the Convention. She recalled that in the course of the discussions certain delegations had proposed the terms Bill, Convention and Covenant.

Col. HODGSON (Australia) was in favour of the term Bill of Human Rights, since that was the term which had been employed in the General Assembly, the Economic and Social Council, the War Crimes Commission and the Human Rights Commission itself. Furthermore, that term was employed constantly in the Nuremberg doctrine. His chief reason, however, was that "Bill" was the word used in the Commission's terms of reference.

Dr. WU (China) regarded the term "Bill" as so sacred that he would like it to cover the threefold aspects of the Commission's work: the Convention, the Declaration and Implementation. He would agree to the term "Bill" (in French "Charte") being used for that triptych, but would vote against that title if it were used solely for the Convention.

Mr. DEHOUSSE (Belgium) recalled that he had already proposed the term "Pacte" (in English "Covenant"). He was opposed to "Convention" which was a nondescript term applied to the most diverse instruments. Nor could he accept the term "Bill" as there was no French, Russian or Spanish translation for it. He understood that in English the word "Bill" meant an instrument of national law. But this was an international instrument. He formally moved that the Convention be called the "Covenant on Human Rights", not only for the negative reason that the other terms did not seem to him to have any special merit, but also for the positive reason that a Covenant set a seal on friendly relations between States and was applicable to political as well as to security and mutual assistance agreements between States. What were Human Rights but a form of security and mutual assistance among men? He was categorically opposed to the term "Charte" (English "Bill"), which held bitter memories for all the countries of Western Europe. He was sorry, moreover, that the term in

question had been chosen for the basic document of the United Nations. In point of fact, a "Charte" was not obtained by the people, but granted to them by a King endowed with Divine right who consented to renounce some of his sovereign rights.

Mr. CASSIN (France) stated that, at the present stage of its work, the Commission should give the various instruments their appropriate technical names. He proposed that the Convention be called a Convention and the Declaration, a Declaration. It was impossible for the Convention to be termed a "Bill" He recalled that when the President of the United States referred at the San Francisco Assembly to a "Bill of Rights", he was thinking of a Declaration to be annexed to the United Nations Charter. The Economic and Social Council itself, when it had examined the Commission's terms of reference, had mentioned a "Bill" in the sense of a Declaration.

He asked the Commission to leave the question of names open. He would agree to the Convention being called a "Covenant", since it would thereby gain in solemnity and since it was to serve as a model for other agreements.

Mr. LOUTFI (Egypt) supported the French representative's remarks.

Mr. VICTORICA (Uruguay) agreed with the representative of France that the Convention should be called a Convention and the Declaration a Declaration. He recalled, however, that at all the American Conferences on Human Rights, particularly the Mexico Conference, it was agreed, having regard to the terminology of the United Nations Charter, that the Declaration should have the legal character of a Convention between States.

Mr. BOGOMOLOV (Union of Soviet Socialist Republics) pointed out for the Commission's information that in Russian the word "Bill" had the meaning of "English law" and the term "Charter" also the meaning of "English law" but with a wider scope. The terms "Convention" and "Covenant" were broad legal expressions, used for agreements between States. Lastly, there was the word "Treaty" which was the most commonly used in Russian.

Dr. MALIK (Lebanon) observed that the Commission could not disregard the terminology contained in its terms of reference and should therefore use the word "Bill" somewhere. He recalled that that was the term used by the Nuclear Commission in the Economic and Social Council, when the question of the Commission's terms of reference was being discussed, and on a second occasion when those terms of reference were revised. He would agree to call the Declaration a "Declaration" and the Convention a "Covenant" as Professor Dehousse had proposed, and agreed to Dr. Wu's proposal that the whole collection of instruments should be called the "Bill".

The CHAIRMAN invited the Commission to vote successively on the proposals made by the delegations of Australia, China, Belgium and France.

Mr. DEHOUSSE (Belgium) wished to clear up a point connected with the voting procedure. He noted that the Chairman was putting four proposals to the vote in a chronological order which rested solely on chance. In his view the Lebanese representative's proposal was a compromise proposal for which he requested priority.

Dr. WU (China) seconded the Lebanese representative's proposal.

The CHAIRMAN accordingly put to the vote the Sino-Lebanese proposal that the Declaration be called a Declaration, the Convention a Covenant and the whole thing a Bill ("Charte").

Decision: This proposal was adopted by four votes to one with five abstentions.

The CHAIRMAN put the document as a whole to the vote, under the name "Covenant".

Mr. BOGOMOLOV (Union of Soviet Socialist Republics) stated that at the outset of the Commission's work, the Soviet delegation had emphasised that its primary task was to make a careful and serious study of the draft Declaration. Only an effective discussion of essential human rights could provide a satisfactory foundation for subsequent work in other fields, such as the elaboration of a Convention or other international undertakings. The Soviet delegation still considered that to be the main task of the Commission, which should endeavour to define what it meant by "Human Rights" and what that concept comprised. In the course of the discussion on those rights, the Soviet delegation had laid emphasis on the simplest and most essential of them: the right to work, leisure, education, social security and the inviolability of the human person. Unfortunately, the greatest difficulties had arisen in connection with precisely those essential rights. In the draft Convention, in whose elaboration the Soviet delegation had been unable to take part, there were no detailed provisions concerning the fundamental rights of concern to the common man, e.g. the right to work, to education, to social security, on which there had been no discussion. The Soviet delegation therefore asked for the following note to be recorded in the Report: "The Soviet delegation considers that the

drafting of a Convention is premature before the end of the work on the preparation of a text of a Declaration on Human Rights and before discussion of the opinion of the Governments on this Declaration. For these reasons, it will vote against taking any decision on the acceptance of this document."

Mr. DEHOUSSE (Belgium) reminded the Commission and the Soviet representative that the proposed Convention did not exhaust the subject. It was only the first of a series and should not be found fault with because it contained only a limited number of stipulations. For its part, the Belgian delegation was determined to press for it to be followed by other Conventions enumerating other rights, particularly the economic and social rights on which it had laid emphasis in the early stages of the present session. He would like this statement to appear in the summary record. He had no wish, however, to regard the Soviet representative's statement as holding out no hope. The latter had merely pointed out that he regarded the drafting of a Convention as premature. It was therefore only a question of a difference of opinion as to timing, not a final rejection.

Mr. CASSIN (France) stated that the French delegation would vote for the draft Convention. Since June it had been of the opinion that the methods of a Declaration and a Convention could be employed simultaneously by the Commission in drafting the document it was preparing. The first draft Convention now before the Commission offered a good illustration of that method. If the Commission had tried to draw up a Convention covering rights less universally recognized, it might have been accused of imprudence. Future conventions should be drawn up slowly and carefully with the assistance of experts. The French delegation would vote for the proposed Convention, as a preface to other Conventions.

Dr. RIBNIKAR (Yugoslavia) explained that he stood by the statement he had made before the Working Group on the Convention, as summarised in the Working Group's Report. The Yugoslav delegation would vote against the proposed Convention.

Lord DUKESTON (United Kingdom) stated that the British delegation would support the draft Convention. He admitted it to be incomplete, but in the sense indicated by the Soviet representative's criticisms, he thought that in the nature of things it could not be otherwise. However, it covered fundamental freedoms without which social security measures could not take shape unless they were imposed by a philanthropic State, the awareness of those freedoms and rights not having had the chance to develop freely in the minds of men. It could be said, therefore, that economic and social rights and social security rested primarily on the affirmation of freedom of speech and the right of association. Hence the first essential was to lay the foundations of the elementary freedoms. There was always a great temptation to criticise a draft for its omissions, but there could be no final text. If the rights and freedoms proclaimed in the present Bill became a reality, they would contribute to the gradual establishment of the other freedoms. Therefore he considered that in the time allowed it the Commission had done excellent work. It could not be deemed to have formulated all the rights and freedoms concerning mankind, but its task was to draw up a text of world-wide application. That text had not been drawn up for States where the practice of such freedoms had become customary. It was intended to be applied more especially in areas where those rights were still only partially recognized. One of the documents drawn up defined an ideal. In order to extend the field of human rights, the Commission had begun by

laying down the fundamental rights, which would become weapons in the battle for freedom. In no democratic country had freedom developed otherwise. Human rights developed primarily through the recognition of freedom of speech, then they passed into law. Each of those rights, in order to be clearly understood and effective, had to be drawn up when the time was ripe. It was better to teach the common man how democracy worked than to regard him as a child and impose certain rules on him. Such an attitude might bear some resemblance to dictatorship systems. The world needed free men and not well-fed slaves. Therefore, in developing human rights, it was necessary to begin by proclaiming freedom of speech, freedom of association and freedom of thought. Without those fundamental freedoms, human rights could not be developed. It was in that spirit he hoped that the Commission had drawn up a Convention covering the fundamental freedoms, so as gradually to bring them to the knowledge of those who did not yet enjoy them.

The CHAIRMAN stated that the United States delegation had always been in favour of drawing up a Declaration and a number of Conventions.

Mr. LOUTFI (Egypt) stated that he would vote for the draft Convention. Although it covered only the most elementary rights, he hoped it would be possible to supplement it later by a number of other instruments. He urged that, when the text was submitted to the Governments for their observations, the Secretariat should point out that it was merely a draft which would have to be put into proper legal shape by a Committee of Experts.

Mr. KLEKOVKIN (Ukrainian S.S.R.) regretted that the Commission had not devoted more care and attention to its essential

task of drafting the texts of a Declaration and a Convention on Human Rights. In his view the Convention was lacking in sincerity. It dealt with only one aspect of human rights and completely disregarded economic rights such as trade union rights, social insurance, the prevention of unemployment, etc., which were the very foundation of all other rights. The Commission had forgotten that those instruments were intended for the great mass of workers, whose views on life had changed considerably since the World War. He was afraid that when the peoples became aware of the contents of the documents produced by the Commission's work they would take up a critical attitude and might even make fun of them. The rights covered by the Convention might be compared with the right of a negro to be taken to a police station just like a white man. The Convention contained no guarantee of protection against unemployment and economic crises. He feared that in periods of economic depression the principles contained in the present Convention on Human Rights might sound hollow. The Convention confirmed the truth of the expression he had heard in the United States: "Men are free, but are dying of hunger".

The common man was only interested in freedom of speech and freedom of the press, when he was protected against poverty; yet the Convention provided no guarantee of material living conditions. He concluded that the Commission's work had been unproductive because it had been unable to find a means of harmonizing the economic and the political rights of man.

The CHAIRMAN put the draft Covenant on Human Rights to the vote.

Mr. DEHOUSSE (Belgium) asked for a vote by roll call.

Decision: The Commission adopted the draft Covenant on Human Rights by ten votes to four.

The following voted in favour: Belgium, China, Egypt, France, India, Iran, Lebanon, the United Kingdom, the United States of America, Uruguay.

The following voted against: Byelorussian Soviet Socialist Republic, Ukrainian Soviet Socialist Republic, the Union of Soviet Socialist Republics, and Yugoslavia.

Absent: Australia, Chile, Panama and the Philippines.

The meeting rose at 12.25 a.m.