

COMMISSION ON HUMAN RIGHTS

Third Session

SUMMARY RECORD OF THE SEVENTY-THIRD MEETING

Held at Lake Success, New York
on Tuesday, 15 June 1948, at 10.45 a.m.

Chairman: Mrs. Franklin D. ROOSEVELT United States of America

Rapporteur: Mr. MALIK Lebanon

Members:

Mr. HOOD	Australia
Mr. LEBEAU	Belgium
Mr. STEPANENKO	Byelorussian Soviet Socialist Republic
Mr. LARRAIN	Chile
Mr. CHANG	China
Mr. LOUÏFI	Egypt
Mr. ORDONNEAU	France
Mrs. MEHTA	India
Mr. QUIJANO	Panama
Mr. LOPEZ	Philippines
Mr. KLEKOVKIN	Ukrainian Soviet Socialist Republic
Mr. PAVLOV	Union of Soviet Socialist Republics
Mr. WILSON	United Kingdom
Mr. FONTAINE	Uruguay
Mr. VILFAN	Yugoslavia

Also Present:

Mrs. LEDON	Commission on the Status of Women
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Representative of Specialized Agency:

Mr. LEBAR	United Nations Educational, Scientific and Cultural Organization (UNESCO)
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Consultants from Non-Governmental Organizations:

Miss SENDER	American Federation of Labor (AFL)
Mr. VANISTENDAEL	International Federation of Christian Trade Unions (FCTU)
Miss STUART	World Federation of United Nations Associations

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Consultants from Non-Governmental Organizations (Cont'd):

Mrs. DRENNAN	Catholic International Union for Social Service
Mr. SARTELL PRENTICE Jr.	Commission of the Churches on International Affairs
Mr. NOLDE	Consultative Council for Jewish Organizations
Mr. MOSKOVITZ	International Union of Catholic Women's Leagues
Miss SCHAEFER	World Jewish Congress
Dr. BIENENFELD	

Secretariat:

Mr. HUMPHREY	Director of the Division of Human Rights
Mr. LAWSON	Secretary of the Commission

IMPLEMENTATION OF HUMAN RIGHTS - STATEMENT BY MR. CASSIN

Mr. CASSIN (France) thanked the Chairman for permitting him to speak on the question of implementation before his departure.

As pointed out before, a declaration on human rights was not enough, definition of the rights and provision for their implementation were also necessary and in accordance with the Charter in which human rights were already guaranteed.

As a decision by one of the organs of the United Nations, the declaration would have certain binding effects, for example, in the provision relating to United Nations assistance to Member Governments and specialized agencies in the drawing up of future conventions or subsidiary bodies. In other respects, the declaration would be in the nature of a recommendation inviting Member States to bring their laws into conformity with the principles adopted, and to make provision for legal and administrative redress in cases of violation of human rights on their territories.

The French Government attached great importance to international co-operation in that field under Article 56 of the Charter, and realized the significance and novelty of measures for ensuring United Nations control over implementation of human rights in each country. Experience had shown the tragic results of unlimited national sovereignty, and France, by its Constitution of 1946, was ready to give up part of sovereignty, provided

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such action was reciprocated. Furthermore, the Charter, which had a wider scope than the Covenant of the League of Nations, established the incontestable legal competence of the United Nations and its organs. International legal action against criminals of war was also accepted, as shown during the Nuremberg Trials. Consequently, a programme of international implementation of Human Rights should appear acceptable at the present stage of international law. In view of those considerations, his country was proposing measures for implementation of Human Rights. (Document E/CN.4/32/Add.1, articles 27 to 39).

The proposal was to create a Commission of eleven members, to be directly elected by the General Assembly, on the basis of personal qualifications, for the period of three years. The Commission, assisted by a permanent Secretary-General, would have the following functions: (a) to examine national and international legislative and judicial action from the point of view of conformity with the Covenant; (b) to consider petitions by, and make recommendations to, the contracting parties, non-governmental organizations, and private individuals; make inquiries and, where necessary, consult the International Court of Justice; and (c) to propose draft recommendations for adoption by the General Assembly. The Secretary-General would assist in the preparation and execution of the Commission's work.

The French proposal would not affect the functioning of any United Nations organs, none of which had dealt so far with petitions relating to human rights. On the other hand, the proposal would meet the general desire for international action in the matter, and was in accordance with the Commission's terms of reference. He mentioned, in connection with the question of petitions, the valuable work of the Secretariat (documents E/CN.4/92 and E/CN.4/93). Another important feature of the French proposal was its provision for consideration of petitions submitted by non-governmental organizations and private individuals. Contrary to the views of other

countries, France felt that when human rights were involved, it was impossible to refuse consideration of an individual's petition. Furthermore, the French proposal constituted the beginning of a system of civil law applying equally to all cases arising under the draft Covenant and not covered by other conventions.

Although the French proposal might seem premature, its provisions found a precedent in the functions of the Trusteeship Council. However, taking into account the scope of the proposed Commission's task, the French Government would welcome any suggestions for preliminary sifting of petitions to be considered.

While fully appreciating the value of other positive proposals on the matter, his Government did not consider it desirable to go beyond inquiry, conciliation and recommendation by the Commission at the present time. Later on, however, it would support international jurisdiction in the field of human rights under an Attorney-General of the United Nations, provided such an arrangement did not prejudice the functions of the International Court of Justice. That position was based on the following considerations: (1) the experience of the Nuremberg Trials, (2) the need to free all cases from any political implications, (3) the fact that the International Court of Justice was competent under its existing statutes to deal only with disputes between States.

In conclusion, Mr. Cassin called for immediate action in the face of the great human suffering.

The CHAIRMAN, after thanking Mr. Cassin for his contribution to the Commission's work, called for a vote on the question whether the alternate representative of France to replace Mr. Cassin should have the right to vote in the Commission.

The Commission unanimously decided that the alternate representative of France had the right to vote in the Commission.

CONTINUATION OF DISCUSSION ON THE DRAFT DECLARATION ON HUMAN RIGHTS,
DOCUMENT E/CN.4/95 (ARTICLE 31)

The CHAIRMAN then outlined the Commission's further procedure and turned to the consideration of article 31 dealing with the rights of minorities. China, India and the United Kingdom had proposed the deletion of the article. France had presented a different text in document E/CN.4/82/Add.3, page 6, article 27. The United States delegation supported deletion of article 31, considering that provisions relating to rights of minorities had no place in a declaration of human rights. She further pointed to the decision taken at the Lima Conference in 1938 and reiterated in Chapultepec, that minority questions did not exist on the American continent. United States experience with foreign groups residing within its borders had been happy, assimilation having been emphasized throughout. Since there was need for the substance of article 31 to be covered by other provisions of the declaration, the United States delegation, wishing to give members of minorities the protection of group action, proposed the following addition to article 19:

"Everyone has the right to freedom of assembly and association,
and especially for the promotion and protection of the rights and freedoms set forth in this Declaration."

If there were any objections against re-considering the article previously adopted by the Commission, the United States delegation would present its amendment later.

Mr. LOUFI (Egypt) favoured deletion of article 31 and supported the United States of America amendment to article 19. The Commission was concerned with a declaration of rights of individuals, and not minorities; the rights of the latter were safeguarded by international conventions. Furthermore, the problem of minorities would be automatically solved by complete implementation of the human rights declaration.

/Mrs. MEHTA

Mrs. MEHTA (India) opposed article 31 as unnecessary. Members of minority groups were protected as human beings by other articles of the declaration. Article 1 stated that all human beings were equal; article 3 ensured protection of members of minority groups by stating: "...and entitled to equal protection of the law against any arbitrary discrimination. and article 30 covered the cultural life of communities, among which minority groups were obviously included. Consequently, since human rights were to be enjoyed equally by all, there was no need to grant special rights to minority groups.

Mr. LEBEAU (Belgium) felt that the question of minority rights was essentially one of tolerance and strict application of human rights to members of minority as well as majority groups. He agreed with the representative of India that scrupulous enforcement of the principles of the declaration would obviate the need for article 31. Mr. Lebeau also pointed to the inconvenience of mentioning in international agreements independent rights of minority groups; he referred, in that connection, to Hitler's policy of raising the problem of treatment of German minorities in countries adjacent to Germany as a means to further his own political and military ends. On the other hand, it was also true that some minorities had been subjected to forced assimilation, as in the case of Tyroleans who had come under Italian rule after the first World War; still, it would be better to settle that problem by giving minorities opportunity for redress rather than by including such a clause in the present declaration. In view of those considerations, he supported the United States proposal to article 19.

Mr. PAVLOV (Union of Soviet Socialist Republics) supported article which was important, even in its imperfect form. Replying to the argument that a statement on minority rights had no place in a declaration of rights of individuals, he said that the clause was in complete conformity with the

Charter where equal rights of men and of states were mentioned in the same sentence. The clause adopted at the Commission's second session protected the members of minority groups against discrimination by providing equal rights of minorities. Existing inequalities in law as well as in practice were against the Charter principles and should be prevented by such provision. He therefore supported the draft of article 31 adopted at the Commission's second session, proposing, however, the deletion of the words "... , as far as compatible with public order, ..." in the fourth line of that text. He explained that there was nothing incompatible with public order in the right of minorities to use their own language in their schools. He equally objected to a similar phrase in the text proposed by the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities. Article 31, while not fully adequate, having no provision for implementation of the minorities rights mentioned there, was, nevertheless, important and justifiable in the light of the Charter.

The CHAIRMAN recalled that previous debates on that question had brought out that the aim of States was to assimilate and absorb large foreign groups, and to make them part of the nation. Unless all the citizens of a given country could speak the same language, there was the danger that public order might be disrupted by persons who might not understand their duties as citizens of the country in which they were a minority. It was not a question of teaching children in a language different from that of the majority, but of adult persons who would be unable to assume their duties as citizens of the larger country.

Mr. MALIK (Lebanon) stressed the importance of the problem raised in article 31 and pointed out that it arose from two different basic conceptions of the States: the uni-national, uni-cultural State which incorporated various ethnic, racial, religious and linguistic groups and practiced a

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policy of assimilation of those groups in the general "melting-pot"; and the multi-national, multi-cultural State which encouraged the development of diversified groups and was best exemplified in the UESR. It was significant that article 31 referred not to minority groups, as the term was generally understood, but to distinct ethnic and cultural groups constituting the component parts of the State.

The United States and most countries of South America had apparently based their policy toward ethnic and cultural groups on the principle of assimilation and had found it well adapted to their needs. Likewise, the countries of Western Europe had been able to create fairly homogeneous States by the amalgamation and fusion of various ethnic and linguistic elements of the population. France was an outstanding example of that homogeneity. However, the principle of assimilation did not appear to be applicable to many countries of Eastern Europe and Asia, such as India. Moreover, the tiny country of Lebanon was a multi-religious State and had been exerting every effort to protect the freedom of religious belief of its heterogeneous population.

In view of its importance, the problem raised in article 31 deserved careful study. While it might not be desirable that it form a separate article, some clause should be introduced in the declaration to ensure adequate protection of distinct ethnic groups in multi-national States.

Mr. VILFAN (Yugoslavia) vigorously supported the remarks made by the representative of Lebanon. The Commission should recognize that the conception of the "melting-pot" could not be applied to Eastern Europe and Asia. Yugoslavia, for example, might be described as one State, with two scripts, three religions, four languages, five nationalities, six republics and many ethnic groups. After the first World War, the Yugoslav minority in Italy had suffered persecution. Consequently, Yugoslavia had learned from its own historical experience the importance of recognizing the rights of specific linguistic or cultural groups.

/Mr. Vilfan

Mr. Vilfan further pointed out that the rights of ethnic groups did not coincide in every respect with the rights of the individual and could not always be protected by general bills of rights for which the State bore responsibility. While it was true that Hitler had made an international convention on minorities the pretext for aggression, as the representative of Belgium had demonstrated, the protection of the rights of minority groups could hardly be considered the reason for that aggression. The abuse of a right in no way detracted from the inherent value of the right; nor did it militate against the defence of that right. The successful co-existence of two distinct national groups in Belgium itself should encourage the representative of Belgium to support an extension of such excellent relationships among different ethnic groups in all the countries of the world.

Mr. KLEKOVKIN (Ukrainian Soviet Socialist Republic) emphasized that the co-existence in many States of various ethnic, religious, and cultural groups had been a source of discord and had often led to open conflict between nations. The events recalled by the representative of Belgium should not discourage the Commission from seeking to ensure to minority ethnic groups the rights granted to all human beings. However, in doing so, an earnest effort should be made to prevent the recurrence of situations which might lead to international complications.

Mr. Klekovkin recalled the experience of the large Ukrainian minority which had been incorporated into the Austro-Hungarian empire. For many years, all efforts to assimilate the group had failed. The very fact that the Ukrainians had preserved their cultural, linguistic and national characteristics had made possible their rapid integration into the new Ukrainian Soviet Socialist Republic. Within the Ukrainian SSR, various ethnic groups, such as the Usbeks, had been permitted to develop their culture and language freely without compromising their social, economic or political advancement. The contention of the United States representative that such group development would retard progress was therefore unfounded.

/Mr. Klekovkin

Mr. Klekovkin strongly favoured retention of article 31 in order to promote the development of the cultures of distinct groups within multi-national States. That purpose was not served by the statement of the rights of individuals to free development without discrimination. For example, the article concerning education ensured the right to education; it did not ensure the right of a member of a special group to be educated in his own language.

Finally, the representative of the Ukraine observed that, in some cases, the practice of a policy of assimilation might be misinterpreted and considered an extension of colonialism. For example, if Hawaii were to become a state of the United States and its population were deprived of the right to continue to develop its own culture and languages, the United States might be accused of following a colonial policy. The State should give more attention to raising the cultural level of many small groups by encouraging the free development of their particular characteristics.

Mr. HOOD (Australia) felt that the ideas contained in article 31 went beyond the scope of the declaration. The declaration enumerated the rights of the individual and included his right to form associations, while article 31 conferred certain rights upon groups as such. Basically, it raised a problem which directly affected the fundamental structure of States and the science of government, that of reconciling the rights and interests of all groups within the State. While he did not question the wisdom of the policy of free development of diversified groups in other countries, Mr. Hood pointed out that Australia had adopted the principle that assimilation of all groups was in the best interest of all in the long run. Therefore, although he wished to delete article 31, he felt that it might be stated more explicitly elsewhere in the declaration that individuals belonging to special groups should enjoy the rights granted to all human beings.

/Mr. FONTAINE

Mr. FORTALINA (Uruguay) stressed that the protection of the rights of distinct ethnic, linguistic and cultural groups was essentially a political problem within the jurisdiction of every sovereign nation and covered by its national legislation. Since, however, the declaration was confined to the legal question of the protection of the rights of the individual, the political question raised in article 31 should be eliminated.

Mr. STEPANENKO (Byelorussian Soviet Socialist Republic) did not agree with the representative of Uruguay that article 31 was primarily political. Moreover, not all the articles contained in the declaration had a non-political character, and there was no valid reason for excluding mention of the rights of national groups. Although article 31 was not wholly satisfactory, it should be included as a minimum statement of those rights.

Mr. Stepanenko reviewed the experience of his own people which had suffered economic and social oppression as a special linguistic and cultural group under the Czarist regime. Only with the establishment of the Byelorussian SSR after the October Revolution had it become free to develop its culture and language. In the thirty years since its inception, the Byelorussian Republic had achieved more than had been possible during several centuries towards raising the cultural level of its people. For the problem was essentially cultural; it did not infringe on citizenship, as the representative of the United States had seemed to imply. Members of distinct ethnic and linguistic groups remained full citizens of the State, despite the fact that they spoke their own languages in addition to the common language. Those minority groups had not been artificially created; they were the product of an historical development which could not and should not be curtailed. Retention of article 31 would broaden the scope of the rights which they could enjoy.

/Mr. WILSON

Mr. WILSON (United Kingdom) pointed out that several representatives were interpreting the same objective in the light of their particular national backgrounds and problems. For valid, historical reasons, different countries followed different policies in resolving the problem of national minorities. The choice of the basic principles they had adopted depended upon their historical development, and were well adapted to the countries in which they were applied. Mr. Wilson was opposed to proclaiming the principle of assimilation in the Declaration. At the same time, implementation of the principle of diversity in some States, far from raising cultural levels, might create minority problems. Since it was difficult to satisfy the needs of all States without imposing a solution which had only been found practicable in a few, it was better to restrict the Declaration to a statement of rights applicable to all sections of humanity, and delete article 31.

Mr. ORDONNEAU (France) recalled that the historical development of France into a homogeneous State had resulted from the extensive and rigorous application of universal human rights to all sections of the population. If it could be assumed that all the rights stated in the Declaration would be applied in that manner, article 31 would become superfluous. On the other hand, Mr. Ordonneau agreed with the representative of the United Kingdom that the specific statement of the rights of national groups might defeat the very purpose of the Declaration by increasing intolerance of minorities and hindering their integration within a State.

Mr. MALIK (Lebanon) again stressed the importance of finding a formula to reconcile the two conceptions of the State under discussion. Some of the worst crimes against humanity had been committed against helpless national minorities. While he would oppose vehemently any

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statement which might have the effect of disrupting a uni-national, uni-cultural State, it was the duty of the United Nations to reassure national groups that their right to free development would be protected. To that end, the Commission should concentrate on the fundamental factor: protection of the cultural group, rather than the minority.

Mr. Malik suggested that the following text might be inserted, either as a separate article or as an addition to Article 18:

"Cultural groups shall not be denied the right to free self-development."

He expressed readiness to withdraw the amendment if it were likely to create difficulties for some States.

Mr. PAVLOV (Union of Soviet Socialist Republics) proposed an amendment which might be introduced either as a separate article or as a second part of article 30. He drafted the first sentence roughly as follows:

"Everyone has the right to his ethnic, national culture, regardless of whether he belongs to a minority or majority group of the population."

The CHAIRMAN suggested that the representatives of the United States, Lebanon and the USSR should form a drafting committee to reconcile the amendments they had proposed. After a decision on the resulting text, the Commission could proceed to vote on article 31.

The meeting rose at 1.20 p.m.