

**ECONOMIC
AND
SOCIAL COUNCIL**

**CONSEIL
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ORIGINAL: ENGLISH

COMMISSION ON HUMAN RIGHTS

DRAFTING COMMITTEE

INTERNATIONAL BILL OF RIGHTS

FIRST SESSION

SUMMARY RECORD OF THE ELEVENTH MEETING

Held at Lake Success, New York, on Thursday, 19 June 1947, at 2:30 p.m.

Present:

Chairman:	Mrs. Eleanor Roosevelt	(United States of America)
Vice-Chairman:	Dr. P. C. Chang	(China)
Rapporteur:	Dr. Charles Malik	(Lebanon)
	Mr. Ralph L. Harry	(Australia)
	Mr. H. Santa Cruz	(Chile)
	Professor Rene Cassin	(France)
	Mr. Geoffrey Wilson	(United Kingdom)
	Professor V. Koretsky	(Union of Soviet Socialist Republics)

Specialized Agencies:

Mr. J. Havet (UNESCO)

Non-Governmental Organizations:

Miss Toni Sender (American Federation of
Labor)

Mrs. Helen Fuhrman (International Co-operative
Alliance)

Secretariat: Professor J. P. Humphrey (Secretary of the
Committee)

Mr. Edward Lawson

After adjourning for a brief period to study the Secretariat paper on Implementation (document E/CN.4/AC.1/12), the CHAIRMAN proposed that the Drafting Committee examine Annex 1 and Part III of the United Kingdom Draft Bill (document E/CN.4/AC.1/4) and try to reach agreement on principle, but not on wording, of articles that might be included in a Convention, and that

/the Committee

the Committee then take up other suggestions, for inclusion in the Convention, such as those put forward by the United States in document E/CN.4/AC.1/13.

Annex 1, United Kingdom Draft (Document E/CN.4/AC.1/4)

In answer to a question put by Mr. HARRY (Australia) the CHAIRMAN explained that in considering Annex 1 of the United Kingdom Draft, any other suggestions concerning implementation might also be discussed.

In considering the method of procedure, the CHAIRMAN explained, in answer to a question from Dr. CHANG (China), that the Preamble in the United States paper (E/CN.4/AC.1/13), was intended as the Preamble to a Declaration rather than a Convention.

Mr. WILSON (United Kingdom) suggested that a discussion of the Preamble was not called for at that stage, but he pointed out that no one part of the United Kingdom document could be isolated from the whole. He requested that, after discussion of the document, including the Preamble, it should be sent forward to the Commission on Human Rights as the working paper for a draft.

Part 1, Article 1, United Kingdom Draft

The CHAIRMAN read the Article 1 and the accompanying Comment.

Mr. WILSON (United Kingdom) said the words "civilized nations" in line 3 need not be retained. Professor CASSIN (France) suggested the alternative, "United Nations." The CHAIRMAN stated that the Committee was concerned only with the principle, not the wording.

Mr. HARRY (Australia) believed that the Committee should not feel that it was creating international law, but only providing the basis for a declaration as to what is international law.

Article 2, United Kingdom Draft

The CHAIRMAN read Article 2 with the accompanying Comment.

Mr. HARRY (Australia) indicated that there might be difficulties in countries which have no written constitutions. He pointed out that in the

/United Kingdom

United Kingdom, any law can be amended by an Act of Parliament. He believed that if the principles of a Convention were accepted, they would carry great weight with the United Kingdom courts and legislature. However, he felt that there was merit in stating that the principles should be included in the fundamental laws of States, not embodied in the constitutions, as some countries had no written constitutions. Mr. HARRY quoted the Statute of Westminster as an illustration of how a Convention might be given effect in the United Kingdom legislation.

Mr. WILSON (United Kingdom) explained that it would be impossible for the United Kingdom government to bind itself to anything which could not theoretically be changed immediately by Act of Parliament. He compared the ratification of a Declaration on Human Rights to the Statute of Westminster; it is possible, but inconceivable that it would be revoked. Provision is made in Article 3 of the United Kingdom Draft for the observation of the terms of a Convention by whatever constitutional means are appropriate in the different countries, he pointed out. Guarantees for the protection of human rights in England would form part of the English Common Law. If they had to be written into the Common Law, this would involve the codification of English Common Law, a measure which the United Kingdom government would find it difficult to undertake. Mr. WILSON pointed out that this section should be broad enough to be acceptable to all countries in accordance with their particular constitutional methods.

The CHAIRMAN, speaking as the Representative of the United States, said that Article 2 would oblige a participating State to ensure that its laws secure to all persons under its jurisdiction the enjoyment of the rights enumerated in Part II, and to ensure an effective remedy for any violations thereof. Mrs. ROOSEVELT referred also to Article 5, Part I, of the United Kingdom Draft, by which failure to fulfill the obligations under Article 2 is made an injury to the community of States and a matter of concern to the United Nations. She explained the difficulties which

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would be experienced under the American federal system of government in giving effect to these provisions. In the division of power between federal and state governments, certain jurisdiction and responsibility is exclusively federal or national; other jurisdiction and responsibility exclusively state or local, and a third area is considered concurrent. The difficulty arises therefore as to whether the national government can assume by treaty or convention jurisdiction in the local or concurrent areas without amendment of the written Constitution, and, further, how far the national legislature would be willing to assume what are ordinarily regarded as local burdens.

Mrs. ROOSEVELT referred to Article 10, Part II, paragraph 6, which guarantees the right to compensation for unlawful arrest or deprivation of liberties, and explained that the national Congress would be unlikely to assume financial responsibility (if governmental compensation was intended) for state or local failure to provide compensation based on unlawful arrest or deprivation of liberties brought about under the separate judicial and penal system of the forty-eight states.

For all such provisions in Part II of the United Kingdom Draft, Mrs. ROOSEVELT said, some formula is required which would take into account the United States federal-state system. Other countries might experience the same difficulties.

Mr. HARRY (Australia) felt that these difficulties were not new. He pointed out that Australia also has a federal constitution. He felt that if it had been possible for such States to implement International Labour Organization Conventions, on matters not as fundamental as a Convention on Human Rights, all possible means of implementing such a Convention must be explored.

The CHAIRMAN declared that States actually were already obligated to ensure the protection of human rights, but that the method of doing this presented some difficulty. She recommended that the principle be accepted, and that States be invited to submit suggestions as to how this end could be accomplished.

/Professor CASSIN

Professor CASSIN (France) admitted that grave difficulties existed in States having federal constitutions and in States having no written constitutions. He pointed out, however, that this was not a new problem in international law. He felt that Article 2 presented a very interesting problem, but one which should be studied in detail before the next session of the Commission on Human Rights. At this stage, he felt it would be advisable for the Drafting Committee to indicate only the broad general principles.

Article 3, United Kingdom Draft

The CHAIRMAN read Article 3 and the accompanying Comment.

Professor CASSIN (France) stated that this Article could not stand in a Convention unless Article 2 were retained. He pointed out that Member States had already undertaken, in the Charter, to protect human rights. He referred to paragraph 3 of the United States suggestions (E/CN.4/AC.1/13), in which States are requested to submit to the Secretary-General copies of the laws or regulations by which they give effect to the provisions of the Convention. He proposed that the Secretary-General of the United Nations, following the Charter, might request States once a year to send a report on existing laws and other legal or administrative measures taken to ensure respect for human rights.

Mr. HARRY (Australia) stated that when reference was made to laws of States, this included, in a federal State, the laws of the separate states. He agreed with Professor CASSIN that when a government, for any reason, temporarily suspended rights, this fact should be reported and an explanation given to the Secretary-General of the United Nations. He felt, however, that there must be some basis for the determination of deviations. He also felt that the provision for a report should be directly related to specific rights enumerated in a Convention, and not to the more general provisions of the Charter.

The CHAIRMAN, speaking as the Representative of the United States, commented on the phrase in Article 3, "certified by the highest legal

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authorities of the State concerned." She explained that if this referred to the highest judicial authorities, the United States Supreme Court was involved, and possibly the highest courts of the forty-eight states. The question would need to be examined whether by convention or by any legislation short of an amendment to the Constitution, the Supreme Court could be compelled to give advisory opinions. If "highest legal authorities" referred, on the other hand, to certification by the Attorney General of the United States, this legal difficulty might not arise. But the certification of the Attorney General probably would have no greater force than any other opinion of the Attorney General, which is not binding on the courts and does not create any obligation for them.

Mr. WILSON (United Kingdom) explained that the phrase "highest legal authority" was purposely vague.. The object of this clause was to exclude the possibility of a subordinate official from signing a proclamation that conditions in his country were excellent. The intention was, that in the event of an alleged violation of, for example, the right of assembly, the Secretary-General would request the government of the country concerned to explain through the highest legal authority how the laws of that country provide for the protection of the right of assembly.

Article 4, United Kingdom Draft

The CHAIRMAN read Article 4.

Mr. WILSON (United Kingdom) explained the purpose of this Article, saying that Part II of the United Kingdom Draft states the principles to be protected, spelling out in each article the only permissible exceptions in such a way that nothing is left to the discretion of the State. Article 4 represents a loophole for not enforcing the Bill in the case of national emergency or some similar reason. It was felt that if the Secretary-General and all members of the United Nations had to be informed of the reasons for the suspension of the Bill of Rights, in a Member State, the moral effect would be strong.

/Professor CASSIN

Professor CASSIN (France) pointed out that under the Charter, States had already undertaken certain commitments concerning human rights. He referred to Article 62, under which the Economic and Social Council may make recommendations to the General Assembly concerning measures to ensure the observance of human rights. He suggested that at the end of the Declaration there might be a General Assembly Resolution, recommending that States should, once a year, send to the Secretary-General a report on the existing laws and any new measures taken for the protection of human rights.

Article 5, United Kingdom Draft

The CHAIRMAN read Article 5 with the accompanying Comment.

There were no observations.

Article 6, United Kingdom Draft

The CHAIRMAN read Article 6 with the accompanying Comment.

Mr. HARRY (Australia) felt that Article 6 not only was inadequate but would give rise to friction and political disputes between States at the expense of individuals.

The CHAIRMAN suggested that the Comment after Article 5 should be repeated after Article 6. She also suggested that the word "substantial" precede "violations."

Article 7, United Kingdom Draft

The CHAIRMAN read Article 7.

Mr. WILSON (United Kingdom) reviewed the measures for enforcement outlined in the United Kingdom Draft. He read the text of Paragraph V, page 3, and Annex 2, paragraphs 1-5, with the comment, on pages 15-16 of the document. He explained that there were two extremes of measures foreseen, one providing for publication by the United Nations of information relating to human rights questions, especially concerning the way in which human rights are observed in the different countries; the other, as outlined in Articles 6 and 7, providing that any violation of the Bill of Rights

/by a Member State

by a Member State may be brought to the attention of the General Assembly, and in the most extreme case that the expulsion from the United Nations of the State be effected under Article 6 of the Charter. Mr. WILSON added that the whole field between these two extremes, which included the examination of petitions, and the protection of minorities, was as yet unexplored. He suggested that the terms of reference of the Commission on Human Rights might need to be re-examined by the Council once the Convention had been drawn up.

Mr. WILSON added that measures for enforcement of a Bill of Rights would need to be learnt by experience and should not be embodied in a Convention at this stage. They must be capable of easy amendment in the light of experience. Article 5 of the United Kingdom Draft was in his opinion as far as the draft Convention should go, allowing for amendments and more detailed elaboration at a later stage.

Mr. HARRY (Australia) drew the attention of the Drafting Committee to the Australian proposals made at the Paris Peace Conference for a method of implementing the human rights provisions in the peace treaties. The Australian delegation had been told there that this was a matter for the Commission on Human Rights to deal with. He felt that the United Kingdom proposal, though commendable, was not sufficient to assure the peoples of the World that the Bill of Rights would be more than a mere Declaration of Principles. The suggestion that States should give effect to the Declaration through national legislation and national courts leaves all initiative and ultimate responsibility in the hands of the States concerned, he felt. The prime purpose of the Bill must be to afford protection to all men from violations by the authorities of the State. The suggestion that States be required to inform the Secretary-General, in general or in answer to a specific request, of provisions made in the national laws for the protection of human rights and of any deviations from them is important, but these facts are already

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known through the Press and other such media: such a measure would provide little more than additional machinery for publicity. The suggestion that a State be expelled from the United Nations for failure to observe the principles of the Bill would add little to protect the individual, though it might afford some protection for an organized community sponsored by a State. Petitions could be sent to the General Assembly, but history has shown that petitions are in the main ineffective.

Mr. HARRY indicated the danger of allowing a State to sponsor complaints and petitions coming from nationals of another State; this might lead to serious political disputes. The supreme sanction of expulsion from the Organization, provided for in Article 7 of the United Kingdom Draft, ought not to be the normal procedure for the protection of human rights, he felt.

These were matters, he continued, requiring judicial determination. He referred to the possibility of requesting an advisory opinion of the International Court of Justice, but added that this Court was constituted to hear cases between sovereign States and not cases of individuals. There was need, he maintained, for an International Court to protect the rights of individuals. The principle of such a Court had already been envisaged. There already existed a precedent in the Upper Silesian Courts. The establishment of this Court would be easier than the establishment of the Nuremberg Tribunal as the laws governing its establishment, its constitution and jurisdiction would be derived from the Bill. As regards the procedure to be followed by the Court, trivial and vexatious complaints would have to be eliminated, and the claimant required to exhaust all remedies of the domestic courts before coming to the International Court, except perhaps with special leave of the Court.

Mr. HARRY admitted only two real obstacles: some States might feel that the provision of a Court was an implication that they would not

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observe the Convention. This was a consideration of minor importance, he felt, beside the stakes at issue. There was secondly a problem of how the decisions of the Court would be enforced. Decisions of international courts in the past had been universally observed because States parties to the Conventions had accepted their decisions. Mr. HARRY was confident that if States accepted the obligations as drawn up by the Convention on Human Rights, only in a very few cases would they fail to implement them. He felt that the decisions of a Court would be more acceptable than decisions of the General Assembly, as some States might feel, in the latter case, that they had been judged on a political basis.

In conclusion, Mr. HARRY said that he felt his proposal would afford the greatest possible protection of human rights available at the present time. He requested that the original proposal, as outlined in document E/CN.4/AC.1/15, with slight necessary changes in terminology, should be sent to the Commission on Human Rights for detailed consideration.

Dr. CHANG (China) complimented the United Kingdom and Australian members on their proposals for implementation but added that he felt the work of the Commission on Human Rights should go a step further than making provision for the punishment of violations of the Bill of Rights. Concerning the suggestion for revising the terms of reference of the Commission, he felt that it would be a mistake to make the Commission merely a court of appeal for petitions for presentation to the Economic and Social Council or the General Assembly, as that would narrow the scope of the Commission to only legal questions.

In illustration of his point of view, Dr. CHANG quoted two Chinese proverbs which he translated as follows: "Good intentions alone are not sufficient for political order," and "Laws alone are not sufficient to bring about results by themselves." The intention and goal should be to build up better human beings, and not merely to punish those who violate human rights, he maintained. Rights must be protected by law, but laws

/are necessary

are necessary also to promote the best in men. They should emphasize the promotion of the extension and refinement of human rights through education and moral means. Implementation does not only mean punishment, but also measures for the full development of man.

Professor CASSIN (France) agreed that the idea of elaborating a Declaration of principles without means of implementation was insufficient, but the immediate realization of that goal was another matter. The Australian proposal would seem to be the normal step in the evolution of the world but its realization at this time seemed unlikely. An International Court of Human Rights would one day, no doubt, form part of the institutions of the world, but the moment was not yet ripe.

Professor CASSIN felt that certain organs, already existing, might be used in the interim. States could be asked to transform into their national laws the principles contained in the Declaration. They should be requested to submit information regarding measures taken to protect human rights. The more flagrant cases could be examined by the Economic and Social Council and the most serious ones by the Security Council.

Concerning the proposal to revise the terms of reference of the Commission on Human Rights, Professor CASSIN felt that this was not an unreasonable suggestion. The French delegation he promised would study the possibility of setting up an organ to examine petitions: this might be the Commission on Human Rights or somebody like the Mandates or Minorities Commission of the League of Nations. He felt that it should be composed of independent rather than government Representatives, and that it should report to the General Assembly.

He pointed out that by the terms of reference of the Drafting Committee, the Committee was not obligated to include provisions for the implementation of an International Bill of Human Rights. However, he felt that the Committee might submit to the Commission the suggestion that had been made concerning the setting up of an organ to examine petitions -

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one which would not yet have a juridical character, but which would examine cases for transmission to an established and competent organ of the United Nations.

Mr. SANTA CRUZ (Chile) referred to the Australian proposal for an International Court of Human Rights and to the United Kingdom proposal of expulsion of a State for violating the principles of a Declaration of Rights. He pointed out that freedom had always been respected in Chile and that the courts guarantee the rights of citizens. All courts are a means of punishing violations of laws. He felt, however, that an international tribunal at this stage was utopian and something for the future. He added that the Inter-American Juridical Committee had studied the problem as it applied in the American countries, which represented an easier field to work in than the whole world. Their conclusion had been that, in the case of violations of occasional rights, the case could be resolved by the tribunals of each State; in the case of an individual against a State of which he is not a citizen, provision should be made for an international tribunal; and in all other cases an institution or Council of a consultative character which would make recommendations to member countries (in this case the twenty-one American Republics) had been proposed.

With reference to the United Kingdom proposal for the expulsion of a State from the United Nations, Mr. SANTA CRUZ said that he had not yet come to any definite conclusion. He referred to Article 6 of the Charter which provides for the possible expulsion of a member State from the Organization, but pointed out that under Article 6, a recommendation from the Security Council is necessary, and this means agreement thereon by the five great powers in view of the right of **veto held by them**. He wondered if this had been taken into account in Article 7 of the United Kingdom Draft. He agreed that it was necessary to find some way of realizing the principles on which the Committee had agreed, and felt that this should be stated.

Part III: Articles 17 and 18, United Kingdom Draft

The CHAIRMAN read the text of these Articles which deal with the method of accession to a Convention, and asked Members to take note of them, pointing out that little discussion was necessary as this would come before the Commission on Human Rights.

Speaking as the Representative of the United States, the CHAIRMAN said that a Declaration without implementation would be a great travesty and deception to the peoples of the world. The Declaration, he felt, should come first and should be followed by Conventions, one by one. She agreed with the idea of presenting a Convention and a Declaration simultaneously now.

The CHAIRMAN stated that the draft convention should be put on the level of a working paper, giving all the information contained in the proposals received by the Committee. She indicated the need for the presence of lawyers at any meeting at which the Convention would be drawn up in its final form. The reports of the two Sub-Commissions, on Discrimination and Information, were also necessary before the relevant clauses could be finally drafted.

Form of the Report of the Drafting Committee to the Commission on Human Rights

The CHAIRMAN suggested that the Report of the Drafting Committee might give first the Articles suggested for the Declaration, then the United Kingdom Draft, which would be presented as a working paper for a Convention. To this would be attached suggestions for implementation, such as the Australian proposal and the United States suggestions. With reference to the first and second parts, a general statement should be made to the Commission, to the effect that there was general agreement on principle but that the method of drafting these principles had been left entirely to the Commission on Human Rights. No final decision could be taken on the Convention without the Sub-Commissions' reports and without the assistance of lawyers.

/Mr. WILSON

Mr. WILSON (United Kingdom) suggested that the CHAIRMAN's remarks concerning the Convention applied equally to the Declaration.

The CHAIRMAN repeated that the United Kingdom Draft would be submitted as a basic working document with the remark that there had been general approval of principle only.

Mr. SANTA CRUZ (Chile) agreed with the CHAIRMAN's suggestion and asked if further amendments to the draft Declaration might be submitted.

The CHAIRMAN pointed out that the draft Declaration, like the Convention, would only be a working paper.

Dr. MALIK (Lebanon) summed up the remarks concerning the report, stating that there would be two parts; first, the slightly more finished Declaration, based on Professor CASSIN's text, and secondly, the United Kingdom Draft with a few additions. There would then be an Annex containing the Australian proposal concerning implementation, and the United States suggestions.

The CHAIRMAN added that the Secretariat paper on Implementation (document E/CN.4/AC.1/12) might also be embodied in the latter Annex.

Mr. HARRY (Australia) requested that the observations which had been made concerning implementation should also be included, and Mr. WILSON asked to which part they should be attached, as they were more appropriate to a Convention than to a Declaration.

The CHAIRMAN said that the items on implementation should be included as a separate section. Discussion of the Preamble would be left to a more advanced stage.

Professor KORETSKY (Union of Soviet Socialist Republics) asked whether the Australian proposal was being presented in the Report in the same way as the United Kingdom Draft; there had been no objection on principle to the latter but there had been objection to the Australian proposal. He felt that no decision should be taken on implementation at this stage.

/The CHAIRMAN

The CHAIRMAN explained that the United Kingdom Draft, with additions, would go to the Commission on Human Rights as the basis for a Convention with the comment that general agreement on principle had been reached. The other papers would be included in a third category, with the comment that they had been discussed and considered but no decision reached.

Dr. CHANG (China) approved of the suggestion for a separate section to cover the discussion on implementation.

The meeting adjourned at 5:10 p.m.
