

MASTER

COMMISSION ON HUMAN RIGHTS

DRAFTING COMMITTEE

SECOND SESSION

TWENTY-FIRST MEETING

Held at

Jake Success, 4 May 1948 at 10.30 a.m.

Present:

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

Vice-Chairman

and Rapporteur: Mr. Charles Malik (Lebanon)

Mr. J. D. L. Hood (Australia)

Mr. H. Santa Cruz (Chile)

Mr. T. Y. Wu (China)

Mr. P. Ordonneau (France)

Mr. A. P. Pavlov (Union of Soviet
Socialist Republics)

Mr. G. Wilson (United Kingdom)

Representatives of Specialized Agencies:

Mr. Oliver Stone (International Refugee
Organization)

Consultants from Non-Governmental Organizations:

Miss Toni Sender (American Federation of
Labor)

Secretariat:

Dr. J. P. Humphrey

Mr. John Male

1. COMMUNICATION FROM THE WORLD JEWISH CONGRESS

The CHAIRMAN said that the World Jewish Congress, as a non-governmental organization in Category 'B', had asked to be heard by the Committee. She read a letter offering the co-operation of the organization and reminded the Committee that if it decided to grant the permission requested it must be prepared to give similar permission to other organizations in the same category.

/Dr. HUMPHREY (Secretariat)

Dr. HUMPHREY (Secretariat) explained that although the full Commission had in the past heard organizations in Category 'A', there was no instance of an organization belonging to Category 'B' having been heard in Committee, but that in Geneva such organizations had been heard in the working parties.

Mr. MALIK (Lebanon) said that in Geneva the World Jewish Congress had made a real contribution to the work of the Commission.

Mr. ORDONNEAU (France) asked whether the Committee was prepared to give more favourable treatment to non-governmental organizations than to Member States which were not represented on the Committee and which were not given a chance of being heard. Moreover, the Committee was informed of the views of organizations through their written communications.

The CHAIRMAN, replying to a question from Mr. PAVLOV (Union of Soviet Socialist Republics), explained that organizations in Category 'A' had the ex officio right to sit in the Committee and that organizations in Category 'B' had the right to ask for a hearing although none had so far exercised that right. She then put the question to the vote.

It was unanimously agreed that it was not possible to hear the World Jewish Congress.

2. GENERAL DISCUSSION

The representatives of France and of the Union of Soviet Socialist Republics both asked that French and English translations of documents be circulated as soon as possible and simultaneously.

Dr. HUMPHREY (Secretariat) explained that many comments from Governments had come in late, and that the technical services of the Secretariat were being strained by the work required by the Special Session of the General Assembly and for the other United Nations organs now in session, which had priority over the Drafting Committee.

The CHAIRMAN asked the members if they had any general statements to make.

Mr. PAVLOV (Union of Soviet Socialist Republics) stated that his delegation was not satisfied with the Draft Declaration presented to the Committee. It did not make proper provision for the respect of human rights and fundamental freedoms for all without distinction as to race, creed, sex or religion as provided in the Charter. The Declaration and the Convention should enact an effective guarantee of implementation, bearing in mind the political, economic and social factors. The Declaration, moreover, should describe not only the rights of the individual but his obligations to his country, his people and his State.

/None of these

None of these requirements were to be found in the documents presented to the Committee. They dealt at length with the just requirements of democratic States, but made no reference to the basic democratic principle that every effort should be made to combat fascism, nazism and racial hatred. Without this, the provisions of the Draft Declaration were mere abstractions, providing ample room for the propagation of their views by Fascist and Nazi organizations. The world was again threatened by terror imposed by reactionary elements. The absence of any provisions to combat this made the Soviet delegation skeptical as to the practical results of these documents.

In addition, the documents did not condemn discrimination because of race, sex or religion, and did not provide for its abolition. They dealt at length with voluntary discrimination, but made no provision to combat discrimination tolerated by law. Yet the situation of coloured people in the United States or of Indians in South Africa were matters of great concern.

As an example of what could be done, the representative quoted Article 123 of the Constitution of the Union of Soviet Socialist Republics which emphasized the equality of all people irrespective of race, sex and other factors and made all direct or indirect privileges based on these notions, or the defense of discrimination, punishable by law.

He added that the documents limited themselves to the formal establishment of rights without any provisions for their implementation. Again he cited the Constitution of the Union of Soviet Socialist Republics as providing real guarantees for rights such as the right to work. What good did it serve the individual if the right to work were proclaimed in the Declaration, but in fact there was unemployment? In support of this contention he quoted figures on unemployment in the United States of America.

Another fault of the Draft Declaration was that it considered the right of citizens as unilateral, without correlative reference to the obligations of citizens to the State. The Declaration permitted anyone to leave his country and change his nationality without consideration of the higher interests of his homeland. Yet during the struggle against fascism, collaboration with the enemy had taken a terrible toll of human lives. How could the Soviet delegation recognize a document which would permit such practices?

Furthermore, there were provisions in the drafts which would violate the principle of the sovereignty of states, such as those contained in

Articles 20 and 22 of the Declaration. Article 20 dealt with the right of a person to petition the United Nations against his own government. This was in contradiction to Article 2 (7) of the Charter and an encouragement to anti-patriotic doctrines.

Mr. Pavlov cited the fact that the Constitution of the Union of Soviet Socialist Republics guaranteed every citizen the right to due process in his own language, a fact which did not appear in the drafts, which provided no real guarantee or safeguard for linguistic minorities.

For these reasons the Soviet delegation was not prepared to accept the draft document as a basis for discussion. It proposed that it be rejected, and that basic principles be defined so as to give a clear anti-Fascist orientation to the work, give actual guarantees of implementation of every right stated, and ensure the punishment of all forms of discrimination. Only on this basis could the document be realistic. In the course of future work he would come back to each individual point and explain how he felt the instrument should be drafted. He recalled that the Union of Soviet Socialist Republics had reserved the right to present a Declaration on Human Rights which would be in conformity with the basic principles he had stated.

The CHAIRMAN asked the representative of the Union of Soviet Socialist Republics to submit as soon as possible any concrete changes he envisaged in the drafts. The fact that he was concerned about the relationship of the state to the individual should be made very clear. She called his attention to the fact that certain rights could not be guaranteed by certain states without radical changes in their constitution. It must be remembered that the world comprised many states with many forms of government, and that they all had to work together. This should be kept in mind when drafting any declaration of human rights.

As representative of the United States, the CHAIRMAN declared that her delegation favoured presentation of a draft Declaration and Covenant to the Seventh Session of the Council and to the Third Session of the General Assembly. The drafts prepared in Geneva during the second session of the Commission could be improved, and an effort should be made to produce simple documents on which to work.

As regards the Declaration, the United States felt that a short document would meet with a wider appeal. It should not be regarded as a legislative document, but as a statement of standards, which, however, carried no legal weight. The description of legal rights would be found in the Covenant. Moreover, it was undesirable to spell out rights

/in terms

in terms of government responsibility. The Declaration should state the rights of the individual and not deal with the rights of the government. The Covenant should be limited to civil rights which were widely accepted. The United States felt unable to enter a Covenant which was hedged in by limitations. Here again, the document should be simple.

Mr. SANTA CRUZ (Chile) expressed great interest in the statement made by the representative of the Union of Soviet Socialist Republics, which he welcomed as the first positive contribution of that country to the drafting of a Bill of Human Rights. His delegation had welcomed the inclusion of the Union of Soviet Socialist Republics in the Committee precisely because that country represented a different philosophy of the subject. It was important, therefore, that the Soviet proposals be made available as soon as possible in order that an attempt might be made to find a common denominator. This endeavour might supply something so far lacking. The whole structure of the Covenant depended on the relationship of the individual to the state. One might conceive of an omnipotent state, or one might give more importance to the individual, considering that society, national and international, was organized for his protection. He added that he would like to see the statement of the Soviet representative in writing, together with his views on the relationship between the state and the individual.

Miss SENDER (American Federation of Labor) said that the American Federation of Labor thought it encouraging that many governments had commented favourably on the question of implementation. The Federation considered that the Declaration should be concise, but at the same time comprehensive. It seemed a wrong approach to envisage it from the angle of national law, as national legislation must be adapted to international law. The Declaration represented an ideal towards which the states must look. The Federation noted with satisfaction the reminder in the comments submitted by the Government of Mexico that in adhering to the Charter, states had contracted obligations which they must respect.

It was important from the point of view of judicial interpretation to make it clear that the Declaration would not be exhaustive, and to have a general limitation clause subject to later judicial interpretation.

Many South American states had criticized the vagueness of such expressions as "cruel or inhuman". This, however, did not seem a defect, as ideas on these matters were subject to change in time and space.

/Finally,

Finally, she wished to make the following suggestions:

1. that the final drafting be done by one or two people, and brought out in one language;
2. that an attempt must be made to arrive at a more logical order within each document;
3. that the Declaration be checked against the Covenant, and these points of the Declaration on which agreement could be reached be taken into the Covenant.

Mr. MALIK (Lebanon) declared that the discussions of the Committee would remain on an abstract plane unless the historic origin of the present concern for human rights were kept in mind. In recent years, men had arisen who embodied the worst aspects of human nature and had trampled on the dignity of the human being. That was the reason for the present desire to make the future safe against the recurrence of such monstrosities.

It seemed that the basic factors of modern life should be taken into account in a recast of ideas on human rights. He could quote four main factors. First of all came the maladjustments and ills of society resulting from the impersonal working of economic and social factors. Man was cramped by the social ills of modern society and this must be taken into account.

Secondly, the world was faced with a tendency to "statism", or the determination by the state of all relations and ideas, thus supplanting all other sources of convictions. The state insisted on the individual's obligations and duties to it. This too was a grave danger, for man was not the slave of the state, and did not exist to serve the state only. This applied also to the relative position of the individual and other groups to which he belonged. There were innumerable other intermediate loyalties which the individual must respect, such as those towards his family, his profession, his friends, and also towards philosophical laws. The state could not be the exclusive arbiter of truth and beauty. Real freedom sprang from the loyalty of the individual not to the state but to these intermediate forms. These must find their place in the general social picture.

Another modern evil was the exclusive concentration on material needs. Material abundance was not everything in life, and the requirements of culture, of the intellect and of the spirit must be taken into account.

Group pressure also should be curbed. Loyalty was owed to the group to which one belonged, but the individual must not be overwhelmed by the group, or he would lose his essential freedom.

/Should

Should the Committee disregard these dangers, it would merely serve the trends of the age without improving it. Man might live in a perfect state, have all material security, be free from all social maladjustments, and yet not be the man which the Charter of the United Nations had in mind, a man with a worth and a dignity of his own. This exact worth and dignity must be determined. Man must be able to think and choose freely and even to reject freely and to rebel freely. He considered that the Declaration should be shorter, while the Covenant, which was more important, should be as wide as possible.

Mr. WILSON (United Kingdom) stated that one of the main difficulties confronting the Committee was the definition of fascism and nazism. Were they not simply the breach of human rights and fundamental freedoms? In that case the definition of human rights and fundamental freedoms gave, by implication, a definition of fascism and nazism. If German law had guaranteed the rights of Jews, Communists, Socialists and other groups, nazism would never have arisen there.

The delegation of the United Kingdom felt that the Declaration should be more concise. Whether the Covenant should have a general limitation clause was of fundamental importance. The Covenant was a piece of international statute law and therefore it could never be couched in simple terms. For example, the article on freedom of information had proved one of the most difficult to draft. He would be disappointed if the vague phrase "subject to the general welfare of the state" were accepted. The question of a general limitation clause might have to be decided by the full Commission or even beyond the Commission.

As a practical point, he felt that the Committee must face the fact that it might not be possible to accomplish its work in time for the coming sessions of the Economic and Social Council and the General Assembly. It had taken three or four months for eleven governments, about one in five of all governments consulted, to make comments on the drafts. The remaining governments might make equally useful contributions and it was more important to work well than merely to work quickly.

Mr. PAVLOV (Union of Soviet Socialist Republics) commenting on the remarks of the Chairman, said that his Government did not wish to impose its experience on anyone. The aim should be to achieve a maximum within the limits of existing conditions in the various countries. If the United States was unable, as was well realized, to eradicate unemployment, could something nevertheless not be done in favour of the

principle of equal pay for equal work of men and women, of equal pay for equal work of minors and adults doing the same type of work? The experience of the Union of Soviet Socialist Republics might be presented as an ideal, but that was not a reason for discarding other possibilities.

The fact that it is difficult to define fascism and nazism was no reason for not adopting measures to prevent their recurrence. In combat, the allied armies did not need a clear definition of fascism and nazism to know what they had to do in face of the enemy. The waging of an effective struggle against fascism and nazism could safely be inscribed in the documents; the peoples of the world would know the meaning.

3. PROGRAMME OF WORK

The CHAIRMAN stated that the next meeting of the Committee would be on Wednesday, 5 May, at 10.30 a.m. and she suggested discussing the Covenant first, then the question of implementation and then the Declaration. Assuming that the Committee had eight days in which to work, three would be allotted to the Convention, two to the problem of implementation and three to the Declaration.

Mr. PAVLOV (Union of Soviet Socialist Republics) suggested that the Committee consider the Declaration first, beginning with basic principles, then examine the Covenant and then the question of implementation.

Mr. SANTA CRUZ (Chile) preferred that work start on the Declaration and Mr. WILSON (United Kingdom) preferred to start with the Covenant.

Mr. WU (China) suggested starting with the Covenant first and then proceeding to the Declaration, and considering implementation last.

Mr. HOOD (Australia) suggested that one and a half days be allotted to consideration of the Declaration, three to the Covenant and that the Committee then return to the Declaration and the problem of implementation.

Mr. PAVLOV (Union of Soviet Socialist Republics) reminded the Committee that they had decided at the chair's suggestion in adopting the provisional agenda, that the discussion should cover the Declaration, the Covenant and then the problem of implementation.

The CHAIRMAN said that the right had been reserved to reverse this order.

The proposal to consider the Covenant first, the Declaration second and implementation third received three votes in favour and three against with two abstentions, and was declared lost.

/The proposal

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The proposal of the representative of Australia was defeated by one vote in favour to seven against.

A proposal to consider the Covenant first was then approved by five votes in favour to one against with two abstentions.

The meeting rose at 1.00 p.m.
