

COMMISSION ON HUMAN RIGHTS

DRAFTING COMMITTEE

FIRST SESSION

SUMMARY RECORD OF THE FIFTH MEETING

Held at Lake Success, New York, on Thursday,
12 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)
Col. W. R. Hodgson (Australia)
Mr. H. Santa Cruz (Chile)
Prof. Rene Cassin (France)
Prof. V. Koretsky (Union of Soviet Socialist Republics)
Mr. Geoffrey Wilson (United Kingdom)

Specialized Agencies:

Mr. J. Havet (UNESCO)

Non-Governmental Organizations:

Miss Toni Sender (American Federation of Labor)
Mrs. H. Fuhrman (International Co-operative Alliance)

Secretariat: Prof. J. P. Humphrey (Secretary of the Committee)
Mr. Edward Lawson

1. Preparation of a Preliminary Draft of an International Bill of Human Rights on the Basis of Documentation Supplied by the Secretariat

Rights The CHAIRMAN suggested that the meeting be devoted to a discussion of the form which should be used in drafting the International Bill of Human Rights. She suggested that there were several alternatives: (1) to prepare a general Declaration, to be followed by a number of conventions; (2) to write

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an "Act of Parliament", including perhaps fewer items but spelling out the provisions more completely and carefully; (3) to draft a general Declaration, then put the substance of the Declaration as nearly as possible into the form of a convention, and present both to the Commission on Human Rights at the same time. She proposed that if necessary, when the division in the Committee appeared to be fairly equal, two alternative drafts might be presented to the Commission. This would give the Commission an opportunity to weigh both methods of expressing an idea. She asked each member to express his opinion as to the form the Bill should take.

Professor CASSIN (France) felt that there might be two extreme positions: (1) to prepare something that would immediately strike public opinion and serve as a guide to the future policies of States; this would be a Declaration or Manifesto which might not be accompanied by a convention or by any other measure of implementation; (2) to make immediately an enumeration of the rights of man, that enumeration to be in the form of an international convention obligatory for all States, and to create immediately, under the auspices of the United Nations, and serving mankind, an organism which might watch over the respect of human rights, which would be under the supervision of the General Assembly. In his opinion, the Committee should first formulate principles - not only the principle of liberty which it already had examined and the fundamental rights it had talked about, but also the social and economic rights of man. In this respect the Declaration should be complete. The Committee, however, might compromise on the length of the document, making it as brief and concise as possible as regards the separate rights and using concise formulas which do not embark upon details.

With regard to the question of implementation, Professor CASSIN stated that in his opinion the Committee would have to work in stages. The role of the Governments would be very important in this connection, and the Committee would have to be prepared to make certain compromises with regard to the obligatory character of the rights. After having set forth certain

brief but striking declarations, he said, the Committee should then prepare longer and more elaborate texts on each specific right mentioned.

Professor CASSIN pointed out that the Committee might consider, in addition to the rights already discussed, certain so-called international rights, for instance immigration, expatriation, right to asylum, and right to a nationality. In this field, he felt, it would be a very difficult task to draft precise protocols to be adopted by the States.

As regards social and economic rights, he felt that the protocol and the undertakings could not be the same as for the fundamental rights of the human being. Most States would agree that the liberty of conscience or the right to live should be safeguarded as soon as possible, but few would be in agreement on detailed undertakings regarding social security, social insurance, full employment, and other subjects. It should also be remembered that in these latter fields, such inter-governmental organizations as the ILO and the General Assembly Committee on the Codification of International Law already were active.

Mr. SANTA CRUZ (Chile) stated that he had no precise opinion as to the manner in which the Committee should proceed in drafting the International Bill of Rights. He pointed out that the draft presented by Chile contained an article establishing that its provisions shall form part of the laws of each country; that is, they would be obligatory. However, he agreed with Professor Cassin that the practical aspect had to be taken into account, and that the Committee would have to proceed by stages: first establishing the fundamental principles and reserving for later stage the working out of agreements concerning separate rights.

Dr. CHANG (China) stated that at this stage the Committee could only hope to draw up a list of general principles and rights, putting them into the form of a draft Declaration for consideration by the General Assembly. A commentary might be attached to that list of principles and rights,

defining the terms in simple formulations. Later the Committee could consider practical methods of implementation. He emphasized that the number of articles should not be limited at this stage, and that the Committee might, at the first stage, allow itself to err on the side of too many articles rather than too few.

Dr. MALIK (Lebanon) stated that he agreed with Professor Cassin that both attempts ought to be made at the same time. The first attempts would be to lay down the fundamental principles to be enunciated, which would then be passed upon by the General Assembly in the form of a Resolution. These principles would constitute the Manifesto or Credo of the United Nations concerning human rights. The second step would be to distill from this general basis of principles certain positive laws which will then be entered into by the parties who wish to subscribe to them. That would be the real definitive Bill of Human Rights, which would then become positive law according to the manner in which it is enacted and adhered to by the various countries. Dr. MALIK felt that the Bill should have a preamble and a body of articles. Three categories might be established: (1) a category of fundamental principle, of manifesto, of declaration; (2) a category of the preamble; and (3) a category of the articles that are to be inserted into the Bill. He stated that the small powers are most anxious to see a tangible formulation of positive law to which they could adhere and to which the great powers also could adhere.

Professor KOREISKY (Union of Soviet Socialist Republics) stated that although he was not in a position to express the ideas of his Government on questions of principles and substance, he wished to speak on the general outline of the Bill, raising certain questions which he thought ought to be taken into account without promising to give the answers to those questions. First of all he pointed out that the Committee might be embarking on a voyage which would lead it in the direction where it might cross the border which divides international law from internal law. The border which divides the inter-relationships of governments from the field

where sovereign rights of nations must prevail. He pointed out that the United Nations must first fight the remnants of fascism. Having beaten fascism it must formulate a Bill of Rights which would prevent the rebirth of fascist systems and of fascist ideology. Such a Bill, however, must not be of such a nature as to interfere in the internal system of various governments. Secondly, Professor KORETSKY said the documented outline prepared by the Secretariat appeared to go beyond the limit of international law and appeared to be leading the members of the Drafting Committee to suggest that the United Nations embark into an intervention in the affairs of individual countries. The United Kingdom draft, he pointed out, appeared to him to be an attempt to transfer certain principles of law accepted in the United Kingdom to other countries - not only principles but also the mechanism of their implementation. This system, he felt, was not quite applicable to other nations whose historical development was different.

Professor KORETSKY suggested that the Drafting Committee might have to consider following a different method from the one it had adopted. This method would take into consideration the following ideas: (1) every standard of law which the Committee placed in its preliminary draft ought to be set forth in such a manner that all the governments, and each government separately, should be in a position to agree to enforce them; (2) since each sovereign government must set its own standards in relations among nations the only form which the Committee could suggest, which would be compulsory for any government, would be that of an International Convention; (3) if such a Convention is going to be formulated it must be created with the direct co-operation and participation of each separate government.

Professor KORETSKY pointed out that one of the first principles to be adopted in the formulation of an International Bill of Rights must be the destruction of discrimination and inequality. The Charter, he said, teaches that we must seek equality, that we must seek the end that people in each country shall be equal not only according to law, but also according to fact

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and substance. He did not feel that either the Secretariat outline or the draft of the United Kingdom satisfied this principle.

A second principle to be adopted in formulating a Bill, he went on, was that the Bill should rise above the egotistical interests of each country and stand on a high level. It should be a document for the present time - a historical monument.

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The basic characteristics of the drafts that had been presented to the Committee was their tendency to liberate man not from persecution but from his own government, from his own people, Professor KORMISKY said. This meant putting him in opposition to his own government and to his own people. With regard to procedure in formulating the draft Bill of Rights, Professor KORMISKY made the following suggestions: (1) that the drafts which had been submitted to the Drafting Committee are systematized; (2) that they be sent to the governments in order that the governments might be able to make concrete suggestions; (3) that the comments of each member government be gathered and studied; and (4) that as a result of the study of the comments of the governments a simple document be drawn up which would protect the rights of a free man in a free community.

In regard to the form of the document he stated that the one which pleased him most, from the point of view of the method of its preparation although not as far as its contents was concerned, was the Cuban draft. This draft consisted of clear and concise formulas which could be easily understood. The Committee would not impress the masses of mankind if it presented as a Bill of Rights a document full of legal complications and reservations, he said. The Declaration of the Rights of Man should be as simple and as clear as the Decalogue, acceptable both to rich and poor, to the famous and those who are not famous, to Gentile and to Jew, to black and white, to everybody regardless of race or nationality.

In conclusion he proposed that the Committee proceed on the basis of a Declaration which should be adhered to by all governments. The Declaration

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should be simple, clear, and concise. It should not seek to separate man from his community; it should rather create a man who is free in the framework of a free society.

The CHAIRMAN pointed out that the Drafting Committee's terms of reference required it only to present a preliminary draft of an International Bill of Rights to the Commission on Human Rights. The Commission itself had been asked to submit this preliminary draft to all the governments for their comments. She pointed out also that it had been agreed at a previous meeting that the definition of the principle of equality or non-discrimination would be undertaken by the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities. She emphasized that the draft to be prepared by the Drafting Committee was not binding irrevocably with respect to any government.

Professor KORETSKY suggested that perhaps the Drafting Committee might submit its preliminary draft directly to the governments or at least might circulate to the governments its materials already available. The drafts which had been presented, he said, could not be considered as satisfactory because they were beyond the limitations of the problems which could be included in an International Convention.

With respect to the question of discrimination he stated that in his opinion this particular item was the most important one to be included in a Bill of Rights - a question which ought to be raised under the present historical, concrete and material conditions. Whatever discrimination still exists in the world must be destroyed, he felt. This must be done in such a manner that the organization of the United Nations never again would have to consider items dealing with discrimination. Discrimination, he continued, can be considered an international political act, a phenomenon which has to be fought, which has to be treated, and which will threaten peace and security unless it is ended. This was one reason why he believed that the opinions of governments should be heard at the present early stage rather than the later stage in the formulation of a Bill of Rights.

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The CHAIRMAN pointed out that the Drafting Committee had no authority to initiate an entirely new procedure and that it would have to submit its preliminary draft to the Commission on Human Rights as it had been directed to do by the Economic and Social Council.

Mr. WILSON (United Kingdom) expressed his agreement with what Professor Koretsky had said about the importance of establishing the principle of non-discrimination and also the importance of having a clear, concise, statement of the principles underlying the conception of human rights. He hoped that the representative of the Union of Soviet Socialist Republics would be able soon to express the views of his government on the substance to be included in the Bill. He agreed that the United Kingdom draft represented the United Kingdom point of view but felt that any other document put forward by any other representative would similarly reflect the atmosphere in which the drafter of the document had lived his life. The work of the Drafting Committee, as he understood it, was to find the maximum possible degree of unanimity between these various different points of view.

Colonel HODGSON (Australia) pointed out that all governments had had several months in which to prepare their observations concerning the substance to be included in an International Bill of Rights. The Drafting Committee, he said, had been specifically requested to prepare the preliminary draft of such a Bill. The immediate question was not the contents of the Bill but the form that it should take. Approximately two hundred suggestions had already been made as to items to be included in the International Bill of Rights, he pointed out, and the Committee should now attempt to go through these with a view to reaching agreement. The Committee, he felt, must be practical and realistic and must avoid putting into its preliminary draft a group of principles which would be unacceptable to the various governments.

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With regard to the form of the Bill, the Australian Delegation did not believe in a simple Declaration, Colonel HODGSON said; the Bill should be drafted in such a way that it could become an actual Convention which should contain practical measures for carrying out stated objectives. Even this might not be enough, for many conventions or treaties had never been put into effect in practice. Therefore, he felt that provision should be made that if a government or nation does not carry into effect the terms of the Bill of Rights it should be taken to task by the aggrieved party before an International Court.

The CHAIRMAN pointed out that the proposed International Court of Human Rights was a method of implementing the Bill of Rights and that therefore consideration of its establishment should be deferred until a later date.

Professor KORETSKY (Union of Soviet Socialist Republics) felt that any action creating a Court which would stand higher than the separate governments as regards the inter-relations between governments and their citizens would inevitably lead to the destruction of governments. It would, he felt, be an organism which would be working against governments - a new, outside, disconnected organism which would take upon itself the function of regulating the relations between the governments and their citizens. This, in his opinion, would violate the provisions of international law. Professor KORETSKY felt that it would be better to follow out the proposal made in the Declaration presented by the Delegation of Panama, which was that each government should ensure conditions which would make each human being free.

Colonel HODGSON (Australia) pointed out that it was the intention of the government of Australia to press for the establishment of an International Court of Human Rights. He cited several historical precedents, including the Court of Upper Silesia, the International Court of Justice, and the "mixed" courts of Egypt. Unfortunately, he said, there is no court in

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existence at the present time where individuals or minorities can seek redress when their human rights and freedoms have been violated.

Professor KORETEKY pointed out that the Egyptian "mixed" courts were created at a time when certain countries did not have equal rights. Egypt was obliged, instead of having foreigners judged on the basis of local law, to have them judged according to foreign law. That differed naturally in principle from the situation in other countries where foreigners are always judged according to the local law.

Professor CASSIN (France) pointed out that if the Codification of International Law had been called for by the Charter it would have begun before the work of the Commission on Human Rights started. Because the Charter directly created the Commission on Human Rights, work in this field had started before work in the field of Codification of International Law. The Economic and Social Council had prescribed certain working procedures for the Commission on Human Rights and both the Commission and the Drafting Committee were bound by those working methods.

As far as the conception of the work was concerned, Professor CASSIN reverted to his original suggestion that the Drafting Committee might have to contemplate two tasks: (1) the drafting of principles in a short, concise, eloquent Declaration which would speak directly to the masses of the people and be accepted by public opinion; and (2) the preparation of Conventions which the States might be willing to sign.

With respect to the fears which the delegate of the Soviet Union had expressed with regard to intervention or interference on the part of an international body, he agreed that it must be fully borne in mind that the United Nations is not yet a World Government which could over-ride the authority of national governments. However, in his opinion the Charter itself stated the right of interference. The Charter itself recognized that the international community has the right to deal with the respect of human rights and fundamental freedoms in the interior and within the borders of countries.

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This was specifically put into the Charter in the hope of avoiding a repetition of what happened in 1933 when Germany began to massacre its own nationals and when other nations refused to consider this a matter of international concern.

He was convinced, he said, that the right of interference must be used with moderation, that it must be used with conviction, and that many stages would have to be gone through before such interference could be effectuated equitably. He did not see how the international community of States could accept appeals with regard to electoral questions, with regard to questions of taxes or in regard to many other questions raised in the relationships between States and their citizens. He did, however, feel that certain important cases - for example, the case of the massacres which began in 1933 - could be considered by some sort of an International Court in the future.

The CHAIRMAN said that Professor Cassin had expressed in essence the position of the United Nations: namely, that the Bill of Rights must consist first of a Declaration of broad principles. These principles later could be elaborated in a Convention. She suggested that the preliminary draft of the Bill might be in two parts and expressed the hope that at the next meeting the representative of the Union of Soviet Socialist Republics would be prepared to make a statement on the views of his government relating to the substantive contents of the Bill.

The meeting adjourned at 5:00 p.m.
