

COMMISSION ON HUMAN RIGHTS

Fifth Session

SUMMARY RECORD OF THE HUNDRED AND FOURTH MEETING

Held at Lake Success, New York,
on Monday, 6 June 1949, at 11.30 a.m.

CONTENTS: Draft International Covenant on Human Rights: measures of implementation (E/CN.4/168, E/CN.4/274, E/CN.4/276, E/CN.4/288, E/CN.4/82/Add.10, E/CN.4/292) (discussion continued)

<u>Chairman:</u>	Mrs. ROOSEVELT	United States of America
<u>Rapporteur:</u>	Mr. MALIK	Lebanon
<u>Members:</u>	Mr. SHANN	Australia
	Mr. STEYANET	Belgium
	Mr. SACURIS	Chile
	Mr. HSU CHA	China
	Mr. SOERHENSEN	Denmark
	Mr. LOUEFI	Egypt
	Mr. CASSIN	France
	Mr. GARCIA BAUER	Natemala
	Mr. MEHTA	India
	Mr. ERTEZAM	Iran

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Members: (continued)

Mr. AQUINO	Philippines
Mr. KOVALENKO	Ukrainian Soviet Socialist Republic
Mr. PAVLOV	Union of Soviet Socialist Republics
Miss BOWIE	United Kingdom
Mr. MORA	Uruguay
Mr. VILFAN	Yugoslavia

Representative of a Specialized Agency:

Mr. ARNALDO	United Nations Educational, Scientific and Cultural Organization (UNESCO)
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Consultants from non-governmental organizations: category A:

Miss SENDER	American Federation of Labor (AF of L)
Miss STUART	World Federation of United Nations Associations (WFUNA)
Mrs. MEACHER	World Federation of Trade Unions (WFTU)

Consultants from non-governmental organizations: category B:

Mr. RENNIE } Mr. MILLER }	World's Alliance of Young Men's Christian Associations
Mr. MOSKOWITZ	Consultative Council of Jewish Organizations
Mr. BERNSTEIN	Co-ordinating Board of Jewish Organizations
Mr. LEWIN	Agudas Israel World Organization
Mrs. VERGARA	Catholic International Union for Social Service
Mr. BEER	International League for the Rights of Man
Mr. NOLDE	Commission of Churches on International Affairs

Secretariat:

Mr. HUMPHREY	Representative of the Secretary-General
Mr. LAWSON	Secretary of the Commission

DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS:
MEASURES OF IMPLEMENTATION (E/CN.4/168, E/CN.4/274, E/CN.4/276, E/CN.4/288,
E/CN.4/82/Add.10, E/CN.4/292) (discussion continued)

The CHAIRMAN drew the attention of the representatives to the memoranda prepared by the Secretariat on the question of measures of implementation (E/CN.4/168, E/CN.4/292) and to the joint United States-United Kingdom proposal (E/CN.4/274), and the Indian (E/CN.4/276), French (E/CN.4/82/Add.10), Chilean (E/CN.4/288) and Australian proposals before the Commission which one and all embodied concrete suggestions for the appointment of an ad hoc committee on human rights.

The CHAIRMAN stressed the fact that the various proposals visualized entirely different solutions: the joint United States-United Kingdom proposal, for example, concerned only the right of States to petition, while the proposals submitted by France and India contemplated the extension of the right of petition to individuals and to groups. That being the case, it might perhaps be preferable for the Commission not to attempt at the moment to choose between those solutions, which could scarcely be harmonized, but simply to submit them to Governments for their remarks and comments. At its following session, the Commission, which would in the meantime have received the observations of the various Governments, would be in a position to take a decision in full knowledge of the facts.

He therefore proposed that the Commission should restrict itself to a general discussion on the Secretariat memorandum (E/CN.4/292) and should transmit ^{the} various proposals to the Governments, without taking any decision upon them.

Mr. GARCIA BAUER (Guatemala), on the other hand, thought that the Commission should come to agreement on a single proposal, which would be communicated to the Governments as the majority view and would be accompanied by the proposals the majority had rejected.

Miss BOWIE (United Kingdom) agreed with the Guatemalan representative that the Commission should endeavour to make a choice among the proposals which had been placed before it.

As those proposals were the product of two fundamentally opposed points of view, it would be useful to include those rejected by the Commission in the material forwarded to Governments. The United Kingdom representative recalled that the Commission had taken a similar decision in the case of certain articles of the draft Covenant.

Mr. SHANN (Australia) supported the Chairman's suggestion. In view of the fact that the attitude of the Governments towards the measures of implementation would depend to a considerable degree on the contents of the Covenant, the Commission should not take a final decision on those measures until the Covenant itself had been completed.

If the Chairman's suggestion were accepted, he would ask for the proposal submitted by his delegation to be forwarded to the Governments.

Mr. CASSIN (France) pointed out that besides the two methods of procedure proposed by the representatives who had spoken before him, there was a third, which had been suggested by the Danish representative. It might perhaps be possible to embody in the Covenant the measures of implementation which were regarded as an indispensable minimum by the majority, and to present the measures rejected by the majority in the form of an optional protocol. He would be interested to hear further particulars on the subject from the Danish representative.

Mr. SOERENSEN (Denmark) remarked that the solution to which reference had just been made had originally been proposed by the Secretariat, and not by his delegation. The Secretariat had suggested taking as a model the General Act of 1928 for the Peaceful Settlement of Disputes. That instrument included all the media of pacific settlement -- conciliation, arbitration, judicial settlement -- but the signatory States were free to adhere to it either in full or only in part. It might in the same way be possible in the case of measures of implementation of human rights to include all the proposed solutions, without exception; namely, to provide at one and the same time for recourse to conciliation and to judicial settlement, and to grant the right of petition both to States and to private individuals, leaving the signatory States free to adhere to all the provisions or only to some of them.

In practice it would be possible either to proceed as in the case of the General Act of 1928, namely, to establish one single instrument which the signatory States would be free to accept in whole or in part, or to follow the procedure proposed by France, which was to embody in the Covenant a certain number of measures of implementation which were regarded as an indispensable and obligatory minimum, while presenting the more radical measures in the form of an optional protocol.

The latter procedure offered great advantages. In the first place, the signatory States would be entirely free to subscribe only to those obligations which they considered themselves in a position to carry out. Secondly, the Commission would avoid the necessity of making a choice between the various solutions proposed; such a choice might, indeed, present certain disadvantages, for, should the Commission decide to reject one or another measure -- that, for example with regard to the right of private individuals to petition -- which the majority considered too far-reaching and premature, such a decision would be liable to impede any necessary future development.

Mr. AQUINO (Philippines) supported the Guatemalan representative's suggestion. He considered it essential for the Commission to express its preference and to submit to the Governments a concrete proposal regarding the principles on which the Commission had been able to come to general agreement.

If, on the other hand, the Commission was merely to submit various proposals to the Governments, it would be more difficult to obtain their impressions of each of the proposals in question.

He fully understood the Danish representative's point of view and was himself a little concerned as to how the problem of the participation of organizations or individuals in the United Nations, in so far as human rights were concerned, could be solved. He thought, however, that it would be necessary to resort to temporary measures before a final solution could be found. It was therefore to be desired that among those temporary measures the participation by organizations or individuals in the procedure of conciliation, arbitration or judicial settlement should be guaranteed.

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That would not prevent the Commission from adopting a specific procedure for implementation, without prejudice to the transmission to the Governments of other suggestions or proposals which had failed to be adopted by the majority of the Commission.

Mr. LOUTFI (Egypt) found the Danish representative's proposal of great interest; he thought, however, that it should be examined at the following session of the Commission, during the detailed discussion of measures of implementation. What the Commission had to do during the current session was to formulate a concrete proposal which would represent the opinion of the majority of its members; that did not mean that other proposals which had not been accepted by the Commission could not be submitted to the Governments.

He therefore supported the proposal of the representative of Guatemala.

Mr. PAVLOV (Union of Soviet Socialist Republics) recalled that, in the opinion of his delegation, the various proposals before the Commission involved violation of the provisions of the Charter.

The Commission was faced with two conflicting methods of procedure regarding measures of implementation: on the one hand, respect for and protection of human rights by each Government, which was the only method which would ensure the real implementation of certain of the provisions; on the other, enforcement by various States under international pressure of the provisions of the Covenant.

All the proposals before the Commission took the second approach; the USSR delegation could not therefore accept any of them.

The USSR delegation thought that the Commission would do well not to accept provisionally a proposal which, when it had been submitted to all the Member States of the United Nations, would have to be considered by the Commission again a year later. The Commission should rather confine itself to informing the various Governments of all the views that had been placed before it. Having received the opinions of the Governments, the Commission would then be able to proceed to a more detailed examination of the question, in full knowledge of the facts.

The USSR delegation therefore considered it wisest to proceed to a general discussion of the question and to pass on to the Governments the various views expressed; that was the proposal that should be adopted.

The CHAIRMAN announced that she would proceed to put to the vote the proposal that the Commission transmit one proposal to all the Governments in the form of a majority report, without prejudice to the simultaneous forwarding to the Governments of the other proposals it had received.

A vote was taken by show of hands.

The proposal was adopted by 9 votes to 2, with 4 abstentions.

The CHAIRMAN suggested that the Australian, Chilean, Danish, United States, French, Guatemalan and United Kingdom representatives should form a working group and endeavour to reach agreement on a single text.

Mr. LOUFI (Egypt) did not think that the formation of such a committee would facilitate a solution of the question, in view of the differences of opinion among the delegations in question on matters of principle. He would prefer the questions to be debated in a plenary meeting of the Commission.

His own opinion was that the Commission should take one of the proposals before it as a basis for discussion, and then consider any amendments proposed to it.

Mrs. MEHTA (India) pointed out that the Secretariat had been requested to present a working paper (E/CN.4/292); the Commission should therefore use that paper as a basis for discussion.

Mr. CASSIN (France), replying to a question from the Chairman whether he still wanted the Commission to examine part II of the document (E/CN.4/292) first, stated that he only wished to facilitate the work of the Commission. For that purpose, the Commission should first consider the most radical proposal -- that of Australia, as it happened -- concerning the right of individuals to enter complaints. If that proposal were rejected, the Commission would ultimately arrive by a process of elimination at the proposal most acceptable to the majority of its members.

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As the Australian proposal appeared in part III of document E/CN.4/292, he urged that that section should be examined first.

Miss BOWIE (United Kingdom) regretted that she was unable to share the opinion of the French representative.

The fact was that the decision of the Commission regarding the procedure for considering complaints and petitions would depend upon the origin of those complaints and petitions.

The document prepared by the Secretariat enabled a clear distinction to be made between the various proposals. It was for that reason that she thought part I should be examined first.

Mr. MALIK (Lebanon) thought that extreme caution was necessary. The Commission should not assume the responsibility of rejecting out of hand a proposal of such importance as that submitted by Australia. The Commission had a twofold task: first, to try to incorporate into the Covenant as many provisions as possible to ensure its implementation and secondly, to consider the establishment, apart from the Covenant, of the international means of implementation which the Economic and Social Council had always had in mind.

The Commission should proceed to a study of the Secretary-General's memorandum; he personally would prefer to begin with the second part, but he would gladly agree to begin with the first part if that was the wish of the majority.

The CHAIRMAN announced his intention of putting to the vote one by one the proposals that the Commission should begin its consideration of the Secretary-General's memorandum with the first part, the second part, the third part. If the first of those proposals were adopted, there would be no need to put the others to the vote.

Mr. PAVIOV (Union of Soviet Socialist Republics) stated that it would be difficult for him to vote on that matter, since document E/CN.4/292 had so far been distributed in English only.

Mr. SOERENSEN (Denmark) pointed out that the headings of the four parts of document E/CN.4/292 were to be found on pages 16 and 17 of document E/CN.4/168, which had been circulated in English and French.

The Commission decided, by 6 votes to 5, with 4 abstentions, to consider part I of the Secretary-General's memorandum (E/CN.4/292) first.

The CHAIRMAN invited the Commission to examine the beginning of the first part of the Secretary-General's memorandum, in which the proposals on the right of States to enter complaints in the event of violations of the Covenant were analyzed.

Mr. GARCIA BAUER (Guatemala) remarked that his delegation had prepared a document, to be distributed shortly, in which it suggested, among other things, that not only States parties to the Covenant, but also non-governmental organizations and nationals of States parties to the Covenant, could initiate the procedure for complaints and be parties to it.

Mr. SAGUES (Chile) pointed out that the Chilean proposal, which appeared in paragraph 6 on page 3 of the memorandum, was merely a simple suggestion made by the Chilean representative in the course of discussion and not a formal proposal.

Mrs. MEHTA (India) noted that all the proposals on page 3 of the memorandum raised one and the same question, namely, whether States would have the right to enter complaints in the event of a violation of the Covenant. The Commission could state its views on that question of principle without examining any of the individual proposals.

Miss BOWIE (United Kingdom) thought it clear that States would in any case have the right to enter complaints. The point at issue was whether that right would be extended to all States or would be reserved to States parties to the Covenant.

Mr. SOERENSEN (Denmark) agreed with the United Kingdom representative.

The CHAIRMAN suggested that the Commission should vote on the first sentence of the United Kingdom and the United States proposal (E/CN.4/292, sub-paragraph 4 on page 3). The question of principle which the Commission had to settle was expressed in that sentence in sufficiently plain terms.

/Mr. PAVLOV

Mr. PAVLOV (Union of Soviet Socialist Republics) again pointed out that his part in the discussion was considerably hampered by the fact that he had no copy of the French text of document E/CN.4/292.

He would like to know first, what body would deal with the complaints in question, and secondly on what matters a State would have the right to enter complaints. It would be absurd to imagine that a State would ever enter a complaint in respect of a violation taking place on its own territory. On the other hand, it was admissible that a State could defend its nationals residing in the territory of another State. But to give States the right to interfere in disputes within another State between the legal or executive authorities and the citizens of that State would be tantamount to inviting interference in the domestic affairs of States, and to violating the principle laid down in the Charter on that matter.

Mr. CASSIN (France), replying to the USSR representative, pointed out that since human rights were laid down in the Charter, Member States had the right in any case to see that those rights were respected everywhere. In drawing up the Covenant on Human Rights, however, it should be decided whether any special procedure would be provided for cases of violation of the Covenant.

The meeting rose at 1.10 p.m.