

**United Nations**

**Nations Unies**

**MASTER FILE**

**ECONOMIC  
AND  
SOCIAL COUNCIL**

**CONSEIL  
ECONOMIQUE  
ET SOCIAL**

UNRESTRICTED  
E/CN.4/SR.115  
9 June 1949  
ORIGINAL: ENGLISH

COMMISSION ON HUMAN RIGHTS

Fifth Session

SUMMARY RECORD OF THE ONE HUNDRED AND FIFTEENTH MEETING

Held at Lake Success, N. Y.  
on Monday, 6 June 1949 at 2.30 p.m.

CONTENTS: Draft International Covenant on Human Rights:  
Measures for Implementation (E/CN.4/82/Add. 10,  
E/CN.4/276, E/CN.4/292, E/CN.4/293)

<u>Chairman:</u>	Mrs. ROOSEVELT	United States of America
<u>Rapporteur:</u>	Mr. MALIK	Lebanon
<u>Members:</u>	Mr. SHANN	Australia
	Mr. STEYAERT	Belgium
	Mr. SAGUES	Chile
	Mr. CHANG	China
	Mr. SOERENSEN	Denmark
	Mr. LOUFI	Egypt
	Mr. CASSIN	France
	Mr. GARCIA BAUER	Guatemala
	Mrs. MEHTA	India
	Mr. ENTEZAM	Iran
	Mr. AQUINO	Philippines
	Mr. KOVALENKO	Ukrainian Soviet Socialist Republic
	Mr. PAVLOV	Union of Soviet Socialist Republics
	Miss BOWIE	United Kingdom
	Mr. MORA	Uruguay

Any corrections of this record should be submitted in writing, in either of the working languages (English or French), and within two working days, to Mr. E. Delavenay, Director, Official Records Division, Room F-852, Lake Success. Corrections should be accompanied by or incorporated in a letter, on headed notepaper, bearing the appropriate symbol number and enclosed in an envelope marked "Urgent". Corrections can be dealt with more speedily by the services concerned if delegations will be good enough also to incorporate them in a mimeographed copy of the record.

Representatives of Specialized Agencies:

Mr. ARNALDO United Nations Educational, Scientific  
and Cultural Organization

Consultants from Non-Governmental Organizations:

Category A:

Miss SENDER American Federation of Labor  
Miss STUART World Federation of United Nations  
Associations  
Mrs. MEAGHER World Federation of Trade Unions

Category B:

Mr. MILLER World Committee of Young Men's  
Christian Associations  
Mr. BERNSTEIN )  
Mr. FRIEDMAN ) Co-ordinating Board of Jewish  
Organizations  
Mr. MOSKOWITZ Consultative Council of Jewish  
Organizations  
Mr. LEWIN Agudas Israel World Organization  
Mr. BEER International League for the  
Rights of Man  
Mr. NOLDE Commission of Churches on  
International Affairs  
Miss SCHAEFER International Union of Catholic  
Women's Leagues

Secretariat:

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

DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS: MEASURES FOR  
IMPLEMENTATION (E/CN.4/82/Add.10, E/CN.4/276, E/CN.4/292, E/CN.4/293)

The CHAIRMAN stated that without formulating details she would ask the Commission to vote, in principle, on whether or not States would have the right to initiate proceedings under the Covenant.

Mr. MALIK (Lebanon) agreed with that proposed procedure, and felt that the principle might be decided at once. He pointed out, however, that, as the USSR representative had said, the implementation of the decision taken would depend on the body to which complaints were to be sent, and the decision must therefore be a tentative one which could be reviewed later.

Mr. PAVLOV (Union of Soviet Socialist Republics) pointed out that he had not received the French translation of document E/CN.4/292, the working paper on which the decision would be based.

He wished the Commission to realize exactly what it was about to vote on. The Covenant on Human Rights was an international covenant and therefore complaints, if admitted, would be sent to the United Nations or to an international committee established by it. Any decision taken on the principle of the matter was prejudged by that fact and it would not be so easy to review it later when considering its implementation. The Commission was about to decide whether nations which ratified the Covenant would permit any other State to intervene in their domestic affairs on a question of violation of human rights. If a country wished to let others intervene in its domestic affairs, it might do so; but it should not compel other States to do the same. He felt that provisions concerning the right of petition might be embodied in a bilateral agreement, but were not appropriate for a multilateral agreement.

The CHAIRMAN pointed out that the principle on which the Commission was to vote was clear. The body to which complaints were to be addressed, and the manner of handling them, would be considered later under Part II of document E/CN.4/292. The vote was merely provisional because the decision might later be changed in the light of the decision taken on Part II. If, however, the Covenant was to mean anything, there must be agreement on measures of international implementation -- they could not merely be left to individual governments.

In answer to a question from the representative of Guatemala, she stated that "signatory States" meant States which ratified the Convention.

The principle that proposals concerning the right of States signatories to the Convention to initiate proceedings in cases of violation of human rights should be considered in detail was adopted by 12 votes to none, with 2 abstentions.

The CHAIRMAN placed before the Commission the heading of Chapter 2 (E/CN.4/292): proposals relating to the question of the right of individuals, or groups of individuals, and of organizations to petition. There were proposals by the working group on implementation. The Government of France, the representatives of China and the United States, and the representative of India.

Mr. GARCIA BAUER (Guatemala) pointed out that his delegation had also put forward proposals on that subject (E/CN.4/293).

Mr. MALIK (Lebanon) said that the Commission was not now committing itself as to the manner of dealing with petitions when received; it was about to decide whether individuals and groups of individuals should be allowed to send in petitions or not. The United Nations already received complaints and petitions from individuals. The decision was not therefore very important, since it would not materially alter the existing situation. He therefore proposed that the Commission should decide, without spending more time on the matter, to allow individuals the right of petition without prejudging the manner in which those petitions would be dealt with.

Mrs. MEHTA (India) agreed with the views expressed by the representative of Lebanon and proposed that the Secretariat should be asked to prepare rules on the receivability of petitions. She felt there could be no doubt that everyone should have the right to petition.

Mr. MORA (Uruguay) said that, as in the case of States, the Commission must now decide on the general principle of the admission of petitions, and could later consider the details of the machinery for dealing with them. He thought that the right of petition could not be denied to individuals and groups.

The question was delicate since it might make the individual the subject of international law, but that should not alarm the Commission. Apart from the moral and humanitarian reasons in favour of granting the right to individuals, it should not be forgotten that, according to a judgment of the Permanent Court of International Justice in 1928, individuals might acquire rights under an international convention when the signatory States so agreed.

Mr. LOUTFI (Egypt) said that the principle on which the Commission was about to decide was not, as the Lebanese representative had suggested, whether the United Nations should receive petitions from individuals, but whether the United Nations should receive individuals' petitions within the framework of the machinery the Commission was about to set up to examine them, which was a different matter.

The CHAIRMAN stated that the vote would be on the inclusion of provisions in the Covenant for petitions by individuals or groups -- the mechanism to deal with those petitions was not yet known.

Miss BOWIE (United Kingdom) felt, like the Egyptian representative, that what the Commission was to vote on was not quite so simple as the Lebanese representative had suggested.

Petitions were already received by the United Nations. If machinery were adopted to deal with petitions, the number of petitions would greatly increase. Even if such machinery were not adopted, the number would still increase because of the publicity given to the subject. Her Government felt that the United Nations was making a new departure in granting States the right to petition and it was not yet prepared to accept the right of individuals to do so. It felt that progress should be made slowly in order not to overload the machinery established. Granting the right to States only did not exclude the possibility of justice being done to individuals -- the State might take up individual cases of violations of human rights, as had been the case during the second part of the Third General Assembly, and once the machinery had been established and was working satisfactorily it might be extended to cover individual petitions.

Mr. FAYLOV (Union of Soviet Socialist Republics) viewed the question of the individual right to petition differently. If any individual already could address a complaint to the United Nations, there was no need for an international decision on it. The crux of the matter, however, was whether anyone was obliged to take any action on the petitions received. To whom would the petitions be sent and how would they be dealt with?

In every State which wished to ensure the observance of human rights, machinery should be established to deal with complaints. He pointed out that in his country the system of petitions was definitely established; special Government offices had been set up to deal with them and a serious petition was never left unanswered. He felt that such a system should be organized by every State, and he would warmly support that form of implementation; but it was purely a State responsibility and should not be delegated by the State to the United Nations or any other body. To grant individuals the right to address petitions to the United Nations would be a

contravention of the sovereign right of the State, the most important aspect of the State's existence. The acceptance of such a right would be a violation of Article 2, paragraph 7 of the Charter. It would be a derogation of the sovereign rights of States and would permit the United Nations to intervene in domestic affairs.

Moreover, he pointed out that in view of the size of the world's population and the number of injustices which daily occurred, the United Nations would be so swamped by individual petitions that it would be quite unable to handle them.

The only article in the Charter which mentioned petitions was Article 87 (b), dealing with petitions which the Trusteeship Council accepted from the inhabitants of Trust Territories. That was obviously necessary because in the Trust Territories no bodies existed which could deal with such petitions. It would, however, be odd to extend the procedure appropriate to Trust Territories to sovereign States. The arguments advanced in the Commission had shown that certain representatives wished to establish the possibility of intervention in the internal affairs of other States. That, however, would be a direct violation of the Charter and he therefore opposed the acceptance of any such decision.

The CHAIRMAN stated that, as representative of the United States of America, it was her intention to vote against the filing of petitions by individuals. She thought the Covenant should provide only for the right of petition by States, although she was not opposed to the individual's right to petition being provided for in a later protocol. She pointed out that many petitions would be forthcoming from individuals and organizations and that it would be wiser to begin gradually and not overwhelm newly established machinery.

Mr. AQUINO (Philippines) shared the view that it would be unwise at that stage to provide in the Covenant for the right of direct individual petition, with two reservations. The United Nations should continue to ensure the right of petition to the population of Trust Territories, and in any State in which there were restrictions on individual freedom, there should be access to machinery by which violations of human rights might be redressed. In those cases individuals should be permitted to bring their complaints before the United Nations.

Mr. CASSIN (France) was in favour of the individual right of petition. He felt that it would be a departure from the spirit of the Charter if the Commission were to use the pretext of practical difficulties to refuse individuals the right of petition. He had voted in favour of the principle of the State's right to petition but he admitted that a complaint by a State might have serious political consequences. A necessary complement to that right was the right granted to individuals or organizations, whose intervention would not always involve political considerations.

Between 1920 and 1940 the right of petition had been established in mandated territories and for political minorities. The treaty between Germany and Poland on Upper Silesia, in which the right of petition for individuals was recognized and organized, had been very useful. It had been a petition in 1933 to the body corresponding to the Security Council in the League of Nations which had brought to public notice violations of human rights in Hitlerite Germany.

On the question of national implementation, he agreed with the USSR representative. National measures must come first, but if they were not adequately organized, or the individual was not satisfied by them, the principle of recourse to the United Nations should not be denied and machinery for that purpose should be established. His Government, which favoured the principle established by the working group, had therefore submitted additional articles (E/CN.4/82/Add.10) to prevent the United Nations from being overwhelmed by an excessive number of petitions.

Mr. Cassin pointed out that no organization established for inter-State dealings could adequately treat cases presented by individuals, and the Commission should therefore, from the beginning, make provision for the individual right of petition.

He could not accept the suggestion made by the USSR representative, that a comparison was being established between sovereign States and Trust Territories.

Referring to the Philippine representative's remarks, he felt that there should be no discrimination in favour of the inhabitants of Trust Territories, which would be the case if they alone were granted the right of individual petition.

Mr. ENNEZAM (Iran) said all were in agreement that so long as the right of petition was limited to States, the Commission's full aim would not be attained. But the question was one of timing. The Commission was establishing a Covenant, and setting up machinery for its implementation, which had no precedent. It could not expect to do everything at once. He was not opposed to the right of individuals to petition, but the time was not yet ripe for it. He therefore appealed to those who had proposed the recognition of the right of individuals to petition to withdraw their proposals, so that the Commission should not be recorded as voting against that right.

He pointed out that under the League of Nations the right of petition for minorities had only been recognized in three countries.

He was in favour of the Chinese-United States proposal and appealed to representatives to support it.

Mrs. MEHTA (India) said the question was very important and would fulfil or frustrate the hopes of millions. If States alone were granted the right to complain it was possible, as the French representative had suggested, that they would not make use of that right for fear of raising a political issue and for fear of retaliation by other States, so that individual human rights would be neglected.

She felt that machinery should be devised capable of dealing with individual petitions and drew attention to the working group's proposal for a committee to screen the petitions received.

If the principle of individual petitions were rejected, much harm would be done to the cause of humanity.

Mr. MALIK (Lebanon) said the question under discussion was one of long standing in the Commission and it was obvious that representatives were still actuated by the same motives as in the past.

The representative of Uruguay had pointed to the current tendency towards making the individual the subject of international law. If the individual gained that importance in the eyes of the law it would be inconsistent not to grant him the right to tender a formal complaint.

All proposals in document E/CN.4/292, except that of the United States and China, agreed that individuals and groups should have the right to send in petitions, and the United States-Chinese proposal did not exclude the possibility of granting that right in the future. The Philippine representative had advised caution and had suggested that the individual right of petition should be granted only in countries in which individual liberty was seriously restricted. Mr. Malik, however, felt that the possibility of abuses of human rights occurring in any country could not be excluded, and, if the right of individual petition were allowed in one country, it should be allowed in all.

It would be woefully inadequate to grant the right of petition to States alone, since they were influenced by political motives. The question of petitions should be left to the individual rather than to States. He felt strongly, like the Indian representative, that the matter was not one which could be treated lightly, and was convinced that the right of petition should be granted to individuals. Moreover, if machinery for screening petitions could be devised, there would be little reason to fear that more petitions would be received than could be handled.

Mr. LOUFFI (Egypt) stated that what he wished to say had already been well expressed by the representatives of Iran, the United States of America and the United Kingdom. His delegation was not opposed to the principle of individual petition, but felt that the Commission should proceed step by step, and that the first step was to consider only petitions from Governments.

Mr. CHANG (China) stated that he took a somewhat different view of the meaning of measures of implementation from that expressed by the majority of representatives. By implementation he meant positive measures for putting the Covenant into effect. It should not be dealt with merely from the negative angle; the emphasis should be less on complaints and petitions and more on international co-operation in the realization of human rights.

Mr. Chang pointed out that great advances had been made in the status of the individual during the past 150 years, particularly in the more highly industrialized countries, which had, incidentally, been influenced by Chinese philosophical thought. Although the ideals of human rights had been more fully put into effect in some countries than in others, they were recognized by all.

Differences in the individual's position with regard to human rights naturally existed between highly industrialized countries, with opportunities for individual expansion, such as the United States of America, and others such as China which, although heirs to a great tradition of culture, were more backward industrially. It would therefore be easy for one country to complain of violations of human rights in the other but, on the political plane, such a complaint would merely lead to retaliation and would be of no constructive value.

On the question of the individual right of petition he agreed with the representatives of India and Lebanon. He felt, however, that the question of positive implementation was of much greater importance and proposed that, instead of provisions dealing with complaints, positive measures to stimulate international co-operation and encourage interest in the implementation of human rights should be taken.

Mr. GARCIA BAUER (Guatemala) noted, with reference to the Chinese representative's remarks, that his delegation had considered the positive aspects of the implementation of human rights in its proposed working paper (E/CN.4/293). He reserved the right to speak on his proposal at a later date.

As regards the question under consideration, his delegation felt that individuals and non-governmental organizations of States ratifying the Covenant should have the right to petition. An article to that effect was included in its proposal. The right of the individual to petition in respect of violations of human rights had been previously recognized in the Convention of 1907, establishing a court of justice for the Central American countries, in the action taken by the League of Nations in respect of Upper Silesia, and in other instances. The main new development in international law was the recognition of the individual as the subject of international law; the Commission should keep abreast of that development by granting the right of petition to non-governmental organizations which had taken such an active part in the United Nations' work in the field of human rights, and to individuals who were looking to the latter for protection. As the representatives of France and India had pointed out, petitions should be submitted by individuals and non-governmental organizations rather than by States, in order to avoid international friction and political implications.

/What was more,

What was more, States might be loath to bring any violations of human rights in other States to the attention of the United Nations, and in such cases, individuals and non-governmental organizations alone would be prepared to take action. Furthermore, in a number of States the judicial machinery for the protection of human rights did not function properly and merely simulated action, as for example in the case of dictatorships. In view of those considerations, his delegation supported the recognition of the right of individuals and non-governmental organizations to petition as an effective measure for protecting human rights.

With regard to the argument that recognition of that right would lead to a flood of petitions with which no international body could cope, his delegation had suggested, with a view to overcoming that difficulty, that all complaints should be submitted to a screening committee which would determine the manner of their disposal. All irrelevant petitions would be eliminated at that stage, and the United Nations would be required only to deal with violations which national machinery had failed to redress. Quoting from his proposal (E/CN.4/293), Mr. Garcia Bauer noted that the complaints would be transmitted, together with the relevant documentation to the Secretary-General who would submit them to the Committee together with any relevant information.

In that way the United Nations would overcome the difficulty of having to deal with an excessive number of petitions, while giving hope and encouragement to the peoples of the world.

Mr. KOVALENKO (Ukrainian Soviet Socialist Republic) noted a substantial difference between the right to petition within a State where there was proper machinery to consider such matters as a means of implementing the Convention, and the recognition of the right of individuals to send complaints to an international organ. In addition to technical difficulties, a number of controversial points arose in that connexion. Recalling petitions previously brought before the General Assembly in respect of violations of human rights in Greece and Spain, concerning which the view had been taken that they were related to domestic matters which, under Article 2, paragraph 7, were outside the competence of the United Nations, he stated that petitions were only valuable if they could lead to practical results.

Furthermore, the question of petitions by individuals to an international organ raised the question of legalizing a dispute between an individual and a State so that the two were on an equal footing and the State would be required to justify its action. As most petitions would deal with complaints,

/every complaint

every complaint received would become a matter of international dispute, arouse suspicion between States and thus be harmful to the development of friendly international relations which was the primary aim of the United Nations under the Charter. The individual would thereby become an instrument of slander against certain Governments, as had already been the case in the General Assembly.

Moreover, recognition of the right of individuals to petition would raise a countless number of questions regarding the limitations of that right, such as the nature of petitions to be accepted, the required number of signatures thereto, etc. There seemed to be a contradiction in the position of certain members: on the one hand, they agreed that the Governments ratifying the Covenant would take on the obligation to carry out its provisions and thus promote respect for human rights, and on the other, they proposed that the individual should have the right to complain in respect of violations of human rights, thus assuming that Governments would not adhere to the Covenant.

With regard to the argument that individual petitions should be submitted to international machinery after the appropriate national organs had failed, Mr. Kovalenko felt that Governments, thus admittedly fallible, would hardly be able to judge violations of human rights by other States; consequently the responsibility of considering petitions would devolve upon experts. How could individual experts, however, be expected to succeed where Governments had failed?

It had been stated that the petitions would be examined by an international body which would take a decision on the matter. Mr. Kovalenko pointed out, in that connexion, that not even the General Assembly was competent to decide what Governments should do, <sup>could</sup> but/only make recommendations in that respect.

As regards the right of petition of the inhabitants of Trust Territories, it was their only means of making their wishes felt. In every sovereign State, however, the people were able to achieve their aims through the ordinary democratic processes. They could vote for a different Government, but the peoples of trust territories could not change their administering authority. Consequently the two situations were quite different. In view of those considerations, his delegation was opposed to the right of petition of individuals and non-governmental organizations.

Mr. SHANN (Australia) wished to state his delegation's position. The joint United States and United Kingdom proposal, which omitted the principle of individual petition, constituted a retrogression from the action taken by the League of Nations as well as the Charter provisions in respect of Trust Territories. As Mr. Cassin had said, the right of petition should not be the monopoly of States.

He therefore supported the view of France and Egypt that it would be preferable to allow individuals to submit petitions.

Miss BOWIE (United Kingdom), with reference to the statement by the representative of China, stated that the Commission's discussion did not preclude it from considering the positive aspects of the protection of human rights with which many United Nations organs, specialized agencies and non-governmental organizations were also concerned.

As regards procedure, she suggested that the Commission should not eliminate by a vote any of the questions outlined by the Chairman, but rather see how many members were in favour of each alternative, and report the results of the vote to the Council. She pointed out, in that connexion, that the entire question would be re-opened in the General Assembly.

Mr. AQUINO (Philippines) wished to clarify his position. His delegation had taken a consistent stand in favour of the ultimate establishment of international machinery for the adjudication of cases arising from violations of human rights. That objective, however, should be reached by a gradual process, and his delegation considered the joint United States - United Kingdom proposal as constituting the first step in that direction. The authors of the proposal had correctly emphasized the need for caution in evolving machinery to deal with petitions. According to that proposal, the ultimate responsibility for the protection of human rights lay with the States which should provide constitutional processes to that end; the right of petition would be inherent in such a system. International machinery should only be a measure of last resort when national machinery for redress had failed. He supported the United Kingdom view that the adoption of the joint proposal would not preclude the adoption of further measures in the future.

Mr. SOERENSEN (Denmark) stated that the Danish delegation supported in principle the United States and United Kingdom view that progress in international co-operation must be gradual. In the present

/case, however,

case, however, his delegation had been convinced by the French representative's arguments in favour of removing complaints from the political level, namely that if the right of petition was limited to States, that right would degenerate into a question of power politics. His delegation would therefore find it regrettable if the right of petition of individuals were to be excluded even though, as the United Kingdom representative had suggested, such action would be temporary.

The Commission must consider the question whether the right of petition of individuals was compatible with the rights of States, and consider how such a right could be exercised under the system of implementation. The Commission's decisions would not be binding upon the Governments, which could approve or reject the concrete proposals which the Commission should nevertheless transmit to them. The Commission was bound under the decision of the General Assembly to deal with the matter at its present session.

Mr. CASSIN (France), in reply to the representative of China, pointed out that the first part of the Covenant dealt with the positive aspects of the question which he was prepared to stress even further. He drew attention, in that connexion, to the Guatemalan proposal that States Members should take suitable steps, nationally and internationally, to ensure the enjoyment of human rights by their inhabitants.

As regards the Ukrainian representative's objections to the recognition of the right of petition of individuals, he pointed out that the purpose of the conciliation commission would be not to prove that a State was in the wrong, but to examine the merits of the complaint. Thus petitions would not have a merely negative character, but would be a positive means of contributing to friendly international co-operation.

He saw some inconsistency in the position of certain representatives who sometimes favoured international action under Article 55 of the Charter, and at other times opposed it under Article 2, paragraph 7. The Commission was merely trying to build up respect for human rights and ensure their protection, and to give Governments the exclusive right of petition on the matter would not contribute to the achievement of the Commission's goal. Mr. Cassin reminded the Commission that the question of

the protection of human rights had been expressly entrusted to the Economic and Social Council in order that it might be kept free of political considerations; it was for that reason also that the Council had been authorized in Article 71 of the Charter to seek the co-operation of non-governmental organizations. Such action was therefore in complete harmony with the Charter, and the fear of States to relinquish some of their powers could not arrest the inevitable evolution of human rights which had been consecrated in guarded though consistent terms in the San Francisco Charter.

As regards the United Kingdom proposal of procedure, Mr. Cassin felt that the Commission should follow the procedure adopted earlier.

Mr. PAVLOV (Union of Soviet Socialist Republics) felt that the Commission was about to take a decision on a principle which ran counter to the Charter. Article 87 clearly limited the right of petition to inhabitants of Trust Territories. As a subsidiary organ of the United Nations, the Commission could not go beyond the terms of the Charter.

Provisions for implementation could have been included in the body of the declaration, as he had frequently proposed. The best means of ensuring human rights was to let the people participate in their own Government and thereby prevent any violations of human rights. He agreed, in that connexion, with the representative of China that the Commission was concentrating on the negative aspects of the question and neglecting its positive sides. Had the articles of the declaration been strong enough, the present discussion could have been avoided. He had heard no serious refutation of his arguments that any attempt to put the question of individual petition on an international level would be in violation of Article 2, paragraph 7 of the Charter. As regards Article 55, to which reference had been made, it dealt with the development of friendly relations among States and showed precisely the inadmissibility of the proposal for the right of petition of individuals.

The suggestion had been made that that right should be exercised only after national machinery had failed. Who, however, would decide whether all constitutional processes within a State had been exhausted?

In conclusion, Mr. Pavlov said that he had not received document E/CN.4/292 in French. He therefore proposed that the vote on the question should be postponed.

After some discussion, the Commission decided, by 9 votes to 2, with 2 abstentions, to put the question to the vote at the following meeting without further discussion.

The meeting rose at 6.05 p.m.