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COMMISSION ON HUMAN RIGHTS

Sixth Session

SUMMARY RECORD OF THE HUNDRED AND THIRTY-SEVENTH MEETING

Held at Lake Success, New York,
on Wednesday, 29 March 1950, at 11 a.m.

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<u>Chairmen:</u>	Mrs. ROOSEVELT	United States of America
<u>Members:</u>	Mr. WHITLAM	Australia
	Mr. STEYAERT	Belgium
	Mr. SANTA CRUZ	Chile
	Mr. CHANG	China
	Mrs. WRIGHT	Denmark
	Mr. RAMADAN	Egypt

Members (continued):

Mr. ORDONNEAU	France
Mr. KYROU	Greece
Mrs. MEHTA	India
Mr. AZKOUL	Lebanon
Mr. MENDEZ	Philippines
Mr. HOARE	United Kingdom of Great Britain and Northern Ireland
Mr. RODRIGUEZ FABREGAT	Uruguay
Mr. JEVREMOVIC	Yugoslavia

Representatives of specialized agencies:

Mr. EVANS	International Labour Organisation (ILO)
Mr. ARNALDO	United Nations Educational, Scientific and Cultural Organization (UNESCO)
Mr. INGALLS	World Health Organization (WHO)

Representatives of non-governmental organizations in Category A:

Miss SENDER	International Confederation of Free Trade Unions (ICFTU)
Mrs. BERG	World Federation of United Nations Associations (WFUNA)

Representatives of non-governmental organizations in Category B:

Mr. NOLDE	Commission of the Churches on Inter- national Affairs (CCIA)
Mr. MOSKOWITZ	Consultative Council of Jewish Or- ganizations (CCJO)
Mr. BERNSTEIN	Co-ordinating Board of Jewish Organi- zations
Mr. CRUICKSHANK	Inter-American Council of Commerce and Production
Mrs. PARSONS	International Council of Women
Mr. BEER	International League for the Rights of Man

Representatives of non-governmental organizations in Category B (continued):

Miss SCHAEFER	International Union of Catholic Women's Leagues
Mr. PERLZWEIG	World Jewish Congress (WJC)

Secretariat:

Mr. HUMPHREY	Director of the Human Rights Division
Mr. LIN MOUSHENG } Mr. DAS }	Secretaries of the Commission

SUMMARY RECORDS OF THE MEETINGS OF THE COMMISSION

1. Mr. LIN MOUSHENG (Secretary of the Commission) called the attention of the members of the Commission to rule 37 of the rules of procedure of the Functional Commissions adopted by the Economic and Social Council at its tenth session (E/1653). He outlined the new system under which provisional summary records of meetings were distributed to participants only; corrections had to be sent to the Official Records Division not later than forty-eight hours after the distribution of the translation of the provisional summary record. Corrections submitted after that time could not be accepted. He asked the members of the Commission to abide by the new regulations adopted by the Council.

2. Mr. SANTA CRUZ (Chile) thought that the statement made by the Secretary of the Commission was perfectly clear. He observed, however, that there were two main kinds of summary records: the summary records of meetings of the Economic and Social Council and of the main committees of the General Assembly were fairly full, while the summary records of meetings held by other organs were much shorter.

3. The Chilean representative realized that a summary record had really to be a summary, but he pointed out that the work of the sixth session of the Commission on Human Rights was of great importance because it would establish the final text of the international covenant on human rights. He believed, therefore, that the summary records of meetings devoted to that discussion should be as full as possible; he asked the representative of the Secretary-General to take the necessary steps to ensure that those records should be as detailed as those of the meetings of the Economic and Social Council.

4. Mr. HUMPHREY

4. Mr. HUMPHREY (Secretariat) said that the Secretariat would do its utmost to prepare summary records which would be as detailed as possible.

WORK OF THE COMMISSION

5. The CHAIRMAN asked members of the Commission whether they wished to meet on Good Friday.

6. Mr. MENDEZ (Philippines) said he would prefer the Commission not to meet on that day.

7. Mr. WHITLAM (Australia) and Mr. RODRIGUEZ FABREGAT (Uruguay) agreed with the representative of the Philippines.

8. The CHAIRMAN noted that no one had suggested that the Commission should meet on Good Friday. There would therefore be no meeting on Friday, 7 April 1950.

DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS (ANNEXES I AND II OF THE REPORT OF THE FIFTH SESSION OF THE COMMISSION ON HUMAN RIGHTS, DOCUMENT E/1371)

Method of work

9. The CHAIRMAN asked whether the Commission, in accordance with the usual practice, wished to postpone consideration of the preamble to the draft covenant until it had studied the text of the articles.

10. Mr. KYROU (Greece) pointed out that several delegations had proposed that article 1 should be deleted. He, therefore, wondered whether it would not be better to consider the preamble and article 1 together.

11. Mrs. MEHTA (India) recalled that at its fifth session the Commission had decided to discuss the preamble and article 1 after drafting part II of the covenant. She proposed that the same procedure should be followed at the sixth session as it would facilitate the discussion of the articles comprising part I.

12. Mr. JEVREMOVIC (Yugoslavia) objected to postponing the discussion of the preamble and articles 1 and 2.

13. The preamble should state the principles on which the whole covenant was based. It should indicate very briefly what would be stated more concretely and in more detail in subsequent articles. There was no reason why the Commission should not immediately define, in principle, its attitude to the covenant; in other words, the purpose which it was hoped to achieve by drafting the covenant must be defined together with the principles which would serve as a guide when the various human rights were set out in detail.

14. It was hardly possible to wait until agreement had been reached on the details before defining the Commission's general attitude. That would be a procedural mistake and might be interpreted to mean that the Commission did not feel capable of defining what it hoped to achieve by the covenant and first wished to see what would be the results of the detailed study of the different provisions. He doubted whether there was any valid reason for not stating from the outset that the covenant was intended to give effect to the human rights provisions of the Charter. The postponement of the discussion of the preamble might be interpreted to mean that the Commission was not particularly concerned with giving effect to the provisions of the Charter.

15. The same comments applied to articles 1 and 2 since they too contained general principles and should not depend on subsequent articles of the covenant. He, therefore, proposed that the Commission should begin to discuss the preamble and articles 1 and 2 forthwith.

16. Mr. WHITLAM (Australia) recalled that hitherto it had been considered that the discussion of the preamble and of articles 1 and 2 should be postponed until after the discussion of part II of the covenant. He thought, however, that if the Commission did not consider the preamble to the covenant from the outset it might not have a very clear idea of the provisions to be included in the other articles.

17. The covenant formed a corollary to two important international instruments: the Charter and the Universal Declaration of Human Rights. Article 55 of the Charter stated that the United Nations "shall promote

universal respect for, and observance of, human rights and fundamental freedoms for all". Furthermore in Article 56, "All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55". Lastly, Article 4 laid down as a condition for the admission of new members to the United Nations that candidates should declare their willingness to accept the obligations contained in the Charter.

18. In Article 56 Member States pledged themselves to ensure the respect of human rights. The phrase "pledge themselves" had a specific legal significance. It implied an undertaking from which there was no withdrawing; it meant that Member States were under a strict obligation to apply the human rights provisions of the Charter.

19. For its part, the Universal Declaration of Human Rights stated in the greatest detail what Member States meant by "human rights". That Declaration was a statement of the noble strivings of humanity which had seen the light of day after years of struggle.

20. It might be contended that the covenant on human rights was of less importance, but he disagreed with that contention and thought that the covenant constituted an integral part of the general entity formed by the Charter, the Declaration and the covenant. It was the culmination of everything that had hitherto been done in the field of human rights; it was specific as to details; it thereby rendered specific the very concept on which the Universal Declaration of Human Rights and the human rights provisions of the Charter were based.

21. In conclusion, the representative of Australia submitted a new text for the draft preamble (E/CN.4/377) which, he said, was characterized by its austerity; he stated that the difficult circumstances in which the Commission was obliged to work should not detract from its members' resolve to achieve concrete results.

22. Mr. SANTA CRUZ (Chile) felt that the arguments in favour of postponing the discussion of the preamble were no longer valid. The draft covenant had already been examined twice, and the members of the Commission were in agreement regarding the principles which it should embody. It was now the Commission's duty to revise the text of the draft covenant in the light of the

comments submitted by the various Governments. In the circumstances, the representative of Chile thought that the Commission should first study the preamble and then proceed to a study of the articles in their numerical order. He agreed with the representatives of Greece and Yugoslavia that the preamble and article 1 might well be examined together, in view of the fact that the redrafting of the preamble had resulted in a proposal for the deletion of article 1.

23. Mr. AZKOUL (Lebanon) supported the proposal of the representative of India. In point of fact, an analysis of the articles which preceded part II of the draft covenant led to the conviction that article 4 contained a paragraph relating to derogations which could not properly be studied until after the discussion of the draft covenant had been completed; that certain members of the Commission had felt that article 3 should be included among the measures of implementation; that during its fifth session the Commission had taken the view that article 2 could only be considered after completion of the discussion of the draft covenant; and finally, that the preamble and article 1 appeared to be closely linked.

24. The Commission should reply to the questions which might be raised both by public opinion and by jurists. There should be some justification for the existence of the covenant and some explanation of discrepancies which might perhaps exist between the covenant and the Universal Declaration of Human Rights, which were some of the provisions contained in the Declaration not to be included in the draft covenant. A reply to possible questions on those points should appear in the preamble.

25. Moreover, it might be questioned whether the explanation of the relationship between the draft covenant and the Declaration, and of the omission in the covenant of any mention of certain rights provided for in the Declaration should be given by the signatories in the preamble or by the United Nations as a whole, or to put it otherwise, whether such explanation should appear in the draft covenant itself or in the resolution by which the General Assembly would adopt the draft covenant.

26. Such arguments militated against the postponement of the discussion of the preamble, the text of which would depend upon the decisions which the Commission would take in connexion with the provisions contained in part II.

27. Mr. CHANG (China) pointed out that an exchange of views on the general articles which would constitute part I of the draft covenant would undoubtedly be exceedingly useful at the current stage, provided that the Commission were given the possibility of changing its opinion at a later date, for it would be difficult, on account of the reasons given by the representatives of India and Lebanon, to take a final decision on those articles before the Commission had established the general purport of part II of the draft covenant.

28. In the circumstances, Mr. Chang suggested that a general debate should first take place on the preamble and the first four articles. The Commission would then study the provisions of part II of the draft covenant, basing its discussion on the principles which would have emerged in the course of the general debate. It would then return to the preamble and the general articles and take its decision upon them on the basis of ripe consideration.

29. Mr. KYROU (Greece) stressed the fact that when he had proposed joint consideration of the preamble and article 1 by the Commission, he had taken it for granted that there would be no final decision for the time being. For his part, he was ready to accept the proposal of the representative of China.

30. Mr. RAMADAN (Egypt) and Mrs. MEHTA (India) supported the Chinese representative's proposal.

31. Mr. JEVREMOVIC (Yugoslavia) also endorsed that proposal. He urged, however, that the preamble should be studied separately from article 1; it really was important that the Commission should first discuss the principles upon which the draft covenant was based.

The Chinese representative's proposal was adopted.

General Discussion of the preamble

32. The CHAIRMAN invited the members of the Commission who had submitted drafts for the preamble to explain their proposals.

33. Mr. WHITLAM (Australia) said that from the observations submitted by the Governments it was clear that most of them considered the proposed draft covenant as a first step toward full implementation of the fundamental rights and liberties proclaimed in the Universal Declaration of Human Rights. The Australian delegation considered it important to state that fact in the preamble, clearly and concisely. At the same time, the preamble should explain the purpose and scope of the covenant.

34. The Australian delegation supported, in general, the draft text submitted by the delegation of the United States (E/CN.4/365). At the same time that text contained an allusion to the "general principles" proclaimed by the United Nations Charter and the Declaration of Human Rights which he considered too vague. Moreover, the Charter did not merely proclaim general principles -- it set out in clear-cut terms certain obligations to which the signatory States had voluntarily subscribed. The object of the covenant was to give legal expression to those obligations which involved human rights. That was what had to be affirmed in the preamble and what had to be borne in mind in studying the various provisions of the covenant, if those provisions were to be drafted in a form likely to facilitate their application in all countries.

35. Those were the reasons which had led the Australian delegation to submit its draft preamble (E/CN.4/377).

36. The CHAIRMAN, speaking as the representative of the United States, agreed on behalf of her delegation to the text proposed by Australia which clearly indicated that the covenant was but an initial step towards implementation of the Universal Declaration of Human Rights.

37. Article 1, however, appeared to be a duplication of the preamble and should therefore be deleted.

38. Mr. SANTA CRUZ (Chile) observed that, as to substance, there was hardly any difference between the Australian text and that proposed by his delegation (E/CN.4/376), which was likewise of the opinion that the preamble should emphasize the fact that the covenant was based both upon the United Nations Charter and the Universal Declaration of Human Rights. At the same time, it should be recognized that the covenant could not possibly cover all the rights set forth in the Declaration. The covenant would be the smallest common

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denominator of those legal provisions upon which States, at their current stage of development, could reach agreement.

39. The first part of the Chilean text was taken from the draft submitted by the French delegation while the second was derived from the United States proposal. It should be agreed, however, that the Australian representative had raised a relevant point in proposing that reference should be made to the Declaration itself and not to the "general principles" proclaimed in it. The draft preamble proposed by Chile should be amended accordingly.

40. Mr. HOARE (United Kingdom) recalled that his Government had expressed preference (E/CN.4/365) for the text of the preamble contained in the report of the Third Session of the Commission (E/800). He agreed, however that reference should be made to the obligations deriving from the Charter rather than to general principles. The United Kingdom delegation therefore noted with satisfaction the Commission's decision not to proceed immediately to a vote on the preamble. A thorough study of the various texts would permit the delegations to give their opinion with full knowledge of the facts.

41. Mr. ORDONNEAU (France) stated that the idea of general principles, to which the Australian representative took exception, was given considerable prominence in French law. The French delegation was aware, however, that other legal systems did not attribute the same importance to that concept. He would therefore not dwell on the point.

42. The essential difference between the text proposed by France (E/CN.4/365) and that suggested by Australia lay in the final sentence of the Australian draft. The latter, in fact, omitted one of the lines of reasoning which should be included in the preamble. The general principles which should govern the protection of human rights were laid down by the Commission in 1948 and the time had now come for it to determine the precise conditions under which those principles could become legal provisions binding upon the States parties to the future covenant. The preamble should bring out that definite link between the Declaration and the covenant. On the other hand, the covenant obviously could not immediately cover all the rights and freedoms set forth in the Declaration and that fact should therefore be noted in the preamble where it must be implicitly stated that the initial covenant could be completed

/later by

later by other conventions intended to ensure implementation of the remaining principles mentioned in the Declaration. That was the purpose of the French text when it stipulated that "the States Parties...agree to give effect... to certain of the principles specified in the Declaration...".

43. Mr. MENDEZ (Philippines) declared that there could be no doubt that every Member State of the United Nations had accepted, and was determined to ensure respect for, the fundamental rights and freedoms proclaimed in the Universal Declaration of Human Rights. The Commission had agreed that the covenant should be considered as an initial step in that direction. The covenant, however, should not merely confirm the validity of the Declaration; it must affirm it by giving compulsory effect to some of the principles therein expressed. The Philippines delegation had tried to make that point clear in its proposed text which specified that "the States Parties...agree to reinforce certain of the principles of the Declaration, as follows: ..." (E/CN.4/365).

44. The CHAIRMAN reminded the Commission that it should also take account of the opinion expressed by the Netherlands Government (E/CN.4/365, page 16).

45. Mrs. MEHTA (India) stated that she would support the text proposed by the Australian delegation if the latter would agree to make it more explicit, in accordance with the suggestion of the French representative, by indicating that the purpose of the covenant was to give effect to certain of the principles specified in the Universal Declaration.

46. Mr. AZKOUL (Lebanon) recalled that it was the opinion of his delegation that the terms to be adopted for the preamble must be very carefully weighed. It was not enough for the provisions of the Covenant to support the Universal Declaration of Human Rights solemnly proclaimed by the United Nations; it was important to see that they did not in any way weaken the Declaration. Public opinion, which had been so favourably impressed by the Universal Declaration, would inevitably wonder why it was now necessary to supplement it by a covenant. The French representative was right in saying that the purpose of the covenant was to guarantee the effective application of the general principles set forth

in the Declaration, but it was to be feared that it might give the impression that States Members which were not parties to the covenant would no longer be bound by the Declaration. Public opinion would also have difficulty in understanding why the covenant concerned only a certain number of rights. It was, therefore, essential to explain clearly the link between the covenant and the Declaration and to bring out the fact that the covenant was primarily intended to facilitate the implementation of the principles to which States Members had already subscribed in adopting the Universal Declaration. From a moral standpoint, those principles were always of a compulsory nature whether or not they were the subject of provisions in a legal instrument. In brief, the covenant was a means whereby the United Nations would be able to control the application of those principles. None of the draft preambles so far placed before the Commission completely satisfied the Lebanese delegation on those points.

47. Moreover, it was important to make formal reference to the possibility of future conventions which might be concluded to round off the covenant now being prepared. The Lebanese delegation considered that it was for the United Nations as a whole, through the General Assembly, to make some promise in that sense; it could do so in a resolution accompanying the covenant which it would lay before the States Members for their signature.

48. Should the Commission not adopt the suggestion of a separate draft resolution setting forth the ideas he had just expressed, he reserved the right to submit a new text for the preamble at a later date.

49. Mr. JEVREMOVIC (Yugoslavia) explained that, in the opinion of his delegation, it was the duty of all democratic states to guarantee fundamental rights and freedoms to their citizens. As events in the recent past had clearly shown, the fact of a state's depriving its citizens of their rights and freedoms could constitute a threat to the peace and security of other peoples.

50. Because of the international danger constituted by such violations of the rights and freedoms of citizens and more particularly those of the workers, the Charter of the United Nations and the Universal Declaration of Human Rights made it obligatory for all States Members to strive unceasingly to maintain

those fundamental rights and to increase their number in both the political and in the economic and social sphere. One of the most important steps taken to that end was the preparation of the covenant on human rights. The preamble to the covenant should therefore reflect that instrument's primary purpose, which was to guarantee all the fundamental human rights set forth in the Charter of the United Nations.

51. The Yugoslav delegation considered that none of the texts proposed for the preamble was completely satisfactory in that respect. All the texts foresaw to a greater or smaller extent that the covenant was destined to guarantee only a certain number of fundamental rights and not all of them. In other words, they called attention to the possibility that certain fundamental human rights might be restricted/^{or}purely and simply eliminated from the covenant. The Yugoslav delegation thought that the Commission should be careful not to head in that direction; on the contrary it should do its very utmost to widen the field of human rights, rather than to restrict it.

52. The fact that a number of the texts proposed were content simply to refer to the general principles set forth in the Charter of the United Nations caused the Yugoslav delegation some anxiety. That might mean that the signatories of the covenant would not be formally bound to guarantee all the human rights provided for in the Charter but simply to keep their existence in mind. A study of the draft covenant adopted by the Commission at its fifth session confirmed the fears felt by the Yugoslav delegation. The draft in fact omitted any reference to a number of rights qualified in the Charter as "fundamental". Thus, for example, the covenant did not contain any provisions regarding the protection of such important rights as the right to vote, the right of asylum, the right to work and the right to decent living and working conditions.

53. On those grounds, the Yugoslav delegation considered that none of the proposed texts for the preamble was satisfactory, in view of the fact that, contrary to the Charter of the United Nations, all tended to limit the number of rights which the covenant was intended to safeguard.

54. Mr. CHANG (China) thought that the Commission had done well to begin by discussing the preamble because that discussion would enable it to understand the scope and the true nature of the covenant which it was preparing. That was in fact the essential point which the Commission should try to settle. In the past, the covenant had been considered the most important part of the Charter of Human Rights and the Declaration was to constitute a kind of preamble to it. However, ever since its adoption, the Declaration had assumed more and more importance and meaning, exceeding the hopes of those who had drafted it. It had now become an historic document which would outlive political disturbances and nothing, not even the covenant, could diminish or weaken its significance. In the circumstances, what was the specific purpose of the covenant which was being prepared? It was to ensure the implementation of the rights and fundamental freedoms proclaimed in the Declaration. It was clear that the covenant, unlike the Declaration which had rightly been described as "universal", could only have an international character inasmuch as it was supposed to bind the signatory States. But the question which immediately arose was how to ensure the effective implementation of the covenant, given the present stage of development of international law? In the absence of an universal constitution which would guarantee its implementation, it could be anticipated that States would seek to evade their responsibilities by invoking their sovereignty, and would reproach one another for failure to apply the provisions of the covenant.

55. That being so, the least that should be done was to draw the attention of Governments to their duties under the Charter in respect of human rights and fundamental freedoms. With that purpose in mind, Mr. Chang thought that the preamble of the covenant might reiterate the end of the introductory clause of the proclamation as it appeared in the Declaration.

56. Moreover, Mr. Chang thought that the representative of Australia had been right in deleting any reference in his draft to the general principles of the Charter. The Universal Declaration never mentioned principles; it spoke only of specific rights and freedoms. Every effort must be made to avoid statements concerning principles because States could always use the argument that practice could not in all cases be made to conform to principles. The Australian draft therefore quite rightly emphasized the fact that, by signing the Charter, States had undertaken to promote universal respect for human rights

57. Mr. Chang thought that the operative part of the preamble proposed by the Australian delegation should be drafted so that it could not be construed to mean that the rights which were not specifically stated in the covenant were not guaranteed by the contracting parties. Furthermore, Mr. Chang did not especially like the phrase "agree on the following articles" in the Australian text; he would prefer to replace it with "agree to give effect..." or a similar phrase such as that which appeared in the French text.

58. Mr. RAMADAN (Egypt) said that the covenant should stress the legal obligation incumbent upon States to act in accordance with the principles stated therein, and to provide the means of supervision required to ensure their implementation; otherwise, the covenant would simply be a statement of purely academic principles and would merely raise hopes which would soon be shattered.

59. Mr. ORDONNEAU (France) found the English translation of the words "sont convenus d'appliquer" in the French text rather inadequate. Instead of the phrase "give effect", the word "implement" might be more accurate.

60. Mr. MENDEZ (Philippines) said there could be no doubt that everyone cherished the rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights. However, it should be borne in mind that some of those rights, such as the right to life, could not be guaranteed in a convention which was legal and mandatory in nature. For that reason, the covenant only contained some of the rights proclaimed in the Declaration; it would probably be followed by other covenants designed to safeguard rights omitted in the original covenant and of which the compulsory nature was not in doubt.

The meeting rose at 1 p.m.