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COMMISSION ON HUMAN RIGHTS

Seventh Session

SUMMARY RECORD OF THE TWO HUNDRED AND ELEVENTH MEETING

held at the Palais des Nations, Geneva,
on Monday, 23 April 1951, at 10.30 a.m.

CONTENTS:

Present:

Chairman: Mr. CASSIN (France), First Vice-Chairman

Members:

Australia	Mr. WHITLAM
Chile	Mr. VALENZUELA
China	Mr. YU
Denmark	Mr. SORENSEN
Egypt	AZMI Bey
France	Mr. LEROY-BEAULIEU
Greece	Mr. EUSTATHIADES
Guatemala	Mr. DUPONT-WILLEMIN
India	Mrs. MEHTA
Lebanon	Mr. NASSIF
Pakistan	Mr. WAHEED
Sweden	Mrs. RÖSSEL
Ukrainian Soviet Socialist Republic	Mr. KOVALENKO
Union of Soviet Socialist Republics	Mr. MOROSOV
United Kingdom of Great Britain and Northern Ireland	Miss BOWIE
United States of America	Mr. SIMSARIAN
Uruguay	Mr. CLASULLO
Yugoslavia	Mr. JEVREMOVIĆ

Representatives of specialized agencies:

International Labour Organisation	Mr. COX
United Nations Educational, Scientific and Cultural Organization	Mr. BAMMATE

Representatives of non-governmental organizations:

Category A

International Confederation of Free Trade Unions	Miss SENDER
International Federation of Christian Trade Unions	Mr. EGGERMANN

Category B and Register

Agudas Israel World Organization	Mr. SHAFRAN
Catholic International Union for Social Service	Miss de ROMER Mrs. SCHRADER
Commission of the Churches on International Affairs	Mr. NOLDE
Consultative Council of Jewish Organizations	Mr. BENTWICH Mr. MOSKOWITZ
Co-ordinating Board of Jewish Organizations	Mr. BERNSTEIN Mr. MOWSHOWITZ
Friends' World Committee for Consultation	Mr. BELL
International Association of Penal Law	Mrs. ROMNICIANO
International Council of Women	Mrs. CARTER Miss van EEGHEN
International Federation of University Women	Mrs. ROBB
International League for the Rights of Man	Mr. de MADAY
International Union for Child Welfare	Mrs. SMALL
International Union of Catholic Women's Leagues	Mrs. de ROMER Miss ARCHINARD
Liaison Committee of Women's International Organizations	Miss ROBB
Pax Romana	Mr. BUENSOD
Women's International League for Peace and Freedom	Miss BAER
World Jewish Congress	Mr. BIENENFELD Mr. RIEGNER
World Union for Progressive Judaism	Mr. WOYDA

Secretariat:

Mr. Humphrey	Representing the Secretary-General
Miss Kitchen	Secretariat
Mr. Das	Secretary to the Commission

DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS AND MEASURES OF IMPLEMENTATION (item 3 of the agenda):

(c) CONSIDERATION OF PROVISIONS FOR THE RECEIPT AND EXAMINATION OF PETITIONS FROM INDIVIDUALS AND ORGANIZATIONS WITH RESPECT TO ALLEGED VIOLATIONS OF THE COVENANT: STUDIES OF QUESTIONS RELATING TO PETITIONS AND IMPLEMENTATION (E/1732, E/1927, E/CN.4/513, E/CN.4/515 and Add.1-17, E/CN.4/525, E/CN.4/527, E/CN.4/530, E/CN.4/549, E/CN.4/550, E/CN.4/551, E/CN.4/553, E/CN.4/555) (resumed from the 210th meeting).

The CHAIRMAN called on the Secretariat to announce one or two corrections to document E/CN.4/549, which the Uruguayan representative, who had submitted the proposal, did not feel called for a formal corrigendum.

Miss KITCHEN (Secretariat) said that the following corrections should be made in document E/CN.4/549: in articles 24 and 25 the reference to article 5 should read article 23; and in articles 26, 27 and 28 the reference to article 7 should read article 25.

Mr. NASSIF (Lebanon) merely wished to make a few general observations. If the Covenant was to be of practical value, it was essential that it should contain provisions for its implementation. The Universal Declaration of Human Rights adopted by the General Assembly represented the consensus of world opinion on certain general principles. If, in order to command the votes of a larger number of governments, the Commission set out to define those principles afresh, it might give the impression that it was trying to take away with one hand what it had given with the other. Hence, if any progress was to be made, the need was for measures of implementation and guarantees which would confer binding force on the principles embodied in the Declaration, rather than for splitting hairs about those principles, which had already been accepted.

It was not always essential that written texts should include specific undertakings before the implementation of the texts was provided for. Thus, for example, the jurisprudence of the French Council of State had deduced a whole series of impressive notions, like that of public service, from texts in which they were not explicitly and legally proclaimed. In the same way, the

French Constitution of 1946 referred back to the statements on the rights of man and of the citizen in the Declaration of Rights of 1789, and to the broad principles proclaimed by the Republic. Thus it could be said that everything depended on implementation; that was what the world was expecting from the Commission.

Mr. EUSTATHIADES (Greece) recalled that the Economic and Social Council had requested the Commission on Human Rights to bear in mind the views expressed in the Council. It was therefore necessary for the Commission to ascertain those views, in order to establish the points on which there was some possibility of agreement. He congratulated the Chairman and the Commission on the work that had been accomplished during the first week of the session, but felt that in the case of the special problem of measures of implementation the picture was not one capable of dispelling the initial impression that in that field the Commission was still at the first stage of the first stage of its work. That fact emerged also from the wording of the General Assembly resolution 421(V), paragraph 8 of which merely requested the Commission "to proceed with the consideration" of the question. The realisation that it was only at the first stage of the first stage of its work must not dishearten the Commission, but might serve to preserve it from a premature optimism which would be detrimental if it was intended to make a direct attack on the whole problem in all its complexity and thus accomplish some useful work.

The variety of opinions adopted towards the clauses concerning implementation in the Economic and Social Council, in the General Assembly and at the present session was not, as the Soviet Union delegation considered, a sign of weakness, but arose from the very complexity of the delicate problem with which the Commission was faced. He would pass in review the divergencies of opinion on the problem, which were due precisely to its complexity, so that the Commission might realise the effort that would have to be made to try to reach agreement on so important but so delicate a question.

The relevant documents of the Commission, the Economic and Social Council and the General Assembly revealed on examination that there was, first and

foremost, a fundamental divergence on the very principle of implementation. His analysis of the various points of view was based on documents which he would not quote, but which he held at the Commission's disposal.

Whereas the representatives of the Union of Soviet Socialist Republics, supported by other delegations, were opposed to any system of supervision on the grounds that it was, in their opinion, contrary to the provisions of Article 2, paragraph 7, of the Charter, other delegations thought that human rights should no longer be kept within the bounds of the internal jurisdiction of States. He himself, did not, however, feel that any fundamental difficulty was involved. Although it was true that the protection of human rights had hitherto been regarded as coming solely within the competence of States, clear international undertakings could perfectly well bring it outside those limits, in which event paragraph 7 of Article 2 of the Charter would cease to constitute an impediment.

However, there were also several shades of opinion to be distinguished among those who were prepared to accept a system of supervision of the commitments entered into for the protection of human rights. Some accepted the idea of a system of supervision without the establishment of any special body for that purpose, considering that each State adhering to the Covenant would, by the very fact of its accession, undertake to provide under its legislation effective redress at law for the violation of human rights. That was a possible solution, and was, indeed, what was envisaged in the third paragraph of the preamble to General Assembly resolution 421 (V). In that connextion, two schools of thought had emerged. While one or two delegations had held that it could be left to the International Court of Justice to supervise the implementation of the Covenant, four others had proposed that annual or periodic reports on the application of its provisions should be submitted to the General Assembly by States parties to the Covenant.

Other delegations, on the other hand, advocated the setting up of an ad hoc control body; but whereas some supported the system of a Human Rights Committee which would take up matters raised by a Contracting State, as proposed in Part III of the draft Covenant, with the possibility, in his opinion, that that system

might be improved in the light of certain provisions of the Rome Convention on the protection of human rights negotiated under the auspices of the Council of Europe in November, 1950, others had expressed a preference for the right of individual petition. The precedent of the right of petition recognized by the Charter as part of the trusteeship system had been mentioned in support of that view; but it was doubtful whether a system of control applicable only to non-self-governing territories would be, mutatis mutandis, acceptable for independent States.

The supporters of the right of individual petition maintained that if States alone were entitled to appeal to the Human Rights Committee, political friction between States might develop. But at the same time they argued in the opposite sense, namely, that a State would normally find it difficult to lodge a complaint against another State with which it was in friendly relations, so that article 38 of the draft Covenant would seldom be invoked.

That argument could easily be countered by pointing out that, were the right of individual petition recognized, there would be a serious risk of its being exploited politically by certain States, which might make use of petitions framed by irresponsible individuals or groups to feed the flames of international discord, so that the procedure for implementing the Covenant would hamper the task of maintaining the peace between nations. The system of the right of individual petition, which would appear at law to provide the most adequate machinery of implementation, would be politically justified only in an international atmosphere which, although everybody desired it, had unfortunately not yet been attained. In those circumstances, certain delegations were rightly chary of supporting it.

Apart from the political aspect of the question, mention must also be made of the technical difficulties that a spate of complaints, for the most part ill-founded, the examination of which would require unwieldy and complicated administrative machinery, would cause.

Despite those serious drawbacks, the system of individual petition might be introduced as a last resort provided it was generally acceptable to all

Governments. However, it was clear that there was no general agreement on the point; many States opposed the system, and even among those in favour of it there were wide divergencies of view.

Some would agree to matters being raised by States as well as by petitions lodged by non-governmental organizations and private individuals; others wished the right of petition to be granted only to individuals; others, again, wished it to be restricted to non-governmental organizations and so on.

Some delegations had mooted the idea of an Attorney General or a High Commissioner. But while some conceived his task in one way, others conceived it in another. Thus, according to the conception entertained, the High Commissioner would act either on his own initiative, or when a complaint was brought before him, or in both ways.

There were also differences between the various delegations as to where in the draft Covenant the provisions concerning implementation should appear, some proposing and others opposing the drafting of a separate protocol. Taken altogether, that proved that many of the partisans of the individual right of petition were not convinced of the soundness of their views.

He felt that it was of primary importance that an attempt be made to reconcile the different viewpoints. During the discussion in the General Assembly the French delegation, though in favour of the right of petition, had recognised that acceptance of any limitation of sovereignty was a substantial concession on the part of a State, and that consequently it would be even more imperative to observe the rule of reciprocity and equality between States in the case of signature of a protocol governing implementation than in the case of accession to the Covenant itself. His own delegation held the same view, and thought that machinery of implementation must be devised capable of binding all States Members of the United Nations alike.

To conclude, his sole object in classifying the various shades of opinion, which had been expressed concerning implementation of the Covenant, not only in the Commission, but in the discussions in the Economic and Social Council and the General Assembly, was to draw attention to the efforts which would have to

be made by way of conciliation if agreement was to be reached. The differences of opinion were not such as to preclude all hope that common ground for an understanding might be found, and his delegation would co-operate wholeheartedly in efforts to that end, acting always on the principle of equality and reciprocity already upheld by other delegations.

The Greek delegation would therefore reserve its position until it saw how far the essential principle of uniformity in the implementation machinery was observed, thus ensuring that all Members of the United Nations would reap the same benefits and would assume the same obligations.

Miss SENDER (International Confederation of Free Trade Unions), speaking at the invitation of the CHAIRMAN, said that it was not surprising that the question of implementation should need thorough discussion, since in the early stages of the Commission's work clarification and formulation of that aspect of the Covenant had been deferred. Nevertheless, the majority of the Commission of the Economic and Social Council and of the General Assembly had consistently voted for the inclusion of measures of implementation in the Bill of Human Rights.

The main argument advanced against the inclusion of implementation measures was that they would constitute interference in the domestic affairs of States. That argument, however, was illogical, inasmuch as it revealed that certain governments, while willing to provide for international legislation, were unwilling to see it made effective internationally. And yet the existence of an international community had already been recognized by the creation of an international body carrying obligations for all its member nations, namely, the United Nations.

The adoption of the Covenant would be the equivalent of the promulgation of international legislation; and the only guarantee of its application would be international enforcement. She must re-iterate that a Covenant without measures of implementation would not be a Covenant; it would be a less satisfactory document placed in juxtaposition to the Universal Declaration of Human Rights. A hypothetical example taken from national procedure would prove that

point. Assuming that a bill against monopolies was passed by a State legislature, but its enforcement left to the monopoly corporations and their organs, not only would that bill never be observed, it would undermine the whole prestige of the legislature. Furthermore, the principle of implementation had already been accepted on four separate occasions by roll-call votes, twice in the General Assembly and twice in the Third Committee. Clearly, the States Members of the United Nations had already decided in adopting the Charter that certain questions were of concern to the entire international community.

There remained the question of alleged violations of human rights and the consequent right of petition. If governments alone were granted the right to submit complaints, there would in practice be no complaints and no international machinery would be needed for dealing with them. It had been argued that experience must first be acquired before the right of petition could be granted to individuals and to non-governmental organisations. But experience could only be gained after such a system had been established. Therefore the least that must be done, if the full right were withheld, was to select a certain group of non-governmental organizations in consultative status, and grant the right of petition to them.

The proposal that measures of implementation should be relegated to a separate protocol was equally unsatisfactory. To do so would be tantamount to having a Covenant which was incapable of being enforced, at least in the case of those governments which failed to ratify the protocol. Measures of implementation would surely not be made more acceptable, simply by virtue of their inclusion in a separate instrument. Furthermore, such a procedure might be interpreted by many as an invitation not to ratify either the Covenant or the protocol, and would thus strengthen any pre-disposition on the part of governments to such inactivity. The United Nations could make no progress in its work if governments persisted in declining to co-operate with the international community in the development of guarantees for the individual's freedom and the implementation of his rights.

Once agreement had been reached on those fundamental points, the task of drafting the appropriate articles would prove much easier.

In principle, it did not matter whether the standing Human Rights Committee or a High Commissioner was entrusted with the task of screening petitions, since the authority and functions of either would have to be clearly delimited. She supported those organizations which had emphasized the need for speeding up the process of examination, especially in cases where all appropriate measures had been taken at national level. A dilatory procedure might give rise to situations in which the fate of injured persons or groups would be sealed before action could be taken. A maximum time-limit should consequently be fixed for national remedies, and the national judicial authority should be placed under the obligations of suspending final action once a petition had been brought before the competent international organ. That would correspond to the juridical system in most countries, under which no judgment could be executed so long as an appeal was pending.

All those who desired to make the draft Covenant a living thing should concentrate on creating machinery for the examination of petitions, such machinery being operated either by the proposed Human Rights Committee or by a High Commissioner. It was true that a decision taken at the present moment might prove not to be final, and that only experience could show whether it would need revision in the future, but, although in a time of flux, such as the present, finality might be lacking, it was still essential to go forward.

Mr. JEVREMOVIC (Yugoslavia) stating his Government's position, considered that the fundamental question was whether a violation of human rights should be handled internationally, or whether it fell within the competence of national, sovereign States. According to paragraph 7 of Article 2 of the Charter, the latter would seem to be the proper interpretation, but in the Yugoslav Government's view, violation certainly constituted a problem which concerned the international community when it was of a type affecting not an individual, but groups, and when it was based on, for instance, racial discrimination. Such violation could threaten the security of States as well as the maintenance of peace, being in effect a preparation for war, and, as such, a matter for international concern. Thus, for instance, the Nazi regime in

Germany had begun with the propagation of racial theories, which had led in turn to the wide-spread persecution of the Jews and finally culminated in war. It was the duty of the United Nations to safeguard peace, and his Government consequently took its position on the principle that an organ of implementation should not be juridical, but political. The defence of international law and order was one of the political aims of the United Nations, but that aim could not be achieved by means of a juridical process and the setting up of a supra-national court. Consequently, his Government was opposed to the submission of petitions by individuals, groups or organizations. It was up to a government, and a government alone, to submit complaints. The precedent of the League of Nations was, in his view, invalid. Rather than supporting the argument in favour of action by individuals, groups and organizations, it proved the ineffectiveness of the League of Nations in stemming the tide of aggression.

The question turned on the safeguarding of peace by the United Nations as a whole, and by the individual States Members, and on the latter's observance of the purposes and principles of the Charter.

His Government was opposed to the Uruguayan proposal (E/CN.4/549), which was wholly inadequate in its treatment of implementation. He recalled that the Yugoslav delegation had put forward proposals on the problem at previous sessions, and, reserving the right to make detailed comments later, he confined himself to stating that he was categorically opposed to the exclusion of economic, social and cultural rights from the scope of any measures of implementation that might be imposed. Such exclusion would seriously weaken the general structure of implementation.

Mr. WHITLAM (Australia) said that since his Government's position had been described at past sessions of the General Assembly and the Economic and Social Council, he need only re-state it briefly.

The various aspects of the problem had been stated with great clarity, and the weakness of a Covenant without measures of implementation had been emphasized, but to those who argued that such a Covenant would remain a dead letter, he would reply that it would have the same value as any treaty, and be

accompanied by the customary sanctions. Article 10 of the Charter, which laid it down that "The General Assembly may discuss any questions or any matters within the scope of the present Charter" was valid in that connexion. Indeed, from the very beginning of the present chapter in international relations, the conception that the individual and his rights were of concern to the international community had prevailed, and the United Nations had, through the Charter, explicitly declared its intention of respecting the individual's rights and fundamental freedoms. Articles 55 and 56 of the Charter clearly reflected that pledge. Thus, any problem arising from the enforcement of the Covenant must be a matter of concern to the General Assembly. The issue of implementation was consequently supplementary to the Charter. The aim of the Commission's present work was to draw up a Covenant which would be a binding legal instrument, and to which would be added specific measures of implementation whereby the new position of the individual in international law would be recognized. Such a method was acceptable to the Australian Government.

As to the right of individuals and organizations to submit petitions, his Government maintained the view that it would be premature to grant that right to individuals, because it would be virtually impossible to prevent serious abuse. He had not been convinced by the arguments of the non-governmental organizations, and believed that, more especially at a time of international tension, mischief-makers should not be given an opportunity of adding to the burden and responsibility of those who wished to draw up an effective International Covenant on Human Rights. Furthermore, he agreed with the United Kingdom representative that there would be a serious danger of lowering the prestige of national tribunals if an appeal were allowed to an international body on matters which should be subject to final domestic jurisdiction. Every existing institution was being challenged to-day. It would be both impolitic and unwise to present an opening to those who were desirous of decrying the principles and institutions of justice.

In any case, the decision reached by the Commission and approved by higher organs would not prove final, since the Commission was as yet only on the outer-

most approaches to its work. That was why it should be chary of doing too much too soon. It should lay down sound foundations rather than build up what might prove to be a rickety super-structure.

In that connexion, he would recall the liberal provisions of article 45 of the draft Covenant in the amended form proposed at the Commission's sixth session. That article provided for the Covenant to evolve by a process of trial and error.

He believed that, in principle, it was generally recognized by the Commission that the non-governmental organizations were looking to an ideal solution. Their contribution was the more to be appreciated in that the rôle of moulding public opinion fell to them. But governments must recognize that in the democratic system they could not move ahead of public opinion. He did not doubt, however, that the representations made by the non-governmental organizations would receive most careful consideration in the proper quarters.

Mr. YU (China) desired to explain the position of the Chinese delegation in the lights of the statements made by previous speakers. His delegation felt that the inclusion of measures for implementation was essential, not only in order to make the Covenant an effective international instrument, but also because the Commission had received clear-cut directives to that effect, both from the General Assembly and from the Economic and Social Council.

It was desirable to aim at harmonizing the provisions dealing with implementation and the articles of the Covenant: in other words, to see that the implementation clauses linked up with the articles of the Covenant and, conversely, to make sure in the discussion on the articles of the Covenant that there was nothing in them which would make implementation difficult or impracticable.

Next, there was the question of the obligations to be assumed by those governments which acceded to the Covenant. There it was essential to recognize that the assumption of obligations in the international sphere implied a diminution of national sovereignty. That view had been stressed at San Francisco when the United Nations Charter had been drawn up, and the Chinese delegation had stated categorically at that time that China was prepared to surrender part of her sovereignty if such a sacrifice would help to build up the United Nations. The Chinese delegation's position to-day with regard to the Covenant on Human Rights was the same; it was prepared to surrender certain of its soverign rights in the common interest.

Sovereignty, it had been said, was indivisible and supreme. Was that true to-day? He thought not. Such a conception belonged to the past; for the future, world co-operation between States would prove more important than insistence on sovereign rights. Sovereignty, liberty and other abstract words of a similar kind were grandiloquent, but history had shown that they were prone to be abused.

Turning to the suggestions made by previous speakers, he expressed some doubt as to the Uruguayan representative's proposal that a High Commissioner or Attorney General be entrusted with the task of screening petitions from individuals. He did not believe that any single individual should be entrusted with so important a duty. In the same way, he thought that the proposal to charge the Secretary-General of the United Nations with the task was also open to criticism. The Secretary-General was essentially an administrative official; he might have no solid background of legal knowledge, and in any case there was nothing in the Charter to justify entrusting him with a function of that kind.

With regard to the right of petition, the ideal would be to find a half-way position between leaving the State master in its own house, and conferring equally complete freedom on the individual. Should the first alternative be adopted, injustice to the individual might result; whereas the second might give

rise to excessive licence. He was not yet in a position to suggest how that intermediate procedure could be contrived, but he was certain that all members of the Commission were anxious to protect the rights of the individual. In that connexion, he pointed out that in certain countries societies existed for the prevention of cruelty to animals; was it not far more important to ensure that the rights of human beings were adequately protected?

The Chinese delegation also considered that previous international agreements were unduly tainted with compromise. There were a number of delegations in the present Commission which believed in measures for implementation, and even more that believed in the Covenant itself. But it would be better to give up the idea of implementation, or even of the Covenant itself, rather than to accept compromise measures for implementation or a compromise Covenant which would be acceptable to all, but which would betray the very principles on which it rested. Unanimity was desirable, but unanimity achieved at the expense of a betrayal of principle would prove disasterous.

Finally, the Chinese delegation believed that the Commission should move slowly, cautiously and realistically, as well as being idealistic. It should constantly keep in sight its ideal, which was to ensure a greater degree of justice for the individual and to mitigate man's inhumanity to man, but should try to progress slowly, and therefore surely. It must also be certain that none of the articles of the Covenant as finally approved could give rise to conflict with other international instruments or authorities, for example, the International Court of Justice. If there was any prospect of consulting the latter, either through the General Assembly or through the Economic and Social Council, he thought that much would be gained by exploiting it.

The meeting rose at 12.30 p.m.