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COMMISSION ON HUMAN RIGHTS

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Eighth Session

SUMMARY RECORD OF THE TWO HUNDRED AND FIFTY-FIFTH MEETING

Held at Headquarters, New York  
on Wednesday, 16 April 1952, at 10.30 a.m.

CONTENTS:

Recommendations concerning international respect for the self-determination of peoples (A/L.103, A/L.106, A/2112, E/CN.4/657, E/CN.4/516, E/CN.4/519, E/CN.4/L.21, E/CN.4/L.22, E/CN.4/L.23/Rev.1, E/CN.4/L.24, E/CN.4/L.25, E/CN.4/L.26, E/CN.4/L.27) (continued)

<u>Chairman:</u>	Mr. MALIK	(Lebanon)
<u>Reporters:</u>	Mr. WHITLAN	(Australia)
<u>Members:</u>	Mr. NICOT	Belgium
	Mr. VALENZUELA	Chile
	Mr. CHENG TAOHAN	China
	ASMI Bey	Egypt
	Mr. CASSIN	France
	Mr. KYRCU	Greece

Members: (continued)

Mrs. MEHTA	India
Mr. AZKOL	Lebanon
Mr. WALED	Pakistan
Mr. BIRICHI	Poland
Mrs. ROGNEI	Sweden
Mr. KOVALENKO	Ukrainian Soviet Socialist Republic
Mr. MORZOV	Union of Soviet Socialist Republics
Mr. BOARE	United Kingdom of Great Britain and Northern Ireland
Mr. SIMSARIAN	United States of America
Mr. BRACCO	Uruguay
Mr. JEVREMCVIC	Yugoslavia

Representative of a specialized agency:

Mr. MORELLET	International Labour Organisation (ILO)
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Representatives of Non-Governmental Organizations:

Category A: Miss KERN World Federation of Trade Unions (WFTU)  
Mr. LEANI International Confederation of Free Trade Unions (ICFTU)

Category B and Registrar:

Mr. MANJILA	International Association of Penal Law
Mr. SALPERIN	Co-ordinating Board of Jewish Organizations for consultation with the Economic and Social Council of the United Nations
Mr. FOLIS	Commission of the Churches on International Affairs
Mrs. PHILLIPS	Liaison Committee of Women's International Organizations
Mr. KATZACH	World Jewish Congress (WJC)
Mrs. BYMER	International Federation of Business and Professional Women
Mico GARTLAN	International Union of Catholic Women's Leagues (IUCWL)
Mrs. FARBET	
Mrs. POLSTEIN	World Union for Progressive Judaism
Mr. RONALDG	

/secretariat:

Secretariat:

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

RECOMMENDATIONS CONCERNING INTERNATIONAL RESPECT FOR THE SELF-DETERMINATION OF PEOPLES (A/L.102, A/L.106, A/2112, E/CN.4/657, E/CN.4/516, E/CN.4/649, E/CN.4/L.21, E/CN.4/L.22, E/CN.4/L.23/Rev.1, E/CN.4/L.24, E/CN.4/L.25, E/CN.4/L.26, E/CN.4/L.27) (continued)

Mr. KOVALENKO (Ukrainian Soviet Socialist Republic) recalled that the question of the self-determination of peoples was bound up with the aims and principles of the Charter and that, being a basic question, it must find a place in the covenant, otherwise that document would be incomplete. None of the essential rights set forth in the covenant would really be ensured unless the right of national self-determination was included; the proclaiming of that right would offer valuable moral and juridical support, especially to the countries of Africa and Asia which were struggling for their independence.

Two methods had been put forward in the Commission: some States, like the USSR, advocated the inclusion in the covenant of the principle of national self-determination, others, such as Australia, France and the United Kingdom, were opposed to that idea. The delegation of the Ukrainian SSR favoured the first method, because it considered nations to be equal whatever their intrinsic differences. It would therefore support the USSR draft resolution (E/CN.4/L.21). In accordance with the Charter, the article of the covenant should, like the draft resolution, refer not only to peoples but also to nations; it should then emphasize that States which had responsibilities for administering Non-Self-Governing Territories should promote the fulfillment of that right; it should finally give an accurate definition of the duties of States towards national minorities.

/In conclusion,

In conclusion, he reserved his delegation's right to speak on the other draft resolutions at a later stage.

Mr. WHITLAM (Australia) paid a tribute to the Lebanese representative for his statement at the last meeting of the Commission, but pointed out that the Australian delegation had drawn different conclusions from the arguments put forward, especially with regard to the questions asked by the Belgian representative at the 252nd meeting of the Commission. He considered those questions were relevant and that they could be answered only by critical studies, as the Belgian representative had claimed. The Lebanese representative had admitted his inability to answer them and had doubted whether they could be answered at the present stage. Nevertheless, the Lebanese representative had concluded that it was appropriate to introduce into the covenant an article on self-determination. Mr. Whitlam could not agree on that point. The conclusion to be drawn from the arguments of the Lebanese representative was that he aimed to secure a place for the article in the covenant as the finest instrument of propaganda, in the best sense of that word. If that was a correct deduction from the arguments of the Lebanese representative, then in the judgment of the Australian delegation to insert a clause such as that proposed in the covenant would be to do violence to the covenant, because the clause would not be in the nature of a legal commitment. There was a difference between an instrument that was intended to be binding in international law and one that was not. The instrument that the Commission was at present concerned with was intended to be so binding and would, if sufficient acceptances were forthcoming, add to the body of international law on a respectable instrument of international justice. It was the belief of the Australian delegation that any commitment that did not measure up to that standard should not have a place in the covenant. Moreover, members of the United Nations and its bodies, particularly the Commission, should be zealous to preserve the character of legal commitments and to distinguish between what was binding and what was not. The Commission could not afford to lessen, or even appear to lessen, respect for the institution of law in the international field or in any field.

/The Commission

The Commission was dealing with a political concept, to which only political sanctions were applicable. The position of the Australian delegation had been defined when it had stated in the Third Committee of the General Assembly at its sixth session that it was prepared to reaffirm the provisions of the Charter relating to self-determination. If the argument was sound that self-determination of peoples and nations was to be regarded as a human right, the proper place would be in the Universal Declaration. So placed, it would be in the International Bill of Human Rights, for the Universal Declaration was a part, the initial part, of the International Bill. The Australian delegation had intervened in the debate at that point to make plain its conviction that the covenant was not the proper place for the proposed clause and that the Commission should say so.

Mr. HOARE (United Kingdom) wished to reply to the USSR representative who, in his statement at the 253rd meeting of the Commission, had compared the situation in his country in respect of national self-determination with that obtaining in the Non-Self-Governing Territories. He did not believe that any human institution was perfect, and he would not claim that the administration of Trust Territories had not had as well as good points. The Non-Self-Governing Territories were an inheritance from the past; what mattered was the spirit in which they were being administered now. The administering Powers had undertaken solemn obligations under the United Nations Charter, and he was content to leave it to history to judge whether they had fulfilled their duty in that respect.

He then paid a tribute to the spirit of fairness that had animated the Lebanese representative's statement. The United Kingdom delegation fully understood and sympathized with the national aspirations that were stirring in many parts of the world today. But the Lebanese representative, while admitting frankly that there was neither accepted doctrine nor jurisprudence on the subject of self-determination, nevertheless concluded that an article should be inserted in the covenant because the cases in which difficulties in its application would arise would be quite a small proportion of the whole. Even if that were true the small proportion represented not cases, but States: in fact, however, he doubted whether any State had not its own minority problems,  
/and the number

and the number of States which might find themselves in a difficult position from such a provision was incalculable. Legal obligations could not be adequately defined by merely stating a moral principle: the study of any legal code would show that that was not the method employed to give moral principles legal force. On that point he agreed fully with the Australian representative. The article under consideration ran the risk of remaining a dead letter or of hindering the ratification of the covenant, as had been pointed out by the representative of France. In those circumstances he could not insist too strongly that the Commission should recognize that it had not been able to frame an adequate article.

Mr. BIRECKI (Poland) said that his country had always supported the aspirations of oppressed peoples. Article 69 of the future Constitution of Poland solemnly proclaimed and ensured respect for the principle of national self-determination. He was surprised that the Belgian representative had deemed it proper to raise questions about the problem as if his country had not had to fight for its independence during the previous century and as if the problem had never before been encountered. The agendas of the Security Council and the General Assembly indicated that it was a general problem which arose nowadays in many cases and always constituted a threat to peace. It was therefore necessary to settle the matter within the terms of the Charter as world public opinion demanded. Many members of the Commission represented countries which knew that freedom of the individual was a onere and a delusion as long as the nation of which he was a part was not free.

Mr. Birecki said that the USSR draft resolution (E/CN.4/L.21) fully met the wishes of the General Assembly and would receive the support of his delegation. He felt that the Egyptian amendments (E/CN.4/L.23/Rev.1) were a useful addition to the USSR draft but he would propose the inclusion of the words "and all nations" after "all peoples" as being in line with the spirit of the General Assembly's decisions.

Mr. BRACCO (Uruguay) thought that in view of the technical and political difficulties facing the Commission, it should agree on a text that took into account existing realities and not seek to avoid that task.

/He reserved

He reserved the right to discuss the various draft resolutions later but wished to say at once that his delegation favoured the inclusion of the article under consideration in both covenants and that it supported the Chilean draft resolution (E/CN.4/L.24) recognizing the right of States to sovereignty over their natural wealth and resources.

Mr. CASSIN (France) asked the Chairman whether the time limit for submitting draft resolutions also applied to draft articles for inclusion in the covenant and draft recommendations.

The CHAIRMAN replied that while he had not made any special distinction when he fixed the time limit of Wednesday 15 April 1 p.m., he had really had in mind only draft resolutions referring to the first part of the General Assembly's resolution (A/L.102). The time limit for drafts dealing with the second part would be fixed later. There was no time limit for the submission of amendments.

Mr. CASSIN (France) recalled that at the previous meeting he had confined himself to a discussion of some aspects of the Commission's possible procedure. The general discussion at the previous day's meetings indicated that the Commission's work was even more difficult than had been thought. It also revealed that the most serious problems would arise if at the present stage an attempt was made to include in the covenant an article on the right of peoples to self-determination. He was not at all opposed to that principle nor to its being given the place of honour it deserved in the work of the United Nations as a whole, but it was impossible to give it that place if it took the form of a hurriedly drafted text inserted in the covenant laying down obligations impossible for States to accept.

The Lebanese representative had agreed that it was difficult to find legal wording for the right of peoples but had nevertheless emphasized the necessity of eventually including in the covenant an article on the right of peoples to self-determination. Mr. Cassin pointed out that another solution would be to proclaim the principle in a separate declaration or in a preamble to the covenant. In doing so the Commission could use the Charter as a model.

/After

After lengthy deliberations it had succeeded in the Declaration of Human Rights in working out a more explicit and detailed wording by beginning with the Charter. In the case of the right of peoples to self-determination, for the Commission to try to jump suddenly from the Charter to concrete legal principles binding upon all States would result in practically insurmountable obstacles. If the Commission wished to draw up a document for the right of peoples similar to the Declaration of Human Rights it could likewise find guidance in the Charter, in particular in Article 1 and Articles 55, 72 and 76, where the general principles of the right of peoples to self-determination were already laid down. Mr. Cassin then reviewed the mutual relationship of these principles.

Article 1 of the Charter based peaceful relations between nations on respect for the equality of the right of peoples and of their right to self-determination. Article 55 (c) provided for universal respect for, and observance of, human rights and fundamental freedoms. The right of self-determination and equality was a means of ensuring stable and friendly relations between peoples, but was dependent on the protection assured to human rights by the Economic and Social Council. Article 55 (c) of the Charter therefore provided for immediate and definite obligations to be assumed in the field of human rights. In the Charter human rights were a cause; the right of peoples was a consequence. The Commission had the task of studying human rights and the right of peoples according to the provisions of the Charter. It could not therefore reverse the order of the Charter; it must deal first with relations between the individual and the group and then with relations between groups.

The drafting of an article on the right of peoples to self-determination was difficult because it presupposed the solution of certain legal and technical problems. The study of such questions came within the scope of the technical competence of many organs which the Commission on Human Rights could not replace. He emphasized the importance of including provisions on that question which, without taking the form of an article, would crown the whole covenant on human rights. The General Assembly could use those provisions as it thought fit.

He wished to define his delegation's attitude on two important points. First, the French delegation was not opposed to the Commission's trying to

/carry out



carry out the General Assembly's instructions and include in the covenant an article of a juridical nature on the Charter obligations as a whole. Both the rights set forth in Article 1 and those in Chapters XI and XII must be defined from the angle of the Charter. Secondly, France did not intend to evade its obligations under the Charter but it could not agree to the covenant making a distinction between administering and non-administering States of Non-Self-Governing Territories. The covenant's obligations must be equally binding on all States subscribing to it. France refused to appear in the Community of Nations as a defendant. It did not have to be ashamed of what it had achieved in a relatively short period and it had always honoured its commitments. He then related how he had been able to see for himself in trips to Africa and Indo-China the great work of civilization which France had done in its territories.

He would never advise his country to adhere to a covenant which did not impose equal obligations on all States nor even to an agreement which distinguished between administering and non-administering States, some of which had among their populations heterogeneous elements that did not enjoy equal individual or collective rights with other national groups. Among the non-administering States there were always some which demanded a covenant on human rights although they themselves would not adhere to it or ratify it or permit inspection while setting themselves up as judges of countries accepting the covenant's obligations. France was not inclined to agree that some signatories should be required to assume obligations while others were exempt from doing so.

AZMI Bey (Egypt) stated that after submitting amendments (E/CN.4/L.20) to the USSR draft resolution (E/CN.4/L.21) he had reconsidered the matter. He had been led to do so following the suggestion by the United States representative that the Commission should try to clarify instead of rejecting the text proposed by the General Assembly which some representatives found too vague. That was what he was now trying to do. He had felt it necessary to define the right of peoples to self-determination as the right of peoples freely to determine by and for themselves their political, economic, social and cultural status. In spite of what had been said, the idea of a people mentioned in that definition was a classical concept which had long since  
/been well

been well defined in international law. That was the background for the revised amendments he had submitted (E/CN.4/L.23/Rev.1) the first of which contained a definition of the right of peoples to self-determination. The second amendment aimed at making good an omission in the USSR draft resolutions which mentioned only States having responsibility for the administration of Non-Self-Governing Territories. The Egyptian delegation proposed the insertion before the paragraph concerned of a paragraph referring to all countries without exception.

He did not think that the Commission deserved the technical criticisms which the French representative had just made. It was not the Commission which had taken the initiative to include an article on the right of peoples to self-determination in the draft covenants. It had received definite instructions from the General Assembly to do so which it was bound to follow.

The arguments of the representatives of France, Australia, Belgium and the United Kingdom were not new; they had been presented and discussed at length at the sixth session of the General Assembly and the matter had been settled by a very large majority. The dangers were not as serious as some appeared to believe in view of the fact that the question would be re-examined at the next session of the General Assembly.

He had listened with much interest to the French representative's anecdotes about his African journeys. He did not, of course, question their veracity, but it occurred to him that they might be the expression of a strictly personal point of view. As far as North Africa was concerned, he himself had had many opportunities of observing that the French administration was open to severe criticism and liable to arouse great discontent. He quoted a number of examples in support of that statement. He emphasized that his remarks were inspired not by any desire to touch on political differences which were not the Commission's concern, but by the wish to correct certain impressions made by the French representative so as to give a truer picture of the reality.

Mr. KOROZOV (Union of Soviet Socialist Republics) said that the suspicions roused in him the previous day by the attitude of certain members of the Commission had been confirmed in the course of the debate. The many  
/questions

questions that had been asked and left unanswered were nothing else than a skilfully disguised attempt to divert the Commission from the task entrusted to it by the General Assembly. He regretted that some speakers had objected to his criticisms and emphasized that they were in no way subjective; on the contrary, he had tried to express an objective opinion.

The new statements made by the French and United Kingdom representatives and the Australian representative's speech proved that those delegations were conducting an offensive on exactly the same lines as the one made in the General Assembly; they considered it unnecessary to include in the covenants an article on the self-determination of peoples. They claimed that their attitude was not caused by opposition of principle but by quite different reasons. The United Kingdom representative, for instance, when voting against the insertion of such an article in the covenants, had stated that he did not oppose the affirmation and the recognition of the right of peoples to self-determination. At the previous meeting he had said that to proclaim a principle and to put it into practice were two quite different things; he had now added to that the statement that a moral precept could not be transformed into a legal obligation. No doubt the motives behind that attitude were sincere, but incontestably in fact its result would be to deny the right of peoples to self-determination both in theory and in practice.

The French representative had tried to persuade the Commission that the delegations that wanted the right of peoples to self-determination to be included in the covenants were endeavouring to study effects before causes and, so to speak, turn the question upside down. Furthermore, the French representative had been willing to agree to the inclusion of that principle in a kind of preamble to each covenant. That showed that he would be willing to accept a declaration in high-sounding terms only on condition that it entailed no definite obligations. The French representative had depicted the African towns that he had visited as a sort of colonial paradise; no doubt he lacked the caution shown by Alphonse Toussaint in describing his hero's adventures in Africa; he should have refrained from any reference to such burning questions at the very time when eleven States, representing six hundred million human beings, were asking the Security Council to take up the subject of Tunisia. He did not doubt the good faith of the French representative, but he did think that if that representative had continued his journey as far as

Madagascar

Madagascar his attention would have been forcibly drawn to the tens of thousands of graves that gave evidence of the brutal oppression inflicted on the country; nor would he have been able to ignore the fact that the French people as a whole regarded the French operations in Indo-China as an unjustifiable war.

It emphasized once again that the only result of the efforts of certain representatives was artificially to complicate the Commission's task; that must be stopped so that the Commission could begin its work, from the text of the article to be included in the covenants and draw up the recommendations requested by the General Assembly.

The CHAIRMAN pointed out that the following draft resolutions had been submitted: draft resolution by the USSR (E/CN.4/L.21) with amendments proposed by Egypt (E/CN.4/L.23/Rev.1) and the Polish amendment to the Egyptian amendments (E/CN.4/L.27); draft resolution by Yugoslavia (E/CN.4/L.22); draft resolution by Chile (E/CN.4/L.24); draft resolutions by India (E/CN.4/L.25, E/CN.4/L.26); a draft resolution submitted by the United States of America would be submitted shortly.

Mr. KARCZOW (Union of Soviet Socialist Republics) speaking on a point of order, proposed that the Commission should adjourn until the following day, 17 April, at 10.30 a.m., so as to give representatives time to study the numerous draft resolutions that had been submitted.

Mr. HIGOT (Belgium) and Mr. WHITLAM (Australia) supported that proposal.

Mr. KYRCU (Greece) suggested that at its afternoon meeting the Committee should hear the statements of the sponsors of the various draft resolutions and that it should not meet the following morning. That would give representatives an opportunity to consider the various drafts.

The CHAIRMAN put the proposal of the USSR representative to the vote. The proposal was adopted by 10 votes to 4, with 4 abstentions.

The meeting rose at 1.10 p.m.

9/5 p.m.