

COMMISSION ON HUMAN RIGHTS

SECOND SESSION

SUMMARY RECORD OF THIRTY-NINTH MEETING

Held at the Palais des Nations, Geneva,
on Monday, 15 December, 1947, at 3 p.m.

PRESENT:

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| Chairman: | Mrs. Franklin D. Roosevelt (United States of America) |
| Rapporteur: | Dr. C. Malik (Lebanon) |
| Members: | Colonel W.R. Hodgson (Australia) Professor F. Dehousse (Belgium) Mr. A.S. Stepanenko (Byelorussian S.S.R.) Dr. C.H. Wu (China) Mr. O. Loutfi (Egypt) Professor R. Cassin (France) Mrs. Hansa Mehta (India) Mr. A.G. Pourevaly (Iran) Mr. M. Amado (Panama) General C.P. Romulo (Philippine Republic) Mr. M. Klekovkin (Ukrainian S.S.R.) Mr. A.F. Bogomolov (U.S.S.R.) Lord Dukeson (United Kingdom) Mr. A.C. Victorica (Uruguay) Dr. V. Ribnikar (Yugoslavia) |
| Specialized Agencies: | Mr. J. de Givry) Mr. R. Bessling) (I.L.O.) (17 p.) Mr. J. Havet (UNESCO) |

Non-Governmental
Organizations:

Category A:

Miss Toni Sender (American
Federation of Labour)

Mr. P.V.S. Serrarens) (International
) Federation of
) Christian
Mr. Vanistendael) Trade Unions)

Non-Governmental
Organizations:

Category B:

Mr. J.M.E. Duchosal (Comite
Internationale de la Croix
Rouge)

Dr. Bienenfeld) (Consultative
) Council of Jewish
Mr. Beigner) Organizations)

Miss de Romer (Union Internationale
des Ligues Feminines
Catholiques. Union
Catholique Internationale
de Service Social)

Miss van Eeghen (International
Council of Women)

Mr. A.F. Ennals (World Federation
of United Nations
Organizations)

M. de Felice (International
Abolitionist Federation)

1. Consideration of the Draft Report of the Working Group on Implementation (Document E/CN.4/53).

General ROMULO (Philippine Republic) reminded the meeting that he had already made one important commitment on behalf of his Government. His Government would be prepared to accept any International Bill of Rights as part of its general law, provided that the guarantees for the protection of individual rights and fundamental freedoms established therein were not less comprehensive than those provided by the Philippine Constitution and existing laws. That commitment was subject to an equally important reservation. His Government could not be committed in favour of any machinery for implementation until it had had an opportunity of considering the Declaration and the Convention. The texts of these two documents were now taking shape and it should be possible for the various governments to consider proposals for their implementation. He was able to say on behalf of his Government that it would be favourably inclined towards the adoption of a Declaration on Human Rights in the form of a recommendation by the General Assembly. The implementation of a Convention was a far more complicated problem, as the Report of the Working Group had made quite clear. His reading of that Report had revealed two principal possibilities in the case of those States which adhered to a Convention on Human Rights. It could either make the Convention an integral part of its constitution or it could limit itself to a simple act of ratification. But in neither case would the ordinary citizen have recourse beyond the courts of his State against violation of his rights. The proposals of the Australian representative made a concrete attempt to meet this problem by the establishment of an International Court of Human

Rights or a special division of the present International Court of Justice. These courts would presumably decide cases on appeal from the national courts of each respective state. It was an entirely new conception that a citizen should have the right to summon a fellow citizen or the authorities of his own State before an International Tribunal. That conception involved such a restriction of national sovereignty that he was quite able to understand the misgivings expressed by certain delegations, whose views on the matter, he felt, should be regarded with the utmost respect. That did not imply that his Government would be unwilling to accept further limitation of its sovereignty but he was not prepared to commit himself, at this stage, to a simple statement for or against any specific proposal for implementation. He wished nevertheless to give every assurance that his Government did not stand fast on the principles of absolute national sovereignty. Nor would it reject any reasonable proposal in the interests of extending the field of Human Rights.

Mrs. MEHTA (India) referred to the Resolution on Implementation adopted by the Economic and Social Council on 21 June, 1946. A procedure for implementing an international Convention was essential in order to assure the non-violation of human rights by States themselves, she thought. The Working Group had proposed two steps. Firstly, the formation of a Standing Committee, not necessarily of five members but of not less than this number. This Committee must be independent in order to secure impartiality. It would act as a screening organization, and an important part of its functions would be conciliation. This was the first time such a complete scheme had been presented to the world. A novel proposal of this kind would certainly contain defects,

but criticism should remain constructive. Representatives could always propose alternative schemes. It was extremely difficult for representatives to voice an opinion on the subject at this stage, and she felt that the Report of the Working Group should be forwarded to Member Governments for their observations.

The CHAIRMAN observed that so far the Rapporteur of the Working Group on Implementation had not replied to a question by the representative of the American Federation of Labour who had asked why he had changed his mind regarding the organization of a special Chamber of the International Court of Justice.

Professor DEHOUSSE (Belgium), speaking as Rapporteur of the Working Group, said that he had reserved the right to answer questions of a general character at the end of the debate, but that he would make an exception here. He had not stated that he was in favour of a new Court, but that he hesitated between the idea of using the machinery of the existing International Court of Justice and the proposal for a new organization made by the Australian representative. He was now inclined to the view that the creation of a new Court was preferable. The special status governing the Court of International Justice had to be considered in the light of the Charter. Agreement was necessary between the parties to bring a case before the Court. An agreement of this nature was in fact a convention. This constituted an argument in favour of the creation of a new organization since, a convention being in any case necessary, it would be worth while establishing a special tribunal for this type of litigation.

Mr. ENNALS (World Federation of United Nations Associations) welcomed the progress made in the preparation of a Declaration of Human Rights. The adoption of such a Declaration by the largest possible number of States would have a high moral value but its effectiveness would largely depend on the measures taken to conserve respect for those rights. In view of the broad field of subjects covered by the proposed Declaration, he suggested that it might be more practicable to divide the Convention into several Conventions on specific subjects, such as trade union rules, racial discrimination, etc. That would not only increase the chances of general ratification but might provide the possibility of employing more flexible methods of implementation. His Organization wished to emphasize three points regarding the latter. Firstly, the importance of the sanction of public opinion. That necessitated drawing public attention to the commitments undertaken by the respective Member Governments. Secondly, the importance of ensuring that the Declaration and Conventions applied to Trust and Non-Self-Governing Territories as well as to Metropolitan areas. Thirdly, the importance of providing for the participation of the major non-governmental organizations in the process of presenting petitions. His Organization had already received numerous petitions. The Commission might find it useful to consider the inclusion of one or more representatives of those organizations in a consultative capacity on the proposed Standing Committee, because the officers of those organizations were independent of any government and in constant contact with public opinion in all parts of the world.

Dr. MALIK (Lebanon) said that in his opinion the crux of the whole question of Human Rights lay in the implementation of measures for their protection. His government would not be interested in other aspects if the question of implementation were treated as secondary or problematic. He doubted if the Commission could improve on the Declarations in the great classics of their various countries. The many changes of fortune of his own country had made her healthily cynical of declarations and resolutions. What was now required was something to make the protection of Human Rights a reality. The minimum to be expected of the Commission, he felt, was the production of an international treaty binding on all signatories. The effect of this would be to elevate the field of Human Rights to that of the sanctity of international treaties. He would go further and place it above the sanctity of treaties. What was required was a document so clearly defined and so binding in character as to occupy a level of its own; a document by virtue of which men could rest confident that they would secure redress under international law for any violation of rights. He supported the Australian proposals which provided the machinery for such redress. He had been struck by the observations of the delegate for Yugoslavia on the sacredness of national sovereignty, but the field of Human Rights was, in his opinion, outside that of national sovereignty. Firstly, their determination was not exclusive to any State. Secondly, their violation concerned not only the State but the whole world. Thirdly, their domain was outside the scope of internal law. And fourthly, in establishing a convention on Human Rights, humanity was only being conceded its due. He wished to make two comments on the Report of the Working Group. (1) He questioned

whether the Group was empowered to call on the Secretariat for services. (2) There was no proposal to pass the Report on to the Economic and Social Council.

Colonel HODGSON (Australia) said that he had hoped to hear a more concrete analysis of the contents of the Report. He wished to give a clear picture of the proposed machinery for implementation. It would be a mistake to postpone consideration of this question until after the Convention had come into force. The machinery should work automatically from the start.

The Working Group, he pointed out, had made specific proposals for a machinery to enforce the Convention. Firstly, the composition of a Standing Body, with authority to screen applications and also to mediate between parties. Secondly, an International Tribunal, the nature of which remained undecided. He supported the creation of a Special Court for four reasons:

(1) The Commission on Human Rights had no mandate under the Charter to seek advice from the International Court of Justice.

(2) If it had such a right, it could only seek advice on legal points of issue. Having secured an opinion, that must be referred to the Assembly which would involve considerable delay.

(3) That procedure could only be applied to disputes between States and such disputes were limited in the field of Human Rights.

(4) The procedure would require an amendment to the Charter.

For those reasons, he thought it imperative to form a new Court. An additional function which it was proposed to

give that Court was in connection with the new peace treaties already signed and to be negotiated. Those treaties affected a great number of persons who would otherwise have no means of redress. It was therefore proposed that the new Tribunal should be given a dual function, (1) that of implementing the Convention, and (2) that of acting as a Court of Appeal for cases affecting groups or individuals in respect of the peace treaties.

Mr. DEHOUSSE (Belgium) said that there had been much discussion in the Commission concerning sovereign rights of States, and that he would have preferred to have heard more mention of the sovereign rights of man.

He wished to make some general observations concerning national sovereignty, of which he considered that two concepts existed. First, there was the concept of absolute sovereignty, which excluded all international co-operation; but he considered that a State, if it possessed absolute sovereignty, had the power thereby to limit its sovereignty and power. In this case, the State would be based on the second concept of relative sovereignty, which was a sovereignty limited according to the practical interests of the country.

Concerning absolute sovereignty, he referred to a conference at The Hague in 1907, when Germany refused to accept the principle of mandatory arbitration on grounds of absolute sovereignty. He reminded the Commission of the results of that argument. He said that such a concept of national sovereignty had not been put forward for 15 years, and he considered that any support of such a concept was reactionary.

He felt that it was not possible to have complete confidence in governments, insofar as human rights were concerned, for an indefinite period. It was therefore necessary, in his opinion, to create an international machinery to control and supervise the observation of human rights.

He referred to objections raised against the work of the Working Group on Implementation. First, there was the objection that this Working Group had proposed the establishment of National Committees to supervise the observation of human rights; he referred Members to page 22 of the Draft Report of this Working Group, where it had been stated that no decision had been reached, because it had been considered that such a proposal was premature. Secondly, there was the objection that the suggested handling of petitions would give immense powers to a standing committee of five members; he referred to page 20, paragraph 2, of the Draft Report, where it had been stated that "It is obvious that five people cannot be given the immense task of themselves undertaking all the work connected with petitions."

Mr. DEHOUSSE said that there were two propositions before the Commission, one from the Union of Soviet Socialist Republics, and one from India. Referring to the proposal by the representative for the Union of Soviet Socialist Republics, he said that he did not consider that this proposal was logical; if the Soviet representative considered that absolute national sovereignty was an established fact, he should have proposed the rejection of the Report and not its transmission to governments for consideration.

He said that he accepted, with modifications, the proposal by the representative for India; he considered, as

suggested by the representative of Lebanon, that the Report should be sent both to governments and to the Economic and Social Council.

The Working Group, he said, had proposed that the Secretariat be asked to formulate rules for the handling of petitions. He considered that this work should be undertaken at once, and should not be postponed until the Report had been submitted to governments.

He said that there were two decisions for the Commission to make; first, concerning the transmission of the Report to the Economic and Social Council; secondly, concerning the suggested work to be undertaken by the Secretariat.

He said that the discussions of the Commission had, in his opinion, saved Human Rights from a death on academic grounds. The problem of Human Rights had now been put before the world and could not be forgotten.

The CHAIRMAN pointed out that the report of the Working Group would automatically be transmitted to the Economic and Social Council, as it would form part of the full Report. She agreed that the Commission should vote on whether or not the Report should be accepted.

She said that the representative of Yugoslavia had asked to be allowed to answer shortly the comments made on his speech.

Dr. RIBNIKAR (Yugoslavia), in reply to the representative for Belgium, recalled historical facts concerning State sovereignty. He defined the principle of State sovereignty as independence both in internal affairs and in international relations with other States. He said that such sovereignty was the oldest democratic principle in the field of State relations, and that this principle was

only opposed, in his opinion, by those people who had ideas of international domination and generally represented reaction.

The CHAIRMAN proposed that a vote be taken on the resolution of the representative for the Philippines, as to whether or not the Commission should transmit the Report to the governments of various States for consideration and comment.

Professor CASSIN (France) proposed the addition of the words "for their observations, with a view to the next session of the Commission in May 1948".

Mr. DEHOUSSE (Belgium) said that, in his opinion, the Commission should first vote on the proposal of the representative of the Union of Soviet Socialist Republics, as it was the most far-reaching.

The CHAIRMAN pointed out that there were two resolutions before the Commission which represented opposite views. She suggested that the vote should be taken on the proposal of the representative of the Union of Soviet Socialist Republics, who should first be allowed to state his views, and then, if this proposal was lost, that a vote be taken on the proposal of the representative of India. In this way, she considered, it would be possible to get the exact views of the Commission.

Mr. BOGOMOLOV (Union of Soviet Socialist Republics), in explanation of his proposal, said that he considered that the Working Group on Implementation had chosen a wrong procedure in trying to establish an international organization for control and inspection in the field of Human Rights. He said that, in his opinion, it would have been better if the Working Group had not attempted to solve that

problem, but had suggested measures to be taken to implement Human Rights within the framework of the administration of each country.

He considered that a wrong solution had been chosen; he agreed with the representative of the Philippines that this problem should not yet be discussed; he did not agree with him that the Report should be sent to governments, as he considered that it required further preliminary study.

The CHAIRMAN put the Soviet proposal to a roll call vote, at the request of the representative of Australia, with the following result:

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| Australia | No |
| Belgium | No |
| Byelorussia | Yes |
| Egypt | Abstention |
| France | No |
| India | No |
| Iran | No |
| Lebanon | No |
| Panama | No |
| Philippine Republic | No |
| Ukrainian S.S.R. | Yes |
| U.S.S.R. | Yes |
| United Kingdom | No |
| U.S.A. | No |
| Uruguay | No |
| Yugoslavia | Yes |

Total: In favour 4; against 11; abstentions 1.

The CHAIRMAN then proposed that a vote be taken on the resolution of the representative of India.

Mr. DEHOUSSE (Belgium) referred to his suggestion that the words "and to the Economic and Social Council" should be added at the end of the Indian Resolution.

The CHAIRMAN considered that such an addition was unnecessary, as the Report would automatically be sent to the Economic and Social Council. She suggested, however, that the proposed addition could be made, if the representative of India agreed.

Mrs. Hansa Mehta (India) agreed.

The CHAIRMAN put the Indian proposal to a roll-call vote.

Voting

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|---------------------|------------|
| Australia | Yes |
| Belgium | Yes |
| Byelorussia | No |
| Egypt | Yes |
| France | Yes |
| India | Yes |
| Iran | Yes |
| Lebanon | Yes |
| Panama | Yes |
| Philippine Republic | Yes |
| Ukrainian S.S.R. | No |
| U.S.S.R. | Abstention |
| United Kingdom | Yes |
| U.S.A. | Yes |
| Uruguay | Yes |
| Yugoslavia | No |

Total: In favour 12; against 3; abstentions 1.

The CHAIRMAN suggested that the Commission continue the discussion of the Declaration and the Convention.

Article 23 of Declaration and Articles 17 and 18 of the Convention.

The CHAIRMAN referred to Article 23 of the Declaration, which she said corresponded to Articles 17 and 18 of the Convention. She said that no amendments had been proposed and asked if any member wished to speak either for or against these Articles. As no member wished to speak, she proposed that these Articles be put to the vote.

Mr. VICTORICA (Uruguay) agreed that the amendment, which he had proposed to replace Article 23, should be published in the Minutes. In conformity with the Constitution of Uruguay, he said that he supported the principle that the Right of Assembly should be recognized by all States. He said that, in his opinion, no grounds should be recognized whereby States could be excused from a compulsory recognition of this right; but that the State and the local authorities had the duty to provide full opportunity for this expression of public opinion. He admitted that there were limitations, based on well-founded law, to the exercise of this right. As examples, he quoted laws concerning public order, security of the State, the development of social life, and the harmonious exercise of other rights.

The CHAIRMAN put Article 23 of the Declaration to the vote. There were 10 in favour, 0 against, and 5 abstentions.

The CHAIRMAN said that, as no member wished to speak for or against Article 17 of the Convention, she would put this Article to the vote. There were 11 in favour, 0 against, and 4 abstentions.

The CHAIRMAN then asked if any member wished to speak concerning Article 18 of the Convention.

Professor CASSIN (France) said that, in his opinion, the texts of the Convention and the Declaration should be in harmony. He said that, in principle, the Convention was drafted in more detail than the Declaration, and therefore all the provisions of the Declaration should be included in the Convention.

He then proposed, as an amendment to Article 18 of the Convention, that the words "not inconsistent with the aims of the Declaration" should be added after the word "object" in line 4.

Lord DUKESTON (United Kingdom) considered that the amendment proposed by the representative of France was partly covered by the word "lawful" in line 3 of Article 18. He further considered that it was a mistake at that stage to alter the text of the Convention so as to reconcile it with the text of the Declaration. He said that he did not believe that those who had drafted the Convention wished to alter the text by the transfer to it of language from the Declaration.

The CHAIRMAN put to the vote the amendment proposed by the representative of France. There were 3 in favour, 5 against, and 8 abstentions.

The CHAIRMAN then put Article 18 of the Convention to the vote. There were 11 in favour, 1 against, and 4 abstentions.

Article 2⁴ of Declaration.

Referring to Article 2⁴ of the Declaration, the CHAIRMAN said that no amendments had been proposed and that there

Colonel HODGSON (Australia) proposed, as a point of drafting, that the words "Everyone has the right" should be used to introduce this Article, as in Articles 23 and 26. He did not think that the language of the Convention should be used.

The CHAIRMAN put the proposed amendment by the representative of Australia to the vote. There were 11 in favour, 1 against, and 4 abstentions.

Lord DUKESTON (United Kingdom) proposed the following amendment of the text that the words "of the State of which he is a national or in which he resides or of United Nations" should replace the words "of his State, or his residence or of the United Nations".

Professor CASSIN (France) said that, as Rapporteur of the Working Group concerned, he accepted the proposed amendment.

The CHAIRMAN put to the vote the proposed amendment of the representative of the United Kingdom. There were 11 in favour, 0 against, and 4 abstentions.

The CHAIRMAN then put to the vote Article 24 of the Declaration. There were 11 in favour, 0 against, and 4 abstentions.

The meeting rose at 6.15 p.m.