

COMMISSION ON HUMAN RIGHTS

Third Session

SUMMARY RECORD OF THE SEVENTY-SEVENTH MEETING

Lake Success, New York
Thursday, 17 June 1948 at 11 a.m.

<u>Chairman:</u>	Mrs. Franklin D. ROOSEVELT	United States of America
<u>Rapporteur:</u>	Mr. MALIK	Lebanon
<u>Members:</u>	Mr. JOCKEL	Australia
	Mr. LEBEAU	Belgium
	Mr. STEPANENKO	Byelorussian Soviet Socialist Republic
	Mr. LARRAIN	Chile
	Mr. CHANG	China
	Mr. LOUFI	Egypt
	Mr. ORDONNEAU	France
	Mrs. MEHTA	India
	Mr. QUIJANO	Panama
	Mr. LOPEZ	Philippines
	Mr. KLEKOVKIN	Ukrainian Soviet Socialist Republic
	Mr. PAVLOV	Union of Soviet Socialist Republics
	Mr. WILSON	United Kingdom
	Mr. FONTAINE	Uruguay
	Mr. VILFAN	Yugoslavia

Representative of a Specialized Agency:

Mr. LEBAR	United Nations Educational, Scientific and Cultural Organization
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Consultants from Non-Governmental Organizations:

Mr. GARVAN	American Federation of Labor (AFL)
Miss STUART	World Federation of United Nations Associations
Miss DRENNAN	Catholic International Union for Social Service
Mr. NOLDE	Commission of the Churches on International Affairs

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Consultants from Non-Governmental Organizations (Cont'd)

Mr. MOSKOWITZ	Consultative Council of Jewish Organizations
Mrs. VANDENBERG	International Women's Alliance
Mr. BIENENFELD	World Jewish Congress

Secretariat:

Mr. HUMPHREY	Director, Human Rights Division
Mr. LAWSON	Secretary of the Commission

CONSIDERATION OF THE PROPOSAL SUBMITTED BY THE CHINESE DELEGATION REGARDING THE ORDER OF THE ARTICLES OF THE DECLARATION

Mr. CHANG (China) proposed making article 2 the penultimate article of the Declaration. An article which dealt with the limitations on the exercise of the rights and freedoms proclaimed in the Declaration should not appear at the beginning of the Declaration before those rights and freedoms themselves had been set forth.

Mr. LOUFI (Egypt) did not agree with that view. Article 2 was among the articles which set forth the general principles and, as such, should appear at the beginning of the Declaration.

Mr. FONTANA (Uruguay) supported the Chinese representative's proposal.

He recalled his delegation's objections to the use of the term "ordre public" (public order) in article 2, paragraph 2 (see document E/CN.4/SR.74). To place that article towards the end of the Declaration immediately before article 33 would reduce the possibility of misinterpreting that term.

Mr. WILSON (United Kingdom) pointed out that the general scope of the Declaration would not change with the order in which the articles were placed. Article 2 should not be placed towards the end of the Declaration so as to avoid giving the reader the impression that the individual was granted unlimited rights; the reader would not realize, until he had reached the penultimate article, that the rights and freedoms laid down were subject to certain restrictions.

/Mr. PAVLOV

Mr. PAVLOV (Union of Soviet Socialist Republics) agreed with Mr. Wilson that the reader should know from the outset that the rights and freedoms set forth in the Declaration were to be enjoyed within the framework of society. Logically, the general provisions should precede the more specific clauses.

Mr. LEBEAU (Belgium) entirely agreed with Mr. Pavlov.

Mr. LOPEZ (Philippines) supported the Chinese representative's proposal; since they were dealing with a Declaration on Human Rights, the rights of the individual should be stressed before his duties to society.

The CHAIRMAN, speaking as United States representative, thought that the article regarding the general limitations on the enjoyment of rights would be better placed towards the end of the Declaration.

The Chinese representative's proposal was adopted by 8 votes to 7, with 1 abstention.

Mr. CHANG (China) proposed changing the order of the first five articles of the Declaration as follows: article 1 to remain where it was; article 3, paragraph 1 (principles of non-discrimination) to become article 2; article 3, paragraph 2 (principles of equality before the law) to become article 5; article 4 (right to life) to become article 3 and article 5 (respect for human dignity) to become article 4.

The Chinese representative's proposal was adopted by 9 votes to 1, with 6 abstentions.

Mr. CHANG (China) proposed placing article 13, which dealt with marriage, after article 9 which dealt with the family.

Mr. LOUFI (Egypt) pointed out that article 9 did not deal exclusively with the family. He was, therefore, opposed to the proposed change.

The Chinese representative's proposal was rejected by 5 votes to 4, with 7 abstentions.

/Mr. CHANG

Mr. CHANG (China) proposed placing article 15, on nationality, after article 12, which dealt with the right to recognition as a person before the law.

Mr. LOUTFI (Egypt) supported the proposal.

Mr. LOPEZ (Philippines) pointed out that article 12 itself had not been properly placed; it should follow article 3 which dealt with the right to life and freedom.

Mr. CHANG (China) thought it would be better to place article 12 after article 5 which dealt with equality before the law.

Mr. ORDONNEAU (France), while remarking that his delegation did not attach much importance to the order of the articles in the Declaration, thought that there was no strong reason to alter the present order.

Mr. PAVLOV (Union of Soviet Socialist Republics), supported by Mr. MALIK (Lebanon), suggested adopting both the proposals which had been made, namely, to place article 12 after article 3, which would be immediately followed by article 15.

His delegation would only vote for the Chinese representative's proposal to place article 15 after article 12 if the latter followed article 3 concerning the right to life and to liberty.

The CHAIRMAN called on the Commission to vote on the proposal to place article 12, which dealt with the right to recognition as a person before the law, after article 3 on the right to life and to liberty.

The proposal was rejected by 7 votes to 6, with 3 abstentions.

Mr. MALIK (Lebanon) then proposed placing article 12 immediately after article 4 on slavery and respect for human dignity. Article 12 would thus become article 5 and the numbers of the following articles would be altered accordingly.

/s/ Mr. Lebanon

The Lebanese representative's proposal was adopted by 9 votes to 1 with 5 abstentions.

The CHAIRMAN, speaking as United States representative, suggested placing article 15, regarding nationality, immediately after article 11, on the right to asylum.

The proposal was adopted by 15 votes to none, with 1 abstention.

CONTINUATION OF THE CONSIDERATION OF THE PREAMBLE TO THE DECLARATION ON HUMAN RIGHTS (documents E/CN.4/138 and E/CN.4/139)

The CHAIRMAN recalled that the Commission had adopted at its earlier meetings the first three paragraphs of the Preamble to the Declaration. She then read the text prepared by the Drafting Sub-Committee on the Preamble:

"4. WHEREAS the peoples of the United Nations have in the Charter determined to re-affirm faith in fundamental human rights and in the dignity and worth of the human person and to promote social progress and better standards of life in larger freedom; and

"5. WHEREAS Member States have pledged themselves to achieve, in co-operation with the Organization, the promotion of universal respect for and observance of human rights and fundamental freedoms; and

"6. WHEREAS this pledge can be fulfilled only on the basis of a common understanding of the nature of these rights and freedoms,

"Now therefore the General Assembly

"PROCLAIMS this Declaration of Human Rights as a common standard of achievement for all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance."

/The CHAIRMAN

The CHAIRMAN called on the Commission to consider the text paragraph by paragraph, and opened the discussion on paragraph 4.

Mr. ORDONNEAU (France), supported by Mr. LEBEAU (Belgium), considered the French version of the text unsatisfactory. They would prefer the expression: "larger freedom" to be translated as: "une liberte plus complete".

Mr. FONTAINA (Uruguay) would also prefer the expression: "the human person" to be replaced by: "human being".

The CHAIRMAN reminded the Commission that the wording of paragraph 4 had been borrowed from the Charter, and thought that it would be best not to depart from that wording.

Mr. MALIK (Lebanon) and Mr. CHANG (China) also thought that, as long as the wording of the Charter had not been officially modified by the General Assembly, no changes could be made to it.

Mr. JOCKEL (Australia), although unable as alternate to take part in the vote, said that his delegation approved of the text submitted by the Drafting Sub-Committee for the second part of the Preamble.

Paragraph 4 of the Preamble was adopted by 11 votes to none, with 5 abstentions.

Paragraph 5 of the Preamble was adopted by 12 votes to none with 4 abstentions.

Mr. FONTAINA (Uruguay) proposed amending paragraph 6 so as to read:

"WHEREAS this pledge can be fulfilled mainly through a common understanding of the nature of these rights and freedoms."

/The Uruguay

The Uruguay representative's proposal was rejected by 10 votes to 4 with 2 abstentions.

Mr. PAVLOV (Union of Soviet Socialist Republics) wished paragraph 6 to be deleted, as he thought it introduced not only an erroneous but a dangerous conception. To make the Declaration on Human Rights dependant on the application of a common conception of the nature of rights and freedoms would destroy its very purpose. The Commission's discussions had clearly shown the divergencies which existed between the members in the fields of philosophy and ideology; that difference of ideas had not prevented fruitful co-operation, because even though there had been disagreement on the nature of the rights, the Commission has, nevertheless, come to a satisfactory agreement as to their practicable application.

Paragraph 6 in its present wording seemed to require a unity of thought and ideas which was impossible to achieve. His delegation, however, held that, in spite of philosophical differences, international co-operation was possible, as it considered that the minimum of rights, as set forth in the Declaration, could be applied in every detail by all. Its application should not be threatened by an unacceptable provision such as was contained in paragraph 6, at present submitted for the Commission's consideration.

The CHAIRMAN pointed out that the realization of the purposes of the Declaration depended above all on a common understanding of the essential human rights and freedoms. If a common view on the nature of those rights and freedoms could not immediately be attained, that identity of views nevertheless remained the supreme aim to be sought. There had been disagreement in the Commission, but the decision of the majority had prevailed in the choice of articles, and the Declaration, as drafted, indicated as effectively as was possible at present the degree of agreement which had been reached.

/Mr. CHANG

Mr. CHANG (China) said that there was something to be said for the USSR representative's interpretation: the paragraph, as drafted could mean that the obligation assumed by the Members of the United Nations would not be binding should agreement on a common conception not be reached.

The CHAIRMAN, speaking as United States representative, emphasized that the pledge in question was incumbent on the Members of the United Nations by virtue of the Charter and not of the Declaration which they would be asked to approve. In order to remove any ambiguity she proposed saying:

"WHEREAS this pledge can be fully fulfilled only through a common understanding of these rights and freedoms."

The deletion of the words: "of the nature" answered Mr. Pavlov's comments regarding the various philosophical and ideological differences which existed.

Mr. MALIK (Lebanon) advised the Commission to be very cautious in a matter which might lend itself to misinterpretation. The pledge of the Members of the United Nations to ensure the respect of fundamental human freedoms and rights had been taken more than three years ago; their task would obviously be facilitated if they could reach a common understanding of these rights and freedoms. Without making that common conception a sine qua non for international co-operation, the usefulness of such an identity of views could be recognized. He therefore suggested saying: "Whereas this pledge could be best fulfilled through a common understanding of these rights and freedoms."

/Mr. PAVLOV

Mr. PAVLOV (Union of Soviet Socialist Republics) recognized the merit of those various proposals which improved the text, but nevertheless insisted on the deletion of paragraph 6.

Mr. ORDONNEAU (France) agreed with the USSR representative that it would be wiser to avoid adopting a text which, owing to hasty drafting, might lead to criticism. The Commission agreed that, in spite of the difference in philosophical and political systems, it was still possible to find grounds for common action, and that it was on that conviction that the work it had just completed was founded. As regards paragraph 6, the difficulty was more in the wording than in the substance as there was no doubt as to the authors' intentions. His delegation would, therefore, welcome any amendment which would satisfy the USSR representative and which would make it quite clear that the Commission had tried to find a common understanding and had succeeded in doing so.

The CHAIRMAN and Mr. CHANG (China) agreed that paragraph 6 was not essential and could, therefore, be deleted. Mr. Chang pointed out that any reservation regarding the pledge taken under the Charter would weaken that pledge.

Mr. WILSON (United Kingdom) thought on the contrary that it should be emphasized in the Preamble that the Commission had reached a remarkable degree of understanding and that the Declaration was the result of that identity of views. He reminded the Commission that the terms of paragraph 6 had been taken from a draft submitted by his delegation, and that they had been linked with an earlier paragraph which had not been retained; they should, therefore, be somewhat amended to bring them into line with the paragraph immediately preceding them in the present draft, but they should not be deleted, as they fulfilled a useful function by providing a transition. He therefore suggested adopting

/the amendments

the amendments suggested by the Lebanese representative and by Mrs. Roosevelt.

Mr. ORDONNEAU (France) said that he would only agree to the complete deletion of paragraph 6 if no satisfactory formula could be found. He suggested that the Commission should acknowledge its common effort by saying:

"WHEREAS this pledge can be fulfilled only through a common effort to reach as broad as possible a common understanding of these rights and freedoms."

Mr. CHANG (China) proposed appointing a small committee to draft a formula acceptable to all, bearing in mind the various comments made during the meeting.

Mr. JOCKEL (Australia) supported that proposal. His delegation considered paragraph 6 the most important of all the paragraphs of the Preamble, and it should be retained while an attempt was made to satisfy the USSR representative's justifiable objections.

The CHAIRMAN announced that the Drafting Sub-Committee to amend the form of paragraph 6 would be composed of the representatives of the following countries: China, France, Lebanon, the United Kingdom and the Union of Soviet Socialist Republics.

Mr. ORDONNEAU (France) pointed out a translating error in the French text of the last paragraph of the Preamble. The text gave the impression that, in the national and international spheres, the efforts of Nations would be directed only to teaching and education, whereas the text should read:

"...de developper le respect de ces droits et libertes et d'assurer par des mesures progressives, realisees dans le domaine national et international, leur reconnaissance et leur application universelles et effectives."

/The Commission

The Commission took careful note of the correction.

Mr. PAVLOV (Union of Soviet Socialist Republics) drew the Commission's attention to the fact that the wording of the English and French versions did not exactly agree, and he feared that the difference in the terms might entail a difference in substance. The English text spoke of a "common standard" while the French text referred to "un idéal commun".

Mr. LIBEAU (Belgium), supported by Mr. WILSON (United Kingdom), said that the difference was one of form and did not affect the substance of the paragraph which was clearly the same in both texts. The term: "common standard of achievement" was the aim which the nations should try to achieve: "l'idéal commun" used in the French text corresponded quite well with the idea expressed.

Mr. FONTAINE (Uruguay) stressed the difficulty of translating accurately the full sense of the English word "standard" into a single French or Spanish word.

Mr. CRONIN (France) pointed out that the difference in form was due to the inherent difference in the spirit of the two languages. His delegation considered that the two texts corresponded as to substance.

Mr. LOPEZ (Philippines) recalled that the Commission had decided in principle, that, whenever it was faced with the difficulty of a translation of that type, it would adopt texts which agreed in substance rather than in form.

The Commission adopted the last paragraph of the Preamble by 12 votes to none with 4 abstentions, on the understanding that the translators would endeavour to reproduce the meaning of the original English text paying more attention to substance than to form.

/Mr. PAVLOV

Mr. PAVLOV (Union of Soviet Socialist Republics) proposed adding the following paragraph to the Preamble:

"Recommends to all the States Members of the United Nations the following Declaration on Human Rights;

"For use at their discretion in taking appropriate legislative and other measures and in their systems of upbringing and education; and for the dissemination of the provisions of this Declaration throughout the populations of the States Members themselves, of territories over which such States are performing the functions of the administering authority, of territories under trusteeship. (non-self-governing territories.)"

The text was taken from the Draft Preamble submitted by his delegation (document E/CN.4/139).

He proposed dividing the vote on the addition proposed by him as follows: the first vote to be taken on the measures necessary for the development of teaching and education; the second on the principle of the dissemination of the Declaration throughout the population of the non-self-governing territories.

Mr. MALIK (Lebanon) approved of the second part of the addition suggested by the USSR representative, but feared that the first part would weaken the preceding paragraph just adopted by the Commission.

Mr. WILSON (United Kingdom) raised an objection with regard to the form. The USSR representative's proposal would give that part of the Declaration the character of a General Assembly resolution.

He was likewise opposed to the apparent discrimination made in the USSR text by especially mentioning the trust and non-self-governing territories, when it was clearly laid down in paragraph 5 of the Preamble that States Members of the United Nations were pledged to guarantee not only effective but universal respect for human rights and fundamental freedoms.

/Mr. ORDONNEAU

Mr. ORDONNEAU (France) said that the first part of the USSR proposal corresponded almost exactly to the last article of the Draft Declaration proposed by Mr. Cassin (document E/CN.4/82/Add.8, article 28). While agreeing with the USSR delegation on the need to include such a provision, his delegation considered that its logical place was at the end of the actual Declaration and not in the Preamble. Thus placed, the provision would serve as a link between the declaration of rights and the statement of the enforcement measures to be taken, thereby achieving the maximum legal force.

He also wholeheartedly agreed with the USSR representative that the Declaration should be universal. In that regard he pointed out that the Declaration on the Rights of Man of 1793 applied to all French territories. But it would not serve any useful purpose to include in the Preamble any special provision on non-self-governing territories which would seem to imply that the populations of those territories did not enjoy the essential rights and freedoms on an equal footing with the populations of the metropolitan territories.

On the suggestion of Mr. PAVLOV (Union of Soviet Socialist Republics), the CHAIRMAN instructed the Drafting Committee, which had just been set up, to prepare a text which would take into account both Mr. Pavlov's and Mr. Cassin's drafts and to submit its recommendations to the Commission.

The meeting rose at 1.20 p.m.