

COMMISSION ON HUMAN RIGHTS

SECOND SESSION

SUMMARY RECORD OF THE TWENTY-EIGHTH MEETING

Held at the Palais des Nations, Geneva, on  
Thursday, 4 December 1947, at 10.15 a.m.

PRESENT:

- Chairman: Mrs. F.D. Roosevelt (United States of America)
- Rapporteur: Dr. Charles Malik (Lebanon)
- Members: Col. W.R. Hodgson (Australia)
- Professor F. Dehousse (Belgium)
- Mr. A.S. Stepanenko (Byelorussian S.S.R.)
- Mr. Wu, Nan Ju (China)
- Mr. Omar Loutfi (Egypt)
- Professor René Cassin (France)
- Mrs. Hansa Mehta (India)
- Mr. A.G. Pourevaly (Iran)
- Mr. Miguel Amado (Panama)
- Mr. Salvador P. Lopez (Philippine Republic)
- Mr. Klekovkin (Ukrainian S.S.R.)
- Lord Dukeston (United Kingdom)
- Mr. A.E. Bogomolov (Union of Soviet Socialist Republics)
- Dr. V. Ribnikar (Yugoslavia)
- Representatives of the Commission on the Status of Women: Mrs. Bodil Begtrup )
- Mrs. E. Uralova )

Secretariat: Professor J.P. Humphrey  
Mr. E. Lawson

Specialized Agencies: Mr. Jean de Givry (I.L.O.)  
Mr. Jacques Havet (UNESCO)

Non-Governmental Organizations:

Category A: Miss Toni Sender (American Federation of Labor)  
Mr. J.S. Serrarens (International Federation of Christian Trades Unions)

Non-Governmental Organizations:

Category B: Mr. O. Frederick Nolde (Commission of the Churches on International Affairs)  
Mr. J.N.E. Duchosal (International Red Cross Committee)  
Miss de Romer (International Union of Catholic Women's Leagues)  
Dr. Bienenfeld (World Jewish Congress)

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Discussion of the Report of the Drafting Committee (E/CN.4/21).

Professor DEHOUSSE (Belgium) wished to clarify certain aspects of his proposal (E/CN.4/44). He pointed out that behind the divergences of view on procedure lay disagreement on matters of substance. A certain number of representatives seemed resolved to go no further than a Declaration, whilst others demanded the immediate formulation of one or more Conventions. With the object of bridging the gap between those two standpoints, the Belgian delegation had submitted a proposal for a compromise solution, involving mutual

concessions. Paragraph 1 of the proposal called for a simultaneous examination of the three main problems arising from the international protection of human rights; the Declaration, the Convention or Conventions, and implementation. Paragraph 4 gave the Commission the right to take a final decision on the conclusions reached by the three Working Groups. The objection that the proposal would lead to an examination of the problems of the Convention and implementation before agreement had been reached on the principles of the Declaration could, in his view, be met by co-ordinating the deliberations of the three Groups. Furthermore, the Group or Groups would have concrete considerations, such as the freedom of the individual and economic and social rights, as a basis for discussion. As regards the problem of implementation, it was not essential to know the substance of the Declaration or Conventions before deciding whether an International Human Rights Office should be established, whether there should be a Court of Justice, or how those organs should work.

The Declaration was almost ready. The Convention and implementation provisions could be quickly formulated in positive terms or even in formal texts. The Belgian proposal would enable the Commission to produce, by the end of its present session, a Declaration, a draft Convention and draft implementation provisions, which the Drafting Committee would be able to examine at its next session.

The Belgian proposal left the plenary Commission in full possession of its powers of final decision. The Belgian delegation made no secret, however, of the fact that it would press for the final decision to be the adoption of a draft Declaration, one or more draft Conventions, and draft implementation provisions.

Those members who were in favour of a Convention only were cherishing an illusion, as the Declaration was the most advanced of the three drafts and it was the wish of the majority of the Commission's members that the present discussions should at least produce a Declaration. He maintained that, despite its shortcomings, the present Declaration represented a substantial advance on the San Francisco Charter.

In his view the Commission should not disregard the question of the form of the Declaration. He believed that the only possible form was a recommendation of the United Nations General Assembly. A recommendation of the Assembly was, however, no more than an opinion, an advisory statement, a suggestion, which Members might or might not follow. That was the precise legal character of a recommendation. Furthermore this was proved, as he saw it, by the fact that in at least two cases Members of the United Nations had refused to comply with recommendations of the Assembly. The first case concerned the treatment of Indians in South Africa; the second concerned a country which had not carried out a recommendation regarding relations with Franco Spain. A mere Declaration would be a frail and precarious form of international protection of human rights. For this reason the Belgian delegation pressed for the Declaration to be accompanied by a Convention.

He also wished to draw the attention of representatives to the question of terminology. Some representatives spoke of a "Bill" of Human Rights, instead of a Convention. He accepted that term in the sense of a legal instrument having binding force, but it was an expression for which there was no French translation. He also rejected the term "Convention",

which designated international agreements of less importance than treaties. He preferred "Covenant" to "Charter". The latter term should, he thought, be reserved exclusively for the basic instrument of the United Nations.

Although paragraph 2 of the Belgian proposal left it to the Chairman to determine the composition of the Working Groups, he hoped that each of the Groups would consist of 6 members.

He asked the Chairman to put his proposal to the vote paragraph by paragraph. He added that if it did not obtain a majority, he would vote for the United Kingdom proposal (E/CN.42/Rev.1), which seemed to come closest to his own views. He had no wish to hide the fact that the Commission had reached a decisive point in its work. The solution it adopted would determine whether it was to linger over academic considerations or whether it would perform original and progressive work. An academic vote might even endanger the Commission's existence and would cause immense disappointment to a world that was awaiting positive solutions capable of influencing human destiny. He was thinking more particularly of all those who had clung to the hope of a reconciliation between the ideologies of the East and the West.

Colonel HODGSON (Australia) stated that he had learnt from a study of the documentation that one of the first documents submitted to the Commission was a draft "Statement of Essential Human Rights", presented by the delegation of Panama. In his view, that draft advanced general principles but did not provide for any juridical obligation. The Economic and Social Council had referred the document in question to the Drafting Committee of the Commission on Human Rights for consideration during the elaboration of an

International Bill of Human Rights. Under the Commission's terms of reference, drawn up by the Economic and Social Council, it was an International Bill of Rights which was to be drawn up, not a Declaration.

The representative of the Soviet Union wanted the Commission to confine itself to a Declaration. He therefore appeared to disregard the need for giving priority to essential tasks. Specifically, those tasks consisted of drawing up, as soon as possible, the text of a Bill of Human Rights. If the Commission followed the suggestions made by the Drafting Committee, it would have to draw up a Declaration or manifesto enumerating human rights and an international Convention relating to those rights. The difference between those two texts was that the second only would have the force of law. He would like to know whether the Declaration submitted by the United States delegation (E/CN.4/36) was to take the form of a recommendation of the General Assembly or whether it was a Declaration, to be ratified by States, in which case it would have binding force under both municipal and international law. Those who favoured a Declaration should explain what they meant; if it was merely to be a recommendation, the peoples of the whole world would be disappointed and the Commission would have taken a hypocritical decision. He was convinced that such was not the Commission's aim.

He approved the Belgian proposal (E/CN.4/44) with the exception of paragraph 3, which in his view was not convincing.

As regards the French proposal (E/CN.4/48), he could agree with the first three paragraphs, but could not accept the paragraph in which the Commission was recommended to

consider first of all a Declaration and afterwards a Convention. He was anxious to know when the Commission would be able to begin consideration of the Convention.

He would vote in favour of the first, second and fourth paragraphs of the Belgian proposal, but against the third because he considered that the Commission had an essential task to perform and the Covenant should have priority.

Lord DUKESTON (United Kingdom) pointed out that the Resolutions of the Economic and Social Council and the General Assembly were perfectly clear. The Commission's task was to prepare a Bill of Human Rights. The discussion had shown, however, that some representatives wished to confine themselves to the drafting of a Declaration, whilst others had taken up a position midway between the two extremes. The debate on the priority to be assigned to one or the other of the proposals gave rise to certain difficulties and a prolonged discussion would make it increasingly difficult, if not impossible, to reach a compromise solution.

The Commission should study a Declaration setting forth the aims, objectives and ideals, and imposing on States the moral obligation to implement its provisions according to the varying conditions in each country. History showed that Declarations imposing no juridical obligations had remained inoperative for centuries. According to jurists, a Convention was a legal instrument which had to be submitted to States for ratification on the international level. He was in favour of a Convention accompanied by a Declaration. His delegation would never agree to the Commission elaborating a Declaration without a Convention. He proposed that the Commission should prepare two documents; a Bill in the form of a Convention, and a Declaration of Human

Rights. The form of the latter was not very important, so long as it was followed by a Bill imposing a moral obligation to implement it. They should be careful, however, not to give those drafts a form which would prove unacceptable to certain States. Above all, the world should not receive the impression that the drafting of the Declaration would not be followed by a Convention until some time in the more or less distant future. The Commission should act quickly since the world expected some practical result from its deliberations. If the sole fruit of its labours were to be the draft of a Declaration, irreparable harm would have been done.

As regards working procedure, it would be possible for Annexes F and G of the Report of the Drafting Committee (E/CN.4/21) to be discussed clause by clause by the plenary Commission. The texts were clear enough to be discussed in the Commission before being referred, together with the Commission's instructions, to the Working Groups. The Commission's primary task was to prepare a Bill in the form of a Convention and it was the completion of that task that public opinion anxiously awaited.

The United Kingdom delegation was not opposed to the Commission preparing the two documents simultaneously, if that were possible. In no circumstances would it agree to the Commission confining itself to the preparation of a mere Declaration. It would not allow itself to be drawn gradually into a position in which it would have to agree to examine the preparation of a Convention at a later session.

Mr. AMADO (Panama) stated that the draft Declaration was to contain the general principles of human rights and that the implementation of those principles was subsequently to be ensured by one or more Conventions. He also recalled

that the Commission was under an obligation to the United Nations to secure the application of those principles. That obligation arose from Article 2, paragraph 2, of the Charter of the United Nations, and the Charter was the very essence of the Declaration. He was surprised that some representatives, appointed by their Governments and in possession of terms of reference from the United Nations, could take part in the Commission's discussions, draw up a mere Declaration of principles and avoid assuming responsibilities in connection with the implementation of those principles. A Declaration of that nature would be a legal monstrosity.

Mr. BOGOMOLOV (Union of Soviet Socialist Republics) observed that the Commission had spent three days on a discussion as to whether it was going to prepare a Declaration, or a Declaration and Conventions. It was also discussing whether it should or should not appoint Working Groups to prepare those documents. Four proposals had already been made regarding the last point. How could the three Groups carry out their work if the principles of a Declaration, such as for example the protection of the man-in-the-street against racial, national or religious discrimination had not been discussed beforehand? The Commission had as yet accomplished nothing in regard to the essential problems, whose solution was awaited by the whole world. He formally moved the closure of the discussion in progress and proposed that "the Commission proceed without delay to consider the draft Declaration on Human Rights submitted by the Drafting Committee and postpone the present discussion until after the draft has been considered." Only after that had been done could agreement be reached on the question of which document

Dr. RIBNIKAR (Yugoslavia) recalled that the Economic and Social Council had instructed the Commission to prepare a Declaration on Human Rights. The Commission had also to decide whether that document should take the form of a resolution or of a recommendation to be submitted to the General Assembly. In his view it would rest with the Assembly to decide, after consultations between the Governments, whether a Bill or a Covenant should be drawn up as well. He also recalled his previous statement that he had no objection in principle to the preparation of one or more Conventions, provided they came after the drafting of a Declaration. It was impossible to prepare a draft Convention at present, even should agreement be reached on general principles. He therefore proposed that the Commission should prepare a Declaration, to be submitted to Governments for study and comment. He would vote against the proposals made by the representatives of Belgium, France and the United Kingdom, and would support the resolution submitted by the delegation of the Soviet Union.

Dr. MALIK (Rapporteur) observed that the discussion was bringing out the same difficulties as had been encountered at the Commission's first session. In his view it was the intention of the Economic and Social Council and also of the authors of the Charter that, in addition to a Declaration, a more substantial document should be drawn up - a legal instrument which would be submitted to States for ratification under the same conditions as any other international document. It was imperative that the Commission's work should result in the drawing up of a Bill, a Convention or a Covenant, and not just a mere proclamation.

He did not under-rate the importance of a Declaration and was at one with the representative of the Union of Soviet Socialist Republics in asserting that the general principles should be defined, but he also felt that the Commission's terms of reference and the international situation demanded the immediate elaboration of a Convention or a Covenant. The real point at issue was whether there was in the world to-day an international moral sense, whose principles could be incorporated in national laws, or whether such an anarchy existed in that field that only a vague proclamation of general principles could be achieved. If the latter were the case, the world would be in a very grave situation; the situation was already very gloomy, but the Commission should enlist the support of all men of goodwill to bring about an understanding which would help to brighten it. The Commission's work was the acid test of the world situation, and if it were to end in a breakdown, that situation would become desperate.

If certain representatives had received such narrow instructions that a breakdown could not be averted, he suggested that they should request their Governments to broaden them. He recalled that whilst the Commission was beginning its second Session, the "Big Four" were meeting in London to prepare the peace treaties. It could not be forgotten that for more than ten years the Hitler regime had trampled on the most sacred of human rights. Moreover, it was to those recent events that the Commission owed its creation. He could understand the difficult position of some Great Powers, but he believed that if the medium and small Powers combined their efforts, they could invite the "Big Powers" to follow their lead, in the same way as the

small and medium Powers followed the Great Powers in their efforts to secure peace; they could by contrast speak more frankly and act more freely to promote general agreement. He gathered from the Commission's discussions that the issue of a "Declaration" or a "Convention" was a challenge between small and great Powers. He trusted that hopes of agreement would not be disappointed.

He recalled that the Drafting Committee had decided to study the Declaration and Convention simultaneously, but it had soon become apparent that it had time only to prepare a Declaration; it was for that reason that Document E/CN.4/21 devoted so much space to the Declaration. If the Commission now decided to study both documents simultaneously, he was afraid it would encounter the same difficulties as the Drafting Committee. It would be dishonest, he thought, to say that the Commission wanted to prepare a Convention when it knew that the latter was a practical impossibility. Therefore representatives should say clearly whether they wished to have a Convention or not.

After examining the proposals presented by certain delegations he had decided that the one advanced by France was the least suitable, since the most important document was the Convention, which was moreover the end to which the Declaration was directed. The Belgian proposal seemed to him the best one since it conformed most closely to the Commission's terms of reference. As to the proposal submitted by the Soviet Union, it was very important for agreement to be reached on the general principles of Human Rights, and he would not be opposed to a prior examination of those principles, provided the Commission were determined to go further. He believed the proposals submitted by the

Union of Soviet Socialist Republics and Belgium could be brought together and harmonized provided only that the Commission declared its determination to prepare a Convention and stated that it would never publish a Declaration without a Convention. He supported the two latter proposals.

The CHAIRMAN stated that the representative of Australia had submitted an amendment to the proposal made by the Belgian delegation, which had accepted it. The amendment in question replaced the word "Declaration" by "Covenant or Convention".

The meeting rose at 1 p.m.