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COMMISSION ON HUMAN RIGHTS

SECOND SESSION

SUMMARY RECORD OF TWENTY-FIFTH MEETING

Held at the Palais des Nations, Geneva, on Tuesday,
2 December 1947, at 3.55 p.m.

Present:

Chairman: Mrs. Franklin D. Roosevelt (United States
of America)

Members: Col. W.R. Hodgson (Australia)
Mr. F. Dehousse (Belgium)
Mr. A.S. Stepanenko (Byelorussian S.S.R.)
Mr. P. Garcia de la Huerta (Chile)
Mr. O. Loufti (Egypt)
Mr. R. Cassin (France)
Mrs. Hansa Mehta (India)
Mr. A.G. Pourevaly (Iran)
Mr. M. Amado (Panama)
Mr. M. Klekovkin (Ukrainian S.S.R.)
Mr. A.E. Bogomolov (Union of Soviet
Socialist Republics)
Lord Dukeston (United Kingdom)
Mr. V. Ribnikar (Yugoslavia)

Specialized
Agencies: Mr. J. de Givry (I.L.O.)
Mr. J. Bersling (I.L.O.)

Non-Govern-
mental
Organizations:

Category A: Miss Tony Sender (American Federation
of Labor)

Category B: Mr. F.R. Bienenfeld (World Jewish
Congress)
Mr. A.G. Brotman (Coordinating Board of
Jewish Organizations)
Miss van Eghen (International Council of
Women)

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

* The 26th Meeting of the Commission was held in closed session, and by decision of the Commission the Summary Record is being distributed as a Restricted document (E/CN.4/SR.26) to members of the Commission only.

Examination of the Report of the
Drafting Committee

The CHAIRMAN raised the preliminary question of whether the Commission should concern itself with the drafting of a Declaration or of a Convention or of both, and of how it proposed to act on the decision taken in this connection.

Mr. BOGOMOLOV (Union of Soviet Socialist Republics) thought it too soon to take a decision on this subject. Item 5 of the Agenda mentioned the examination by the Commission of the Drafting Committee's Report. This Report consisted mainly of a draft Declaration of 36 articles. There should be a general discussion of these articles, and the question of what form a final draft should take would only arise after this had been discussed and adopted. It was therefore in the Commission's interests to concentrate its attention first of all on the examination of the preliminary draft Declaration on Human Rights. He pointed out the difficulties the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities had encountered in its consideration of the six articles referred to it. While hoping that the Commission would obtain quicker results, he did not think that it could take any immediate decision about the document in which its work would be embodied. He therefore proposed that this question be deferred until a later date.

Mr. CASSIN (France) considered that this question was within the competence of the Plenary Commission. Although it was not essential for the Commission to reach a decision that same day, it was essential that the general lines of the discussion

should be fixed straight away. If they confined themselves to drafting a Declaration, the immediate result would be a considerable increase in the length of that document; if they only prepared a Convention, the scope of the discussion would be restricted.

The French Delegation believed that the Commission should draw up both a short general Declaration and a number of successive Conventions, which could be drafted when time allowed. It was essential that a Declaration on Human Rights should be drawn up, as it had been openly stated that the omission of such a Declaration from the Charter was due solely to lack of time, and that it remained the duty of the United Nations to draft such a Declaration. The text of this Declaration, if not the preamble, which could be set aside, should be the first subject for discussion by the Commission. However, conventions were also essential. How could Trade Union rights be specified in a Declaration? How could a Declaration embody the specific obligations which would have to be undertaken in this connection? The same applied to the question of nationality. In this connection the Drafting Committee had proposed a very short paragraph, affirming that everyone had the right to a nationality; but that was nothing more than a principle which would have to be taken up in one or more Conventions. Before they could accept the admission of stateless persons and the abolition of the loss of nationality, States would need time and the advice of experts. The same was true in regard to non-discrimination and the protection of minorities. The Declaration could only lay down principles which should be taken up and developed later in conventions. Even during

the present session, the Commission might draft an initial Convention on the classic freedoms and the right to life, which were now recognized by practically all the constitutions or written laws of the whole world. Thus, on the day a draft Convention was submitted to Governments, the General Assembly of the United Nations could vote on the Declaration on Human Rights.

A third point remained to be decided by the Commission, i.e. the implementation of those rights. Since June 1946, the Commission had been required under its terms of reference to inform the Economic and Social Council of the measures required to protect Human Rights. Owing to the shortness of the present Session there was no possibility of a thorough examination of this question. Nevertheless, it was the Commission's duty, when drawing up the Declaration on Rights, to envisage the means of practical implementation, choosing those which were simplest and conformed most closely to the terms of the Charter, thus showing its desire to carry out its terms of reference, and as regards the initial Convention, to include various enforcement measures going further in this field than the Charter.

General measures would thus be provided to give effect to the Declaration and more elaborate machinery for the enforcement of the Conventions. These would advance the Commission's projects very considerably.

Mr. AMADO (Panama) pointed out that the Charter recognized Human Rights in seven different places. In his view the first thing was to draw up a draft Declaration on Human Rights. Only when this had been done should a series of rights to be embodied in one or more Conventions submitted to the Governments for their approval, be drawn up. Even if all such Conventions were not approved by all Governments, there would still remain the obligation for all Members of the United Nations to respect human rights, under the terms of Article 2, paragraph 2 of the Charter.

Mr. LOUFTI (Egypt) supported the view expressed by the Representative of France, and hoped the Commission would be able to submit, at the close of the present session, a draft Declaration and a preliminary draft Convention relating to the rights on which agreement could readily be reached by the members of the Commission.

Lord DUKESTON (United Kingdom) thought it a pity to view a declaration and a convention as two opposite ways of dealing with the same thing. A declaration could hardly deal with anything but very general principles, already embodied in the Charter. If the Commission confined itself to producing such a declaration without any means of enforcement it would produce a text too vague to be of real value. The present discussion might moreover go on and on without arriving at any result within the time limit fixed for the completion of the Commission's work. The Commission business was to arrive at concrete results. If its function was to protect human rights it ought to define precisely what those rights were. It should surely not devote more than one meeting

to general discussion, and should proceed immediately to drafting a Convention binding the signatory Governments so that it would be possible to set up machinery for appeal in the event of their not respecting their undertakings. He thought that the most profitable working method would be to examine the Draft Convention article by article. The only reason for having a general discussion was to define more clearly what was to be understood by the word "convention". General discussion of any other kind would be contrary to the purposes of the Commission. His Delegation was prepared to accept a Draft Declaration if that were to precede a Convention, but if the Draft Declaration were to take the place of the Draft Convention his Delegation would be unable to support it.

Mr. DEHOUSSE (Belgium) remarked that the same differences and vagueness of viewpoint seemed to be appearing within the Commission as had been noticeable at the outset of its work. His Delegation was there to arrive at practical solutions. There were three points to be considered. That of a Declaration on Human Rights seemed to him of little importance. The real point at issue was not the definition of these rights. However, the Belgian Delegation was not opposed to such a Declaration, since it would supplement the Charter and moreover meet the wishes expressed by certain representatives. The Draft Convention on the other hand he regarded as more important, since it involved obligations embodied in international law and in the municipal law of each of the States participating. Certain matters, such as individual freedom and the economic and social rights of workers

in particular, might be introduced into such a Convention. Emphasis must however be laid on the difficulty of solution, when so many different Conventions might be drawn up, and on the importance of seeing that the conference of the Human Rights Commission was not turned into a codification conference. The third point, implementation, seemed to him the essential one. Either the Commission would become involved in academic arguments or it would produce something new and progressive, though that would only be possible if it set up machinery to secure the implementation of its plan. The difficulties were not only political but technical as well. One could aim at a single general system, which was what he thought preferable, or at a special system for each convention. In this connection he drew attention to the proposal that had been submitted by the Australian representative on various occasions at other conferences. This proposal was to set up an International Court of Human Rights. The Belgian Delegation would be entirely in favour of this and proposed that the Court in question should form part of the International Court of Justice, and become a special chamber of that Court. As regards methods of work he suggested two practical solutions. One was to appoint a small Sub-Committee to study the different drafts of the form the text produced by the Commission should take, after hearing the Sub-Committee's report, the Commission would be asked to take a formal decision by a vote. The second solution was to sub-divide the Commission into three Working Groups, each to devote itself to a particular question:

- 1) a general declaration;

- 2) the question of conventions, which might cover, as he had already suggested, classical or individual freedoms on the one hand and the economic and social rights of workers on the other;
- 3) the machinery for implementing the various solutions proposed.

Madame MEHTA (India) felt the Commission was making very little headway; while a certain measure of agreement had been reached in the Drafting Committee's Report as to the content of the Draft Declaration, no final solution was recommended there as to the form the Draft should take. The Delegation of India could not give its consent to a solution consisting merely in drafting a Declaration. It would like to see measures for its implementation included in the Declaration, such as those proposed by the Secretariat in Articles 47 and 48 of its Draft Declaration. The Delegation of India was in favour of a preliminary declaration followed by conventions, and would like the Commission before going further to take a formal decision regarding the form of the text it would draw up.

The CHAIRMAN announced that the Representative of the American Federation of Labor wished, with the Commission's permission, to make a statement.

Miss SENDER (American Federation of Labor) said she represented, before the Commission, the opinion of the workers affiliated to the Federation. Among them, the Commission's activities met with a scepticism which would disappear only if they were fully successful. It was essential, to increase confidence throughout the world, that the Commission

should not be satisfied with making verbal promises, but should give proof of its determination to implement its declarations. It was certainly necessary to promulgate a Declaration defining the rules to be embodied in subsequent conventions. Moreover, such international rules would rank above the rights of national sovereignties, as was already the case with the principles of the Charter, and should therefore be respected whether the conventions were ratified or not. She agreed with the French representative that such a Declaration should be short and clear. As regards the conventions, she also agreed with the Belgian representative's proposal to the effect that the Commission should at this session prepare two draft conventions, on individual freedoms and economic and social rights, including, of course, trade union rights. The pressure of public opinion was one of the important factors which might lead Governments to ratify such conventions. The Commission could therefore, at this session, adopt not only a draft Declaration, but also draft conventions on the questions about which it could readily reach agreement. Finally, it might attempt to establish an International Court of Human Rights attached to The Hague Court.

Mr. BOGOMOLOV (Union of Soviet Socialist Republics) stressed the fact that there still remained in the world Nazi and Fascist elements whose aim it was to sow doubt and hatred and spread the idea of a new war. In its draft the Commission should therefore incorporate statements designed to eliminate any remaining traces of the Nazi spirit, to develop democratic forces, strengthen the bonds uniting individuals, and reinforce individual rights in democratic communities. For that purpose, it should prepare a document which would be concrete and brief, but rich in content and easily understandable. He therefore

proposed that they should adopt as a working method a general discussion, in the course of which the Commission would gather the material to be included in the draft Declaration. Other material might be furnished by Governments if the latter so wished.

The CHAIRMAN said there had been a slight evolution in the United States' position with regard to the form which a Declaration on Human Rights should take. Her delegation thought that priority should be given to the draft Declaration, and that the latter should not be drawn up in such a way as to give the impression that Governments would have a contractual obligation to guarantee human rights. As regards the draft Convention or Conventions, the United States considered that the Commission should not proceed to draw them up until it was sure that such Conventions could be accepted and applied in all good faith by the participating States. Flagrant, prolonged and repeated violations of those Conventions could not fail to harm the United Nations. That did not mean, however, that her delegation would not be willing to examine the draft Convention or Conventions if the Commission so desired. The Commission should, however, take the time factor into account, and, if they had to make a choice, should first tackle the draft Declaration.

She hoped the United Kingdom representative was right in thinking that agreement could readily be reached on the draft Declaration, and that the Commission could then go on to study the draft Convention. Her delegation had proposed a draft Declaration which seemed to it the type of document at which the Commission should arrive. Finally, while emphasizing the primary importance of the Declaration, she was prepared for one or more draft Conventions to be drawn up, which could be adopted as soon as possible.

Lord DUKESTON (United Kingdom) said it seemed to him dangerous to prepare a draft Declaration without a draft Convention. If the Commission did confine itself to drawing up a Declaration, delegates would tend to propose various amendments with a view to embodying in the Declaration ideas which could more appropriately be included in a Convention. The Commission would thus get a hybrid result which would be neither a Declaration nor a Convention. Moreover, machinery for implementation could not be contemplated within the framework of a Declaration. The latter could not legally bind Governments as could a Convention. A Declaration was nothing more than a document of propaganda. He recognized the difficulties involved in drafting conventions, but that was what the world needed today. Most delegates so far had expressed themselves in favour of combining the two systems of a Declaration and Conventions. Although he would have preferred to incorporate such Conventions in a single draft Convention, he would not oppose the method of drafting several Conventions. On this subject the general opinion of the Commission should be ascertained. Delegates who accepted the draft Convention would not on that account reject the idea of a draft Declaration. He therefore moved a formal proposal that a vote be taken on the question of whether the Commission was in favour of drafting a Convention (Document E/CN.4/42/Rev.1).

Mr. DEHOUSSE (Belgium) recalled that he had also put forward a proposal, consisting of two parts, the second of which he wished to retain as a formal proposal; this was to the effect that three working groups be set up. One of

those working groups might be appointed at once, and the two others the following week. His proposal involved an important question of principle: the simultaneous establishment of three working groups, one on the draft Declaration, another on the draft Conventions, and the third on implementation.

The CHAIRMAN said that the Commission would vote on the two proposals at the end of the general discussion.

The meeting rose at 6.10 p.m.