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Fifth Session

SUMMARY RECORD OF THE ONE HUNDRED AND TWENTY-EIGHTH MEETING

Held at Lake Success, New York,
on Wednesday, 15 June 1949, at 11 a.m.

CONTENTS: Draft international covenant on human rights: article 23 (E/CN.4/296, E/CN.4/82/Add.10/Rev.1) (discussion continued)

Chairman:	Mrs. F. D. ROOSEVELT	United States of America
Rapporteur:	Mr. C. MALIK	Lebanon
Members:	Mr. SHANN	Australia
	Mr. CHA	China
	Mr. M. SOERENSEN	Denmark
	Mr. O. LOUTFI	Egypt
	Mr. R. CASSIN	France
	Mr. GARCIA BAUER	Guatemala
	Mrs. MEHTA	India
	Mr. ENTEZAM	Iran

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Members: (Continued)

Mr. AQUINO	Philippines
Mr. KOVALENKO	Ukrainian Soviet Socialist Republic
Mr. PAVLOV	Union of Soviet Socialist Republics
Miss M. BOWIE	United Kingdom
Mr. J. MORA	Uruguay
Mr. J. VILFAN	Yugoslavia

Consultants from non-governmental organizations:

Category A:

Miss SENDER	American Federation of Labor
Miss STUART	World Federation of Trade Unions

Category B:

Mr. PERLZWEIG	World Jewish Congress
Mrs. G. AIETA	Catholic International Union for Social Service
Miss C. SCHAEFER	International Union of Catholic Women's Leagues
Mr. STEINER	Commission of the Churches on International Affairs

Secretariat:

Mr. FELLER	Legal Department
Mr. HUMPHREY	Representative of the Secretary-General
Miss KITCHEN	Secretary of the Commission

DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS: ARTICLE 23 (E/CN.4/296, E/CN.4/82/Add.10/Rev.1) (discussion continued)

The CHAIRMAN announced that only consecutive interpretation services would be available at that meeting.

Mr. PAVLOV (Union of Soviet Socialist Republics) drew attention to the fact that the Secretariat, while knowing that the Trusteeship Council and the Atomic Energy Commission had meetings scheduled for that morning, had previously promised that simultaneous interpretation would be available for the Commission on Human Rights. In view of the short time remaining at the Commission's disposal that was most important, since consecutive interpretation took three times as long as simultaneous and constituted a considerable hindrance to the Commission's work. At Geneva he had been told that it was not always possible to service three meetings with simultaneous interpretation, but he was amazed that that should also be the case at Headquarters.

He pointed out that his delegation was most anxious to present and discuss proposed additional articles dealing with such important subjects as the right to work, the right to leisure, the right to social security and the right to free education. He had the impression that technical obstacles, such as the lack of simultaneous interpretation, arose most frequently whenever his delegation wished to expedite the work in order to have time to discuss important proposals. The Commission should insist on simultaneous interpretation for the afternoon's meeting and for subsequent meetings.

The CHAIRMAN stated that every effort would be made to provide simultaneous interpretation for the afternoon meeting and pointed out that the problem was purely a budgetary one since it cost more to provide the additional teams of simultaneous interpreters necessary to service all the meetings. She rejected the USSR representative's imputation that the delay was in any way intentional.

She appealed to representatives to speak as briefly as possible in order to expedite the Commission's work.

Mr. FELLER (Legal Department) said he had been asked to analyze article 23 and refer to precedents in United Nations procedure. The original drafting committee text for article 23 (E/CN.4/296) provided for the system of accession to the draft covenant; the United States amendment (E/CN.4/296) provided both for the system of accession and for the system of signature followed by ratification.

Originally in international instruments the system of signature had been followed and that had later been supplemented by the system of accession. In League of Nations and United Nations practice the system generally adopted had been that of accession. In the case of accession no previous signature was necessary -- the State merely deposited an instrument of accession.

Quoting specific examples, Mr. Feller said that the General Convention on Privileges and Immunities of the United Nations provided solely for the system of accession. In other cases, both signature and accession might be used. For example, the Protocol on Narcotic Drugs was open either for signature or for acceptance by the deposit of a formal instrument (acceptance, in that case, being the same as accession); the Convention on Freedom of Information was open for signature and for ratification by States in accordance with their constitutional practices, and was also open for accession; the Convention on Genocide differed slightly from the other two in that it was open for signature for a certain period of time, after which it might be ratified by an instrument of accession.

He pointed out that legally there was no difference between signature and accession or acceptance of a convention but that custom varied because certain States felt that the ceremony of signature had a symbolic value. The simplest procedure was that of accession. It was for the Commission to decide as a matter of policy whether it wished merely the simply procedure of accession, or both accession and signature as suggested in the United States amendment. As a drafting amendment to the United States amendment he suggested that the first two paragraphs might be combined to read "This Covenant shall be open for signature or accession...", which was the formula used in the Protocol on Narcotic Drugs.

With regard to the question of which States might become parties to the Covenant he pointed out that the original text admitted Members of the United Nation, States parties to the Statute of the International Court of

Justice and any other State declared eligible by the General Assembly, whereas the United States amendment provided that all States might accede. No United Nations multilateral convention had so far been declared open for accession by all States; such conventions had merely given the General Assembly or the Economic and Social Council the option of deciding whether non-member States might become parties to them. In the case of the Protocol on Narcotic Drugs the General Assembly had decided that all non-member States might ratify it.

The CHAIRMAN reminded the Commission that, in the case of the Convention on the Gathering and International Transmission of News, the Third Committee, and later the General Assembly, had voted in favour of the system of signature and ratification followed by accession, although the basic document had provided only for accession. That was significant since it implied that the system of signature had been felt to have advantages over the other. She accepted Mr. Feller's drafting amendment.

Mr. SOERENSEN (Denmark) thanked Mr. Feller for his statement. The Danish delegation would have preferred the procedure adopted in connexion with the Convention on Genocide, but since there was no proposal to that effect before the Commission, it would be willing to accept the United States proposal with the change suggested by the Secretariat.

With regard to the question of which States were to be allowed to adhere to the Covenant, he considered that the precedent of limiting acceptance to States Members of the United Nations and non-member States approved by the General Assembly should be closely followed.

He recalled that the Commission had before it the United States amendment to the effect that the Covenant should enter into force after ratification by fifteen States, and the French proposal (E/CN.4/82/Add.1/Rev.1), stipulating that the Covenant should only come into force "as soon as two-thirds of the Members of the United Nations, including at least two permanent Members of the Security Council" had deposited their instruments of accession. In view of the importance of the Covenant, he believed that a large number of ratifications should be secured before

it came into force. He therefore tended to support the French proposal but considered that a vote on the matter should be taken. He would however be prepared to accept the United States proposal, if the number of ratifications was raised from fifteen to twenty or twenty-five.

The CHAIRMAN, speaking in her capacity as representative of the United States, said that her delegation would not press for keeping the number of requisite ratifications at fifteen. It had been suggested in the first place merely as a number small enough to permit the early entry into force of the Covenant.

Mr. PAVLOV (Union of Soviet Socialist Republics) said, in connexion with the Secretariat's analysis of procedures for the acceptance of international conventions, that he believed an incorrect statement had been made with regard to the 1948 Protocol on Narcotic Drugs. The articles of the Protocol did not make acceptance open to all States. He quoted article 5 of the Protocol which provided that only such non-member States as were invited to do so by the Economic and Social Council should be allowed to sign.

Mr. FELLER (Legal Department) regretted that the representative of the USSR had misunderstood his statement. He had mentioned the 1948 Protocol on Narcotic Drugs as an example of an occasion on which all States had been invited by the General Assembly to accept an international convention. That invitation was not made in the Protocol itself. Further, General Assembly Resolution 211 (III) also referred to the terms of General Assembly Resolution 54 (I) which advised the Secretary-General that no such invitation should be sent to Spain.

Mr. MALIK (Lebanon) said that article 23 presented three problems: first, it must be decided what procedure should be adopted for implementing the Covenant. The representative of the United States of America had mentioned the discussions in the Third Committee with regard to the Convention on the gathering and transmission of news. After lengthy debate, the Committee had decided

to adopt the three successive stages of signature, ratification and acceptance. He was in favour of a similar procedure in respect of the Covenant.

Secondly, it must be decided what number of ratifications by States should determine the Covenant's entry into force. The United States had suggested a tentative minimum of fifteen, Denmark was in favour of twenty or twenty-five, and France proposed ratifications by two-thirds of the States Members of the United Nations, including two permanent Members of the Security Council. He was unable to support any of those proposals. Ratification by two-thirds of the Members of the United Nations in particular would postpone the entry into force of the Covenant for far too long. He would prefer it to be possible for the Covenant to come into force between any number of States, no matter how few. States which were the first to sign and ratify the Covenant were presumably anxious to put it into effect inside their own territories, and it should be made possible for them to do so at once. There was no need to stipulate any number of ratifications before the entry into force of the Covenant. After much discussion on the same topic in the Third Committee, in connexion with the draft conventions on the international right of correction and the transmission of news, the comparatively low number of six had been decided on as a compromise. He himself would prefer the Covenant to be valid between any number of states, but in any case the number should be as small as possible. He was particularly opposed to the suggestion that the putting into effect of the Covenant should be dependent on ratification by two permanent Members of the Security Council. The Covenant came within the sphere of the Economic and Social Council and he feared lest such a stipulation might be a surreptitious attempt to import the veto into Economic and Social Council affairs. The smallest State in the United Nations was as much concerned with the fundamental human rights guaranteed by the Covenant as the permanent Members of the Security Council. The entry into force of the Covenant on Human Rights should not therefore be governed by the approval of the permanent members of the Security Council, which was involved pre-eminently in political matters. He urged therefore that the number of ratifications governing the entry into force of the Covenant should either not be stipulated, or else be as small as possible, and that no mention whatever should be made of the permanent Members of the Security Council.

/Lastly,

Lastly, there was the question of what States were to be allowed to accede to the Covenant. He was in sympathy both with the representative of the USSR and the representative of Denmark in that respect. Although in principle all States should be encouraged to sign an instrument which transcended political considerations, it might be advisable in practice to follow the precedent of making acceptance by non-Member States dependent upon the invitation of the General Assembly.

Miss BOWIE (United Kingdom) thought that, as far as possible, it was advisable for the same procedure to be followed in all United Nations conventions. The procedure already followed had been thoroughly discussed in the Economic and Social Council and in the General Assembly and had been tested by experience. It would therefore be wise to adopt, with slight drafting changes, the United States proposal which was based on the procedure adopted for the draft Convention on the Gathering and International Transmission of News. Moreover, a solemn ceremony of signing would be most fitting in the case under consideration.

In following the procedure laid down in articles 15, 16 and 17 of the above-mentioned Convention, two questions, as the representative of Lebanon had pointed out, would arise, firstly, regarding what States non-Members of the United Nations would be eligible to sign and accede to the Covenant. In her view, it would be better to state, for political, as well as other reasons, that non-Member States required to be invited by the General Assembly to accede to the Covenant.

Secondly, there was the question regarding how many signatures would be required before the Covenant could come into force. She disagreed with the Lebanese representative on that point, and noted that nothing would prevent a small number of States from implementing the Covenant by agreement among themselves. In view of the importance of the document, however, a considerable number of signatures should be required for its formal entry into force.

While inclined to support the United States proposal, she suggested that no final decision should be taken at that juncture on the two proposals which should be forwarded to Governments for comment, and that the Commission should limit itself to considering their form only.

Mr. LOUTFI (Egypt) supported in the main the procedure of acceptance laid down in the United States proposal, with the amendment suggested by Mr. Feller. With regard to the question whether the Covenant should be open to all States for signature, he felt that, while the

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principle of universality would have been most desirable in that instance, the accepted United Nations procedure requiring a General Assembly resolution which declared a non-Member State eligible to sign, should be followed.

With regard to the question of entry into force, he suggested, as a compromise, that the Covenant should be signed by thirty States which would be equal to about half the membership of the United Nations. In reply to the Lebanese representative's suggestion, he thought that immediate entry into force might raise difficulties of implementation.

Mr. GARCIA BAUER (Guatemala) supported the United States proposal in general. He pointed out, however, that the drafting of the first paragraph might present certain difficulties to countries like Cyrenaica which had attained independence, but the statehood of which had not yet been recognized. He therefore preferred paragraph 1 of the original text in document E/800 which stated that the Covenant would be open for accession to every State Member of the United Nations or party to the Statute of the International Court of Justice and to every other State declared eligible by resolution of the General Assembly.

He supported the United States proposal that the Covenant should come into force as soon as fifteen States had acceded thereto. A larger number of signatures as proposed by the French representative, would delay its entry into force.

The French suggestion requiring acceptance by two permanent members of the Security Council was not acceptable.

Since the 1948 Protocol on Narcotic Drugs had included a provision requiring the signature of certain States which produced narcotic drugs, in the case of an international covenant on human rights the principle of the sovereign equality of States set forth in Article 2, paragraph 1, of the Charter should apply.

Mr. PAVLOV (Union of Soviet Socialist Republics) asked for clarification regarding the possibility of States becoming parties to the Statute of the International Court of Justice without being Members of the United Nations, as implied in the original text of article 23 to which the representative of Guatemala had referred.

Mr. FELLER (Secretariat) explained that Switzerland was the only party to the Statute of the International Court of Justice which was not a Member of the United Nations. The principality of

Liechtenstein had submitted an application in that regard to the Security Council which had not yet taken any action thereon.

Mr. ENTEZAM (Iran) supported the amended United States proposal that the Covenant should be open for accession to all States. With regard to the question of the required number of signatures, he endorsed the Egyptian proposal providing for thirty signatures firstly, because that would involve one half the membership of the United Nations, and secondly, because by stating a specific number, it would obviate the difficulties of calculation which might arise in connexion with the French proposal.

With regard to the question of eligibility of States to accede to the Covenant, he was in favour of setting no limitation. The Covenant should be open for accession to all States, whether or not they were Members of the United Nations. Accession to the Covenant was not a privilege, but an undertaking which no State should be prevented from making. Moreover, a provision requiring the General Assembly to declare a State eligible to accede to the Covenant might put the former into an embarrassing situation.

The meeting rose at 1 p.m.