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COMMISSION ON HUMAN RIGHTS

Twenty-second Session

SUMMARY RECORD OF THE EIGHT HUNDRED AND SEVENTY-SIXTH MEETING

Held at Headquarters, New York,
on Friday, 25 March 1966, at 11.15 a.m.

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PRESENT:

<u>Chairman:</u>	Mr. VOLIO JIMENEZ	(Costa Rica)
<u>Rapporteur:</u>	Mr. QUENTIN-BAXTER	New Zealand
<u>Members:</u>	Mr. SANCHEZ VIAMONTE	Argentina
	Mr. ERMACORA	Austria
	Mr. IRURETA	Chile
	Mr. REDONDO	Costa Rica
	Mr. ZOLLNER	Dahomey
	Mr. JUVIGNY	France
	Mr. PANT)	India
	Mr. SAJJAD)	
	Mrs. AFWAN	Iraq
	Mr. COHN	Israel
	Mr. SPERDUTI	Italy
	Mr. RICHARDSON	Jamaica
	Mr. MOMMERSTEEG	Netherlands
	Mr. S. LOPEZ	Philippines
	Mr. RESICH	Poland
	Mr. BOYE	Senegal
	Mr. KELLBERG	Sweden
	Mr. NEDBALLO	Ukrainian Soviet Socialist Republic
	Mr. NASINOVSKY	Union of Soviet Socialist Republics
	Sir Samuel HOARE	United Kingdom of Great Britain and Northern Ireland
	Mr. ABRAM)	United States of America
	Mrs. NASON)	
<u>Observers for Member States:</u>		
	Mr. TCHERNOUCHTCHENKO	Byelorussian Soviet Socialist Republic
	Mr. PRUSA	Czechoslovakia
	Mr. DEVENDRA	Nepal
<u>Representative of a specialized agency:</u>		
	Mrs. LOPEZ	International Labour Organisation

PRESENT (continued):Representative of the United Nations High Commissioner
for Refugees:

Miss PETLUCK

Observer for an inter-governmental organization:

Mr. PENTEADO

Organization of American
StatesRepresentatives of non-governmental organizations:Category A:

Mr. PIETRYGA

International Federation of
Christian Trade Unions

Mr. BARTON

International Confederation
of Free Trade UnionsCategory B:

Mr. PERLZWEIG

World Jewish Congress

Secretariat:

Mr. HUMPHREY

Director, Division of Human
Rights

Mr. TARDU

Secretary of the Commission

THE QUESTION OF THE PUNISHMENT OF WAR CRIMINALS AND OF PERSONS WHO HAVE COMMITTED CRIMES AGAINST HUMANITY (E/CN.4/906; E/CN.4/L.800, L.830 and Add.1; E/CN.4/NGO/133)
(continued)

The CHAIRMAN said that the representative of the World Jewish Congress wished to make a statement on the question of the punishment of war criminals. He suggested that the Commission should hear him forthwith.

It was so decided.

Mr. PERLZWEIG (World Jewish Congress) thanked the Commission for not only seeking to ensure the non-applicability of statutory limitation to war crimes and crimes against humanity but also, and primarily, endeavouring to draw up a text which could be adopted unanimously.

The World Jewish Congress had for years been endeavouring to trace war criminals and to collect evidence and testimony against them. It had succeeded in finding about 1,000 eye witnesses, more than 300 of whom had testified before the courts. In the course of the search it had become apparent that one of the primary arguments invoked to justify the statutory period of limitation - namely, that as time elapsed it became more and more difficult to obtain proof - had no foundation whatever in the case of war criminals, for new evidence of their guilt was being discovered every day. Unfortunately, a large number of war criminals could no longer be prosecuted, since they had taken advantage of the statutory limitation in effect in the country in which they lived. The Commission should therefore act promptly if it did not wish to see an increasing number of criminals escape justice.

With regard to the Polish draft resolution (E/CN.4/L.800) and the six-Power amendments (E/CN.4/L.830 and Add.1), he said that the World Jewish Congress was in favour of the adoption of an international convention, provided that the convention was not regarded as the only source of law in the matter. In the resolution that it would adopt, the Commission should therefore confirm the principle of the non-applicability of statutory limitation to war crimes and call on Governments to take steps to ensure that the perpetrators of such crimes could not avail themselves of the statutory limitation. It should be borne in mind that a convention, which sometimes required a great deal of time to prepare, was binding only on the States Parties, whereas a resolution, even if it had only moral force, applied to all States. The unanimous adoption by the Commission of the resolution on the

(Mr. Perlzweig, World Jewish Congress)

punishment of war criminals and of persons who had committed crimes against humanity would give the resolution even greater moral force and thus contribute to the triumph of justice in the world.

The CHAIRMAN announced that the revised text of the six-Power amendments^{1/} would be circulated shortly and he invited the Commission to begin its consideration of agenda item 6 in the meantime.

QUESTION CONCERNING THE IMPLEMENTATION OF HUMAN RIGHTS THROUGH A UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS OR SOME OTHER APPROPRIATE INTERNATIONAL MACHINERY (E/CN.4/895; E/CN.4/L.831 and Add.1; E/CN.4/NGO/136)

Mr. REDONDO (Costa Rica) said that, in spite of the progress achieved in the matter since the establishment of the United Nations, human rights and fundamental freedoms were not respected as fully as was desirable. The principal reason was that so far there was no appropriate machinery to ensure the practical application of the declarations and conventions adopted in that field. Conscious of that fact and of the impatience felt by the international community at such a state of affairs, the Costa Rican Government had proposed the creation of the post of United Nations High Commissioner for Human Rights. Costa Rica realized that universal respect for human rights could not be achieved overnight and it had therefore conceived its proposal as merely a first step in that direction. It was necessary to create, within the framework of the United Nations, an institution which would not be subject to international covenants - whose entry into force depended on their ratification by the various States - and which, through the authority and independence that it would enjoy, would be a valuable instrument for the Organization and would help it to carry out more effectively the task entrusted to it in the United Nations Charter, the Universal Declaration of Human Rights and the other international instruments adopted in the matter. The Costa Rican proposal had been described in detail in the explanatory memorandum submitted to the Commission on Human Rights at its twenty-first session (E/CN.4/887) and in a second memorandum submitted to the General Assembly at its twentieth session (A/5963). The Costa Rican delegation would listen with the greatest interest to any comments which members of the Commission might wish to make on its proposal and would endeavour to take all their suggestions into account.

^{1/} Subsequently issued as document E/CN.4/L.830/Rev.1.

Mr. KELLBERG (Sweden) said that he considered the proposal before the Commission to be of the greatest importance. For more than 150 years Sweden had had an institution called the Ombudsman, to which anyone living in the country could submit complaints concerning the way in which courts and governmental agencies carried out their duties under the law and which thus offered complete protection against any abuses that might be committed by the authorities. The other Scandinavian countries had adopted that institution, adapting it of course to their own conditions, and some other countries, too, were considering the establishment of similar institutions.

He had drawn the attention of the Committee to that institution for three reasons: firstly, because it was mentioned in General Assembly resolution 2081 (XX) on the International Year for Human Rights; secondly, because it played, at the national level, the role that a United Nations High Commissioner for Human Rights would be called upon to play at the international level; thirdly, because the establishment of such an institution on the eve of the International Year for Human Rights would show the peoples of the world that sincere efforts were being made to ensure respect for human rights and fundamental freedoms. It would be difficult, however, to give an international body powers as broad as those of the Ombudsman. The Swedish delegation therefore welcomed the Costa Rican proposal, which was more restricted in scope. The High Commissioner for Human Rights should be empowered, however, to receive complaints from individuals and to examine those complaints, as was done by the Commission of Human Rights of the Council of Europe. To that end, States should yield part of their sovereignty to such an impartial international body. The creation of a United Nations High Commissioner for Human Rights would help to remove certain violations of human rights and fundamental freedoms. The Swedish delegation would therefore support the Costa Rican proposal.

Mr. SANCHEZ VIAMONTE (Argentina) said that, after studying the documentation on the question under consideration, he had come to the conclusion that it was absolutely essential that an official should be empowered to act promptly for the protection of human rights. At present, at the international

(Mr. Sanchez Viamonte, Argentina)

level only States had rights, not individuals. The representative of Sweden had pointed out that there were European institutions which ensured the protection of human rights and had added that the High Commissioner should be able to receive complaints not only from States, but also from individuals. He himself wished to stress the fact that States alone could not be entrusted with the protection of human rights, for within each country such rights were rarely threatened from abroad; in most cases, the violations resulted from the actions of the State itself. In that connexion, he cited the example of countries such as the United Kingdom, where the writ of habeas corpus guaranteed individual freedoms vis-à-vis the State. The existence of an authority which would guarantee the exercise of human rights was therefore indispensable. He had some reservations, however, concerning the proposed title of High Commissioner, for apparently the idea was to invest the holder of that office with supreme executive power. He thought that it would be preferable to broaden the competence of the International Court of Justice and to create an authority which would examine the requests relating to human rights that were submitted to the Court; that authority would come under the jurisdiction of the General Assembly and would play a role comparable to that of an examining judge.

On the eve of the celebration of the twentieth anniversary of the Universal Declaration of Human Rights, the time had come to affirm that each person was covered by international law, in the same way as States. An Argentine jurist had long ago based the protection of human rights on that unitary concept of the world and he himself was confident that mankind would succeed in making progress in that field.

It must be made quite clear, however, that the aim was not to protect States, but to protect human rights; the interests of States represented only the interests of their Governments, which might be contrary to those of the nationals of the country. The advent of the concept of a republic, composed of free men, had radically changed the notion of sovereignty. The sovereignty of the monarch had been transferred not to the Governments which had replaced him, but to the people themselves. The real victory to be won did not concern diplomatic relations among States, but the recognition of human rights, by providing those concerned with the means for their protection.

Mr. ABRAM (United States of America) observed that the contrast between the urgency of the Commission's task and the insufficiency of the means at its disposal was a source of some frustration. In any field of international co-operation it was necessary first of all to reach a general consensus on principles, and where human rights were concerned the United Nations had made great progress in that sense. With respect to certain aspects of human rights it had even been able to move from principles to conventions creating legally binding obligations, but those conventions were limited both by the narrowness of their scope and by the weakness of their implementation provisions. In addition, ratifications often failed to keep pace with the adoption of such conventions. The number of States submitting periodic reports was not only limited; the reports themselves tended to lack objectivity. Much remained to be done and the time had come to ask whether the methods used in the past were adequate or whether new techniques should be evolved.

In that connexion, an obstacle was met with at the outset: the sovereignty of States. The protection of human rights should be ensured first and foremost by the adoption of reforms within each country, and certain States had already begun to move in that direction. Resort to physical force, with its attendant tragedies, seemed as incompatible with the very notion of human rights as it was with the fact of the sovereignty of States. However inadequate moral force might be, therefore, it was the force which should be used and its effectiveness would be proportionate to the means available to sharpen its focus, to increase its visibility, to institutionalize it and to elevate the platform from which it was exercised. In that field current techniques were unavailing and the institution to be established should be centred on human resources: an exceptional post such as that of High Commissioner for Human Rights should be filled by an exceptional and unique personality enjoying a degree of prestige and confidence not generally accorded to faceless committees, where members tended to represent national or ideological interests. The High Commissioner should command the respect of all States by virtue of his moral qualities and his objectivity; as he would in most cases act at the request of a Government or a United Nations body, his prerogatives could not exceed the powers of control exercised by Governments or United Nations bodies. Even an exhaustive theoretical study would not make it possible to define the prerogatives

(Mr. Abram, United States)

of the High Commissioner in full or precise detail, for they could be decided upon only after long experience.

The establishment of a post of High Commissioner would be of real value, for there were still many unsatisfied needs to which the occupant of that post could address himself. For example, he could assist Member States in establishing certain institutions such as that of Ombudsman, which had produced good results in other countries. He would keep himself informed of the status of ratification and implementation of human rights conventions, as also of the problems standing in the way of such progress, and he could seek to increase their effectiveness through consultation with the competent national authorities. At the request of the Secretary-General he could play the role of intermediary in certain critical situations. He could also assist United Nations committees dealing with problems in dependent territories, centralize the various types of information reaching the United Nations in connexion with human rights and co-ordinate it so that useful generalizations could be formulated, encourage Governments to report on the situation in their own countries and, when necessary, consult them to verify the facts. In short, the authority vested in the High Commissioner at the outset should be essentially advisory and the nature of his functions should be more precisely established with the gradual acquisition of experience. It might well be that the High Commissioner would eventually play a role which could not possibly be foreseen at present.

The authors of the Charter had recognized that there was a direct relationship between human rights and the problems of international peace and security, and the experience of the past twenty years, during which so many crises - such as that of Rhodesia - had arisen from religious, ethnic or racial disputes, had confirmed that premise. It was particularly difficult to put an end to conflicts of that sort because each of the contending parties feared that the rights of its supporters would not be respected if the other party prevailed. The existence of some international machinery to guarantee human rights would make it possible to release many efforts for economic and social development, and other more constructive enterprises. In some areas of the world a stable peace might perhaps be ensured by the presence of a United Nations body - for example, a High Commissioner for Human Rights - to

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which individuals would have access, under the auspices of an appropriate regional or other organization. The establishment of such an institution would not, of course, offer a panacea but it would certainly open up great possibilities. In any case it would meet an enormous need and the Commission should seize the opportunity to move forward towards the realization of its goal.

The CHAIRMAN said that the International Federation of Christian Trade Unions and the International Confederation of Free Trade Unions wished to make known their views on the subject under consideration. He suggested that the Commission should hear their representatives.

It was so decided.

Mr. PIETRYGA (International Federation of Christian Trade Unions) said that in the view of his organization the High Commissioner for Human Rights should be an authority capable of acting rapidly, with the flexibility and skill required to discharge the functions referred to in operative paragraph 1 of the Costa Rican draft resolution.

The non-governmental organizations were keenly interested in the implementation of human rights. Their concern had found expression in their many statements made before the Economic and Social Council, the Commission on Human Rights, UNESCO and the ILO, which offered labour organizations the opportunity to take part in their debates. Non-governmental organizations in consultative status had an important role to play in connexion with those bodies, for they expressed the popular will and represented at the international level the organizations affiliated with them. They were identified with the people and did not exaggerate the people's claims. Their role was the more significant in that they were not involved in the politics of States and were independent of political parties and Governments. They saw to it that the United Nations did not repeat the mistake made by the League of Nations in isolating itself from Governments and people, and the consultative status accorded them by the Charter helped to make the work of the United Nations known to the public.

In the General Assembly's Third Committee some delegations had expressed misgivings lest the High Commissioner should become involved in the domestic affairs of States. To obviate that danger, the High Commissioner should be assisted by a

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(Mr. Pietryga, IFCTU)

council which could be readily convened and which would make recommendations to him; the council should be composed of representatives of States and non-governmental organizations, as also of outstanding experts who would be independent of Governments. The establishment of such a council would offer a guarantee against any risk of interference in the domestic policies of Governments.

The International Federation of Christian Trade Unions, which was firmly resolved to co-operate in the effective implementation of human rights, thought that the establishment of a post of High Commissioner would constitute an important advance in that field, provided that the person holding the office was assisted by a council composed of experts and representatives of Governments and non-governmental organizations. It requested the Commission to take note, in its recommendations to the General Assembly, of the important contribution which non-governmental organizations could make to the work of such a council.

Mr. BARTON (International Confederation of Free Trade Unions) thanked the Costa Rican delegation for having taken the initiative of placing on the Commission's agenda the question of creating a post of United Nations High Commissioner for Human Rights, in other words, the question of implementation of human rights. That question was particularly important, for its discussion would determine the nature of the steps taken at the international level for the protection of human rights. The Costa Rican proposal was not premature, since discussions on the implementation of human rights had been going on for many years. As early as 1947, a working group on implementation had been set up. Australia had tabled draft resolution (E/CN.4/15) which had provided for the establishment of an International Court of Human Rights. Moreover, the Commission on Human Rights had mentioned, as early as its third session in 1949, a whole series of measures designed to ensure the implementation of human rights at the international level. He read out the most important of those measures (E/CN.4/168).

At its seventh session the Commission had taken up a Uruguayan proposal concerning the creation of a post of United Nations High Commissioner or Attorney-General for Human Rights. The Costa Rican proposal conformed to the Uruguayan proposal but had the additional merit of not basing the question of implementation on the Covenants on human rights, and hence of not being addressed only to States parties to the Covenants. If the proposal was adopted, it would impose on all States Members the obligation to apply the provisions of the Universal Declaration

(Mr. Barton, ICFTU)

of Human Rights. That was its chief advantage over earlier proposals, for experience had shown that an international organization was powerless unless it could impose the application of its instruments on all its members, whether or not they had ratified those instruments.

There were, however, certain weaknesses in the Costa Rican proposal. It made no mention of the obligation which the High Commissioner should have to collect and examine the necessary information, nor did it give any indication of the nature of the sources of information available to the High Commissioner. He recalled that the Uruguayan draft resolution had mentioned the reports of States parties to the Covenants, laws and regulations, judicial decisions, records of parliamentary debates, writings in periodicals and in the Press and communications from international and national organizations and from individuals. Similarly, the Costa Rican draft resolution did not mention the right - provided for in the Uruguayan draft resolution - which the High Commissioner should have to take steps in cases in which there was any incompatibility with the Universal Declaration of Human Rights or with any other instrument in which human rights were enunciated. Lastly, it gave no definition of the right of petition in cases of violation of human rights. In the view of the International Confederation of Free Trade Unions, that right should be accorded not only to Governments but also to associations and individuals. The Commission had already reached agreement on that point as early as its second session and the reasons which had then militated in favour of the granting of that right were still valid: if the right of petition was limited to States alone, the victims - who were usually individuals - had no adequate guarantee. They must be able to have recourse direct to international bodies, as had been the case under the League of Nations system for the protection of minorities. Without the provisions he had mentioned, the High Commissioner might be powerless.

He would like to cite the case of the ILO, which was the only international organization with an effective provision for implementation. The ILO report on Organizational and Procedural Arrangements for the Implementation of Conventions and Recommendations in the Field of Human Rights (E/4144) described the elements which formed a coherent system of guarantees. The ILO's implementation arrangement

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consisted of a number of bodies working simultaneously and complementing one another without duplication of work. It was worked out very precisely and its tripartite nature at all levels constituted the fundamental guarantee. He suggested that the Commission might base its action on the example of the ILO.

Lastly, he criticized the Costa Rican draft resolution for establishing too loose a link between the High Commissioner and the Commission. The only connexion between the two was that provided for in operative paragraph 1 (b), under which the High Commissioner was to "advise and assist the Commission on Human Rights". Moreover, in asking the High Commissioner to report to the General Assembly through the Economic and Social Council, the draft resolution seemed to leave the Commission out of consideration entirely. He wondered whether the Commission was to confine itself to drawing up principles and draft conventions and play no role in the matter of implementation. The Economic and Social Council had invited the Commission to undertake practical tasks regarding the violation of human rights and fundamental freedoms including policies of racial discrimination and segregation, and of apartheid, in all countries, with particular reference to colonial and other dependent countries. It was time to give the Commission a different place from the one it had hitherto occupied in the United Nations. It was important that the question of human rights should be placed on the same level as political, social and economic questions. At the same time it must be borne in mind that the Commission's functions were different from those of other United Nations bodies and were somewhat similar to those of the ILO: not to deal with relations between States but to secure the application of certain principles in the internal policy of Member States. The Commission had a particular role to play and it must be given a place in the United Nations system that would provide it with the necessary autonomy and enable it to carry out its functions efficiently. A very thorough study of the Commission's operation, the procedure for the periodic reports, and the respective roles of the Commission and the High Commissioner should therefore be made, with a view to making the necessary readjustments.

The meeting rose at 1.10 p.m.