

COMMISSION ON HUMAN RIGHTSSecond SessionWorking Group on Implementation

Summary Record of Second Meeting held in the  
Palais des Nations, Geneva, on Friday, 5 December 1947,  
at 3 p.m.

Present:

Chairman: Mrs. Hansa MEHTA (India)  
Rapporteur: Mr. DEHOUSSE (Belgium)  
Members: Colonel W.R. HODGSON (Australia)  
Mr. POUREVALY (Iran)  
Mr. KLEKOVKIN (Ukrainian S.S.R.)  
Observers: Mr. E.R. WARNER (United Kingdom)  
Miss WHITEMAN (United States of America)  
Secretariat: Mr. Edward LAWSON

Mr. DEHOUSSE (Belgium) considered that it was important to hear the opinion of Mr. JENKS, the Legal Adviser to the International Labour Office. He pointed out that the International Labour Office had had much experience in the implementation of conventions.

Colonel HODGSON (Australia) proposed a revised draft relating to Annex H, paragraph 3(c), as follows: "The Working Group is of the opinion that the provision of the Bill or Convention must be a part of the fundamental law of States ratifying it. States, therefore, must take action to ensure that their national laws cover the contents of the Bill, so that no executive or legislative

RECEIVED

27 JAN 1948

UNITED NATIONS  
ARCHIVES

organs or government can override them, and that the judicial organs alone shall be the means whereby the rights of the citizen of the States set out in the Bill are protected."

Mr. DEHOUSSE (Belgium) said that he preferred the words "domestic" or "national" to "fundamental" law.

Colonel HODGSON (Australia) doubted if "national" was sufficiently comprehensive. He said that he had proposed "fundamental" law, which could not be overridden by subsequent legislature.

Mr. DEHOUSSE (Belgium) said that there were many countries whose constitutional law already guaranteed human rights; but the many countries might have difficulty in amending their constitutions. It would be easier for them to change their laws than to alter their constitutions.

Miss WHITEMAN (United States of America) suggested that the adjective before the word "law" might easily be dropped.

Mr. DEHOUSSE (Belgium) said that the Working Group was only concerned with the mechanism for implementing the Convention. He considered that it was impossible to insist on provisions for implementation in a Declaration of the General Assembly, which was not legally binding. He proposed that the Sub-Commission should be asked if they agree that implementation concerned only the Convention.

The CHAIRMAN agreed with Mr. DEHOUSSE (Belgium) and added that, in her opinion, the Working Group was concerned with implementation and with machinery of supervision only on an international level.

Colonel HODGSON (Australia) considered that no further action was possible in domestic law, where the courts of a particular State could enforce the rights of its own citizens in accordance with the clauses of the Convention,

Referring to the international sphere, he suggested that there were three degrees of possible action: first, to act as conciliators without executive power; secondly, to act quasi-judicially, without a machinery for enforcing decisions; thirdly, to set up an International Tribunal with full judicial powers.

The CHAIRMAN said that the view of her Delegation was contained in document E/CN.4/Sub.2/27, paragraphs 3, 4 and 5.

Colonel HODGSON (Australia) said that, in his opinion, the CHAIRMAN's proposal would give power to a tribunal only to ascertain the facts of a particular dispute. In his view the object of an International Tribunal would be to reach a decision and to pass a judgment.

Mr. DEHOUSSE (Belgium) said that, in his opinion, the Indian proposal represented a beginning of the machinery of implementation, but that a final authority could only be found in Colonel HODGSON's proposal of a tribunal with full judicial powers. He did not consider that this tribunal was a role of the General Assembly.

He considered that the Secretariat draft was a good basis for a discussion by stages. He proposed adding a sub-paragraph (f) to contain Colonel HODGSON's resolution, to establish an International Tribunal, now contained in paragraph 4 of Annex H.

He considered that the Indian proposal to amend the Charter created difficulty. He suggested that the Convention should itself give the necessary competence to an International Tribunal.

He referred to sub-paragraph (a) on page 88 of 4/21, and pointed out that the General Assembly under Article 10 of the Charter already had the right to discuss and make recommendations concerning petitions. He considered that there were two questions: first, whether the General Assembly or the Commission should have the necessary competence; secondly, to whom should the recommendations be addressed.

Mr. POUREVALY (Iran) suggested that recommendations should be addressed to States.

Mr. DEHOUSSE (Belgium) said that according to Article 62, paragraph 2, of the Charter, the Economic and Social Council could make recommendations concerning the observation and preservation of Human Rights. He said that the power to make such recommendations could be given to the Commission either by the member States in the Convention, or by the Economic and Social Council.

Colonel HODGSON (Australia) illustrated various problems arising from the delegation of such powers, but considered that the Working Group should only consider principles.

Mr. DEHOUSSE (Belgium) summed up the argument on the delegation of powers to the Commission. He said that a point in favour of such delegation was that the Commission was less busy and more competent technically than the Economic and Social Council. As points against such delegation, he suggested that there was the legal difficulty of the Economic and Social Council delegating powers irrevocably given to it by the Charter; and that such delegation might lead to a general weakening of the Economic and Social Council.

Colonel HODGSON (Australia) agreed that the Commission, having no executive or judicial powers concerning petitions, had no competence with reference to sub-paragraph (a).

Mr. KLEKOVKIN (Ukrainian S.S.R.) considered that it was difficult to sub-divide the general problem before the Convention was elaborated.

He was uncertain how the proposed measures would affect the independence and sovereignty of States. He considered that an International Tribunal would primarily discuss the internal affairs of States, which was against the policy of the Charter.

Mr. DEHOUSSE (Belgium) maintained that it was possible to consider implementation in the abstract without knowing the exact definition of Human Rights in the proposed Convention. He said that he did not consider that State sovereignty was absolute; but that a State possessed a relative sovereignty which was submitted continually to changes and limitations by the completion of inter-State agreements. He added that the whole issue of Human Rights was subject to the concept of a limited State sovereignty, without which no inter-State collaboration was possible.

Colonel HODGSON (Australia) considered that there should be established a separate and complete machinery to cover the whole field of petitions.

Mr. DEHOUSSE (Belgium) repeated that, in his opinion, their work need not be abstract and he submitted to the Working Group the following practical solution. First, to note, and to make a reminder of, the competence of the General Assembly. Secondly, to note, and to make a reminder of, the competence of the Economic and Social Council, as contained in Article 62 paragraph 2. Thirdly, to set out the arguments for and against the delegation of powers to the Commission, and to ask the Economic and Social Council for its decision. Fourthly, if the Economic and Social Council does not decide to delegate such powers to the Commission, to remember that the Commission on Human Rights can always make recommendations to the Economic and Social Council, which under the Charter can make real proposals.

He added that he did not think that a Convention could itself limit powers granted under Article 62, paragraph 2, of the Charter.

Mr. KLEKOVKIN (Ukrainian S.S.R.) said that the Convention could be signed by non-member States. He suggested that it might be useful to include in the Convention an agreement to give to the Commission powers to make recommendations.

Mr. WARNER (United Kingdom) suggested that this could be included in the Convention, if the Economic and Social Council agreed.

Mr. DEHOUSSE (Belgium) suggested that the CHAIRMAN contact the Second Working Group, whose concern this subject was.

The CHAIRMAN referred the Working Group to sub-paragraph (b).

Mr. DEHOUSSE (Belgium) said that he considered the text in document E/CN.4/Sub.2/27, paragraph 3, was wider than that of (b) because it included "States" and "associations" as well as "individuals".

Considering the question to whom petitions should be addressed, he suggested that the Secretariat should receive all communications in accordance with the Economic and Social Council's Resolution of 5 August, 1947. He suggested that this proposal should be included in the Convention.

Colonel HODGSON (Australia) proposed the addition of a fourth category, "groups".

Mr. DEHOUSSE (Belgium) proposed that the Secretariat should be asked to draft rules dealing with petitions and to submit such rules to the Commission on Human Rights, and thence to the Economic and Social Council.

Colonel HODGSON (Australia) pointed out that non-ratifying States would be able to submit petitions against ratifying States, but not vice versa.

The CHAIRMAN pointed out that the right to petition belonged to all States but that no action could be taken against a non-ratifying State.

She suggested that it should be made clear that action could only be taken on petitions from ratifying States, or from associations, groups, or individuals from within ratifying States.

The meeting closed at 6 p.m.