

COMMISSION ON HUMAN RIGHTSSecond SessionWORKING GROUP ON IMPLEMENTATION

Summary Record of Sixth Meeting held in the Palais des Nations on Tuesday, 9 December at 10 a.m.

---

Present:

Chairman: Mrs. Hansa MEHTA (India)

Rapporteur: Mr. DEHOUSSE (Belgium)

Members: Colonel W. R. HODGSON (Australia)

Mr. POUREVALY (Iran)

Non-Governmental Organizations: Mr. BENTWICH (Consultative Council of Jewish Organizations)

Dr. G. M. RIEGNER (World Jewish Congress)

Observers: Mr. A. CAMPBELL (United Kingdom),

Professor KORETSKY (Union of Soviet Socialist Republics)

Miss WHITEMAN (United States of America)

Secretariat: Mr. Edward LAWSON

-----

Mr. POUREVALY (Iran) referring to the six questions raised by Mr. DEHOUSSE on the previous day, proposed that a sentence similar to the one added at the end of paragraph 2(c), regarding non-governmental organizations, should also be added in paragraph

2(a).

RECEIVED

JAN 27 1948

UNITED NATIONS

The CHAIRMAN explained that non-governmental organizations were already included in the associations mentioned in paragraph 2(a) and it was therefore not necessary to specify them by name. Mr. POUREVALY accepted the explanation.

Mr. DEHOUSSE (Belgium) suggested that mention of the point raised by Mr. POUREVALY should be made in the Working Group's Report, and it was so agreed.

The CHAIRMAN asked that paragraph (c) on page 88 of document E/CN.4/21 should be considered.

Mr. DEHOUSSE (Belgium) felt that the suggestion in paragraph (c), to create a special organ of the United Nations to supervise and enforce human rights, was premature. He suggested that mention of the possibility of creating such an organ at a later date might be made in the Report.

The CHAIRMAN said that the question of enforcement, raised in paragraph (c), would be dealt with at a later stage of the discussions. The question of supervision had already been discussed. With regard to paragraph (d), her personal opinion was that the proposed special organ should not be given the right to suspend any part of the Bill of Rights.

Mr. DEHOUSSE (Belgium) said he was unable to understand the meaning of the provision in paragraph (d). It might have two meanings; either that the organ might study or review cases when, for any reason, a country had been obliged to suspend human rights; on the other hand it might mean that the organ had itself the right to suspend human rights.

Colonel HODGSON (Australia) considered it would be sufficient to make a note of the point, and it was agreed to do so.

The CHAIRMAN referred to the Indian proposal, which had been adopted the previous day, and said that the provision

contained in paragraph 3 would have to be discussed in relation to the Australian proposal to establish an International Court of Human Rights.

Colonel HODGSON (Australia) said that he did not disapprove of the idea that there should be a special Chamber of the International Court of Justice to deal with human rights. The International Court of Justice already had an established reputation, a library, a Secretariat, etc. However, he envisaged a wider jurisdiction for the International Court of Human Rights than that enjoyed by the International Court of Justice. Many states had not accepted the Statute of the International Court of Justice, and its present jurisdiction only covered disputes between States. He considered that many cases of violation of human rights would not be covered by that jurisdiction as groups, minorities, and even individuals might be involved. He felt that such test cases on nationality, statelessness, dispossession of property, etc., as were decided by the International Court of Human Rights would eventually constitute a body of law which might automatically settle many similar cases.

The point to be decided, in his view, was whether to recommend the establishment of a Chamber of the International Court of Justice to deal with human rights or to recommend the establishment of an International Court of Human Rights to deal not only with cases affecting States, but also with cases arising out of peace treaties in which special provisions or declarations with regard to human rights had been included.

Mr. DEHOUSSE (Belgium) agreed with Colonel HODGSON'S arguments in favour of establishing an International Court of Human Rights, as distinct from the International Court of Justice, and pointed out that in his opinion the competence of

the International Court of Justice was not compulsory. He mentioned that paragraph (e) on page 88 appeared to have been left out of their discussions. He stated that in principle he would be in favour of the creation of local agencies as envisaged in the paragraph; he feared, however, that acceptance of the principle might discourage certain States from ratifying the Convention. Taking into account the present state of international relations, he proposed that study of paragraph (e) should be postponed until a later date.

Regarding the following paragraph on page 88, he said he did not see that the Security Council could play a role as such in the implementation of human rights except in a situation or dispute endangering security or peace, in which case its competence was clearly stated in the Charter.

Mr. CAMPBELL (United Kingdom Observer) stated that his Government was opposed to the setting up of an International Court of Human Rights which would have special functions in regard to Human Rights. It considered that advisory opinions should be sought from the present International Court. His Government did not favour the establishment of a special chamber of the International Court of Justice, having the power to pronounce final opinions on questions of violation of Human Rights; that was the prerogative of the Security Council under Article 94 of the Charter. He agreed with the Representative of Belgium that action by the Security Council regarding the implementation of human rights should be limited to cases of violation constituting a threatened breach of the peace. He considered the best solution would be for the International Court of Justice to be invested with power to give advisory opinions on human rights; those opinions could be submitted to the General Assembly of the United Nations which would decide on the action to be taken.

It should be clearly understood that States charged with violation of human rights would also be entitled to consult the International Court of Justice, and he pointed out that, under Article 96 of the Charter, it might be possible for the Commission on Human Rights to obtain opinions from the International Court of Justice.

Mr. DEHOUSSE (Belgium), on a point of order, enquired whether paragraph (e) and the succeeding paragraph on page 88 of Document E/CN.4/21 were to be discussed. The CHAIRMAN stated that it had already been decided to defer consideration of paragraphs (c), (d) and (e).

Colonel HODGSON (Australia), with regard to the question of the role to be played by the Security Council, thought that Article 94 of the Charter had inspired the paragraph in the draft under consideration. It was stated in Article 94 that, should a party to a case fail to perform obligations under the judgment of the International Court of Justice, the other party concerned could refer the matter to the Security Council. That was a well-defined role for the Security Council to play and the point was, whether the Security Council should have a similar role with regard to the implementation of a judgment of any International Tribunal which might be established to deal with Human Rights.

Miss WHITEMAN (United States Observer) directed the attention of the Representatives to the last provision of Article 27 of the Charter and said that, in her opinion, the text under consideration corresponded to that provision. She agreed in part with the last three speakers. She also had grave doubts about referring Human Rights cases to the International Court of Justice; the main difficulty being that States only might be parties to cases before that Court. Before the constitution of the Court could be altered it would be

necessary to amend the Charter, which in her opinion would be a long process and which might delay ratification of the Convention. Regarding paragraph (e), she considered the world was not ready at the present time for the establishment of local agencies of the United Nations, as envisaged there. She was also doubtful as to whether the world was ready to establish an International Court of Human Rights.

Mr. CAMPBELL (United Kingdom Observer) stated that his Government felt it might be wise for advisory opinions on appropriate cases to be obtained from the International Court of Justice; those opinions would constitute legal decisions which could be used to settle similar cases. He directed attention to Document E/CN.4/37 which was the proposal submitted by the United States Representative. He pointed out that the last paragraph of Article 5 provided machinery for obtaining advisory opinions. Should this clause be incorporated in the Convention it would provide the necessary machinery for obtaining advisory opinions; the question of amendment of the Charter or the Statute of the International Court of Justice would not, therefore, arise.

The CHAIRMAN pointed out that, under Article 96 of the Charter, the Court of International Justice was only required to give advice on legal questions, which in her opinion, was not sufficient in regard to Human Rights. She proposed that the following clause should be inserted in the Convention: "If a dispute arises as to whether any violation has taken place, the matter in dispute shall be referred for judgment to a Panel of 3 or 5 Judges of the International Court of Justice, to be appointed for the purpose by the Chief Justice of the Court, or in a Standing Order of the Chief Justice, constituting a section to deal with all cases in regard to the violation of human rights."

In her opinion that clause would solve the difficulty.

Mr. DEHOUSSE (Belgium) asked if his proposal regarding paragraph (e) on page 88 of Document E/CN.4/21 had been accepted, and it was agreed to accept it.

Colonel HODGSON (Australia) felt that the CHAIRMAN's proposal covered a very limited field of action. He was aware that his proposal would need to be put into harmony with the decisions already taken by the Working Group. He considered, however, that after the necessary amendments had been made, it would constitute the most effective machinery for implementation of the Convention. He did not agree with the views expressed by the United Kingdom and the United States Observers. In his opinion it was not sufficient to obtain advisory opinions from the International Court of Justice and submit them to the General Assembly of the United Nations for judgment. He felt a Court, to consider the violation of human rights in the widest possible field, was necessary. He thought that the machinery for implementation which the Working Group favoured ought to be incorporated in its Report and sent to Member Governments for comment.

Mr. DEHOUSSE (Belgium) felt that the question to be settled was: "What was the Working Group going to do if it wished the implementation of human rights to be assured?" Two methods to achieve that had been suggested:-

- 1) to obtain advisory opinions from the International Court of Justice, and
- 2) to obtain compulsory decisions from an International Court, whether it be the present one or the proposed International Court of Human Rights.

Regarding the first suggestion, he fully supported the criticisms made by Colonel HODGSON. An advisory opinion which

merely stated that a right had been violated was insufficient. In any case, he had doubts as to whether the Commission on Human Rights would be entitled under Article 96 of the Charter, to ask for Advisory opinions. That Article mentioned "Organs of the United Nations" and he was not certain that the Commission on Human Rights was an "Organ". Under Article 7 of the Charter the principal Organs of the United Nations were given, but the subsidiary organs were not specifically named; as a matter of fact, a definition of the term "subsidiary organs" as appearing in the Charter, was under consideration elsewhere. The Economic and Social Council was certainly an Organ of the United Nations, but it was questionable whether it could delegate its powers as such to the Commission on Human Rights.

He believed that the only real solution was to obtain the compulsory decision of a Court and said that in his experience, he had never known an instance of a State flouting the legal decision of an international court. The question thus arose as to whether a special chamber of the International Court of Justice, or the proposed International Court of Human Rights should make those decisions. In his opinion there was one argument against the creation of the new Court; that was that the creation of similar international organs was at present under consideration. He pointed out that Article 36 of the Charter provided that, before a compulsory decision from the International Court of Justice could be obtained, the plaintiff State had to enter into an agreement with the defendant State. It was of course possible to increase the competence of the International Court of Justice by means of conventions, without altering the Statute, and in support of that contention, he cited the example of Trieste.

He went on to say, however, that the Belgian Government was in favour of the Australian proposal to create an International Court of Human Rights as it considered that that was the best means to assure implementation of human rights. The Working Group had before it the Australian text in the shape of a Draft Convention, which could serve as a basis for discussion. No text existed to extend the competence of the existing Court. Another reason why he favoured the creation of a new Court was that it would be new, not only from the legal point of view but from the human point of view. The sole task of its members would be to deal with violations of human rights, and they would be experts in the matter.

The CHAIRMAN stated that her Government was not in favour of creating new machinery to deal with implementation. Her proposed clause for inclusion in the Convention was the solution she favoured. If there was a divergence of opinion, she suggested that alternative suggestions should be presented to the Commission on Human Rights for decision.

Colonel HODGSON (Australia) felt that Mr. DEHOUSSE had made a correct analysis of the position. He proposed the addition of the following Article to his draft text, in order to cover the point made by the Chairman earlier in the debate and also to cover the decision taken the previous day regarding a Standing Committee: "The Court shall have jurisdiction to hear and determine disputes concerning human rights and fundamental freedoms referred to it by the Commission on Human Rights". He further proposed that the Working Group should adopt his proposal as a basis for discussion, with a view to bringing it up to date, or amending it, or submitting it as a concrete proposal in the Working Group's Report for the consideration of Governments. He

asked the Chairman to indicate her reasons for opposing the creation of new machinery.

Mr. CAMPBELL (United Kingdom Observer) said he could not support Colonel HODGSON's proposal. In his opinion the main difference between the two points of view lay in the question as to whether decisions given by the International Court of Justice would be carried out. That was a point which might be dealt with in three different ways under Articles 6, 34 and 94, paragraph 2, of the Charter. His Government felt that, if a State were found to have violated the principles of the Charter, it should be dealt with under Article 6. He referred to the proposed establishment of a Committee which would have certain functions in regard to Human Rights. His Government considered it would be inappropriate for complaints emanating from States to be referred in the first instance to a small committee of non-governmental experts. Serious political considerations might be involved, and his Government considered that such cases should first be studied by the General Assembly of the United Nations.

Mr. POUREVALY (Iran) supported Colonel HODGSON's proposal.

The CHAIRMAN, in replying to Colonel HODGSON, stated that her Government's opposition to the creation of new machinery was not based on considerations of cost. She felt that the creation of new machinery might raise false hopes which would be dashed if it were found impossible to enforce decisions taken. She felt that political considerations might make it difficult to enforce the judgments of the proposed International Court of Human Rights. The Standing Committee would, in the first place, try methods of conciliation to secure redress for violations of human rights. Only if it failed

would the question be referred to the International Court of Justice.

Mr. DEHOUSSE (Belgium) said that he and Colonel HODGSON were in agreement that the Australian proposal required alteration in the light of new decisions. He reminded the representatives, however, that the questions under discussion were not the Articles of the Australian proposal but

- (a) whether the Working Group felt that questions of human rights should be referred to a court;
- (b) whether that court should be the proposed International Court on Human Rights or a special chamber of the International Court of Justice; and
- (c) whether the court should give advisory opinions or compulsory decisions.

Colonel HODGSON (Australia) supported Mr. DEHOUSSE's observations, and pointed out that the purpose of his proposed new Article was to take into account the proposed Standing Committee. He reminded the representatives that consideration of paragraphs 3 and 4 of the Indian proposal had been deferred at a previous meeting; he considered that they would fall into place as soon as a decision on the questions posed by Mr. DEHOUSSE had been taken. He felt it was desirable that agreement should be reached on considerations to be placed before governments for comment.

Mr. DEHOUSSE (Belgium) pointed out the procedure that, in his opinion, should be followed in studying petitions. Petitions should be referred first to the Standing Committee for study and report to the Commission on Human Rights. The Commission on Human Rights would decide, if the Standing Committee failed to secure agreement, whether or not cases of violation should be referred to the Court. Should a new

Court be constituted, there would be no doubt of the right of the Commission on Human Rights to refer cases to it. He also pointed out that three alternatives existed:

- 1) the Australian proposal to create an International Court on Human Rights;
- 2) The Indian proposal to establish a special chamber of the International Court of Justice; and
- 3) the United Kingdom and United States suggestions that advisory opinions from the Court of International Justice should be obtained and recommended to the General Assembly of the United Nations.

He was not in favour of presenting alternatives to the plenary meeting of the Commission and hoped that a choice could be made. He suggested that the three questions he had previously posed should be settled.

Colonel HODGSON (Australia) again expressed his objection to the Indian proposal for three reasons:

- 1) he had grave doubts as to whether the Commission on Human Rights was in a position to request opinions from the International Court of Justice;
- 2) if so, it could only request advisory opinions; and
- 3) the Court could only consider disputes between States.

The CHAIRMAN pointed out that her proposal did not necessitate an amendment to the Charter. It suggested referring cases to a special chamber of the International Court of Justice whose powers could be enlarged by means of a Convention.

Mr. BENTWICH (Consultative Council of Jewish Organizations) said he strongly supported the Australian proposal in principle. Some misunderstanding appeared to exist, however, regarding the scope of advisory opinions of the International Court of Justice. He stated that half the decisions of the International

Court of Justice under the League of Nations were given as advisory opinions, and they had had in fact the same force as judgments of the Court. Advisory opinions could be obtained not only between State and State but between any organizations of the United Nations on any question which concerned its Convention. The Court, therefore, had a much wider power in its capacity of giving advisory opinions than in its capacity of giving judgment as between states. The Non-Governmental Organizations which he represented would welcome the establishment of an International Court on Human Rights. On the other hand, he thought it should be realized that the right of the Commission on Human Rights or the Economic and Social Council to ask for advisory opinions from the International Court of Justice might be of very great assistance when dealing with questions of human rights.

Colonel HODGSON (Australia) in reply to the Chairman's observations, said that he did not agree that inclusion in the Convention could confer powers above those conferred by the Charter. He asked Mr. BENTWICH if he was confusing advisory opinions of the League Permanent Court and those of the new International Court of Justice. He agreed that advisory opinions might be useful but pointed out that only the principal organs of the United Nations could request such opinions, and then only on the legal aspects of a case.

The problems in connection with human rights would be largely social and humanitarian, not legal, he felt.

Mr. DEHOUSSE (Belgium) considered that the creation of a new court would in no way affect the existing International Court of Justice. He observed once again that the turning point had been reached in the debate; the Working Group would have to decide that afternoon on the means of enforcement it wished to recommend.

The meeting rose at 1 p.m.