

## COMMISSION ON HUMAN RIGHTS

## SECOND SESSION

## WORKING GROUP ON IMPLEMENTATION

Summary Record of Seventh Meeting held in the Palais des Nations, on Tuesday, 9 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)
Non-Governmental Organizations:	Mr. BENTWICH (Consultative Council of Jewish Organizations)
	Dr. G.M. Riegner (World Jewish Congress)
Observers:	Mr. KORETSKY (Union of Soviet Socialist Republics)
	Mr. A. CAMPBELL (United Kingdom)
	Miss WHITEMAN (United States of America)
Secretariat:	Mr. Edward LAWSON

Mr. POUREVALY (Iran), referring to the CHAIRMAN's proposal to set up a Standing Committee, proposed that the Committee of Conciliation and the Tribunal of Human Rights be situated together. Thus it would form a single legal structure.

Mr. KORETSKY (Observer of the Union of Soviet Socialist Republics) stated that he had heard with interest the remarks

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of the Representatives of Australia and Belgium on the question of the extent to which the rights of man, as defined in a Declaration or Convention, could be enforced. He recalled that the Drafting Committee had studied the question at its first session, but had not been able to arrive at any agreement. He felt that the Working Group was attempting to work out a solution for this very difficult problem too hastily and in a manner that was contrary to the Charter.

As a starting point, he felt, the Group should bear in mind that there did not yet exist such a thing as world government. The Group was faced with the co-existence of sovereign states. The United Nations itself consisted of 50-odd states that had agreed to co-operate, but had not renounced any of their sovereignty. It would be improper, he felt, to establish the dependence of one country upon another. The United Nations Charter, he pointed out, does not allow interference in the domestic affairs of a state.

Commenting first on the proposal that a special body be established to deal with petitions, he observed that the people who put forward this proposal did not seem to have any confidence towards their own or other governments; they wanted to take upon themselves the task of settling disputes that might occur between governments and citizens. Thus Colonel HODGSON, for example, had in effect suggested that Australia would ask India to help it settle problems arising between an Australian citizen and the Australian government. Then the citizen of Australia, instead of turning to the Australian government for help, would turn to other governments and ask them to help him. He himself did not belong to a people who did not have confidence in their government.

There might be some merit, he suggested, in creating a machinery whereby the people of non-self-governing territories might be able to petition to an international body; but that was not the way to deal with independent peoples. All disputes between people and their governments should be settled by the respective governments, he felt. He wondered why the proposers of the scheme were reluctant to have government representatives on the Standing Committee. He did not feel that anyone could be wholly objective in such a situation; everyone is a citizen of his country and completely objective non-national points of view did not exist.

Commenting on the second proposal, that a special judicial body be established to settle disputes between a citizen and his government, Mr. KORETSKY observed that the proposers seemed to feel that there already exists some kind of a commonwealth of nations. If Australia had not yet given its own people such a Tribunal, he asked, how could it propose its establishment for the whole world.

He himself considered that control and supervision of human rights by public opinion of the world was the only form of control that was practicable at this time. Of course if a violation of human rights reached the stage where it threatened the peace of the world, the intervention of the Security Council was possible.

The CHAIRMAN said that there were three proposals before the Working Group, of which the first was whether it was desired to set up an International Court to protect Human Rights.

Miss WHITEMAN (United States of America) stated that she wished to make it clear that, in her opinion, the Convention on Human Rights should not include machinery to establish an

International Court, as this might cause difficulty in obtaining ratification of the Convention by member States. She asked that the Working Group should refer in its Report to Document E/CN.4/37, Parts 1 and 3, which set out the ideas of the United States concerning implementation, and in Article 5 made special reference to the International Court.

Mr. DEHOUSSE (Belgium) said that Document E/CN.4/37 had been considered by the Working Group.

The CHAIRMAN put to the vote the principle of the supervision of human rights by an International Court. This proposal was unanimously accepted.

She then put to the vote Colonel HODGSON's proposal to recommend the Creation of an International Court of Human Rights. There were 3 votes in favour, and 1 against.

The CHAIRMAN then put to the vote the principle that the proposed Court should have the power to make binding and enforceable decisions. This proposal was accepted unanimously.

The CHAIRMAN submitted to the Working Group the question as to who would enforce such decisions.

Colonel HODGSON (Australia) said that he had suggested that the new Court should have jurisdiction to hear and determine (a) disputes concerning human rights and fundamental freedoms referred to it by the Commission on Human Rights, and (b) disputes arising out of Articles relating to human rights in any treaty or convention between States referred to it by parties to the treaty or convention.

Referring to his draft resolution, set out in Document E/CN.4/21 at page 897 he proposed the following addition to paragraph 2; first, to replace the words "provided for in the Declaration of Human Rights" by the words "referred to it by the Commission on Human Rights"; secondly, to add the words

"arising out of Articles affecting Human Rights in any Treaty or Convention between States referred to it by the parties to that Treaty or Convention."

He said that he was doubtful whether the proposed Court should have an appellate jurisdiction concerning disputes between citizens and their own government.

Mr. DEHOUSSE (Belgium) suggested that Colonel HODGSON's final proposal would presumably replace paragraphs 2, 3, 4 and 8 of the original proposal. He accepted the final text provided that under paragraph (b), the Secretariat be asked to study the applicability to the Peace Treaties of this system. He added that if Colonel HODGSON's proposal was accepted, the proposed Court must have an original jurisdiction in the case of petitions referred to it by the Human Rights Commission.

The CHAIRMAN submitted that the Working Group should adopt Colonel HODGSON's text replacing paragraphs 2, 3, 4 and 8 of his original proposal; and that the whole proposal should be submitted to the Commission on Human Rights. This was agreed.

Referring to paragraph 6 of Colonel HODGSON's proposal she submitted to the Working Group the problem of enforceability of a decision by the proposed Court if such decision was not applied by the State concerned.

Mr. DEHOUSSE (Belgium) said that States had very rarely failed to apply decisions of the International Court. He said that either the Security Council or the General Assembly should enforce a decision disregarded by the State concerned.

Colonel HODGSON (Australia) felt that the General Assembly should have the power of enforcement.

The CHAIRMAN proposed that the power of enforcement should be left to the General Assembly. This was agreed.

Mr. KORETSKY (Observer of the Soviet Socialist Republics) suggested that if the Working Group decided to recommend the establishment of a judicial body not mentioned in the Charter, no organ of the United Nations could participate in its work. If in the future a new Tribunal were established it would be established on the basis of a convention compulsory only for those who signed it, and would have no relation to the United Nations or its Charter. He wondered on what basis the members of the Group spoke of the General Assembly enforcing its decisions.

Colonel HODGSON (Australia) pointed out that the Observer of the USSR might have overlooked Article 95 of the Charter. Mr. DEHOUSSE (Belgium) added that he understood, of course, that no existing organ of the United Nations could be entrusted with supervising human rights unless it accepted the task. In the case of Trieste, the Security Council had done so.

Mr. KORETSKY (Observer of the Union of Soviet Socialist Republics) stated that he had not overlooked Article 95, but that he did not feel that it applied in this case. He said that it was quite possible that some day the Soviet and the Australian governments could reach an agreement on a particular point; but that did not mean that the two governments could go to the General Assembly and ask it to enforce that agreement. However, if there existed a violation of human rights which threatened international peace and security, the Charter clearly made it possible for the situation to be brought directly to the attention of the Security Council, without previous reference to any Tribunal.

At the suggestion of Mr. DEHOUSSE (Belgium) four remaining questions were taken up with the following results:

1. It was agreed that the Working Group should not discuss the question of implementation of the proposed Convention or Conventions in non-member States.

2. It was agreed that special provisions for implementation might be necessary in connection with specific points in the Convention or Conventions; it was felt that these points could be dealt with only when the contents of the Convention were known.

3. It was agreed that the implementation of proposals for the prevention of discrimination and the protection of minorities must be a part of a single system for the implementation of human rights in general, as suggested by the Sub-Commission; and it was felt that the Drafting Committee might be asked to consider special minorities provisions for inclusion in the convention after consultation with the Sub-Commission.

On this question Mr. KORETSKY (Observer of the Union of Soviet Socialist Republics) observed that the questions of human rights and the protection of minorities did not necessarily coincide, because questions of cultural autonomy did not fall into the category of human rights; the two were connected, but did not coincide.

Mrs. MEHTA (India) said that in her opinion the general rights of minorities were included among the so-called human rights; any special rights, however, would have to be implemented by special measures that could not be considered until the principles were known.

4. It was decided that the question of an Attorney-General to deal with cases in dispute before the proposed International Court was one of detail which could be considered at a later stage.

The meeting rose at 6 p.m.