

COMMISSION ON HUMAN RIGHTSSecond SessionWorking Group on Implementation

Summary Record of First Meeting  
held in the Palais des Nations,  
Geneva, on Friday, 5 December 1947,  
at 11.30 a.m.

Present:

Acting Chairman: Mr. Edward LAWSON (Secretariat)

Members: Colonel W.R. HODGSON (Australia)  
Mr. DEHOUSSE (Belgium)  
Mrs. Hansa MEHTA (India)  
Mr. POUREVALY (Iran)  
Mr. KLEKOVKIN (Ukrainian S.S.R.)

The ACTING CHAIRMAN called for the election of Officers.

Colonel HODGSON (Australia) proposed that the representative of India be appointed Chairman and the representative of Belgium, Rapporteur.

The ACTING CHAIRMAN drew attention to the Rules of Procedure but, in the absence of any objections, he declared that Colonel HODGSON's proposal was carried by acclamation.

The CHAIRMAN (Mrs. Hansa MEHTA - India) directed attention to Document E/CN.4/21, and suggested that Annex H thereof would form the basis of the Working Group's study. She asked for observations on sub-paragraph 3 (a).

Colonel HODGSON (Australia) pointed out that the question of implementation did not relate to the Declaration but to the Bill or Convention. He suggested that it might be examined from two points of view: (1) implementation in the domestic field, which was the duty of every State signing and ratifying the Bill; and

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(2) how the Bill could be made effective in the international field.

He was not of opinion that the Bill would take the form set out in Paragraph 3. He envisaged a final article reading roughly: "This Bill or Convention cannot be amended or modified except along certain lines, that is, by special meeting of the ratifying States following on the circulation of a proposed amendment within a stated time". He also stated that he found it difficult to separate sub-paragraph (d) from the rest of Paragraph 3. As he saw it, the Bill or Convention would contain a clause to the effect that the Bill would come into force on being ratified by the signatory States. There would be an interval between the signing and the coming into force, in which interval the clause contained in sub-paragraph 3 (d) would require to be implemented. In his opinion, the Bill or Convention could only be ratified when the State concerned had reviewed its national law and brought it into conformity with the provisions of the Bill or Convention.

Mr. DEHOUSSE (Belgium), while agreeing that Annex H should form the basis of study, pointed out that it had been prepared by the Secretariat on the assumption that a Declaration would be drafted. The Commission on Human Rights, however, had decided to prepare a Declaration and one or several Conventions, and a distinction must be drawn between the two forms. He also maintained that the question of implementation arose only in the case of the Convention. Regarding the Declaration, he agreed with Colonel HODGSON that special attention must be paid to sub-paragraph 3.(d). With regard to sub-paragraph 3 (a) he was of opinion that it was unnecessary to include such a clause; it was generally accepted that an international instrument could not be unilaterally abrogated or modified.

Mr. KLEKOVKIN (Ukrainian S.S.R.) stated that he was of the opinion that it would be very difficult to decide on questions about implementation without first knowing the contents of the

Convention or Conventions and of the Declaration. He felt that the principal difficulty would lie in bringing the domestic law of some countries into conformity with the provisions of the Convention. That was why the Soviet Delegation had proposed in the Commission that consideration should first be given to the Declaration and be followed by consideration of the Convention and lastly, questions of implementation.

Mr. DEHOUSSE (Belgium), while agreeing that some questions of implementation could not be settled without taking into account the specific contents of the Declaration and of the Convention, felt that certain general measures might be discussed, for example, the question of the setting up of an International Court of Human Rights. He proposed, therefore, that consideration should first be given to drafting general provisions; later the contents of the Declaration and of the Convention could be taken into account and special provisions drafted if necessary.

The CHAIRMAN said it was clear that the provisions of the Conventions would have to become part of the national law of signatory States, as well as part of the programme of the United Nations.

Colonel HODGSON (Australia) felt that the Declaration should contain some clause regarding implementation and suggested that violation of the Declaration by a signatory State should involve some form of moral punishment, such as bringing the violating State before the Bar of the General Assembly of the United Nations. He was entirely in agreement with the representative of Belgium that the Working Group should deal first with general principles of implementation, irrespective of the contents of the Bill or Convention, and suggested that the means of implementation might be the same whether the Convention contained two articles or a hundred articles.

Mr. KLEKOVKIN (Ukrainian S.S.R.) still maintained that difficulties might be met in adapting domestic laws to the provisions of the Convention. These difficulties he felt would probably have to be discussed in the Plenary Session of the Commission.

Mr. DEHOUSSE (Belgium) said that Mr. KLEKOVKIN had raised a very important point, the compatibility of national laws with an international convention, which would have to be discussed later. Colonel HODGSON's point that there could be no ratification of the Convention before domestic law had been brought into conformity with its provisions, was also a very important consideration.

Mr. POUREVALY (Iran) agreed with the Belgian representative that the inclusion of sub-paragraph 3 (a) might diminish the value of the document.

Colonel HODGSON (Australia) agreed with the representatives of Belgium and Iran on the point and proposed the following text: "The Working Group is of the opinion that both the Declaration and the Bill should contain provisions to the effect that they cannot be unilaterally abrogated or modified".

The CHAIRMAN said a decision on Colonel HODGSON's proposal would be deferred until later and asked the representatives to pass on to sub-paragraph 3 (b).

Mr. DEHOUSSE (Belgium) and Mr. POUREVALY (Iran) were of opinion that, since an international Bill was being drafted, it was obviously a matter of international concern and such a clause as that contained in sub-paragraph 3 (b) was quite unnecessary.

Mr. KLEKOVKIN (Ukrainian S.S.R.) thought the point was not one of principle and really concerned the Working Group on the Convention. It should therefore be left to it for decision.

The CHAIRMAN said they would pass on to sub-paragraph 3 (c).

Mr. DEHOUSSE (Belgium) pointed out once more the necessity for distinguishing between the Declaration and the Convention: the

first was accepted and the second ratified. He stated that his report would be divided into two parts, one dealing with the Declaration and the other with the Convention. Regarding sub-paragraph 3 (c) he again considered that the clause was pointless, as international law was a part of the law of the realm. He pointed out, however, that the problem might arise of a State which, having ratified the Convention, did not take the necessary internal measures to apply it.

The CHAIRMAN said it was precisely because of the possibility of such a problem arising that, in her opinion, the matter was raised in sub-paragraph 3 (c).

Mr. KLEKOVKIN (Ukrainian S.S.R.) repeated his remarks regarding the difficulty of making decisions on implementation without first knowing the contents of the Convention, and reserved his right to speak on the subject in Plenary Session.

The CHAIRMAN explained to Mr. KLEKOVKIN that the Working Group was not concerned at that moment with the contents of the Convention. Articles proposed for the Convention might be discussed in the Plenary Session. The question under discussion, however, was whether, once agreement had been reached on a Declaration or a Convention, it should become part of the domestic law of signatory States.

Mr. KLEKOVKIN said he understood the question perfectly but it seemed to him that difficulties might arise for some countries because of the difference between the provisions and their domestic law.

Colonel HODGSON (Australia) felt that implementation of the Convention in the domestic field was a very important problem and he submitted the following text for the consideration of the Group:

"The Working Group is of the opinion that the provisions of the

Bill or Convention must be embodied in the domestic law of States ratifying it. States, therefore, must ensure that their laws cover the provisions of the Bill, so that no executive or legislative organs of government can override them, and that the Judicial organ shall be the means whereby the rights of the citizens of the State can be protected and enforced".

Mr. DEHOUSSE (Belgium) drew attention to another question which, in his opinion, was raised by sub-paragraph 3 (d). While, by ratification of the Convention, its provisions became automatically an integral part of the national law, other measures might be necessary. In support of this he cited the experience of the International Labour Office in connection with International Labour Conventions.

Colonel HODGSON (Australia) pointed out the difficulties in connection with ratification that might exist in States having a federal form of government. In his opinion the provisions of the Convention ought to be embodied in the constitutions of signatory States, and ought not to appear as statutory laws.

Mr. DEHOUSSE (Belgium) suggested that the opinion of the International Labour Office on this point be sought.

The meeting rose at 1.15 p.m.