



8 MAY 1952

COMMISSION ON HUMAN RIGHTS

Eighth Session

SUMMARY RECORD OF THE TWO HUNDRED AND FIFTY-SEVENTH MEETING

Held at Headquarters, New York,
on Thursday, 17 April 1952 at 3 p.m.

CONTENTS:

Recommendations concerning international respect for the self-determination of peoples (A/L.102, A/L.106, A/2112, E/CN.4/516, E/CN.4/649, E/CN.4/657, E/CN.4/L.21, E/CN.4/L.22, E/CN.4/L.23/Rev.1, E/CN.4/L.24, E/CN.4/L.25, E/CN.4/L.26, E/CN.4/L.27, E/CN.4/L.28, E/CN.4/L.28/Rev.1, E/CN.4/L.29, E/CN.4/L.30) (continued)

<u>Chairman:</u>	Mr. MALIK	(Lebanon)
<u>Rapporteur:</u>	Mr. WHITLAM	(Australia)
<u>Members:</u>	Mr. NISOT	Belgium
	Mr. VALENZUELA	Chile
	Mr. CHENG PAONAN	China
	AZMI Bey	Egypt
	Mr. CASSIN	France

Members (continued):

Mr. KYROU	Greece
Mrs. MEHTA	India
Mr. AZKOUH	Lebanon
Mr. WAHEED	Pakistan
Mr. BORATYNSKI	Poland
Mrs. ROSSEL	Sweden
Mr. KOVALENKO	Ukrainian Soviet Socialist Republic
Mr. MOROZOV	Union of Soviet Socialist Republics
Mr. HOARE	United Kingdom of Great Britain and Northern Ireland
Mrs. ROOSEVELT	United States of America
Mr. BRACCO	Uruguay
Mr. JEVREMOVIC	Yugoslavia

Representative of a specialized agency:

Mr. MORELLET	International Labour Organisation (ILO)
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Representatives of non-governmental organizations:Category A:

Miss KAHN	World Federation of Trade Unions (WFTU)
Miss SENDER)	International Confederation of Free Trade Unions (ICFTU)
Mr. LEARY)	

Category B:

Mr. MANUILA	International Association of Penal Law
Mr. AVRAM	International Bureau for the Unification of Penal Law
Mrs. CARTER	International Council of Women
Mr. BEER	International League for the Rights of Man
Mrs. PHILLIPS	Liaison Committee of Women's International Organizations
Mr. JACOBY	World Jewish Congress
Mr. RONALD	World Union for Progressive Judaism

/Secretariat:

He also wished to point out that in some cases the right to use a native language served to isolate groups from civilization and was often used as a means of slowing down progressive development toward independence.

Mr. CASSIN (France) stated that the French delegation which had expressed reservations on the principle of including the right of self-determination in the covenant could nevertheless contribute to the Commission's work in drafting an article.

Recent discussions indicated a general tendency for a short statement of principle rather than a detailed article.

He would be unable to support the first paragraph of the USSR proposal because it embodied a concept of "nations" not in line with the wishes of the General Assembly. The second paragraph was objectionable in that it singled out one category of States instead of applying to all States without exception. The third paragraph on minorities exceeded the directives of the General Assembly for an article on self-determination. While the question of minorities should be treated elsewhere, an attempt to introduce the principle of the rights of minorities in the article on self-determination would tend to weaken the principle of self-determination by discouraging States from ratifying the covenant.

The proposals of India, the United States and Yugoslavia shared the common characteristic of accepting the obligation of all States to promote the general principle of self-determination. In his opinion, the formula proposed by Egypt was too limited. On the three general texts, he preferred the United States proposal as a basic text because it was brief, applicable to all States and contained an important reference to the purpose and principles of the United Nations. The United States text might well be improved by additions from other proposals before the Commission. The Egyptian formula might suggest a definition of the principle of self-determination to be used in both covenants.

The Yugoslav proposal was worthy of consideration because it had the merit of including all sovereign States, Non-Self-Governing Territories and groups seeking emancipation. In his opinion, it would be preferable to refer to all States without discrimination, but if specific categories were to be named, there should be no omissions from the list, and it should apply to all States and all peoples without any exceptions.

/He had not

He had not yet come to a decision on the Belgian proposal because he was uncertain whether a mere question of drafting was involved in the translation of "constitutional processes". The point required clarification.

In general, he approved the second paragraph of the United States text. In his opinion, recognition of the rights of other States would serve to strengthen rather than weaken the principle of self-determination.

The remainder of the Yugoslav, Indian and Chilean proposals was premature at the present stage because they related to recommendations and in all cases would require protracted study and investigation. The Chilean proposal raised important questions of principle. If self-determination included inalienable sovereignty by the people over their natural resources, all international agreements would be subject to revocation by either of the parties. Technical assistance and other programmes of international co-operation would be discouraged if so sweeping a formula were adopted without adequate study. Such proposals should not be put to the vote but should be earmarked for extensive study and investigation.

He could not accept the Polish amendment because it resembled the USSR proposal, which he had declared he could not support.

Mr. BORATYNSKI (Poland) stated that if the Commission was prepared to join in implementing the resolution of the General Assembly as adopted rather than to limit its political and legal consequences, the best course of action would be approval of the USSR resolution embodying the general principle of self-determination and its practical conclusions. In any serious consideration of the subject, the second paragraph was an essential element. The right to self-determination could not be fully ensured without guaranteeing the right of national minorities to use their native tongue and to have their own cultural and educational institutions.

In his opinion, the search for definitions was unnecessary as self-determination should be proclaimed for all.

The United States proposal sought to weaken the principle of self-determination and legalize the colonial system. Its reference to "proper regard for the rights of other States" would undermine the principle of self-determination and constitute a step backward.

The Polish delegation considered the Egyptian and Chilean proposals acceptable and would support them.

Mrs. ROOSEVELT (United States of America) requested clarification of the Chilean proposal. While it was clear that past abuses of rights granted under contractual arrangements had led to the Chilean statement of principle, it seemed more appropriate to incorporate limitations in such agreements rather than to include statements in a treaty which would invalidate contracts and make international co-operation impossible. Satisfactory safeguards could be evolved without destroying all possibility of international assistance. She could not support the Chilean proposal in its present form but might find it acceptable if its wording were changed.

Furthermore, sovereignty rested in States and the people might not have title to the natural wealth. The Chilean proposal seemed to involve complicated matters of State succession which should not be mentioned without reference to such questions as the public debt etc. It would be manifestly impossible for the covenant to meet all the varying circumstances of individual cases.

The Indian proposal followed the specific language of the General Assembly in its opening sentence except for the word "shall". In her opinion, the language of the General Assembly was preferable.

The limitation of the proposal to large compact national groups making a conscious demand might lead to divergent interpretations. Moreover, difficulties might arise regarding the proposal for education by the Trusteeship Council.

The Yugoslav proposal was weak because it entered into great detail on secession and independence and failed to mention other methods by

/which people

which people might appropriately express their will. Also it failed to extend the right to peoples already organized in independent States or to stress the obligation to maintain independence and freedom. As an exhaustive, illustrative list could not be given, it would be preferable merely to state the principle. The United States delegation would therefore be obliged to vote against the Yugoslav proposal.

Mr. AZKOUL (Lebanon) wished to explain his delegation's provisional position on the various proposals before the Commission. No one of those texts appeared entirely adequate, but he hoped that by working on them the Commission would evolve something satisfactory.

The following considerations had to be kept in mind: the article to be drafted was intended for a legal instrument; no matter how the article was phrased, the covenant, and consequently the article itself, would be binding only on the parties to that instrument; in drafting the article, it was necessary to comply with certain express instructions of the General Assembly and to interpret correctly the General Assembly's views; and, as it was not the result of long study, the article should not be unduly detailed, lest its provisions be misinterpreted.

He then proceeded to examine the various proposals in turn. The first paragraph of the USSR draft resolution (E/CN.4/L.21) introduced the word "nation" which was not in the text adopted by the General Assembly. He was not opposed to the insertion of the word, as the General Assembly had used it in its resolution 545 (VI), and its omission in the sentence in question might well have been involuntary. If the Commission did not wish to leave itself open to criticism on that point, however, it might use the General Assembly text and then suggest in its report to the General Assembly that a reference to nations was desirable. The same remarks applied to the Polish amendment (E/CN.4/L.27).

The word "national" before "self-determination" in the same paragraph of the USSR draft resolution, however, was less acceptable. The General Assembly had at no time spoken of "national self-determination", and the phrase might be interpreted as meaning that peoples had the right to self-determination only on the national level and not on the international level.

The second paragraph of that draft resolution was a re-statement of one part of paragraph 1 of General Assembly resolution 545 (VI); by omitting all reference to the other part, it distorted the meaning of the General Assembly resolution and made it appear that only States having responsibilities for the administration of Non-Self-Governing Territories were bound to promote the realization of the right to self-determination. The text should be complemented by a statement to the effect that all States were so bound.

The third paragraph introduced the subject of minorities, which was irrelevant to the issue under discussion, and thus distorted the meaning given by the General Assembly to the right of self-determination.

The USSR draft resolution as it stood was inadequate; it spoke of Non-Self-Governing Territories and minorities, but failed to mention peoples within a sovereign State, thus giving the impression that such peoples were not included in the scope of the proposed article.

Point 1 of the Egyptian amendment (E/CN.4/L.23/Rev.1) to the USSR draft resolution contained a definition of the right to self-determination which was not all-inclusive. The Chilean draft resolution (E/CN.4/L.24) went much further in defining the economic aspect of that right than the words in the Egyptian amendment, "the right freely to determine their...economic...status", would indicate. The Egyptian definition might therefore be misinterpreted as limiting the right of self-determination. Furthermore, the reference to the right to determine social and cultural status might be taken by totalitarian regimes as an excuse for burning or prohibiting foreign books, strict control of education, and various other measures which were certainly not in the mind of the Egyptian representative. No definition would be better than an imperfect one.

Point 2 of the Egyptian amendment was a necessary complement to the USSR text, which did not contain a reference to "all States"; but it appeared to put on the same footing States which had direct responsibilities in the matter and States which had none.

The same objection applied to point 1 of the United States amendment (E/CN.4/L.28) to the USSR draft resolution: it, too, gave the impression that the States which administered Non-Self-Governing Territories and those which had none to administer had an equal responsibility in promoting the realization of the right of self-determination, whereas General Assembly resolution 545 (VI) made it

clear that the first group had a greater responsibility. The final text of the article should make that distinction, possibly by introducing some such phrase as "within the limits of their respective responsibilities".

The first clause of point 2 of the United States amendment was acceptable, but the words "in accordance with constitutional processes" were dangerous; they might be taken to mean that, if the constitution of a metropolitan State prohibited secession, a people under that State's authority could never hope to exercise its right of self-determination. The phrase "with proper regard for the rights of other States and peoples" was equally objectionable, as it permitted the exercise of a basic right only provided that all the other -- and possibly secondary or acquired -- rights of others were not injured thereby.

The Belgian amendment (E/CN.4/L.29) was undoubtedly intended to undo any possible damage caused by the adoption of the reference to constitutional processes in the United States amendment. Should that reference be rejected, however, he asked what would happen to the Belgian amendment; he would have to oppose it, as standing by itself it would appear to sanction the restriction of the right of self-determination on all except constitutional grounds.

He then turned to the Yugoslav draft resolution (E/CN.4/L.22). Its second paragraph contained a definition of a people which was as inadequate as the other definitions that had been attempted; according to it, a thousand people inhabiting the same village could call themselves a people. The paragraph, moreover, concentrated on the right to secede and omitted all reference to Non-Self-Governing Territories, thus departing from the position taken by the General Assembly.

The third paragraph contained a worthwhile idea, not to be found in other drafts; that States which in any way controlled the right of self-determination by another people should undertake to guarantee its free exercise.

With reference to the Indian draft resolution (E/CN.4/L.25), he could only regret that the United Nations, and the world as a whole, had not yet reached the stage at which the admirable ideas it contained would be applicable. It was, to say the least, premature to speak of a United Nations enquiry into the political development of peoples at a time when the United Nations had not the right to ask for reports on the political development of the populations of Non-Self-Governing Territories. Incidentally, the draft resolution contained a definition of the world "peoples" which was vague and not sufficiently comprehensive, and served once more to prove the dangers of attempting a definite

The Chilean draft resolution (E/CN.4/L.24) contained an idea which he appreciated and would be happy to accept, but he feared that as it stood, the resolution would discourage foreign investment in the under-developed areas which were badly in need of it.

Mr. NISOT (Belgium) remarked in reply to the representative of Lebanon that if the passage in the United States amendment containing a reference to "constitutional processes" were not adopted, the Belgian amendment would be withdrawn.

Mrs. MENHA (India) said that she was not entirely satisfied with any of the texts before the Commission, including her own. She was unable to accept the USSR draft resolution because of the last paragraph which dealt with minorities and was plainly irrelevant. She was as disturbed as the Lebanese representative had been by the reference to "constitutional processes" in the United States amendment: where no constitution existed, as was the case with Non-Self-Governing Territories, it was not clear by what processes the right to self-determination could be exercised. The reference in that amendment to the rights of other States was equally nebulous; she wondered who was to decide, in case of a conflict, which group's right should prevail.

While she held no brief for her own definition, she thought both the right of self-determination and the notion of "peoples" -- which was constantly being confused with minorities -- should be clearly defined.

Mr. VALENZUELA (Chile) remarked that several representatives had described the Chilean draft resolution (E/CN.4/L.24) as dangerous. The idea it contained, however, was perfectly simple and represented no such dangers as had been implied.

The French representative had said that the modern tendency of States was to surrender some of their sovereignty when entering into international arrangements. France could afford to surrender some of its economic resources, as it had done under the Schuman Plan, precisely because it had full sovereignty over them; but the countries of Latin America did not have complete sovereignty over their own property, which was being disposed of without their being consulted and without regard to the consequences to their peoples.

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A large share of Latin American resources was controlled by foreign enterprises which determined how much should be produced and at what prices, which suspended production when they so pleased in order to keep world prices at a high level, and which in many cases paid royalties not to the States whose resources they were exploiting but to other foreign enterprises from which they had leased concessions. In all those activities, no account was taken of the interests of the local population or of the hardships to which it might be subjected.

He did not think that foreign investment should be frightened off by the recognition of the simple fact that a people was master of its own country's resources. Private investment, the most likely to be so affected, had in any case dwindled of recent years, which was one of the reasons that Latin America was in such dire need of technical assistance.

He would not insist on the precise wording of his article, but would be ready to accept drafting changes, provided that the idea that peoples had a right to sovereignty over their own natural resources was unequivocally stated. Limitations to prevent abuses of that right could be included elsewhere.

AZMI Bey (Egypt) wished to clarify his intentions in reply to the Lebanese representative's criticism of the Egyptian amendments (E/CN.4/L.23/Rev.). A definition of self-determination had been included in those amendments in view of the existence of two covenants. The same idea had governed the Indian draft resolution (E/CN.4/L.26) and constituted the basic structure of the revised United States amendments (E/CN.4/L.28/Rev.1), which were divided into two parts, under the headings of the covenant on civil and political rights and the covenant on economic, social and cultural rights.

Mrs. ROOSEVELT (United States of America) stated that her original text had been revised in order to meet the definition in the Egyptian amendments; nevertheless, if the majority of the Commission agreed with the Lebanese representative that no such definition should be attempted, she would be prepared to withdraw it. She pointed out that the United States amendment also omitted the reference to nations proposed in the Polish amendment (E/CN.4/L.27), since it seemed that the concept of peoples included that of nations.

/She pointed

She pointed out that the phrase "constitutional processes" was in no way intended to limit obligations relating to self-determination to countries which already had constitutions. The real meaning of the phrase was that the right to self-determination should be promoted by legal and peaceful means; no restrictive interpretation dependent on existing constitutions was implied. An example of self-determination that had been granted by constitutional process was that of the Philippines, which had been achieved legally and peacefully, but had not been restricted in any way by the United States Constitution. The phrase "and with proper regard for the rights of other States and peoples" complemented that idea by stressing that the rights of States and peoples granting and receiving self-determination should be balanced.

Mr. HOARE (United Kingdom) was not satisfied with any of the drafts before the Commission, but was glad that at least some attempts had been made to define the nebulous terms "peoples" and "self-determination".

It was evident from the debate that there were two ways of approaching the problem of including an article on self-determination in the covenants. Certain representatives regarded the task merely as that of granting the right of self-determination to Non-Self-Governing Territories. According to that view, the only problems involved would be those confronting the administering authorities. In that connexion, it had to be recalled that many of the problems which arose concerning minorities within States equally arose in certain Non-Self-Governing Territories.

The second point of view was that of representatives who held that any obligation with regard to self-determination must be laid impartially on all signatory States and must apply in relation to every people which claimed self-determination. Experience had shown that the practical application of the principle of self-determination could only be achieved by a maximum of good will and skilful statesmanship; the difficulty of settling such matters by a stroke of the pen was therefore apparent.

With regard to the concrete proposals before the Commission, the principal difficulty seemed to be whether the directions given by the Assembly should or should not be followed exactly. The USSR draft resolution (E/CN.4/L.2) seemed to depart from those directives by laying emphasis on the somewhat

redundant second recommendation of the General Assembly concerning States which had responsibilities for the administration of Non-Self-Governing Territories. It was the purpose of the Egyptian amendment to restore the proper emphasis on the obligations of all States. He agreed with the Lebanese representative that there was no need to include the phrase "and nations" in the first paragraph and thought that the question of the preservation of cultural and educational institutions in the third paragraph of the USSR text was a quite separate issue which could best be dealt with when the Commission considered the separate article on this subject which had been proposed by the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

The Egyptian amendment broke new ground with its attempt to define self-determination; it seemed, however, that the economic, social and cultural status of the people arose out of circumstances beyond its immediate control and it was therefore dangerous to equate self-determination with that concept.

The Yugoslav draft resolution (E/CN.4/L.22) was vitiated by the wealth of detail that it contained; several representatives had criticized the text on those grounds and he would confine himself to pointing out that peoples seeking self-determination did not necessarily belong to "a group inhabiting a compact territory".

The Indian draft resolution (E/CN.4/L.25) at least recognized the difficulty of giving self-determination to a people which was not yet fit for self-government, but it in fact proposed an amendment of the Charter by stating that politically undeveloped peoples should be placed under the protection of the Trusteeship Council with a view to their education. The Chilean proposal (E/CN.4/L.24) was also extremely radical. Although he accepted the Chilean representative's statement that his case was supported by facts, he had noted that his proposal concerned the rights over their natural resources of peoples who were already Sovereign States. Such rights of States had nothing to do with human rights. Moreover, the Chilean representative was asking the Commission to write international law and to define the relations between States owning resources and States or their nationals seeking to exploit such resources. The Commission was obviously not competent to deal with such matters nor were they proper for inclusion in a covenant on human rights.

The CHAIRMAN stated that the Commission was bound to conform with the specific instructions of the General Assembly and recalled that it had done so previously with regard to the Assembly's directives on the question

of whether one or more covenants should be drafted and on that of the territorial application clause. When the Commission had done everything in its power to discharge its duties faithfully, however, it could give the General Assembly its expert opinion in a separate resolution through the Economic and Social Council, as it had done with regard to the question of the number of covenants to be drafted.

Mr. KYROU (Greece) thought that, in view of the general dissatisfaction with the proposals before the Commission, most representatives were not prepared to vote. He therefore suggested that the Lebanese representative, who, as Rapporteur of the Third Committee, was best aware of the Assembly's intentions, might prepare a working paper with the text of an article which would be acceptable to the majority of the Assembly. Meanwhile, the draft resolutions and amendments before the Commission would remain in abeyance and would be voted on if the Lebanese working paper proved to be unacceptable.

Mr. AZKOUL (Lebanon) agreed to submit a working paper, provided that it would be presented on behalf of his delegation.

The CHAIRMAN pointed out that such a working paper could not be regarded as a proposal and could not be voted on, since the time-limit for original proposals had expired.

Mr. AZKOUL (Lebanon) suggested that the working paper might be submitted as an amendment.

The CHAIRMAN pointed out that the text could not be submitted as an amendment if it bore no relation to any of the original proposals.

AZMI Bey (Egypt) proposed that the Secretariat should be asked to prepare a paper synthesizing all the draft resolutions and amendments before the Commission, in order to facilitate the vote.

The CHAIRMAN stated that the Secretariat would be unable to prepare such a document for the following meeting, since no technical services were in operation after 6 p.m.

/AZMI Bey

AZMI Bey (Egypt) withdrew his proposal;

The CHAIRMAN suggested that the Commission should proceed to a vote on the following day.

Mr. MOROZOV (Union of Soviet Socialist Republics) supported that suggestion in principle, with the reservation that any new amendments should be discussed.

The meeting rose at 6 p.m.