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COMMISSION ON HUMAN RIGHTS

Eighth Session

SUMMARY RECORD OF THE TWO HUNDRED AND FIFTY-FOURTH MEETING

Held at Headquarters, New York,
on Tuesday, 15 April 1952, at 3 p.m.

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	Mr. KYROU	Greece
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	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 Organization (ILO)

Representatives of non-governmental organizations:

Category A:	Miss KAIN	World Federation of Trade Unions (WFTU)
	Miss SENDER	International Confederation of Free Trade Unions (ICFTU)
Category B:	Mr. LEWIN	Agudas Israel World Organization
	Mrs. VERGARA	Catholic International Union for Social Service
	Mr. NOLDE	Commission of the Churches on International Affairs
	Mr. MANUILA	International Association of Penal Law
	Mr. AVRAM	International Bureau for the Unification of Penal Law
	Mrs. CARTER) Mrs. PARSONS)	International Council of Women
	Miss ROBB	International Federation of University Women
	Mr. JACOBY) Mr. PERLZWEIG)	World Jewish Congress
	Mr. RONALDS) Mrs. FARBER) Mrs. POLSTEIN)	World Union for Progressive Judaism
	Mr. PENCE	World's Alliance of Young Men's Christian Associations
Secretariat:	Mr. DAS) Miss KITCHEN)	Secretaries of the Commission

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) (continued)

The CHAIRMAN called for a continuation of the general debate.

/Mr. MOROZOV

Mr. MOROZOV (Union of Soviet Socialist Republics) wished to explain his country's position on the right to self-determination. The national problem had been successfully solved in the USSR, where all races, nationalities, peoples and tribes enjoyed full equality of all rights, including the right of self-determination, and had been developing their own economy and culture in entire freedom and with the generous and disinterested assistance of the USSR.

The right to self-determination was guaranteed by the USSR Constitution, Article 123 of which not only accorded full equality of rights to USSR citizens, irrespective of their nationality or race, but made any discrimination on those grounds, as well as any advocacy of racial or national exclusiveness or hatred and contempt, punishable by law, while Article 17 reserved to every Union Republic the right freely to secede from the USSR.

Having eliminated the problem in their own midst, the peoples of the USSR had always viewed with great sympathy all attempts to solve it elsewhere. The USSR had steadfastly supported all peoples fighting for their national independence and sovereignty. To cite but a few examples, in the Security Council the USSR representative in 1946 had supported the request of Syria and Lebanon for the evacuation of foreign troops from their territory, and in 1947 a similar request by Egypt; and within the current month the USSR representative had stated that the Security Council could not ignore the representatives of over 600 million people who held that the Tunisian question represented a threat to peace and should be considered by the Security Council.

The opposition shown on the last-mentioned occasion by the United States, the United Kingdom, France and a few other countries had not been fortuitous. Those were the same States which had opposed the wording "All peoples shall have the right to self-determination", finally adopted by the General Assembly in its resolution 545 (VI).

The general debate in the Commission had so far developed slowly and hesitantly, as though representatives had been unwilling to speak their mind. The Belgian representative's speech had been very cautious; he had confined himself to asking five questions, and it was to be hoped that in the end he would answer them himself. Since, however, in the General Assembly the Belgian delegation had voted against the sentence just quoted, it was difficult to escape the conclusion that the Belgian representative had been engaging in legal casuistries for the purpose of creating confusion and disguising his true attitude.

/The United Kingdom

The United Kingdom representative had been somewhat less cautious: he had indicated that the formula adopted by the General Assembly only applied an obligation already undertaken by the States signatories of the Charter. This restrictive interpretation was plainly the position of a colonial Power and required no comment. The General Assembly, in adopting that formula, had most certainly given it an altogether different meaning. It was worthy of note that, in the conception of the United Kingdom representative, there was a great difference between recognition of the right to self-determination and the assumption by a State of the obligation to implement that right.

The Greek representative had appeared to confound self-determination with self-government. At best, that was the result of a confusion; at worst, an attempt to confuse.

The French representative had had recourse to an argument frequently used by colonial Powers to defeat measures which might free the peoples under their domination: that the adoption of the elementary article on the right to self-determination outlined by the General Assembly would make the ratification of the covenant on human rights more difficult. The use of such arguments was in itself an indication that there were no real arguments to be put forward. In fact, if the representatives who invoked legal difficulties would say outright that they opposed the recognition of the right of peoples to self-determination, the issue would be clearer and much easier to settle. It was for that very reason that they sought to conceal their unwillingness to see the principle put into effect.

The French representative had also spoken of a balance to be maintained between the aspirations of single groups and the general interest. The recent events in Tunis showed all too clearly what the French Government's conception of such a balance was.

The French representative also appeared to be more eager to formulate the restrictions to the right of self-determination than he was to see the right itself proclaimed. It was also apparent that he did not think that the right to self-determination could be dealt with on the same level as the other rights with which the Commission had to deal. This was shown by his statement that the problem was not one which fell within the province of the Commission's work.

/Mr. Morozov

Mr. Morozov declared that he had not wished to engage in polemics; his object had been to show that the various objections and difficulties raised in the general debate had been attempts to prevent the Commission from carrying out the mandate of the General Assembly. He hoped that he had thereby accomplished a useful function and had cleared the way for the Commission's work.

He then introduced the USSR draft resolution relating to the insertion in the draft covenants of an article concerning international respect for the self-determination of peoples (E/CN.4/L.21).

The first sentence of the draft resolution was phrased somewhat differently from the sentence adopted by the General Assembly, in that it spoke of "every people and every nation". The reason was that the General Assembly itself had used that more precise and more comprehensive formula. Not only resolution 421 D (V), but also resolution 545 (VI) itself in three different places -- the first and second paragraphs of the preamble and paragraph 1 of the operative part -- referred to "peoples and nations". Only in the sentence which was to be part of the article on the right to self-determination had the word "nations" disappeared; the USSR delegation proposed that it should be restored.

The second paragraph of the USSR draft resolution was a rephrasing of the passage contained in paragraph 1 of the General Assembly resolution, and stated a principle for which the USSR had fought for many years. Unless that principle were adopted, the recognition of the right to self-determination would remain an empty phrase. In non-self-governing territories there was nothing remotely resembling concern for the development of self-determination. The official documents of the United Nations alone would provide more than adequate material -- which he would be happy to cite if the need arose -- to demonstrate that fact and to prove that the passage was acutely needed.

The last paragraph of the draft resolution was equally necessary. Lack of educational facilities had held back the cultural development of many peoples and had thus postponed the time when they might be ready to exercise the right of self-determination and to decide their own fate. A great deal of material was available on that point as well.

The USSR delegation proposed the draft resolution as an article to be included in both covenants.

/He emphasized

He emphasized that the adoption of that article would be important not only to the peoples who might be thus enabled to exercise the right to self-determination, but also to those who had hitherto dominated them. No people could be truly free that held another in subjection. The time had come for those who still clung to the outworn ideas of colonialism to recognize that fact and to realize that the world was no longer divided between a master race and all the rest.

Another most important point was that the article on the right to self-determination, if adopted, would not stand alone. The draft covenant contained a number of provisions which would complement it, such as articles 1 and 17 and the article on territorial application. In addition, the USSR delegation would propose articles dealing with participation in the government of the State and with the prohibition of fascist or nazi propaganda, which would safeguard the rights of all peoples and nationalities. If those articles were adopted, all the relevant provisions taken together would constitute a serious programme which, if scrupulously adhered to, would ensure a full implementaion of the right of peoples and nations to self-determination.

Mr. NISOT (Belgium) noted that the USSR representative reproached him for having raised certain questions and drawn attention to certain problems. The USSR representative was apparently above all afraid that the exact significance of the right of self-determination might be defined, thus putting an end to arbitrary and opportunist interpretations. He asked whether the Soviet Union's concept of self-determination was shared by the peoples of Estonia, Lithuania, Latvia, Poland, Romania and Czechoslovakia.

Mr. LEWIN (Agudas Israel World Organization) pointed out that the principle of self-determination was no longer in question, since the General Assembly resolution had clearly rendered it a res judicata. The first sentence of the article to be included in the covenant was no longer open to discussion; the Commission now had to decide on the wording of the second

/part

part of the resolution, which stipulated that all States, including those having responsibility for the administration of non-self-governing territories, should promote the realization of that right and that States responsible for the administration of such territories should promote the realization of the right in those territories.

States could promote self-determination in two ways. The first way was to take positive measures, and the second was to avoid recourse to manoeuvres calculated to frustrate the principle of the right of peoples to self-determination, as was stated in paragraph 2 of the Assembly resolution. The type of implementation that would satisfy both requirements was the legally-organized expression of the people's will by means of a plebiscite.

The Belgian representative in the Third Committee had doubted whether a plebiscite was enough to justify the transfer of a population. It might be possible, however, to arrange for such plebiscites under United Nations supervision, perhaps under that of the Trusteeship Council. Moreover, such plebiscites had to be organized in such a manner that peoples should know that they were approaching self-determination. That might be achieved by references to the progress of self-determination in reports of visiting missions to the Trusteeship Council. That measure would enable the United Nations, the missions, and the populations to devise a method of organizing plebiscites.

Thus the three main elements govering the right to self-determination were the initial principle, the promise of a plebiscite, and periodic reports on the progress of self-determination in non-self-governing territories. In the light of those considerations he suggested that the article to be inserted in the covenant should read as follows:

> "All peoples shall have the right of self-determination.
>
> "The population of non-self-governing territories shall be given an opportunity to express its free will as to the form of government it desires to have by way of a plebiscite organized by the administration of such territories under the supervision of an organ of the United Nations.

/"States which

"States which have responsibility for the administration of non-self-governing territories shall report periodically to the Trusteeship Council of the United Nations about the progress made in the realization of the principle of self-determination in relation to the peoples of such territories."

Mr. BIRECKI (Poland) stated, in reply to the Belgian representative, that the Polish people distinguished between its real and its false friends. The Belgian representative in his statement had given a picture of the type of freedom that he advocated; that erroneous concept of freedom had formerly prevailed in Poland, but did so no longer.

Mr. AZKOUL (Lebanon) thought that the main question that had emerged from the general debate was whether it was enough to reaffirm the principle of self-determination in the draft covenant, or whether that principle should be elaborated by indicating the modalities and guarantees of its application.

The Belgian representative had done well to raise all the problems relating to self-determination. He himself had been disturbed, however, by the fact that those problems were being enumerated and sub-divided without due consideration of the existing state of international law. According to the Belgian representative, every effort had to be made to render the enumeration more concrete and, if that effort did not succeed, the Commission would need far more time than it had at its disposal and a competence which it did not possess. In view of those considerations, the first question to be decided by the Commission was whether the wording was too vague, or whether an effort should be made to draft an article even if it remained vague.

The Belgian representative had raised five specific problems relating to self-determination. First came the question of the specific human group to which the principle applied; it seemed to be impossible to find a uniform and universally applicable definition. Secondly, it was difficult if not impossible to find criteria for the stage at which peoples might apply for self-determination. Thirdly, there was the difficult problem of the method of achieving self-determination. Fourthly and fifthly, the attitudes of the

/country in

country in which the minority existed and of other countries more or less closely concerned had to be considered. It was certainly useful to discuss all those questions, even if they could not be settled immediately.

Nevertheless, in raising those questions the Belgian representative had given the impression that the main purpose of the right to self-determination was to promote that right in relation to minorities within countries. That was the aspect of the question which most closely affected European countries, and it was natural that it should be stressed by the Belgian representative; nevertheless, the countries which had raised the question in the General Assembly were not European. It was therefore understandable that the pivot of the whole problem was not the position of minorities, but that of countries that had lost their independence as a result of aggression. The main issue was that of the Non-Self-Governing Territories, to which some of the Belgian representative's examples would not apply. It was true that on certain levels populations had no consciousness of nationality, and there was no intention of imposing self-determination on such populations. There were also, however, peoples deprived by their own government of an opportunity to manage their own affairs; and national governments were imposed on some peoples by foreign rule. Thus, the general principle was not subject to insoluble legal problems.

The French representative had stressed that there was no jurisprudence in that field and had stated that it was for the Commission to create such jurisprudence. Jurisprudence, however, could not be created theoretically round a conference table, but only by the experience of courts and by practical interpretation.

The principle was difficult to apply only in one or two cases out of ten, where the group concerned might indeed be a minority within a State. It therefore seemed advisable to sacrifice such exceptional cases to the majority to which the general principles would apply.

A convincing justification of the statement of the general principle was its inclusion in the Charter. When the authors of the Charter at San Francisco had included references to the right of self-determination in that instrument they had not paused to study all the legal aspects. Although the Charter had legal validity, it was essential to restate the principle in the covenant for a number of reasons.

/The principle

The principle of self-determination was stated in Articles 1 and 55 and, more obliquely, in Article 73 (b) and 76 (b) of the Charter. Nevertheless, in Articles 1 and 55 it was included as a means of achieving friendly relations among nations, and not as a principle properly so called. That context has given rise to the United Kingdom argument that the Charter referred to the right of sovereign peoples to self-determination in order to promote friendly relations. The possibility of such an interpretation showed that a statement in the covenant of the principle out of that context would be useful. Articles 73 (b) and 76 (b) contained references to self-determination as an alternative, and not as a necessity. Thus the principle as stated in the Charter was limited; its bald restatement in the covenant would render it applicable to all peoples.

Moreover, the covenant would impose more individual obligations upon its signatories than did the Charter. Article 55 imposed obligations on Member States in co-operation with the Organization, thus involving obligations towards the Organization only and not towards other Members. The covenant, however, would be signed by each State on its own behalf; that was the principal value of the instrument.

It was essential that the text should be as concrete as possible for its effective implementation; but even if absolute precision were difficult or impossible it was nevertheless important to make a general statement of principle without the restrictions of the Charter. Although implementation would be difficult and in some cases impossible, the jurisprudence referred to by the French representative would evolve gradually out of the statement.

Such a statement of principle would be further justified by its value in counteracting certain traditional misconceptions. In the first place, the wide publicity which would be given to the covenant would have the moral effect of counteracting the concept of "might is right", especially in the non-self-governing territories. In the second place, the idea that cultural and technical superiority gave certain countries the right to govern others, which might be invoked as a compensation, but never as a justification, for a denial of self-determination would to some extent be undermined. Lastly, the false argument

/that world

that world peace occasionally depended on countenancing annexation and suppressing the principle of self-determination, an argument which had served as a pretext for aggression, would be refuted.

Because his country had been a co-sponsor of the resolution subsequently adopted by the General Assembly, and from his experience as Rapporteur of the Third Committee, he assured the Commission that the majority of the Assembly had wished the article to be inserted in the covenant as a minimum requirement, and not as a statement on the jurisprudence and doctrine of self-determination. Although it might be difficult to draw up precise and concrete texts, it was essential to adopt such a minimum, which would prove extremely valuable.

Mrs. ROOSEVELT (United States of America) said that the representative of Lebanon was apparently suggesting that, in view of the absence of judicial interpretation in the field of the right of self-determination, some provision, even if not clearly and precisely phrased, should be included in the covenant as a means of achieving clarification. The covenant, however, a legally binding instrument when ratified, should not include any provision which was not carefully phrased and legally intelligible. The Commission should carefully consider all texts proposed for inclusion in the covenant.

Mr. NISOT (Belgium) pointed out that even the formula "All peoples have the right to self-determination" had no legal clarity and no precise meaning. If the argument presented by the United States representative were accepted, that formula, already approved by the General Assembly, would have to be rejected.

Mrs. ROOSEVELT (United States of America) replied that in her opinion the formula adopted by the General Assembly with regard to self-determination should be clarified, not rejected.

Mr. AZKOUL (Lebanon) also hoped that a clearer and more legal formulation could be achieved. If that proved impossible, he was prepared to accept the statement of principle as it stood and leave the solution of difficult cases to whatever general machinery for implementation the Commission decided to adopt.

Mr. MOROZOV (Union of Soviet Socialist Republics), on a point of order, requested that the prompt service afforded him at the preceding session for the translation of Commission documents into Russian should be continued during the present session.

Mr. VALENZUELA (Chile) requested similar service in the distribution of the Spanish translation of Commission documents.

The CHAIRMAN stated that, although Russian and Spanish were working languages only in the General Assembly, the Secretariat would as a matter of courtesy do its utmost to provide translation of documents into Russian and Spanish as promptly as possible.

Mr. VALENZUELA (Chile) requested that the draft article prepared by the Sub-Commission on Freedom of Information and of the Press and contained in the report of the seventh session of the Commission (E/1992, page 36) should be circulated as a separate document in order to facilitate comparison with paragraph 3 of the USSR proposal (E/CN.4/L.21).

The CHAIRMAN noted that the Sub-Commission's text was automatically before the present session of the Commission and therefore need not be issued as a separate document.

/He suggested

He suggested that the Commission might wish to close the list of speakers in the general debate and agree to a time-limit for the submission of draft resolutions and amendments. He proposed that the time-limit should be 1 p.m. on the following day.

Mr. MOROZOV (Union of Soviet Socialist Republics) supported the time-limit for the submission of proposals but felt that it would be premature to close the list of speakers in the general debate at that stage.

Mrs. ROOSEVELT (United States of America) supported the proposal to close the general debate on the understanding that the Commission would then proceed to a discussion of the individual proposals before it. She particularly favoured the time-limit for the submission of proposals suggested by the Chairman.

Mr. BORATYNSKI (Poland) thought that the decision to close the general debate should be postponed until the following day.

The Commission agreed that all basic texts and amendments should be submitted by 1 p.m. on the following day.

The CHAIRMAN agreed that it might be premature at the present stage to close the list of speakers, but announced that at the next meeting he would urge a decision to close the general debate.

The meeting rose at 5.50 p.m.

30/4 p.m.