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SESSION 1947-48



SPECIAL JOINT COMMITTEE OF THE SENATE
AND THE HOUSE OF COMMONS

ON

HUMAN RIGHTS

AND

FUNDAMENTAL FREEDOMS

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 1

FRIDAY, APRIL 23, 1948

OTTAWA
EDMOND CLOUTIER, C.M.G., B.A., L.Ph.,
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY
1948

ORDERS OF REFERENCE
THE SENATE

TUESDAY, 20th April, 1948.

Resolved,—That the Senate do unite with the House of Commons in the appointment of a Joint Committee of both Houses of Parliament to consider the question of human rights and fundamental freedoms, and the manner in which those obligations, accepted by all members of the United Nations, may best be implemented;

And, in particular, in the light of the provisions contained in the Charter of the United Nations, and the establishment by the Economic and Social Council thereof of a Commission on Human Rights, what is the legal and constitutional situation in Canada with respect to such rights, and what steps, if any, it would be advisable to take or to recommend for the purpose of preserving in Canada respect for the observance of human rights and fundamental freedoms;

That the following Senators be appointed to act on behalf of the Senate on the said Joint Committee, namely, the Honourable Senators: Ballantyne, Bouffard, Crerar, Fallis, Gouin, Horner, Leger, McDonald (*Kings*), Roebuck, Turgeon and Wilson.

That the Committee shall have the power to recommend (*a*) that there be referred to the Supreme Court of Canada such questions as in the opinion of the Committee are necessary to determine to what extent the preservation of the fundamental freedoms of religion, speech, press and assembly, and the maintenance of the constitutional safeguards of the individual, are matters of federal jurisdiction; or (*b*) that there be referred to the Supreme Court of Canada a draft Bill of Rights, containing such provisions as in the opinion of the Committee should be included therein, to determine whether or not it is within the powers of the Federal Parliament to enact such a Bill of Rights for the Canadian people.

That the Committee shall have power to send for persons, papers and records, and to report to the Senate from time to time.

That a Message be sent to the House of Commons to inform that House accordingly.

FRIDAY, 23rd April, 1948.

Ordered,—That the said Committee be empowered to print, from day to day, 750 copies in English and 300 copies in French of its minutes of proceedings and evidence, and that Rule 100 be suspended in relation thereto.

Ordered,—That it be empowered to sit during sittings and adjournments of the Senate.

Ordered,—That its quorum be ten.

ATTEST

L. C. MOYER,
Clerk of the Senate.

ORDERS OF REFERENCE

HOUSE OF COMMONS

FRIDAY, 16th April, 1948.

Resolved,—That it is expedient to appoint a Joint Committee of both Houses of Parliament to consider the question of human rights and fundamental freedoms, and the manner in which those obligations accepted by all members of the United Nations may best be implemented;

And, in particular, in the light of the provisions contained in the Charter of the United Nations, and the establishment by the Economic and Social Council thereof of a Commission on Human Rights, what is the legal and constitutional situation in Canada with respect to such rights, and what steps, if any, it would be advisable to take or to recommend for the purpose of preserving in Canada respect for the observance of human rights and fundamental freedoms.

And that Messrs. Beaudoin, Breithaupt, Cournoyer, Croll, Dechene, Diefenbaker, Fournier (*Maisonneuve-Rosemont*), Fulton, Hackett, Hansell, Harkness, Hazen, Herridge, Ilsley, LaCroix, Macdonnell (*Muskoka-Ontario*), Marier, Marquis, Michaud, Massey, Miller, Probe, Rinfret, Robinson (*Simcoe East*), Smith (*York North*), Stewart (*Winnipeg North*), Stuart (*Charlotte*), Whitman, Zaplitny be members of such Committee, as far as the interests of this House are concerned.

That the committee shall have power to recommend (a) that there be referred to the Supreme Court of Canada such questions as in the opinion of the committee are necessary to determine to what extent the preservation of the fundamental freedoms of religion, speech, press and assembly, and the maintenance of the constitutional safeguards of the individual, are matters of federal jurisdiction; or (b) that there be referred to the Supreme Court of Canada a draft Bill of Rights, containing such provisions as in the opinion of the committee should be included therein, to determine whether or not it is within the powers of the federal parliament to enact such a Bill of Rights for the Canadian people.

That the Committee shall have power to send for persons, papers, and records and to report to the House from time to time.

That a Message be sent to the Senate requesting that House to unite with this House for the above purpose, and select, if the Senate deems advisable, some of its Members to act on the said proposed Joint Committee.

FRIDAY, 23rd April, 1948.

Ordered,—That the said Committee be empowered to print, from day to day, 750 copies in English and 300 copies in French of its minutes of proceedings and evidence, and that Standing Order 64 be suspended in relation thereto.

Ordered,—That the said Committee be empowered to sit during sittings of the House.

Ordered,—That the quorum of the said Committee be ten members.

ATTEST.

ARTHUR BEAUCHESNE,
Clerk of the House.

REPORT TO THE SENATE

FRIDAY, April 23, 1948.

The Special Joint Committee on Human Rights and Fundamental Freedoms beg leave to make their first report, as follows:—

Your Committee recommend:—

1. That it be empowered to print, from day to day, 750 copies in English and 300 copies in French of its minutes of proceedings and evidence, and that Rule 100 be suspended in relation thereto.

2. That it be empowered to sit during sittings and adjournments of the Senate.

3. That its quorum be ten.

All of which is respectfully submitted.

L. M. GOUIN,
Chairman.

REPORT TO THE HOUSE OF COMMONS

FRIDAY, April 23, 1948.

The Special Joint Committee on Human Rights and Fundamental Freedoms begs leave to present the following as a

FIRST REPORT

Your Committee recommends:

1. That it be empowered to print, from day to day, 750 copies in English and 300 copies in French of its minutes of proceedings and evidence, and that Standing Order 64 be suspended in relation thereto.

2. That it be empowered to sit during sittings of the House.

3. That its quorum be ten.

All of which is respectfully submitted.

J. L. ILSLEY,
Chairman.

MINUTES OF PROCEEDINGS

FRIDAY, April 23, 1948.

The Special Joint Committee on Human Rights and Fundamental Freedoms met at 11.00 o'clock a.m.

Present:

The Senate: Honourable Senators Bouffard, Burchill, Crerar, Fallis, Leger, Roebuck, Turgeon.

The House of Commons: The Right Honourable J. L. Ilsley, and Messrs. Diefenbaker, Hackett, Hansell, Hazen, Lacroix, Macdonnell (*Muskoka-Ontario*), Marier, Marquis, Michaud, Miller, Probe, Rinfret, Stewart (*Winnipeg North*), Whitman, Zaplitny.

On motion of Mr. Whitman, seconded by Mr. Marquis, *Resolved*,—That Right Honourable J. L. Ilsley, M.P., be Joint Chairman.

On motion of Honourable Senator Turgeon, seconded by Honourable Senator Crerar, *Resolved*,—That Honourable Senator L. M. Gouin be Joint Chairman.

Mr. Ilsley took the Chair. He thanked the Committee for the honour of again serving as Joint Chairman and advised the Committee that Senator Gouin was unavoidably absent.

On motion of Mr. Hackett,—

Resolved,—That the Committee ask leave to sit while the Senate and the House are sitting and during adjournments of the Senate.

On motion of Mr. Marquis,—

Resolved,—That the Committee ask leave to print from day to day, 750 copies in English and 300 copies in French of its minutes of proceedings and evidence.

Senator Bouffard raised the question of the delay in receiving the French version of the Committee's evidence. The Chairman stated that a statement was read in this House at the last session of Parliament explaining that this delay was caused by the inability of the Translation Bureau to cope with the volume of work.

On the motion of Mr. Diefenbaker,—

Resolved,—That the Committee recommend that its quorum be reduced to ten.

On motion of Mr. Hackett, seconded by Senator Crerar,—

Resolved,—That the Steering Committee consist of seven members namely, Senator Turgeon, Messrs. Diefenbaker, Hansell, Stewart (*Winnipeg North*), the Joint Chairmen, and that the Chairman select one more member from representatives of the House of Commons.

The Committee considered procedure. A suggestion by the Chairman that procedure be reviewed by the Steering Committee was concurred in.

On motion of Mr. Diefenbaker,—

Resolved,—That Mr. J. P. Humphrey, Director of the Division of Human Rights, United Nations Organization, be invited to assist the committee during its consideration of the Draft International Declaration of Human Rights.

Senator Roebuck suggested that the Steering Committee take under consideration the question of inviting the provinces to co-operate with the Committee in the procedure by which a bill or declaration of rights might be attained.

At the request of Mr. Hackett, the Chairman directed that copies of "To Secure these Rights", a Report of the President's Committee on Civil Rights, 1947, be obtained and distributed to all members of the Committee.

At the request of Senator Bouffard, the Chairman directed that additional copies of the "Report of the Commission on Human Rights, 1948" be obtained.

The Committee adjourned at 11.40 o'clock a.m. to meet again at the call of the Chair.

J. G. DUBROY,
Clerk of the Committee.

MINUTES OF EVIDENCE

HOUSE OF COMMONS,

April 23, 1948.

The Special Joint Committee on Human Rights and Fundamental Freedoms met this day at 11 a.m. The Right Hon. Mr. J. L. Ilsley (Joint Chairman) presided.

The CHAIRMAN: I thank you, gentlemen, for selecting me as one of your chairmen. Senator Gouin, the Joint Chairman, told me yesterday he could not be here today but that he would be here on Tuesday. I do not know when our next meeting will be, but he will be here on Tuesday.

Now, it is usual to read the order of reference. Shall we have it read or shall we have it taken as read? It has already received some discussion.

Now, we have to deal with some routine organization motions, one of which is to ask for permission to sit while the House is sitting or during adjournments of either House.

Mr. HACKETT: Mr. Chairman, that may become a rather serious matter when we have several committees sitting at the same time. At the moment there are several busy committees sitting, including the Prices Committee, the Veterans Affairs Committee and the Committee on Banking and Commerce. Probably we could go on the principle that the fewer people there are in the House the more progress they make.

The CHAIRMAN: Sometimes that may not be so.

Hon. Mr. ROEBUCK: The question is whether we can get power to do this.

Mr. HACKETT: That may be true; but I was saying that the demands upon the ordinary members' time are great.

Mr. MARQUIS: The motion can be passed, but we are not obliged to follow it.

The CHAIRMAN: I notice that the Committee on Banking and Commerce is sitting in the evening.

Mr. HACKETT: Yes, that committee is sitting from 8.30 to 10.30 on two or three nights a week.

The CHAIRMAN: It is quite a problem to know how to keep so many committees functioning, and we may have to recommend that this committee sit at peculiar hours, as the Banking and Commerce Committee is doing. However, the motion is that the committee ask leave to sit while the House is sitting and during adjournments of the Senate.

Mr. HACKETT: I so move.

Hon. Mr. ROEBUCK: I do not like that part which contains the words "during adjournments of the Senate"; I do not know that we are going to adjourn, but if we happen to be away it would not be a good thing for the committee to sit.

The CHAIRMAN: Very often a number of the senators are here even while the Senate is adjourned.

Hon. Mr. ROEBUCK: Only those who live in Ottawa; the rest go home. Of course, those who live in the far east or the far west are probably here. However, go ahead; but I hope you do not have to sit on those occasions.

Mr. HACKETT: I hope we do not have to sit in the evening.

The CHAIRMAN: I suggest that we set up a steering committee on which the Senate will be represented and that the whole matter of sittings can be left to the steering committee. The clerk tells me that sometimes the Senate is technically adjourned, but that on the date we might meet the Senate might not convene until at night. That is, the Senate is adjourned but nevertheless the senators are here. If there is no objection I will declare the motion carried.

There should be a motion asking for authority to print the day-to-day proceedings. Last year there was authority to print 750 copies in English and 200 copies in French, and I understand that that number proved sufficient. The clerk reminds me that sometimes the French copies are rather late in coming out.

Hon. Mr. ROEBUCK: Our Committee on Immigration printed 1,000 copies and that number does not seem to be excessive.

Mr. STEWART: If 750 copies in English proved a reasonable number from our experience I move we print that number.

The CHAIRMAN: There is the point about the French printing; whether the number printed in French should be larger, provided they are printed in time.

Mr. STEWART: If they are not printed in time I cannot see how they can be made immediate use of.

The CHAIRMAN: The clerk tells me that the translation bureau is not equal to the task. There was a statement made in the House last year about it.

Mr. MARQUIS: I move that 300 copies be printed in French.

Carried.

The CHAIRMAN: We have now to deal with our quorum. The rule is that the quorum must consist of a majority of the members. Last year our quorum was fixed at ten, and it is suggested that that be the quorum fixed for this year.

Mr. HACKETT: I think that is very wise in view of the number of committees sitting and the difficulty of getting a quorum.

Mr. DIEFENBAKER: I so move.

The CHAIRMAN: That motion is seconded by Mr. Marquis.

Carried.

Then there is the matter of the appointment of a steering committee.

Mr. DIEFENBAKER: What was the position last year as regards a steering committee?

The CHAIRMAN: Last year's steering committee was composed of seven members of the committee, and I should think we could take the same committee, if that is satisfactory to the committee; that is, with the exception of Mr. Belzile, who was on the committee last year but who is not on it this year. Would the committee leave to me the selection of that one member who would be a government supporter and who would replace Mr. Belzile? We could agree on the rest of the members of the steering committee now.

Mr. DIEFENBAKER: Who were they last year?

The CHAIRMAN: Senator Turgeon, Mr. Diefenbaker, Mr. Hansell, Mr. Stewart, the two joint chairmen and Mr. Belzile. Seven in all. The motion would be that the steering committee consist of seven members and that one be selected from the House of Commons by the chairman to replace Mr. Belzile.

Mr. HACKETT: That is all right. I so move.

Hon. Mr. CRERAR: I second that motion.

Carried.

The CHAIRMAN: Now, is there any discussion with regard to the work of the steering committee? I think that committee had better meet and discuss what our work will be this year, and anything that I could say would be premature. My own idea is that the first thing we should do is to circulate this material that we have from the United Nations and we should consider that declaration upon which the comments of Canada have been invited; comments, observations and suggestions. I am suggesting that to the steering committee, but I am not asking anybody to take any action. Mr. Diefenbaker may have different views and so may others.

Mr. DIEFENBAKER: Mr. Chairman, I agree with that, but I was wondering if it would be possible to get Dr. Humphrey to come before this committee; he is the secretary of the international committee. He knows the subject and all its ramifications, and in a couple of meetings he could place before us the situation exactly as it occurred in the United Nations, and what has taken place, better than any other man.

The CHAIRMAN: Would you like to move that? I agree with you. I think we should have him here.

Mr. DIEFENBAKER: I believe he is the one man who can give us more information than anybody else.

Mr. STEWART: I second that motion.

Mr. HACKETT: I am going to ask, Mr. Chairman, if it would be possible for the members to have a copy of the report of the president's Committee on Human Liberties.

Mr. DIEFENBAKER: Was it not distributed?

Mr. HACKETT: I do not think it was distributed to everybody.

Mr. DIEFENBAKER: It was sent to me in the regular course of mail and I thought everybody had it.

Mr. HACKETT: I should like a copy. It could easily be got from Washington.

The CHAIRMAN: The clerk of the committee will take note of your request and try to get an adequate number of copies to circulate to the members of the committee. It is a very interesting statement.

Hon. Mr. ROEBUCK: I have a suggestion I should like to offer to the steering committee for its consideration. This subject is full of difficulties. It is much easier to observe human freedoms than it is to compie way to carry them out or to draw up a document covering them. That is the first trouble we are up against; and the second trouble is that our jurisdiction is so very greatly divided. It is only that portion of human freedoms which is affected—that subject-matter which comes within dominion jurisdiction—that at the moment we can deal with effectively, unless we simply wrote an essay on it; so it struck me that it might be of some value if we could bring about co-operation between the dominion jurisdiction and the provincial jurisdictions as regards this matter. At the present moment a great many people are looking to the dominion jurisdiction for legislative action on matters within provincial jurisdictions and they are going to be disappointed if we do what is within our power and do not do what is not within our power. So it seems to me that if we are going to have a bill of rights or a declaration of rights that is sufficiently comprehensive to satisfy ourselves and others we must have the co-operation of the provinces. Therefore, I should like the steering committee to consider that matter and see if it is possible for us at least to invite them to co-operate as to the procedure by which it could be accomplished.

The CHAIRMAN: The steering committee will consider that matter. My recollection is that the matter was given some consideration in the Ontario House, and the consideration was not favourable. However, that is a matter for the steering committee.

Hon. Mr. ROEBUCK: The views on it do not matter; whether they are in favour or opposed does not matter.

The CHAIRMAN: If we are asking for co-operation it does matter.

Mr. HACKETT: I think that is fundamental, because co-operation means, if I understand the significance of the word, that they would work with us in the preparation of a statement or a statute.

Now, there are headings: freedom of assembly, for instance. That cuts right across municipal regulations. Freedom of speech has to do with the law of libel, and one can go on and imagine a curtailment in provincial jurisdiction, and I think it will take some ingenuity and a great deal of luck to avoid a clash on those points. I believe everybody should be heard.

Hon. Mr. ROEBUCK: That is what I meant when I said it did not matter.

Mr. HACKETT: But when we attempt to get the provinces to co-operate in the sense in which I understand the word to mean, it would mean a cession or surrender of some rights which they may be very reluctant, and possibly rightfully reluctant, to yield.

The CHAIRMAN: The point is that it may not be a surrender at all; but the provinces traditionally are very jealous of their rights; and in all sorts of lines they take a position—it is not always the correct position—but they take the position which will give them the maximum rights and powers under the constitution. It is very difficult on any doubtful matter to get the provinces to agree that that is within the dominion jurisdiction. In cases of doubt the provinces naturally favour the maximum jurisdiction for themselves.

Mr. STEWART: Would it not clarify the situation if this committee adopted the term constitutional right and not civil rights: civil rights, as opposed to criminal rights, has caused some distraction before. Constitutional rights apply to every Canadian from coast to coast.

Mr. DIEFENBAKER: As a matter of fact, the difficulty comes up immediately in connection with an international bill of rights or a declaration, as to what degree may Canada, as a signatory of the United Nations charter, discharge her responsibilities under the charter if in so doing the declaration of rights or the international bill of rights comprises certain matters of provincial jurisdiction, and we could continue to discuss this matter continually; and it is for that reason I made the suggestion, which I am going to make when we get into the steering committee, that the only way in which the matter can be determined is by a submission to the Supreme Court with a view to ascertaining the degree to which Canada may discharge her responsibilities federally under the United Nations charter.

In your speech in the House you pointed out the difficulties of so drafting a submission to the Supreme Court as would permit a decision in that regard. Well, the United Nations committee on the subject of human rights and fundamental freedoms has drafted what is the consensus of opinion of the eighteen nations whose representatives were on that committee; and when we come to deal with that question the suggestion I make is this, that the recommended international declaration on human rights be the one to be submitted to the Supreme Court. It is already drafted; it represents what Canada is going to be asked to accept or to consider: and when I listened to you last Friday in dealing with this question I had in mind bringing that fact to your attention, the fact that an international bill of rights has been drafted, and we in Canada

have to decide once and for all the question as to whether or not Canada as a nation, assuming international responsibilities, can discharge them by federal legislation to that end.

Now, we have gone far afield from what we set out to do today. You mentioned that we are going to have a steering committee, and I pointed out the circumstances. We have before us the recommendations. We are going to be in a strange position as a nation if we find ourselves in the position where the representatives of Canada at an international organization such as the United Nations are hamstrung in carrying out the responsibilities provided for under the charter. That is a matter to be dealt with later on.

Mr. HACKETT: I would like to suggest a word. My recollection is that much of the legislation introduced by the government led by Mr. Bennett as they came to the end of an eventful career was based upon an article in the British North America Act which gave the federal government some powers to carry out the treaty obligations, and my recollection is that much of that legislation was held to be *ultra vires*. I do not want my friend, Mr. Diefenbaker, to think that I am hostile to any project at this stage, but I would be very loath to see a question of this importance presented to any court in other form than a statute passed either by a provincial legislature or by the federal government. I think that the question is of too great importance to be passed upon in the rather thin ether of conjecture. We have got a document which sets forth in language which lacks the precision of a statute a declaration of rights, and I doubt if a court could pass upon it without exceeding its jurisdiction.

The CHAIRMAN: The only thought that occurs to me is that perhaps the covenant is a better document to submit to the court than the declaration, if we do not go as far as Mr. Hackett says and wait for a statute.

Mr. DIEFENBAKER: In answer to Mr. Hackett I point out this, that they did not require a statute to be passed by parliament in order to determine whether or not the parliament of Canada could abolish appeals to the Privy Council, and they did not require a statute either when it came to determining questions regarding one other matter.

Mr. HACKETT: That is why some of the provinces contend that when they want to go to the Privy Council they will go, and if the dominion does not like it, well—

Mr. DIEFENBAKER: I was answering Mr. Hackett when he said he doubted whether the court would consider a matter without a statute.

Mr. HACKETT: I did.

Mr. DIEFENBAKER: I said that they have.

The CHAIRMAN: I think since the labour decisions of the 30's, when we enter into international conventions on labour matters, we always do it with a rider that it is not within our jurisdiction to carry them out wholly and all we can do is bring them to the attention of the provinces; so that our signature is merely an indication that that is what our federal government is in favour of.

Mr. HACKETT: They would do it if they had the power.

The CHAIRMAN: Yes.

Mr. DIEFENBAKER: There is a provision in the declaration that was passed by the Commission on Human Rights that where the federal system exists the declaration shall operate in accordance with the views expressed by ourselves.

The CHAIRMAN: That is in the covenant.

Mr. HACKETT: Yes, that is in the covenant and not in the declaration.

Mr. DIEFENBAKER: Yes.

The CHAIRMAN: I think that we had better fix a date and time for our next meeting if we possibly can.

Mr. MILLER: Will the reference to this committee appear in the printed report?

The CHAIRMAN: It will be in the first report.

Mr. MILLER: What about the work that was done by this committee last year; has it gone by the boards, or do we build on it?

The CHAIRMAN: I think we should build on it, yes. It is all printed. I do not think we should start over again and cover the same ground. It is suggested that perhaps the final report should be put into the minutes.

Hon. Mr. BOUFFARD: Do you think it would be possible to have a few additional copies of this booklet regarding the United Nations?

The CHAIRMAN: Oh, yes. Could we not have it understood now that they will be circulated?

The CLERK: They have been circulated.

The CHAIRMAN: Is there something else that should be circulated?

Hon. Mr. BOUFFARD: I wonder if this committee could secure a few more copies for themselves of this booklet?

The CHAIRMAN: The clerk tells me that he will attempt to get some more copies.

Hon. Mr. BOUFFARD: I would like five or six copies.

The CHAIRMAN: Now, has the committee any views as to the date and time of our next meeting?

Mr. HACKETT: That is a matter for the steering committee, which will have before it the agenda for next week. I would not like a meeting of this committee to clash with that of another.

The CHAIRMAN: I agree with you. Now, does anyone else wish to bring anything before the meeting?

Mr. HANSELL: Mr. Chairman, we have had delivered this morning a few documents and they are all clear, I think, except one—this one I am holding up—and it is signed by Mr. W. J. Waines, president, and David Owens, secretary; but there is nothing to indicate what Mr. Waines is president of.

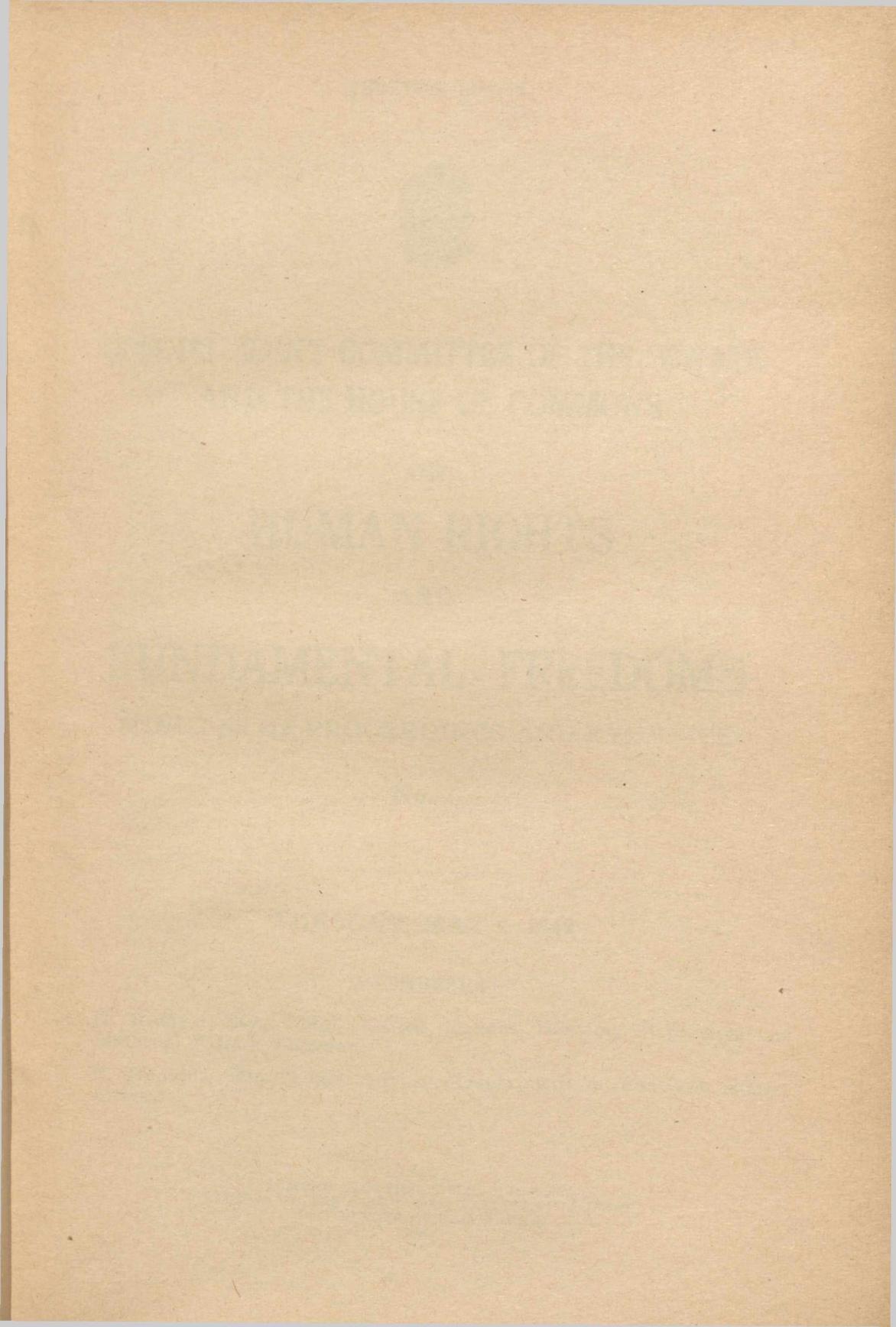
Mr. STEWART: The Winnipeg Civil Rights Association.

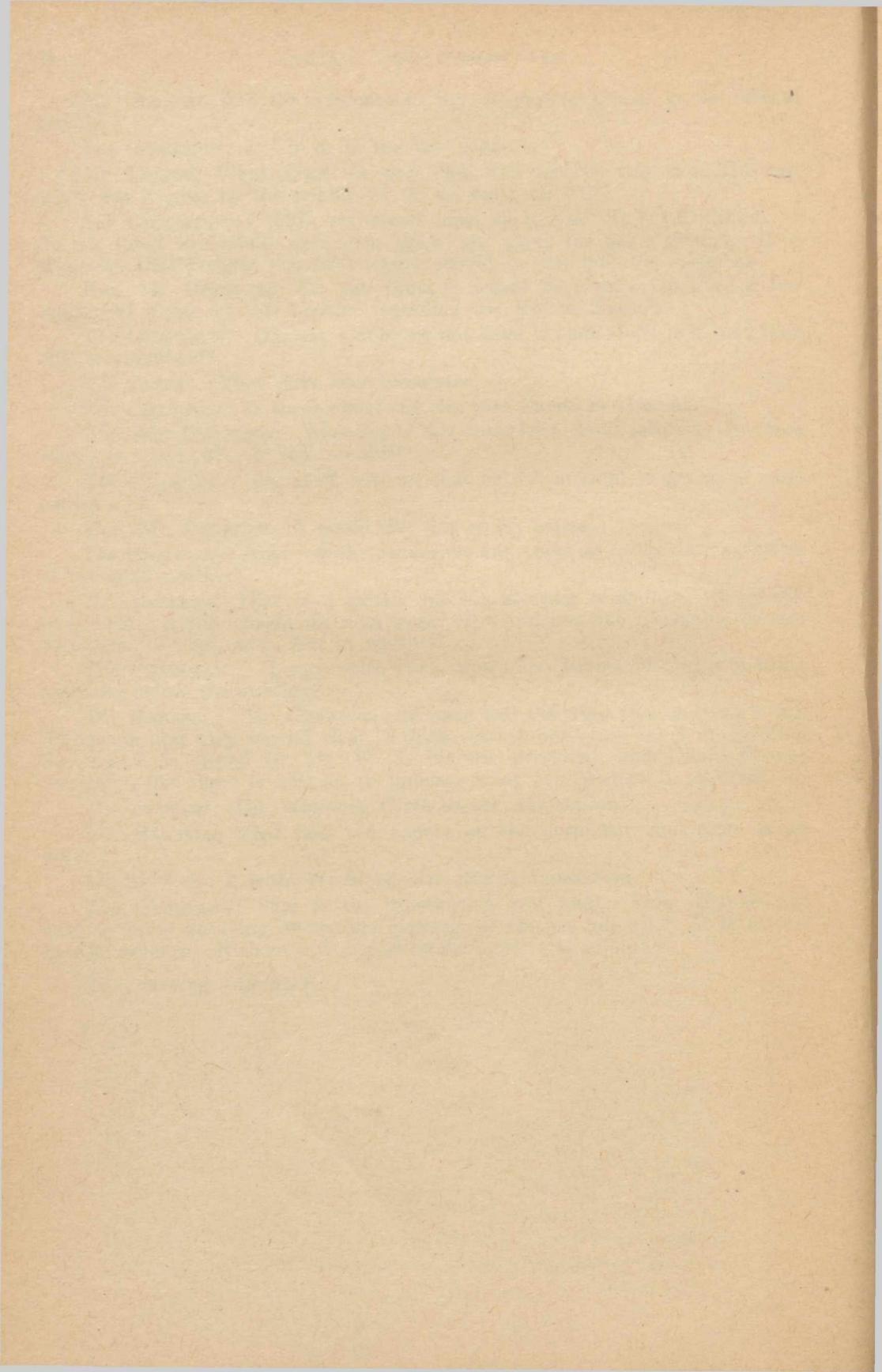
Mr. HANSELL: That does not appear on the document, and there is no date.

Mr. STEWART: It is the Winnipeg Civil Rights Association.

The CHAIRMAN: That is the information you want. Does anyone else wish to bring anything before the meeting, or can we adjourn? It is moved that we adjourn. If there is no objection the meeting is adjourned.

The meeting adjourned.





SESSION 1947-48



SPECIAL JOINT COMMITTEE OF THE SENATE
AND THE HOUSE OF COMMONS

ON

HUMAN RIGHTS

AND

FUNDAMENTAL FREEDOMS

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 2

TUESDAY, MAY 4, 1948

WITNESSES:

- R. G. Riddell, Esq., Chief, United Nations Division, Department of External Affairs, Ottawa;
- E. R. Hopkins, Esq., Legal Adviser, Department of External Affairs Ottawa.

OTTAWA
EDMOND CLOUTIER, C.M.G., B.A., L.Ph.,
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY
1948

MINUTES OF PROCEEDINGS

TUESDAY, 4th May, 1948.

The Special Joint Committee on Human Rights and Fundamental Freedoms met at 4.00 o'clock p.m. The Joint Chairman, Right Honourable J. L. Ilsley and Honourable Senator L. M. Gouin were present. Mr. Ilsley presided.

Also present:

The Senate: Honourable Senators Bouffard, Burchill, Crerar, Turgeon, Wilson.

The House of Commons: Messrs, Beaudoin, Breithaupt, Hackett, Hansell, Hazen, LaCroix, Marier, Marquis, Massey, Michaud, Miller, Rinfret, Stewart (*Winnipeg-North*), Whitman, Zaplitny.

Copies of the following were distributed:

- (a) "To Secure These Rights", the report of the President's Committee on Civil Rights, Washington, U.S.A., 1947.
- (b) "The International Bill of the Rights of Man", by H. Lauterpacht, M.A., etc., University of Cambridge.

The Chairman suggested that the Committee proceed with the hearing of witnesses and defer consideration of the Steering Committee's report relative to procedure until later in the meeting. This was concurred in.

Mr. R. G. Riddell, Chief, United Nations Division, Department of External Affairs, Ottawa, was called. He made a statement summarizing recent documentation and other activities of the Commission on Human Rights, United Nations, and was questioned thereon.

Mr. E. R. Hopkins, Legal Adviser, Department of External Affairs, Ottawa, was called. He made a statement relative to the international implications of the proposed Draft International Declaration on Human Rights, and was questioned thereon.

The witnesses retired.

The First Report of the Steering Committee was read, viz:—

WEDNESDAY, 28th April, 1948.

Your Steering Committee having considered future procedure, recommends the following as a preliminary step in the work of the Committee:

1. That the order of Reference to the Committee be divided into the following three headings for consideration by the Committee:

- (a) To consider the question of human rights and fundamental freedoms, and the manner in which these obligations accepted by all members of the United Nations may best be implemented;

And, in particular, in the light of the provisions contained in the Charter of the United Nations, and the establishment by the Economic and Social Council thereof of a Commission on Human Rights;

- (b) What is the legal and constitutional situation in Canada with respect to such rights;

(c) And, what steps, if any, it would be advisable to take or to recommend for the purpose of preserving in Canada respect for the observance of human rights and fundamental freedoms; and that they may be considered in the order (a), (c) and (b).

2. That with respect to heading (a) the Committee give immediate consideration to the Draft International Declaration on Human Rights forwarded to the Government by the Secretary-General of United Nations with a view to recommending whether Canada should subscribe to such a declaration and, if so, whether in the form submitted or in some other form.

3. That consideration be given to the Draft International Covenant on Human Rights and the Suggestions for Implementation forwarded to the Government by the Secretary-General of United Nations, but that such consideration be deferred at least until it is known what disposition is to be made of these documents this year by United Nations and, if possible, until headings (b) and (c) have been considered by the Committee.

4. That officers of the appropriate agency of United Nations and of the Department of External Affairs be called to advise the Committee as to the significance and effect of the Declaration, Covenant and Implementation provisions and as to the proposed disposition of these documents by United Nations.

With reference to the hearing of Mr. J. P. Humphrey, Secretary, Commission on Human Rights, it is learned that his duties will not permit him to come to Ottawa at this time. This question will be reviewed at a later date.

It is recommended that the Committee now proceed with the hearing of Mr. R. G. Riddell, First Political Division, and Mr. E. R. Hopkins, Legal Division, Department of External Affairs, in relation to paragraph 4.

Your Committee also took note of the following:

- (a) Consideration of communications received from deans of law schools and provincial attorneys-General in reply to the following questions submitted to them by last year's Committee, namely, "The power of the Parliament of Canada to enact a comprehensive Bill of Rights. . . ."
- (b) The hearing of representations from interested organizations.
- (c) Senator Roebuck's suggestion, namely, that the Steering Committee take under consideration the question of inviting the provinces to co-operate in the procedure by which a bill or declaration of rights may be attained.

It was agreed that a decision on these questions should be deferred for the time being.

It was also agreed that subsequent procedure be reviewed from time to time by the Steering Committee as the work of the Committee progresses.

On motion of the Senator Turgeon, the said report was concurred in.

It was ordered that copies of the following United Nations documents relating to the Commission on Human Rights be obtained and distributed to members:

- (i) Economic and Social Council, E/CN. 4/82, 16 April, 1948
- (ii) Economic and Social Council, E/CN. 4/82 Rev. 1, 22nd April 1948.
- (iii) Economic and Social Council E/CN. 4/82/Add. 1, 16th April, 1948.
- (iv) Economic and Social Council, E/CN. 4/82/Add. 2, 22nd April, 1948.

On motion of Mr. Hackett,

Resolved,—That at its next meeting the Committee consider and discuss, article-by-article, the "Draft International Declaration on Human Rights".

Mr. Hackett suggested that a list of papers and documents filed with the Committee be prepared and distributed to members. The Chairman directed accordingly.

The Committee adjourned at 5.40 o'clock p.m., to meet again at 4.00 o'clock p.m. Tuesday, 11th May.

J. G. DUBROY,

Clerk of the Committee.

MINUTES OF EVIDENCE

HOUSE OF COMMONS,

May 4, 1948.

The Special Joint Committee on Human Rights and Fundamental Freedoms met this day at 4 p.m. The Right Hon. Mr. J. L. Ilsley (Joint Chairman) presided.

The CHAIRMAN: The committee will please come to order.

The steering committee met and will make a report at this meeting. Mr. Hopkins of the Department of External Affairs is over here and he has to return to New York tonight, and as it was suggested that he and Mr. Riddell from the External Affairs Department should be called as witnesses at this meeting, I think it would be well if we started and heard them first, and then we can discuss the report of the steering committee after that. There may be some discussion on the report of the steering committee. If that course of procedure commends itself to the committee, I will ask Mr. Hopkins to make a statement to the committee now; but I do not want to take that course if anyone has any objections.

Some Hon. MEMBERS: Agreed.

Mr. HOPKINS: Well, Mr. Chairman, it might be helpful if Mr. Riddell said some few words with regard to back ground by way of introduction.

The CHAIRMAN: Yes. First then we will ask Mr. Riddell to address the committee.

R. G. Riddell, Chief of United Nations Division, Department of External Affairs, called:

By the Chairman:

Q. In the first place, Mr. Riddell, what is your position with the Department of External Affairs?—A. Mr. Chairman, I am Chief of the United Nations Division of the Department of External Affairs.

Q. Yes. I think the committee would like to hear from you something about the present status of the International Bill of Rights, so called.

Mr. RIDDELL: Mr. Chairman, I think perhaps at this stage I shall as you suggest confine my remarks to a very brief summary of the process of preparation of the document which I think is now in the hands of honourable senators and members. That is the document to which the United Nations Economic and Social Council have given the number E-600, entitled "the report of the commission on human rights, second session, Geneva, December 2, to December 17." This document, which contains a draft bill on human rights, has now been referred to members of the United Nations for their consideration. I will say a word in a moment about the character of this document. I might first briefly inform you of the process by which it has been prepared.

As honourable senators and members who attended the committee on this subject a year ago will recall, the charter of the United Nations contains certain general statements of obligation in regard to human rights, obligations which are accepted in these general terms by the members of the United Nations signing the charter. In order that those obligations might be made more specific, the Economic and Social Council of the United Nations established a

commission on human rights the chief function of which was to prepare a document for consideration by member states, embodying a conception of human rights that might be adopted by member states. This commission on human rights consisted of eighteen member states of the United Nations. It met for the first time on January 27, 1947, and held at that meeting a number of preparatory discussions. The actual work of drafting a document containing ideas on human rights was referred to a drafting committee of the United Nations commission on human rights which met in June of 1947. This drafting committee consisted of representatives of the following states; the Philippines, the Ukrainian Soviet Socialist Republic, the Soviet Union, the United Kingdom, the United States, Uruguay and Yugoslavia.

This Committee proceeded to prepare a draft document which was referred again to the Human Rights Commission in December last. The Human Rights Commission met from December 2, to December 17, and went over the draft document and revised it. At that stage the document was referred to member governments of the United Nations, and that is the document which is now in the hands of honourable senators and members. It was received by the Canadian government in a letter from the Secretary General of the United Nations, dated January 9, with the request for comments by the Canadian government; the comments to be taken into consideration along with the comments of other governments in subsequent stages of the preparation of the document.

I might briefly indicate the remaining stages the document will now go through. Some comments have been made by a number of governments and sent in to the Secretary General of the United Nations. Those comments are now in the hands of the original drafting committee which is meeting at the present time at Lake Success and revising this document. The revised document will be considered by the Commission on Human Rights on May 20. The document will then be referred to the Economic and Social Council which meets at Geneva on July 19; and subsequently to the General Assembly of the United States when it meets again in Paris on September 21. At that time a decision will be taken as to the method by which the document will be given further consideration, either for adoption or for further review by members of the United Nations.

As I said, the document was received by the government of Canada on January 9, in a letter from the Secretary General of the United Nations with a request for comments to be received in New York by the 3rd of April. As honourable senators and members will recall from the statement made by the Minister of Justice in the House of Commons, the Secretary of State for External Affairs signed an interim reply to the Secretary General dated April 1, 1948, the text of which has been printed in *hansard*, and which says in effect that the government of Canada wishes the benefit of the advice of parliament before expressing its views finally on this document. Further opportunities for comment will be provided for Canada at the Economic and Social Council which meets in Geneva in July. Canada is a member of the Economic and Social Council and the Canadian representative on the Economic and Social Council will have the revised document in his hands at that stage; there will also be an opportunity for comments when the document is referred to the general assembly at its meeting in Paris in September. This document, therefore, will be subjected to a considerable process of revision from now on. There is the hope and I think the hope is somewhat optimistic, that the document might reach something approaching a final form by the time the general assembly meets in September. As I say, my own personal view is that the process of revision will be a rather longer one than originally had been suggested.

As to the document itself, this report of the Commission on Human Rights contains the draft international bill on human rights. That draft international

bill on human rights is itself subdivided into three parts. The first part is a draft international declaration on human rights. The second part is a draft international covenant on human rights and the distinction between a declaration and a covenant is a matter which I think perhaps Mr. Hopkins could discuss with you more properly than I. The third part of the document contains a number of suggestions for the implementation of the declaration and the draft covenant once those documents have been adopted in any form.

I think, Mr. Chairman, unless there are some specific questions that this brief survey of the procedure by which the document has been prepared and of the further procedure to which it will be subjected might perhaps suffice as an introduction to what Mr. Hopkins has to say at this stage.

The CHAIRMAN: Mr. Riddell will be available at future meetings of the committee and the rest of the day, so perhaps any questions which you may have in mind to address to Mr. Riddell could be deferred until after Mr. Hopkins makes his statement, because he (Mr. Hopkins) has to go away tonight.

Mr. Hopkins, what is your position in the Department of External Affairs?

E. R. Hopkins, Legal Adviser, Department of External Affairs, called:

The WITNESS: I am legal adviser to the department.

The CHAIRMAN: Well, Mr. Hopkins, will you give this committee such assistance as you can?

The WITNESS: Well, Mr. Chairman, I have been elsewhere engaged during the last few weeks and I have not had the opportunity of going into this matter or giving it the undivided attention which its importance warrants; but I am sure that both Mr. Riddell and myself personally are only too glad to give the committee whatever assistance lies within our power.

If I may have the permission of the chair, I would suggest that I might read some preliminary observations which I have jotted down; and I would welcome, if that is allowed, interruptions or interventions at any time by any member of the committee who may wish elaboration or illumination on what I may have said. Is that procedure acceptable?

The CHAIRMAN: Yes, that is all right.

The WITNESS: Mr. Chairman, dealing with the present draft of the International Bill of Rights I would not wish to leave the impression that I am in any sense expressing official views; indeed, it is not my understanding that firm official views have yet been formulated.

Canada is not represented on the Human Rights Commission, nor have Canadian comments, as I understand it, yet been made on the working papers now before this committee. I think it is perhaps wise to point out that these are working papers, and I think that is the most apt description which could be given to them. They are working papers which have yet to receive any formal seal of approval by the United Nations. This being so, the present working papers I suggest may be examined entirely on their merits; and in the most of what I may say I will be expressing my personal views for what they may be worth, except perhaps in respect to certain international legal aspects of the various documents.

The present papers have been prepared by the Human Rights Commission of the Economic and Social Council in an effort to eliminate the relevant provisions of the charter of the United Nations, all of which provisions I think have been drawn to the attention of this committee or its predecessor of last year. The principal of these provisions in the charter I take to be Article 55 (c) of the charter, and section 62 (2) and (3) of the charter. Perhaps I might

read those, Mr. Chairman. There are rather important provisions in the charter, but I think in the light of these particular documents that these are the most germane. Article 55 (c) reads as follows:

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote—

And it is a most important word, “promote”—

shall promote, (c) universal respect for and observations of human rights and fundamental freedoms without distinction as to race, sex, language or religion.

Article 62 (2) and (3) of the charter states:

It (that is the Economic and Social Council) may make recommendations—may make recommendations for the purpose of promoting respect for and observance of human rights and fundamental freedoms for all.

(3) It (that is also the Economic and Social Council) may prepare draft conventions for submission to the general assembly with respect to matters falling within its competence.

It seems to me that it is under the provisions of these or other articles of the charter, that the present working papers now appear before this committee.

The CHAIRMAN: Is there something about promoting international co-operation?

The WITNESS: Yes, there are provisions.

The CHAIRMAN: But you do not quote them?

The WITNESS: I haven't quoted them here. I believe all the related provisions, Mr. Chairman, are already included in the proceedings.

The CHAIRMAN: Yes.

The WITNESS: It is evident that these provisions of the charter are general in character, and that they require further definition before the question of “promotion” can properly arise. This being so, the efforts thus far expended by the Human Rights Commission, and in particular by its distinguished chairman, Mrs. Eleanor Roosevelt, should be welcomed. The commission has produced these working papers upon which attention may be focused by members of the United Nations and which may provide a basis for further discussion in the appropriate organs of the United Nations.

As Mr. Riddell has predicted, there will probably occur the problem of definition.

If anyone would like to interrupt me at any time, I would be very happy.

The problem of definition is far from easy. “Human rights and fundamental freedoms” are concepts which derive from political or moral philosophy. Different meanings may in good faith be attached to the expression by persons of differing philosophical understanding. The problem is not simplified by the fact that the world is not yet united by a single understanding, let alone by a single code, of political or moral philosophy.

In practical terms it would seem to be the task of the Human Rights Commission, and ultimately of the United Nations, to develop a formula for the definition and then a plan for the “promotion of universal respect for an observance of human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion”. Such a formula would have to be generally acceptable to the members of the United Nations. It would not be enough to develop a perfectly credulous a priori formula which would not be accepted by the United Nations members, whatever effect it may have on acceptance by the United Nations. Such a formula would not necessarily have to reconcile the irreconcilable.

The CHAIRMAN: Would you give us an example?

The WITNESS: I take it there is some fundamental distinction between such community philosophy as there might be in the western world as against the philosophy which prevails behind the iron curtain. It is a difficult matter to reconcile those things but on the other hand, as it may become apparent, it may not become necessary—indeed I do not think it is necessary to proceed effectively in this field—to attempt to reconcile the irreconcilable. For practical purposes what is necessary is a two-thirds majority in the General Assembly of United Nations. It must be acceptable to two-thirds of the members of the United Nations.

Hon. Mr. GOUIN: Do you think it is too optimistic to say that even between what we would call the western world and the eastern world, for lack of a better distinction, on that which is the same in theory we might be able to find common ground. There are for instance three fundamental principles of the French revolution which I shall express in French, *liberté, égalité* and *fraternité*. I am rather inclined to believe those expressions are just as acceptable to Moscow as they are acceptable in Paris and throughout the English speaking world. The interpretation of those three single words might give rise to different philosophy but my own suggestion—if I may very modestly make a suggestion—would be that we try in good faith to discover what I would call common ground. It would be rather academic I admit, but I think it would be rather a good start.

The WITNESS: No one would be happier than I if it were possible. I think it is a laudable end but there are certain obvious difficulties which need not necessarily be faced before the document would receive the necessary majority in the United Nations. I would not wish to close the door on any philosophical synthesis but as I have mentioned there seem to be some objections which these gentlemen foresee.

Mr. STEWART: Liberty to us might mean allowing our political opponents to exist but to others it might mean liquidation of those opponents.

The WITNESS: I do not think what I have said is germane to the main thread of what I was about to say.

By Mr. Hansell:

Q. Before Mr. Hopkins goes on I understood him to say these great principles of human rights and fundamental freedoms have in reality not yet been determined? Is that what I understand?—A. They have been determined in various ways by various philosophical and moral systems.

Q. Yes, but the signatories to the charter signed the charter with their own particular understandings?—A. That is right.

Q. With respect to human rights and fundamental freedoms?—A. Yes sir.

Q. They may, in reality, differ in their various opinions.—A. Yes.

Q. My next question is would it not be basic for each of the signatory nations to define those expressions in their own way before there could be an understanding as to what they meant?—A. I entirely agree. The task of any United Nations body endeavouring to determine what is generally acceptable would be enormously facilitated if the committee or commission had before it the considered views, of the member states of the United Nations.

Q. I rather gained the impression while Mr. Riddell was speaking that there would be some truth in the statement that we are putting the cart before the horse. In other words the various committees and commission of the United Nations are drafting documents, declarations, bills, or whatever you want to call them, while we are sitting here attempting to do the same thing. It appears to me that we, in reality, are expecting to endorse that which is only now being done and that is why I say it seems to me that basically, before we can go any

further at all, each nation will have to determine its own definition of those principles. Otherwise we are going to have draft bills put on our doorstep for approval when we do not know what they mean. I think you understand what I am getting at, Mr. Hopkins?—A. I not only appreciate what you say, sir, but I must say that I agree with you in very large part except for this. It is useful to have working papers to enable any body of people to clarify their own minds on a subject. It is always easier to deal with concrete papers than it is to start with nothing and work from that point. I would say myself, and Mr. Riddell can correct me if I am wrong, that these papers are before the committee but you are not in any sense asked to adopt them holus-bolus, but rather they are to be considered as an a priori document for concrete comment in the light of the Canadian understanding. In my next paragraph I was about to make further observations along those lines but I welcome the intervention.

By Mr. Marquis:

Q. Do you think as working papers it would be better to have four or five general principles which we could discuss as a basis for human rights, instead of having many, many, regulations which are rather contentious and cannot cover the general object at which we are aiming?—A. I quite agree that the more complex the document the more difficult is the task of the committee. This document is pretty complex and it is difficult to formulate views on the adequacy of the particular provisions, but it does happen that this document has been churned up in the United Nations by the appropriate body. We might wish to have this before us in some other form, but this is the form that happened to be used.

Q. Yes, but as a supplementary question, if the commission had submitted the general principles upon which they could agree we could have discussed it more effectively?—A. Yes, perhaps we could have discussed it more effectively but some countries, not all, have agreed on the principles.

Mr. MICHAUD: Is this draft bill the unanimous decision of the eighteen countries who sat on the committee?

Mr. RIDDELL: The eighteen countries which sat on the committee have all subscribed to this document with certain reservations and comments which are contained in the report of the commission. What, in effect, has happened is that the eighteen countries have agreed the document should go forward subject to their privilege of objecting at the further stages of the discussion.

Mr. MICHAUD: In these eighteen countries you have Soviet Russia, the Ukraine Soviet Republic, and they have subscribed to this part of the bill have they?

Mon. Mr. GOUIN: If you will notice sections 17, 18, and 31, have been left practically in suspense, if I am not mistaken. I do not want to be critical but it is not correct to say that they have been subscribed to. They have been subscribed to perhaps to the extent of ninety-eight per cent, but I see that three sections, 17, 18, and 31 are apparently left in suspension.

Mr. RIDDELL: Articles 17 and 18 to which you refer are the ones concerning freedom of expression and opinion, and these were referred to the conference on the freedom of the press.

Hon. Mr. GOUIN: Yes, a special conference.

Mr. RIDDELL: That conference has recently taken place and the draft articles then approved are to be placed in this document at those points. They are being considered in New York and will be considered at the later stages. I think copies of those draft articles have been circulated to the

members of the committee. In regard to the general question of the attitude of the member states towards this document it would be necessary to examine the comments on the draft articles which are given in the annexes.

Hon. Mr. GOUIN: It is at page 19 in our copy.

Mr. RIDDELL: The states which participated in the preparation of the document permitted it to go forward with certain reservations as to the attitude they would adopt before its final submission for approval. There may be cases where the articles were adopted simply by a majority vote of the commission and in that case, particularly if the minority included the members of the U.S.S.R., they would reserve their position very strongly for later consideration. It would not be correct to say this document has full approval of the eighteen members of the commission on human rights.

Hon. Mr. GOUIN: At page 29 we have added the U.S.S.R. representation which expressly reserves the right to present at a later stage of the work a Soviet declaration on human rights.

Mr. RIDDELL: That is correct.

Mr. MASSEY: To ask a very naive question? In view of the discussion, what possible contribution can the deliberations of this committee make at the present time? Are we not premature?

The WITNESS: I was about to deal with that aspect in the succeeding parts of my submission.

Hon. Mr. CRERAR: Is there any prospect in the foreseeable future that there will be a grand finale to this thing?

Mr. RIDDELL: As I suggested the hope was that a document on which action might be taken could be presented to the General Assembly of the United Nations next September. My own opinion is that this is optimistic. It is possible that the declaration which, as Mr. Hopkins will indicate, is not of a binding character, could be submitted. It may be in a position where it can be considered for adoption at the next session of the assembly, but even that is optimistic.

Hon. Mr. CRERAR: Do you think it would be practical or possible to have the United Nations agree on a bill of human rights and fundamental freedoms at any time, in so far as we can now look ahead?

Mr. RIDDELL: I think it might be possible for a majority of the members of the United Nations to agree to such a document—to which they would subscribe and which they for their own purpose would regard as representing their views on the subject. It might be only in so far as the dissenting minority was concerned that the document would not be affective.

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Hon. Mr. CRERAR: Your idea is it would be dependent upon the opinion of the respective countries?

Mr. RIDDELL: It would depend on the form in which the document was prepared. If it was a declaration it would not place the same obligation upon those countries as if it were a covenant.

Hon. Mr. CRERAR: I presume there would be reservations there also?

Mr. RIDDELL: Yes.

Hon. Mr. CRERAR: It does seem to me, Mr. Chairman, that at this moment we are flailing the air as far as any decisions to which we can come on this matter are concerned. You have got the various committees and commissions of the United Nations working on these reports. The commissions thrash them out in the shape of a submission for the United Nations Assembly, but I would very definitely say it would require a great deal of optimism to imagine that any positive action could be taken for some time to come.

Mr. MASSEY: May I ask what official action has been taken by other government bodies—action such as we are taking here, meeting in committee and so on? There are eighteen nations involved and what action is being taken other than the action being taken in the United Nations?

Mr. RIDDELL: As I suggested the document has been referred to all fifty-seven members of the United Nations for consideration of their governments. To date replies have been received from only five states—Pakistan, Canada, The Netherlands, Australia, and the United States.

Hon. Mr. BOUFFARD: What has Canada said?

Mr. RIDDELL: The Canadian reply was simply an interim report stating that the Canadian government was not prepared at this stage to express a view on the subject. The document is now in process of formation and I think the only importance of comments from other states at this time is that if a government wishes to influence the character of the document it is easier to so influence it at an earlier stage than at a later stage.

Mr. STEWART: Senator Crerar a moment ago in his questions took the same pessimistic outlook as he took last year. I am quite sure that pessimistic outlook has been present in all meetings of mankind since Plato and Aristotle and in days before. I do not think there is any reason why we should not do our best and do our share towards the formulation of a code of human rights for the world at large. I think we can do it. We know that it is possible to raise straw men and to knock them down, but our main task is to get down to an understanding. Let us agree on what we in Canada will do, and let our influence be felt in the United Nations.

The CHAIRMAN: Perhaps Mr. Hopkins you could continue with your suggestions as to what the committee might advantageously do?

Mr. BEAUDOIN: Perhaps before Mr. Hopkins goes on he could enlighten the committee as to the procedure which has been followed right from the start, in order that everyone will understand.

Some Hon. MEMBERS: That has been done.

Mr. BEAUDOIN: If that is so, it seems to me that that has not been done adequately; at least, judging by the questions which have been asked by the members, I do not think it has been done. What are these working papers which are now before us; and what will their usefulness be? What we are concerned with now is a discussion of what Canada is going to do with regard to the decision she will make later when it comes to the matter of recommendations. It seems to me that we are dealing with the recommendations which have been made to us by the United Nations Commission which grew out of the Economic and Social Council. I think that Mr. Riddell and Mr. Hopkins should say what the Economic and Social Council is and what it is called upon to do in connection with settling this question of human rights. I understand it set up a human rights commission which has laboured for two years in drafting this report, and that this represents the best effort they have been able to arrive at as a result of their discussions. And I understand that this report later on will be submitted to the General Assembly of the United Nations; and I also understand that we are not in any way bound by the contents of this document; that we are here to discuss certain suggestions which may be submitted later on by Canada. And, certainly, Canada as a member of the United Nations may be called upon to make up its mind as to what provisions this draft bill shall contain.

The CHAIRMAN: Order, please.

Mr. RIDDELL: It seems to me that Mr. Beaudoin has himself given a very good account of the position in regard to these papers at this particular moment.

Hon. Mr. GOUIN: We will hear from Mr. Hopkins.

The WITNESS: Mr. Chairman, what then are the essentials of the problems before the Canadian government and before this committee arising out of the reference of these working papers by the appropriate organ of the United Nations? As I understand it—and again I hope I will be forgiven for expressing my personal views because I do not think there are any official views which I could express—the first question is, to what extent are the principles expressed in the present working papers generally acceptable to the Canadian people as an International Bill of Rights? If it is possible to provide satisfactory answers to this question it would be useful, in my view, to transmit these views to the United Nations at as early a stage as possible in order that those Canadian views might have their influence and effect upon the documents which may be produced. In so stating, I am not unaware that projects of the kind under consideration have an academic air in the face of the harsh political and economic realities of the international situation. Nevertheless, we should probably not be deterred by the contemporary political difficulties from a consideration of the long-term objectives of the United Nations.

“Human rights and fundamental freedoms” have not yet been the subject of public international law on any important scale. International law has been concerned primarily with the rights and duties of states in their relations between themselves. However, there has been a tendency in international law, particularly conventional international law, to direct attention to the individual, his rights and responsibilities—and by that I mean international law derived from multilateral agreements or treaties. The provisions in the charter concerning human rights provide a further illustration of this. And it might be useful to have before the committee at the same time material which has been prepared by Doctor Yen Ling.

Hon. Mr. GOUIN: I think we ought to have a copy of that.

The WITNESS: Since this is a manifestation of a certain trend in the direction of concentrating some international attention on the individual as distinguished from dealing exclusively with relations between states, I am not sure that it will be particularly relevant, but it is for the committee to say whether it should look at it or not.

As I mentioned, that is the first question before the committee, as I would conceive it; to assess the general acceptability of the present draft to the Canadian people. There remains a certain question which is related to the first; namely, whether there are objective tests or standards upon which answers to the first question can fairly be based. I respectfully suggest, Mr. Chairman, that the following might be regarded as useful sources:

(a) The state of the law of Canada, constitutional, public and private in relation to the questions now under review. The Department of Justice is of course the competent department to advise the committee in this field and Mr. Varcoe, the Deputy Minister of Justice, I think appeared before your joint parliamentary committee on this same subject a year ago.

(b) The historic documents which bear upon constitutional understandings and practice in Canada.

Most of those documents were referred to and included in the proceedings of the committee last year.

(c) Distinguished authorities on political, constitutional and juridical subjects relating to human rights;

(d) The debates in the Parliament of Canada and in respective provincial legislatures.

I have not mentioned these sources in any order of significance. No doubt other sources will occur to the members of the committee. Perhaps, also, the committee will take a somewhat different and less pragmatic view of the problems

than I do. It is for this reason I again emphasize I am speaking personally. I would add that the views of this committee, itself, would seem to me to be of the highest importance.

Finally, the question which the committee may wish to consider turns on the distinction between the draft declaration and the draft covenant to which Mr. Riddell has made reference and which form the principal part of the working papers now before the committee. The distinction between these documents has already been made by the chairman in the House of Commons. The declaration would not have an absolute juridical force if it were adopted by the General Assembly as a declaration.

The General Assembly is empowered, under article 10 of the charter, to make recommendations and it is under this article of the charter that the declaration would gain its effect. It would, therefore, have the character of a recommendation and what lawyers call a persuasive value. It would not create binding and positive legal obligations.

On the other hand, the covenant would be arrived at something like this: the Economic and Social Council would recommend, if it so decides, to the General Assembly the adoption of the covenant. The covenant would then be submitted to the individual states, the members of the United Nations, for ratification. Upon ratification, in accordance with the terms of the document, binding obligations in international law would be assumed by the ratifying states. It would be necessary, in international law, to enact legislation, in so far as there was any material difference between the text of the covenant and the state of the law in Canada or any other ratifying state.

It is for the committee to consider but it seems to me that logically as well as chronologically, the elaboration of the declaration on international freedoms should precede the formulation of the covenant or convention. The United Nations should, in my view, proceed in this manner unhurriedly and with due care and circumspection. The declaration, which attempts to set out the general understanding of the expression "human rights and fundamental freedoms," if and when it commends itself to a substantial majority of the members of the United Nations, ought to be thoroughly tested in experience where its adequacy may be properly assessed.

If, as a result of this testing, the declaration proves itself generally acceptable, it would seem to me to be the work of jurists to bring this statement of aspirations to perfection in the form of a treaty or convention, if this were then considered desirable. There is, in the United Nations—I do not know whether this has been brought out before the committee previously—in immediate contemplation though not in being, a body of legal experts which would be competent or which would be the most proper United Nations body to translate the principles of any agreed declaration into the terms of a positive convention or covenant. I refer, Mr. Chairman, to the International Law Commission which is a body of legal experts to be appointed by the General Assembly in a similar manner as the Judges of the International Court of Justice, at its next meeting to be held in Paris, France, in the beginning of September, 1948. The functions of this body would be to assist the General Assembly in its obligation to encourage the progressive development and codification of international laws.

It seems to me, therefore—I realize it is a bit gratuitous for me to advise this committee in this matter—

Hon. Mr. GOUIN: On the contrary, we are delighted to get your views, Mr. Hopkins. Perhaps we are not bound to accept them, but you should not be too shy in putting your views forward.

Mr. HOPKINS: It seems to me that the committee should concentrate its attention on the declaration as being of more immediate importance, leaving until a later stage the consideration of any possible convention which might flow from the declaration.

It is in the foregoing context, Mr. Chairman, honourable senators and members, that Mr. Riddell and myself stand ready to contribute what we can to the work of this committee. Our remarks should be construed as efforts to stimulate discussion rather than to provide ready-made answers to the questions which may be raised.

Hon. Mr. GOUIN: If you allow me, I should like to congratulate Mr. Hopkins on his very fair exposé. So far as I am concerned, I must say I am delighted to receive his suggestion because when we first convened the committee last year, I must say, I was terribly pessimistic. I was afraid we could not achieve anything due to the constitutional difficulties. The constitutional difficulties, it seemed to me, made our task almost impracticable. However, the suggestion which has just been made that we begin by studying the declaration is, after all, quite a practical solution.

The question of the division of jurisdiction is a difficult problem. However, if we examine the covenant, from almost the first section of the covenant we are confronted with that difficulty. We would be passing an Act which, in my humble opinion, would be clearly *ultra vires* if we were to accept that part of the covenant.

On the contrary, the declaration, as I look at it is, in a certain sense, almost only a development of the three fundamental principles which I quoted a few minutes ago, liberty, equality and fraternity. If we could agree on some general principles, I think we, as Canadians, would have achieved something and would be offering a real contribution, I admit of a somewhat academic nature, but we would be offering a real contribution to the United Nations.

For these reasons I wish to congratulate very, very sincerely, Mr. Hopkins. So far as I am concerned he has removed from my conscience a problem which was sincerely troubling me. Now, I believe we can get somewhere.

Hon. Mr. BOUFFARD: It seems to me we have an order of reference which is as follows:

That it is expedient to appoint a joint committee of both Houses of Parliament to consider the question of human rights and fundamental freedoms, and the manner in which those obligations accepted by all members of the United Nations may best be implemented.

Now, according to my understanding, the United Nations formed some kind of committee which was called the Economic and Social Council which, within itself, has formed another committee on human rights. To start the ball rolling, if I may express myself that way, this committee has made a draft which is not yet completed. This draft will be submitted within a short time or as short a time as possible, to the council. If it is adopted by the council, it will then be submitted to the United Nations General Assembly. It is only at that time that Canada may see what can be done and whether Canada wishes to implement either the covenant or the declaration on human rights.

At the present time, I believe the committee is only inviting the nations to comment on the work the committee has done up to the present time. I wonder, Mr. Chairman, if we have the authority within our terms of reference to comment to the United Nations on whether we agree with each of these articles which the committee has drafted. It seems to me we have no right to do such a thing. It is not within the terms of reference of this committee. I do not think we have the right to comment on the declaration on human rights drafted by the committee of the Economic Council of the United Nations.

Mr. MARQUIS: Could we not make a report to the House and the government may send to the committee on human rights the decision taken by this committee as reported to the House?

The CHAIRMAN: The Government of Canada has been asked to make its comments. The Secretary of State for External Affairs wrote me and suggested that these matters be laid before the committee, I think under the impression it was incidental to the terms of reference to have the committee express its views or discuss what those comments ought to be.

HON. MR. BOUFFARD: And report to the government?

The CHAIRMAN: Yes; and report, technically, as a committee to the House of Commons.

When it comes to a question as to what this committee will do in assisting the government in making its comments, a question of procedure will arise as to whether the committee will vote on each of these suggestions or whether the members of the committee will simply express their views on each of them. Those views would be taken down, and the committee would refrain from passing any motion or any resolution because I, like the senator, believe it is not within terms of reference of the committee to decide what position Canada shall take. I do not think it is for the committee to decide that.

However, I do not think, if there is to be any legislation at any time, and the government has to take a position at any time, I should think it is within the terms of reference for the committee to give the government any assistance it can in the way which is most practical. I think I will suggest a little later, when we are going over these working papers clause by clause, that we discuss each one and that the members point out the dangers, if they see dangers; suggest improvements if they think of improvements, and that all that be taken down, so that the comments of the members of the committee would be given full consideration by the government.

In this way, I think we have a much more intelligent expression of opinion as to what is likely to be acceptable to the Canadian people as a whole, than if something were worked out in the offices of the Department of External Affairs of the Department of Justice. Now, that is my conception of the functions of the committee, here.

MR. MILLER: Are we to understand from Mr. Riddell that this declaration is again under consideration by the commission at Lake Success and, if so, what changes, if any, does he know are being made to this declaration now?

MR. RIDDELL: The commission began its meetings only yesterday, and it will be some time before we know whether or not they are suggesting substantial changes in this document.

HON. MR. BOUFFARD: There will be substantial changes?

MR. RIDDELL: I doubt if there will be very great changes at the next stage. We will get reports daily on these proceedings in New York.

The CHAIRMAN: Am I right in this, that the Economic and Social Council will make recommendations to the United Nations on the contents of this declaration; is that correct?

MR. RIDDELL: Yes, sir, it will present a report to the General Assembly of the United Nations on the result of the discussions.

MR. HOPKINS: If it can reach agreement.

The CHAIRMAN: Canada is a member of the Economic and Social Council and that is the first place where Canada, officially, will be able to express itself in the United Nations. Before that, all Canada will do is make suggestions about the drafting. The government will send in certain recommendations which may be changed later on consideration, I suppose, but Canada, as a member of the Economic and Social Council, will have an opportunity of expressing its views there. The views we express would likely be in the light of what Canadian people generally feel on the subject and there is no better place to get expression of that feeling than through a joint parliamentary committee such as this.

Mr. RINFRET: Is there any intention of defining the terms used in the declaration of rights? Take the word, "liberty" for instance. Is there any intention of defining what liberty is? I do not know that my interpretation of liberty is the same as that which has been put on paper, here. I am not sure it will agree with the Russian definition of liberty, either.

Mr. RIDDELL: I think the point which the honourable member has raised is one which comes up whenever an attempt is made to define human rights and fundamental freedoms in this manner. I do not think any attempt will be made to define the terms except perhaps by extension of a particular article, itself.

Mr. RINFRET: Would the definition of liberty in article 4 of the declaration be the same as article 8 of the covenant, for instance? Is that all that liberty means?

Mr. RIDDELL: I am quite certain, Mr. Chairman, that there will be differences of interpretation on the part of the people who support these documents which will become apparent—

Mr. RINFRET: So, two persons will sign the document without knowing what the other thinks liberty is?

Mr. RIDDELL: It is possible.

Mr. MILLER: Would not Mr. Hopkins be inclined to say, perhaps, if the nations subscribe to such general documents with these conflicting and undetermined views, it might only be a vehicle for dissension rather than agreement? Is it fair to ask him to give an opinion on that?

Mr. HOPKINS: I would say, Mr. Chairman, that would entirely depend on the nature of the document. I think it would be most helpful if comments or suggestions of the several states were made to assist the United Nations in attempting to prevent that. However, there is danger of that, yes.

Mr. HAZEN: Five nations, I understand, have made some reply to the receipt of this document to the committee. One of those nations is Canada. Are you in a position to tell us what reply the United States government made?

Mr. RIDDELL: Yes, sir, it is contained in a document which, I think, has been given to the committee. It is an Economic and Social Council document entitled, "Comments from governments on the draft International Declaration on Human Rights". The United States comments are fairly extensive and are contained at page 7 of this document, which is E/CN/82. I believe that this document has been circulated to the committee.

The CHAIRMAN: These documents have not been circulated, but they will be. They are very recent. The Netherlands comments are very extensive and, I presume, very good.

Mr. HAZEN: It might be helpful if we had those.

The CHAIRMAN: They are very recent documents and the clerk of the committee showed them to me yesterday.

Hon. Mr. GOVIN: On page 21, we have some comments from the United States. I do not know if this is the same document as the one to which you are referring.

Mr. RIDDELL: These are comments which were made by the United States member of the commission at the time the document was prepared. These other comments to which I am referring are the formal comments of the United States government on the document when it was referred to the government. I should like to quote one sentence from this comment.

The basic difficulty which the government of the United States finds with both the draft declaration and the draft covenant is that they are too long and complex effectively to accomplish their purpose.

That is a very general comment. There are more detailed comments, clause by clause, on the document.

Mr. HAZEN: I note on page 19 of this document which we have from the Economic and Social Council it states that,

The representative of Australia expressed the view, with which the representative of the United States associated herself, that the language of the articles of the declaration is confused in that it is both declaratory and mandatory. He felt that as it had been agreed that the declaration imposes no legal obligation and requires no measures for implementation, it should be drafted in declaratory form only, or in the present indicative sense.

Now, are there any comments on that article or about that comment which I have just read?

Mr. RIDDELL: It would be difficult for me to say, offhand, whether that comment is repeated in these comments which have come from the United States government. I think it is the intention, now, to take comments of that nature and the subsequent comments which have been made and see to what extent the document should be revised in a way which will take account of those.

Mr. MICHAUD: Following this remark, I note on page 21 of this document that the United States submitted a shorter declaration containing 11 articles instead of the 33 in the original declaration. It is more concise.

Mr. HACKETT: Before we proceed any further do you think there is any merit in the suggestion that the clerk be asked to keep a list of the documents that are circulated much like a list of exhibits in a law suit? If that were done it would simplify reference to them and enable everybody to have a full list.

The CHAIRMAN: Yes.

Mr. MICHAUD: Refer to them as exhibits A, B, and C.

Mr. HACKETT: We could refer to them in that way and keep a list before us, and it would facilitate reference and cross reference.

Hon. Mr. GOUIN: I think it is an excellent suggestion. It would be very useful if we could have a list made up to date because I know myself I have already several dozens of documents, and when we want to refer to them we do not know how to describe them.

Mr. HACKETT: If we had a common nomenclature and number it would be more satisfactory.

The CHAIRMAN: Committee document 1, committee document 2, and so on.

Mr. MARQUIS: I should like to put a question to Mr. Riddell. Suppose that the declaration on human rights is brought before the commission on human rights where Canada will be represented, and that this declaration is carried by a majority vote but Canada votes against it.

Mr. MICHAUD: Canada is not on it.

Mr. MARQUIS: Canada is not on it?

Mr. RIDDELL: It is not on the commission but Canada is on the Economic and Social Council.

Mr. MARQUIS: And on the Economic and Social Council Canada votes against it, but it is adopted by a majority vote. After that it is referred, if I understand it correctly, to the organization of the United Nations.

Hon. Mr. GOUIN: The General Assembly.

Mr. MARQUIS: And if it is accepted in the general assembly by a majority vote will this charter on human rights bind Canada?

Mr. RIDDELL: No, sir. The actions of the General Assembly of the United Nations constitute simply recommendations to the member states.

Mr. MARQUIS: If it is adopted by the Economic and Social Council by a majority vote will Canada be bound by that vote if we vote against it?

Mr. RIDDELL: No, sir.

Hon. Mr. BOUFFARD: It would only be binding if they signed the covenant.

The CHAIRMAN: That is right, but we have tried to maintain the position in the United Nations that once a recommendation is made by a two-thirds vote of the United Nations that we will abide by it even though we voted against it. We have tried to maintain that position. I do not know whether or not we have maintained it 100 per cent, but we have voted against resolutions at the United Nations, and once they were passed by a two-thirds vote, even though they had no juridical force, even though they were merely recommendations, we proceeded to comply with them.

Mr. MARQUIS: It is possible to make an exception if certain rights are involved and we have to protect them?

The CHAIRMAN: Yes, but our position has been that if the moral force of the United Nations is to be preserved there must be some subordination of national issues to the expressed wish of the United Nations. My view was, therefore, that we should be very careful about the resolutions that the United Nations passed for that reason, that we should not put up to nations impossible or very difficult things to do because otherwise you would have so many nations refusing to comply with recommendations of the United Nations that they would lose their effectiveness; they would become uninfluential. Canada has made quite a point of respecting that two-thirds vote of the United Nations even when she voted the other way.

Mr. BEAUDOIN: Does that apply also to the majority decision?

The CHAIRMAN: Not so much. Majority decisions are on important matters. Any important matter has to be passed by a two-thirds vote.

Mr. MICHAUD: May I ask the chairman if other countries have adopted a similar attitude to Canada on this point?

The CHAIRMAN: Some have and some have not.

Hon. Mr. GOUIN: There is a remark I should like to make very much. Suppose for one instant that the covenant in its present form is adopted by the General Assembly. I am absolutely convinced that the greater part of it could not possibly be implemented by the dominion government because in my own humble opinion—I may be utterly wrong—the greater part of it is a purely provincial matter.

The CHAIRMAN: The covenant has a clause in it which says in the case of federal states it only binds the federal authority to the extent of its constitutional jurisdiction.

Hon. Mr. GOUIN: To a great extent it would become an empty gesture. To put my cards on the table, the declaration appeals to me very much, but the covenant does not for the reason which we have just discussed. We would not be getting anywhere from a practical point of view, but I am very much in favour of principles, and I think we can have a very useful discussion on principles.

Mr. MILLER: Once it is passed by the Assembly we have already said that we will follow anything that the Assembly does, have we?

The CHAIRMAN: No.

Mr. MILLER: Is there ratification also?

The CHAIRMAN: No.

Mr. HOPKINS: Just of the covenant.

Mr. MILLER: We sign the covenant?

The CHAIRMAN: You are speaking of the declaration?

Mr. MILLER: No, of the covenant. If we sign that covenant—

Mr. MICHAUD: The covenant would have to be approved by an Act of parliament.

The CHAIRMAN: Yes. The practice has been ratification by parliament.

Hon. Mr. TURGEON: For purposes of clarification am I right in saying the answer to Mr. Marquis' question is that the action by the United Nations, no matter how near it is unanimous approval of the covenant itself, does not become binding on any member nation until the member nation has signed and has ratified the covenant?

The CHAIRMAN: That is right.

Hon. Mr. TURGEON: That is the answer to the question.

Hon. Mr. BOUFFARD: And only in so far as the federal parliament has jurisdiction.

The CHAIRMAN: Yes.

Mr. BEAUDOIN: Some reference has been made to opinions voiced by representatives of several nations in this document. Is it not so, Mr. Hopkins or Mr. Riddell, that the opinions expressed here by representatives of nations on this working committee on human rights do not necessarily represent the views of the country they represent?

Mr. HOPKINS: That is right. They put forward these working papers in effect without prejudice to their ultimate view.

Mr. BEAUDOIN: In other words, the views expressed by the Australian representative on this human rights committee do not necessarily represent the views of the Australian government. Probably they are very close to the view of the government, but the only final view of the Australian government will be when a decision has to be taken in the Assembly?

Mr. HOPKINS: Yes.

Mr. MICHAUD: Nevertheless the views expressed by the members of the United States committee seem to correspond with the views expressed by the government of the United States, as we have heard from Mr. Riddell a moment ago.

Mr. HOPKINS: Yes.

Mr. HACKETT: That is because they choose their delegates.

Mr. MARQUIS: I presume there are many countries like Canada which have a federal government and legislatures, and their respective jurisdictions. I do not know if we could draft a declaration which could suit federal governments within their own jurisdiction and powers.

Hon. Mr. BOUFFARD: You will not get much.

Mr. MARQUIS: Perhaps you will not get much, but we will get only what we can get.

Mr. STEWART: Surely we can always accept this declaration of the United Nations in the same way we accept the Ten Commandments, another aspiration.

Hon. Mr. GOUIN: I am terribly sorry. I did not understand your remark.

Mr. STEWART: I said that we can accept this declaration in the same way we accept the Ten Commandments, as an aspiration.

Mr. MARQUIS: If it were the Ten Commandments it would be all right.

The CHAIRMAN: If a declaration was made by the United Nations and Canada voted in favour of that declaration that was so made I would think continually when we introduced legislation in the House of Commons or in the Senate of Canada you would have members who would get up and say, if the

legislation did depart from the declaration, "This legislation is faulty. It departs from that declaration." The declaration has a continual living binding effect upon your federal legislation, and in all probability it would have some effect on provincial legislation, too. As I understand it that is what Mr. Hopkins means by the persuasive force of a declaration. It may be as far as the country will ever go. It may be they will never enter into a covenant. A nation must be pretty careful about entering into a covenant, of course. It is not too pleasant to have yourself impeached as a violator of a covenant by other nations, and have to argue your case out before a tribunal consisting of all the nations of the world, but the declaration might have a very real and beneficial effect upon legislation in your own country.

Mr. HOPKINS: If you will excuse me, it is about time for me to go.

Hon. Mr. GOVIN: Are there any other questions of Mr. Hopkins because he is obliged to leave?

The CHAIRMAN: Thank you very much, Mr. Hopkins. I think all members of the committee appreciate your attendance. If we have time I think I should present the first report of the steering committee. Will you read that?

The CLERK:

FIRST REPORT OF STEERING COMMITTEE

WEDNESDAY, April 28, 1948.

Your Steering Committee having considered future procedure, recommends the following as a preliminary step in the work of the Committee:

1. That the Order of Reference to the Committee be divided into the following three headings for consideration by the Committee:

(a) To consider the question of human rights and fundamental freedoms, and the manner in which these obligations accepted by all members of the United Nations may best be implemented;

And, in particular, in the light of the provisions contained in the Charter of the United Nations, and the establishment by the Economic and Social Council thereof of a Commission on Human Rights;

(b) What is the legal and constitutional situation in Canada with respect to such rights;

(c) And, what steps, if any, it would be advisable to take or to recommend for the purpose of preserving in Canada respect for the observance of human rights and fundamental freedoms;

and that they be considered in the order (a), (c) and (b).

2. That with respect to heading (a) the Committee give immediate consideration to the Draft International Declaration on Human Rights forwarded to the Government by the Secretary-General of United Nations with a view to recommending whether Canada should subscribe to such a declaration and, if so, whether in the form submitted or in some other form.

3. That consideration be given to the Draft International Covenant on Human Rights and the Suggestions for Implementation forwarded to the Government by the Secretary-General of United Nations; but that such consideration be deferred at least until it is known what disposition is to be made of these documents this year by United Nations and, if possible, until headings (b) and (c) have been considered by the Committee.

4. That officers of the appropriate agency of United Nations and of the Department of External Affairs be called to advise the Committee as to the significance and effect of the Declaration, Covenant and Implementation provisions and as to the proposed disposition of these documents by United Nations.

With reference to the hearing of Mr. J. P. Humphrey, Secretary, Commission on Human Rights, it is learned that his duties will not permit him to come to Ottawa at this time. This question will be reviewed at a later date.

It is recommended that the Committee now proceed with the hearing of Mr. R. G. Riddell, First Political Division, and Mr. E. R. Hopkins, Legal Division, Department of External Affairs, in relation to paragraph 4.

Your Committee also took note of the following:

- (a) Consideration of communications received from deans of law schools and provincial attorneys-general in reply to the following questions submitted to them by last year's Committee, namely, "The power of the Parliament of Canada to enact a comprehensive Bill of Rights. . . ."
- (b) The hearing of representations from interested organizations.
- (c) Senator Roebuck's suggestion, namely, that the Steering Committee take under consideration the question of inviting the provinces to co-operate in the procedure by which a bill or declaration of rights may be attained.

It was agreed that a decision on these questions should be deferred for the time being.

It was also agreed that subsequent procedure be reviewed from time to time by the Steering Committee as the work of the Committee progresses.

All of which is respectfully submitted.

Mr. MICHAUD: There is a question I should like to ask.

Mr. HACKETT: Just a minute. Is that carried?

The CHAIRMAN: Will someone move the adoption?

Hon. Mr. TURGEON: I move the adoption of the report of the steering committee.

Hon. Mr. BOUFFARD: I second that.

The CHAIRMAN: Is there any discussion?

Mr. MICHAUD: There is a point I should like to clear up. At the top of page 2 reference is made to Mr. J. P. Humphrey, Secretary of the Commission on Human Rights. That does not mean he is secretary of that international commission? He is our representative, the Canadian representative there?

The CHAIRMAN: No, he is not a representative of Canada at all. He is the secretary. He is a United Nations official. He is a Canadian.

Mr. HACKETT: He abandoned the chair at McGill to accept a position with the United Nations.

The CHAIRMAN: Is there any further discussion on this report?

Carried.

If that is carried, I presume at the next meeting we will, following this recommendation of the steering committee, have to address our attention to this declaration of human rights.

Hon. Mr. TURGEON: What did you say?

The CHAIRMAN: Following the report of the steering committee, we will have to take this declaration of human rights and go through it. The question as to how we shall go through it we shall settle then. I am going to suggest that, instead of undertaking a vote and carrying it item by item as we do the

sections of a bill, that we read it and the members express their views individually as to the dangers in it; as to the possible changes that should be made in it and, after there has been sufficient discussion, to go on to the next item. I shall suggest that.

Mr. HACKETT: I think that is an excellent suggestion for at least this phase of the work. Undoubtedly, in a discussion of this kind there will emerge a few questions which will be highly controversial and, I think the suggestion of the chairman is a very wise one in dealing with questions of this kind. It will enable us to see the question in its entirety before we attempt to deal with the details which are bound to be controversial. I should like to move that the chairman's suggestion with regard to procedure be accepted.

The CHAIRMAN: It has been moved by Mr. Hackett—
Carried.

Mr. HACKETT: I think, Mr. Chairman, as a prelude to the reading of this document it would be very helpful if the members of the committee could have some assurance they are in possession of all the available material. Therefore, if the clerk would make up this list and distribute it, we could then verify what information is lacking from our respective records.

The CHAIRMAN: Before the next meeting, what I intend to do is read the comments of the Netherlands and the United States governments on this declaration of rights.

Hon. Mr. TURGEON: They will be circulated in the meantime?

The CHAIRMAN: They will be in the mail tomorrow. Thursday afternoon is the next meeting. Will that be too soon?

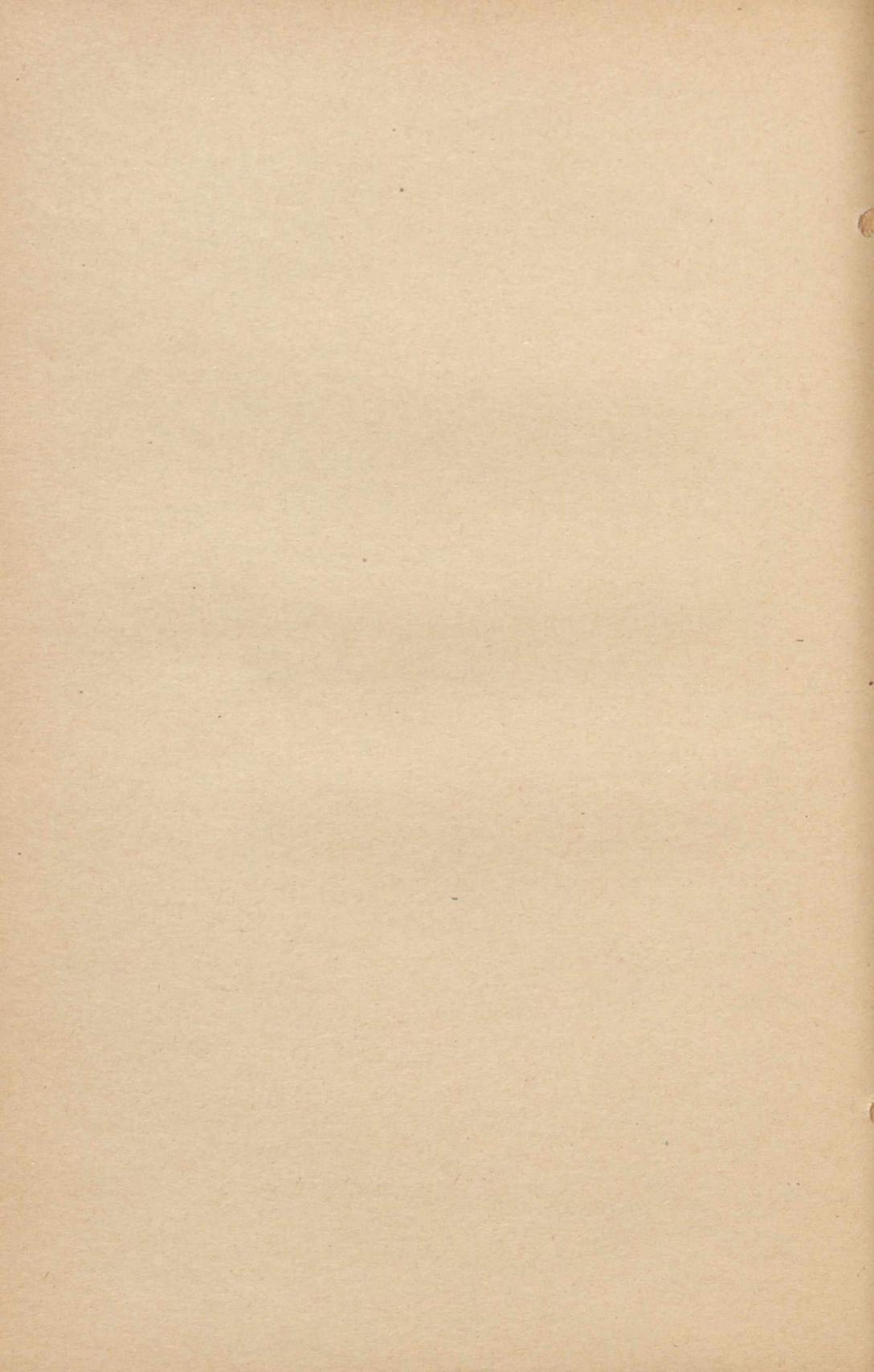
Hon. Mr. GOVIN: Next Tuesday would be the earliest date for the next meeting.

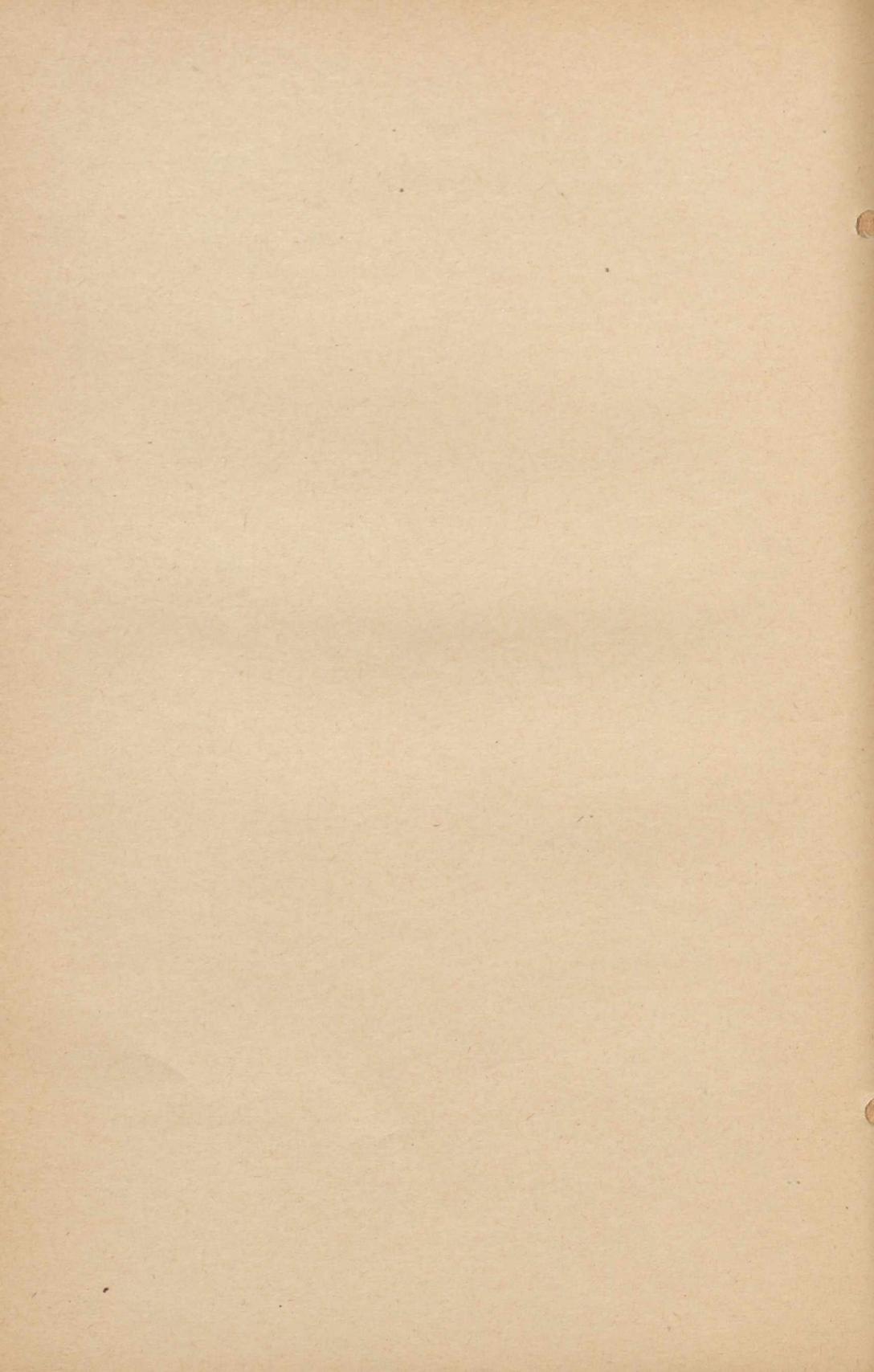
The CHAIRMAN: Very well; next Tuesday at the same hour, we will have our next meeting.

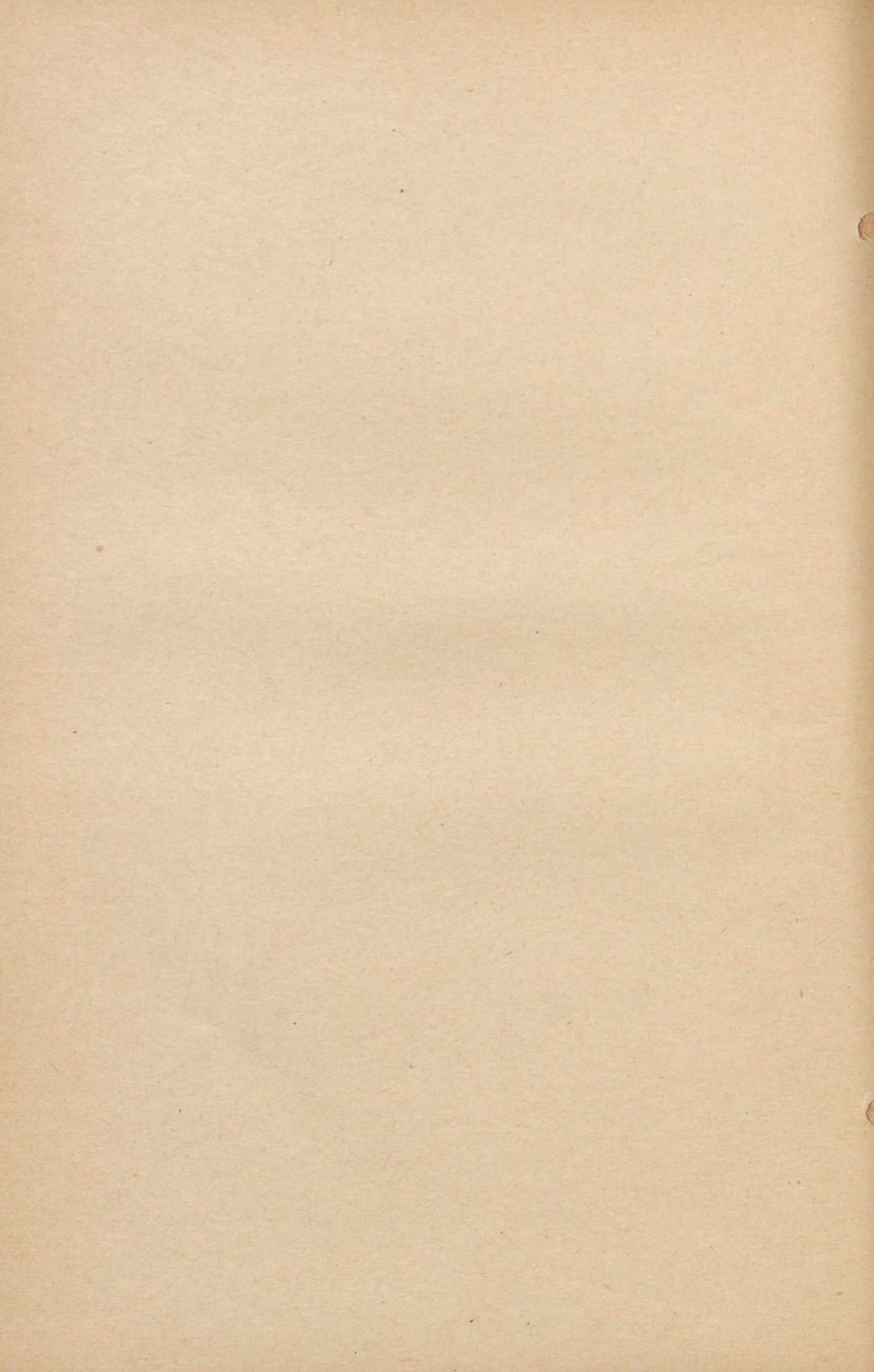
Hon. Mr. TURGEON: I move we adjourn.

The CHAIRMAN: The committee is adjourned.

The committee adjourned to meet again on Tuesday, May 11, 1948, at 4.00 p.m.









SPECIAL JOINT COMMITTEE OF THE SENATE
AND THE HOUSE OF COMMONS

ON

HUMAN RIGHTS

AND

FUNDAMENTAL FREEDOMS

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 3

THURSDAY, MAY 13, 1948

WITNESS:

Mr. D. H. W. Henry, Counsel, Department of Justice, Ottawa.

OTTAWA
EDMOND CLOUTIER, C.M.G., B.A., L.Ph.,
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY

1948

MINUTES OF PROCEEDINGS

THE SENATE,

THURSDAY, 13th May, 1948.

The Special Joint Committee on Human Rights and Fundamental Freedoms met at 4.00 o'clock p.m. The Joint Chairmen, Right Honourable J. L. Ilsley and Honourable Senator L. M. Gouin, were present. Mr. Ilsley presided.

Also present:

The Senate: Honourable Senators Crerar, Fallis, Turgeon, Wilson.

The House of Commons: Messrs. Breithaupt, Croll, Hansell, Hazen, Herridge, Marquis, Michaud, Miller, Rinfret, Smith (*York North*), Stuart (*Charlotte*), Whitman.

Copies of the following were filed with the committee:

- (1) File No. 19. Comments from Governments on the Draft International Declaration of Human Rights, United Nations paper E/CN.4/82, 16 April, 1948.
- (2) File No. 20. Comments from Governments, etc. E/CN. 4/82 Rev. 1, 22nd April, 1948.
- (3) File No. 21. Comments from Governments, etc. E/CN. 4/82/Add. 1, 16th April, 1948.
- (4) File No. 22. Comments from Governments, etc. E/CN. 4/82/Add 2, 22nd April, 1948.

The Chairman stated that Dr. J. P. Humphrey, Secretary, Commission on Human Rights, United Nations, had suggested that he could appear before the committee on Monday, 17th May. It was agreed that this question be reconsidered at a subsequent meeting.

The committee commenced consideration of the Draft International Declaration on Human Rights.

Mr. D. H. W. Henry, Counsel, Department of Justice, Ottawa, was called. He gave a statement summarizing comments from member governments of the United Nations on the draft International Declaration and was questioned thereon.

Articles 1 and 2 were reviewed.

The committee adjourned at 6.00 o'clock p.m. to meet again Friday, 14th May, at 4.00 o'clock p.m.

J. G. DUBROY,
Clerk of the Committee.

MINUTES OF EVIDENCE

HOUSE OF COMMONS,
May 13, 1948.

The Special Joint Committee on Human Rights and Fundamental Freedoms met this day at 4 p.m. The Right Honourable Mr. J. L. Ilsley (Joint Chairman) presided.

The CHAIRMAN: There was a request that Mr. Humphrey be asked to come and give evidence before this committee. He can be here next Monday. The only days that are suitable for him are Fridays and Mondays. I should like the committee to consider whether we should have him next Monday afternoon at 4 o'clock.

Hon. Mr. GOUIN: I have to remain here until the end of the day tomorrow. The Senate is not sitting for two weeks, and for me and all those who go away from Ottawa Friday would have been much more convenient.

Mr. WHITMAN: Tomorrow.

The CHAIRMAN: We cannot get him for tomorrow.

Mr. WHITMAN: It would be a week from tomorrow.

The CHAIRMAN: That would not be—

Hon. Mr. GOUIN: I am quite willing to come to Ottawa then but to come on Monday would be exceedingly difficult for me.

Hon. Mr. TURGEON: The Senate will be adjourning tomorrow until the end of May.

Mr. MARQUIS: Would it be possible to have him tomorrow?

Hon. Mr. GOUIN: He cannot come tomorrow. I have been away from my office for such a long time that I would like to have Monday free. Friday of next week would be suitable if it is all right for the other members of the committee.

The CHAIRMAN: Would it be of any use to have it next Friday with the Senate in adjournment?

Hon. Mr. TURGEON: You would have trouble getting a quorum from looking around the table.

The CHAIRMAN: We may have trouble next week in getting a quorum. However, I think we have got to remember that there must be more than ten members of the House of Commons on the committee.

The CLERK: Twenty-nine.

Mr. WHITMAN: I think we had better have it a week from tomorrow.

Hon. Mr. GOUIN: Two weeks from tomorrow is the same thing. The Senate will not be back. Senators from Montreal are able to come. I would consider it my duty to come.

The CHAIRMAN: Shall we plan to have him here next Friday, if possible, a week from tomorrow?

Hon. Mr. TURGEON: Those of us who cannot attend can read his statement.

Mr. WHITMAN: Carried.

The CHAIRMAN: All right, that is agreed.

Hon. Mr. GOUIN: You will send us notices.

The CHAIRMAN: We may not be able to get him next Friday. He can come next Monday.

Hon. Mr. TURGEON: It would not suit you?

Hon. Mr. GOVIN: You might perfectly well have a meeting on Monday. It was not my idea to prevent the committee from meeting but I have to tell you you could not rely on my presence to make a quorum because it would be exceedingly inconvenient for me to come back here for Monday afternoon.

The CHAIRMAN: I think it would be better to wait until the Senate comes back because we will have him right in the middle of our consideration of the clauses of this declaration if we have him now. Probably at the end would be just as good. It was agreed last day that we would go over this declaration today. I have asked Mr. David Henry of the Department of Justice to examine the suggestions that have been made to the commission on human rights by various countries so that he could give us some idea of the kind of proposals that are coming in.

David Henry, Department of Justice, called.

The CHAIRMAN: I would ask Mr. Henry to give us the benefit of his examination of these documents.

The WITNESS: Yes, sir. Thus far I felt perhaps I should look first of all at the general observations which have been made by the various states which have furnished the benefit of their comments to the United Nations. In general, therefore, I think perhaps I might epitomize their remarks as follows, that it is agreed that the declaration, which is what we are examining now, is not to have a legal binding effect, but is rather to be a set of principles which will furnish a standard for the nations who are members of the United Nations in promoting rights and freedoms under the United Nations charter; secondly, that the declaration would be a guide and inspiration to individuals in that it sets forth rights and liberties which individuals are deemed to be entitled to. That thought appears to run fairly generally through the comments of the states that have replied. Thirdly, there seems to be a fairly general consensus that there should be a shorter and more concise statement of the rights and liberties than appears in the present draft. It is thought that to have the draft in its present form may lead to certain amount of uncertainty and confusion because it is not stated whether, when in the draft covenant it is said something is unlawful, that is meant to have a binding effect. It would appear to be so and yet it is acknowledged that the declaration is not to have a binding effect. That is merely one example of how confusion may arise. It is thought to have the principles stated more broadly so that you can approach them from a very general perspective, so that you can see what the general rights and liberties of the individual are as a goal or ideal towards which nations might strive, would be beneficial.

The next thought which seems to run through the comment is that there is in the declaration a tendency to say that there are certain duties on the part of states which subscribe to or vote for the declaration in the general assembly. It is suggested by some states that rather than placing emphasis upon the duties of states to furnish something to individuals there should rather be a declaration of what the rights of individuals are, with the emphasis upon the rights and liberties of the individual, not upon the duties of the state.

Those are just some general comments which occur to me as perhaps somewhat fundamental to the ideas that have been put forward. I think it might be appropriate if I, at this point, attempted to state very shortly what

the general observations of some of the states have been upon the covenant, not at this point with respect to individual articles, but with respect to the general form and principles of the document.

By the Chairman:

Q. The covenant now?—A. I am sorry, it should be the declaration. We are not dealing with the covenant. I am sorry. I might say at the outset that Great Britain has furnished comments on the covenant and not on the declaration so that we have not the benefit of the comments of the United Kingdom on the declaration, but the United States has commented on the declaration. The view of that government is that the document is too long and too complex. I should like to quote, because I think it is very appropriate, the views of the government of the United States as to what function should be fulfilled by the declaration. The first function is:

To serve as basic standards to guide the United Nation—

By Mr. Hazen:

Q. What page are you reading from?—A. I am reading from a document—

Q. I think I have a copy.

Hon. Mr. GOUIN: Number 20.

The WITNESS: Number 20 at page 18.

Mr. HAZEN: Pardon me. I should like to follow along, and I have a document here dated April 16, and on page 7 there are observations, suggestions and proposals of the United States.

Hon. Mr. TURGEON: I think that is the same one. That is the one I have.

The WITNESS: I think that was revised because there are two documents which will contain that. There was later one dated April 22.

Mr. BREITHAAPT: What number is that?

Hon. Mr. TURGEON: Number 20. There is another one of April 22.

Hon. Mr. GOUIN: Right.

The CHAIRMAN: Number 20 is dated April 22.

Hon. Mr. TURGEON: It is my mistake. I have number 20..

By Mr. Breithaupt:

Q. What page of number 20?—A. Page 18.

The declaration is envisaged as properly fulfilling two functions:

1. To serve as basic standards to guide the United Nations in achieving, within the meaning of the charter, international co-operation in promoting and encouraging respect for and observance of human rights and fundamental freedoms for all;

2. To serve as a guide and inspiration to individuals and groups throughout the world in their efforts to promote respect for and observance of human rights.

With respect to the first function which is there set forth it is suggested that a shorter and more concise declaration would be more effective for the purposes to be achieved than the long and detailed declaration which has been submitted. The government of the United States suggests that it is not intended to be a legislative document, and the manner in which the various nations or the United Nations will undertake the task of promoting and encouraging respect for and observance of human rights and fundamental freedoms remains to be determined. It is suggested that that task will require a broad approach, not one which at first, at any rate, should be undertaken in detail. It is also suggested that if the declaration is broad and comprehensive in its terms then the task of implementation, if necessary, in detail, will become more simple.

With respect to the second point which has been set down if it is suggested that the declaration will serve as a focal point of world public opinion the document must be simple and must be as readily understandable as possible.

As a result of these observations the United States government comes to the conclusion that a more short and concise declaration would be desirable. The United States makes the further point that it is not appropriate to state the rights of the individual in the form of a government responsibility. I think a reference to the document will show what is meant there. There are duties of the states suggested, and the United States is rather of the view that the purpose is to set forth basic human rights and freedoms, and to state these in terms of government responsibility, or to say that certain acts are unlawful, is likely to cause confusion as to the basic meaning of the declaration which should presumably be declaratory in its wording.

It is therefore suggested by the United States that the rights should be proclaimed but no attempt made to define the role that the government should play, because that role must of necessity vary from one country to another, and if you confine the role of the government of each country in any particular way you must accordingly limit the flexibility of the whole scheme. Flexibility is obviously desirable if you are to have general acceptance of a document of this kind.

I would draw your attention to a quotation which the government of the United States wishes to base its views upon. It is a quotation from a statement made by Abraham Lincoln. Perhaps it would be appropriate to read it because I think it does explain exactly what the view of the government of the United States is. Referring to the assertion of human equality in the United States' Declaration of Independence Mr. Lincoln said:

They (the drafters) did not mean to assert—

By Mr. Marquis:

Q. Which page?—A. Page 19 of the same document.

They did not mean to assert the obvious untruth that all were then actually enjoying that equality, or yet that they were about to confer it immediately upon them. In fact, they had no power to confer such a boon. They meant simply to declare the right, so that the enforcement of it might follow as fast as circumstances should permit. They meant to set up a standard maxim for free society which should be familiar to all, constantly looked to, constantly laboured for, and even, though never perfectly attained, constantly approximated, and thereby constantly spreading and deepening its influence, and augmenting the happiness and value of life to all people, of all colors, everywhere.

By Hon. Mr. Gowin:

Q. That is all for the declaration apparently?—A. That is all about the declaration which the United States has commented in general. There are other comments on specific items which will follow later although I believe the United States has only confined itself thus far to commenting upon the individual articles in the draft covenant with which I believe we are not to deal today.

Q. Would you allow me one question? On page 21 of committee document No. 18, which you now have in your hand, there were some representations made by the representative of the United States suggesting precisely a shorter text?—A. Yes.

Q. I wonder if you have taken communication of any other text submitted by the United States, or if this is the only shorter text which we have from them up to date?—A. Yes, sir, as far as I am aware the only shorter text

which has been submitted is the one appearing on page 21 of committee document 18. I think that has 10 articles, and it seems to be a very appropriate document, but I am not aware that the United States has prepared anything other than that for present discussions. This one was submitted to the drafting committee by the United States' representative, Mrs. Roosevelt, and was included in this document which is now before us for comparison.

Q. No. 18.—A. For comparison. Whether or not such a document would be eventually adopted would, of course, depend upon the discussions now in progress in the drafting committee.

Q. If you will allow me I should like to remark that we have not received anything on behalf of the U.S.S.R. because on page 21 of that same document No. 18, paragraph 9, there was a remark to the effect that the representative of the U.S.S.R. felt that the draft which you discussed a few minutes ago was not sufficient for the protection of the essential human rights, and consequently he reserved his right to present at a later stage of the work a Soviet draft declaration of human rights. I do not think Mr. Riddell has received anything for the Department of External Affairs?

Mr. RIDDELL: No, sir.

By the Chairman:

Q. Now, Mr. Henry, do you wish to report to the committee in general the comments that have been made by any other countries except the United States?—
A. Yes, sir. I have other comments of other countries which I may go on with.

By Mr. Hansell:

Q. Before Mr. Henry departs from the United States I understood him to say that the United States' impression is that the declaration has no legal status. Would they have the same impression respecting the covenant?—
A. That would be quite a different question. I think the covenant is generally recognized as being of binding legal effect when adopted by any state.

The CHAIRMAN: It is referred to as a treaty. You will find it is referred to as a treaty in the comments of some countries.

Mr. HANSELL: That is right. I thought it would be as well to have that on the record in the discussion.

The WITNESS: I might quote from the observation in the general comments of the United States on the covenant.

The CHAIRMAN: I do not think you had better.

The WITNESS: Perhaps that would be better done later.

Hon. Mr. GOVIN: It would be quite advisable to stick to the declaration for the time being.

The WITNESS: If I may, I should like to make one or two comments on what has been said by some of the other governments. The Netherlands has made representations which may be found in committee document No. 20, page 3. It is interesting to note that the Netherlands' government draws attention to the distinction between the two instruments, which is a distinction brought up by the question which Mr. Hansell asked a moment ago, and which should constantly be borne in mind because I think it will be found that that distinction is of such great importance that it is very likely to influence the adoption of the declaration much more readily than the adoption of the covenant, simply because the latter is going to be of binding effect. The Netherlands, however, has said that on the whole a shorter and less detailed text might in some cases be preferable. They mean there, I think, that some of the individual articles might be worded in a more general manner to make them more generally acceptable. The government also thinks that some co-ordination of various provisions in the draft might be wise.

I can think of one place where there does appear to be some overlapping, if I might give you an example.

By Hon. Mr. Gouin:

Q. You are referring back?—A. I am referring to document 18 which is the draft of the declaration, articles 4 and 5 appear to me to, in some way, overlap because they both refer to life, liberty and the security of the person. I do not know if that is the type of thing to which the Netherlands government is referring, but I suggest that is one example of possibly better co-ordination of the provisions in the draft.

The Netherlands government has also suggested that before a final form of the draft is chosen it might be appropriate to eliminate what they term certain vague articles. They refer to articles 29 and 30 of the draft covenant which appear at page 18 of committee document 18.

One of those articles concerns the right to rest and leisure and the other one concerns the right to participate in the cultural life of the community. The government suggests these as examples of vagueness.

By Mr. Marquis:

Q. Nothing is provided for standard time or daylight saving time?—A. The Netherlands government also agrees that the declaration and the covenant should be prepared together and points out that the declaration is assumed to have only moral importance which is the matter mentioned a moment ago and that the covenant is to be binding legally.

The point is brought forward which I think is not mentioned in any other government's comments, namely, that some might consider the declaration should be merely in the nature of a supplement to the covenant. The government of the Netherlands does not agree that that should be so but that the declaration should cover the whole field of human rights and should deal with the problems which will appear later in the covenant, so that states that do not adopt the covenant may, by voting in the General Assembly, adopt the declaration as a general directive. Then, the comments go on to indicate that in the view of that government priority should be given to the declaration.

The further point is made by the Netherlands government that throughout the declaration there appears various provisions which are intended to militate against discriminations and, rather than have those provisions appear seriatim, it would perhaps be an advantage to have one single article somewhere in the covenant which would provide for non-discrimination on the grounds of race, colour, sex, religion and so forth.

The Netherlands government is also inclined to feel that emphasis should more clearly be placed on the rights of individuals rather than on the duties of the state in respect of the individuals which is a point I mentioned previously. It is also felt that limitations as to certain rights and freedoms which may, at times, be in some respects abridged should be gathered into one general limitation provision. I understand that in the course of the present discussions which are taking place consideration is being given as to whether or not limitations upon individual liberties should be placed in a single provision. It is obvious, for instance, that liberties must be abridged for the purpose of law enforcement in some ways, such as persons being imprisoned who have offended against the law. It is thought something definite should be said about such an abridgement of liberty and it should appear at one place in the declaration. That is the extent of the comments of the Netherlands government.

The government of Australia has also made some comments and it says it does not consider the present draft is satisfactory. You will find the comments of the government of Australia in committee document No. 20 at page 16.

It is to be noted that Australia has confined itself to rather general comments on the whole document and has not followed the lead of the other countries in dealing with the individual provisions. Australia suggests that the declaration should be an instrument of popular appeal and persuasion and, therefore, should be a more concise statement of general principles than it is at present. It also makes the suggestion that the declaration might be properly placed as a preamble to the covenant when it is drafted, but that the declaration should be promulgated as a separate document.

The government of Mexico has submitted observations which appear in committee document No. 21. In the observations the government points out that Mexico took the initiative in this question at the inter-American conference on problems of war and peace, indicating the active interest which the government has in these problems. It goes on to suggest that a declaration of this nature does not conflict with the principle of the sovereign equality of states or of the domestic jurisdiction of states who are members of the United Nations. It is agreed that the declaration should be in the declaratory form only, with no provision for implementation.

By way of re-assurance, the government of Mexico points out that the absence of sanctions in the declaration does not lessen its influence and importance since it is considered that the declaration is effective of itself for the following reasons: firstly, because it recites the rights and freedoms which the members of the United Nations undertook to promote in signing the United Nations charter; secondly, it proclaims the standard of justice and of freedom approved by international public opinion to serve as a guide and encouragement to the various states. Accordingly, the Mexican government considers that by drafting the declaration in broad terms it will be made more readily acceptable by most of the states.

It is further noted that the states who signed the charter undertook to fulfil the principles stated in the charter which include the promotion of and respect for human rights. I think by way of pointing out that there is some way of implementing, to an extent, the provisions of the declaration, the Mexican government goes on to point out that the General Assembly of the United Nations may discuss and make recommendations upon matters affecting human rights and fundamental freedoms and may call attention of the Security Council to any situation which is likely to endanger international peace and security.

Now, the government of South Africa has made observations in a document which, I understand, has not yet been submitted to the committee and distributed for the use of the members, but I shall attempt to paraphrase it. It is pointed out that some articles, such as articles 1, 13, 28 and 32 of the draft covenant do not actually define any right or freedom at all while others describe certain duties which are to be performed by states rather than describing rights and freedoms to which individuals are entitled. Some of the articles, it is considered by South Africa, go beyond what is the concern of the United Nations as they are more than elementary, essential rights. Although this may be a desirable goal, it is suggested that the charter of the United Nations envisages only protection of the minimum rights and freedoms which the world conscience feels to be essential to the life of the individual and the declaration, therefore, it is considered by South Africa, trenches upon the domestic rights of states.

It is further submitted by that government that, to enforce the economic rights which the declaration sets forth, requires the co-operation of employers, whether that co-operation is compulsory or otherwise. It is suggested that this implies the necessity of a totalitarian control of economic life and that the declaration is thus, in effect, an injunction to states to move towards the communistic economic system.

Therefore, the government of South Africa comes to the conclusion, owing to its importance as a moral influence, the declaration should not be passed in a form which is so unacceptable.

There is one more comment which has just been handed to me. It is made by the government of Brazil, document No. 22. With respect to the declaration, the government of Brazil, in common with some other governments, suggests that the document should be as broad as possible. The declaration should constitute an ideal which the states would strive to reach thereby fulfilling the deficiency in their juridical organizations. Such a document would thus become a stimulus to the progress of the legal organizations of all states. On the other hand, it is suggested that the text of the declaration should be as concise as possible, although the conciseness should not prevent accurate definition of acknowledged rights.

Then, the government suggests that attention should be paid to the duties and corresponding rights. Further comment is made as to the duties of a state to which reference is made in the draft, and it is suggested that such reference would be better if it were a specific declaration of rights and duties of states than the one in the present declaration.

Finally, it is suggested that, as the guarantees of rights in certain instances are presented as substantive rights, it might be better to replace the expression, "rights and liberties", appearing in the declaration with the words, "rights and guarantees".

Now those, Mr. Chairman, are, so far as I am aware, all the comments of a general nature which have been made upon the draft declaration which is what we are discussing now. Possibly, that could form the basis of some discussion.

The CHAIRMAN: Well, I do not know whether the committee wishes to discuss these general comments. I think, perhaps, we would make more headway if we started now with the articles.

Mr. HANSELL: There are one or two questions I should like to ask. With regard to the comments which have been made by South Africa, we have not that document as yet?

Hon. Mr. GOUIN: Not yet.

Mr. HANSELL: We will be able to get it?

The CHAIRMAN: It is on order.

Mr. HANSELL: Mr. Henry did not say anything about Canada's comments. Might I call the committee's attention to the comment which has been made contained in document No. 19, page 2. This is only in the form of a reply by letter to the Secretary General by our Secretary of State for External Affairs. I believe that reply is worthy of considerable praise. I read it carefully and it deserves praise if, for no other reason, than that it embodies within it the suggestion to the United Nations that we believe strongly in our parliamentary form of government and not government-in-council. It also indicates that the official opinion is we do not believe we should be rushed into such an important matter. It is suggested that the matter might even be postponed pending discussion until 1949.

I wonder, Mr. Chairman, if it would not be as well for the purpose of those who are interested in this committee if we embodied that letter in the record?

Hon. Mr. GOUIN: That is the April letter?

Mr. HANSELL: April 1, 1948.

The CHAIRMAN: It is on *Hansard*, I might say.

Mr. HANSELL: People might be reading these reports who will not be reading *Hansard*.

The CHAIRMAN: Is it agreed that Mr. St. Laurent's letter of April 1 appear in the proceedings of this committee?

Agreed.

DEPARTMENT OF EXTERNAL AFFAIRS

Canada

Ottawa, April 1, 1948.

Sir,—I have the honour to refer to your letter of January 9, 1948, in which was enclosed a report on the Second Session of the Commission on Human Rights, and to inform you that the proposals contained in the draft International Bill of Human Rights have been closely considered by officials of the government, and it is expected that they will be considered by a Joint Parliamentary Committee on Human Rights. A discussion of this subject by parliament has not yet been possible, however, and the Canadian Government would not wish to express views on a matter of such importance without having had the benefit of learning the opinion of Parliament. This is especially true in view of the nature of the Canadian Constitution, and the Canadian Government, therefore, regrets that final comments on the Declaration will not be available for April 3rd.

The Canadian Government is anxious that ample opportunity be afforded to comment on the International Bill of Rights both at the meeting of the Economic and Social Council in July and at the meeting of the General Assembly in September.

It is the opinion of the Canadian Government that the final drafting of an International Bill of Rights is a serious task involving the reconciliation of differing philosophies and judicial principles. It is therefore respectfully suggested that the final expression by the United Nations of human rights and fundamental freedoms may well require much more time than is at present contemplated, and that postponement of approval of the Draft Bill from the 1948 to the 1949 Session of the General Assembly might be with advantage taken into consideration.

I have the honour to be,

Sir,

Your obedient servant,

(Signed)

Secretary of State for External Affairs.

The CHAIRMAN: I think the statement Mr. Henry has made will serve as a helpful background for the discussion of the articles. I suggest we now take article 1 and that we ask Mr. Henry what specific comments have been made on article 1 by the various nations who have made comments. I will read article 1.

All men are born free and equal in dignity and rights. They are endowed by nature with reason and conscience, and should act towards one another like brothers.

Hon. Mr. CRERAR: It sounds fairly good.

The CHAIRMAN: You will find some exception has been taken to it.

The WITNESS: The government of the Netherlands has made the only suggestion which I have noted. Their comment is that it seems superfluous to state explicitly that the word, "men" implies both men and women. Apart from that, I find no other comments.

By Hon. Mr. Gowin:

Q. If you will allow me, I may say there is no mention of that in article 1. Your reference is to the comments on article 1 where the definition of men is equally embracing, men and women.—A. That is the comment which the government made. I think, perhaps, they were looking at it from a precise legal point of view as a draftsman of a legal document might regard it. Possibly, it is fair to say they were referring to some comments which appear in the drafting committee rather than in the article itself.

Q. It is on page 19, you see, part 2, entitled, "Comments of the draft International Declaration on Human Rights". It is really a comment on article 1.

Mr. MICHAUD: Has anyone suggested an interpretation section to the declaration?

By the Chairman:

Q. I should like to get an answer to that question. Is there any interpretation clause such as have in our statutes by our Interpretation Act, stating that men would include women?—A. No, sir, I am not aware that there is any interpretation clause for this purpose.

Q. Then, should it not be "persons"?

Mr. HAZEN: If I remember correctly, at our last meeting it was suggested that each nation would define these terms as they saw fit and, consequently, there would be no general agreement as to what the words meant. Now, the words here are, "all men are born free and equal in dignity".

When Mrs. Roosevelt presented a suggested draft she used the word as used in the United States, "everyone". If the word "everyone" were used in place of the words, "all men" it would be all embracing.

Hon. Mr. TURGEON: Would you say, brothers and sisters?

Mr. MICHAUD: Everyone would not refer so clearly to persons.

Mr. HAZEN: Everyone is entitled to life, liberty and equal freedom under the law.

Mr. MARQUIS: Before going further, I would suggest to the committee that it seems to me to be of very considerable importance that, at the beginning of a declaration on human rights, the name of God should be embodied in the text of the article.

In this article we see the words, "all men" or every human being, which would, perhaps, be more appropriate, but I would suggest that this article be amended as follows:

That in the article 1 of the Draft International Declaration on Human Rights the words "and rights", at the end of the first sentence, be deleted and the following ones substituted therefor:

being vested by their Creator with unalienable rights.

So that the said article would read as follows:

All men are born free and equal in dignity, being vested by their Creator with unalienable rights. They are endowed by nature with reason and conscience and should act towards one another like brothers. I have copies of this amendment for the members of the committee.

I think, Mr. Chairman, that the first thing we should do in commenting on this Draft International Charter is to suggest that in a country like ours we believe in God and that, as human beings, we derive our rights from God, not from ourselves. We should draw the attention of the International Committee on Human Rights to the fact that they should examine that proposition and include it, if it is possible, in the first article of that Draft International Declaration on Human Rights.

I wish to draw the attention of the committee to the fact that, perhaps the strongest nation in the world, the United States, has embodied such a declaration in the Declaration of Independence in Congress, July 4, 1776. May I read the first few extracts? The beginning of the declaration reads as follows:

When in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness.

Then in the conclusion:

We, therefore, the representatives of the United States of America, in general Congress assembled, appealing to the supreme judge of the world for the rectitude of our intentions, do, in the name, and by authority of the good people of these colonies, solemnly publish and declare, that these united colonies are, and of right ought to be free and independent states; that they are absolved from all allegiance to the British crown, and that all political connection between them and the state of Great Britain, is and ought to be totally dissolved; and that as free and independent states, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent states may of right do. And for the support of this declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our lives, our fortunes and our sacred honour.

I have in my hand the constitution of Ireland. In the preamble we see that the first words used refer to God.

In the name of the Most Holy Trinity, from Whom is all authority and to Whom, as our final end, all actions both of men and states must be referred, we, the people of Eire, humbly acknowledging all our obligations to our Divine Lord, Jesus Christ, who sustained our fathers through centuries of trial, gratefully remembering their heroic and unremitting struggle to regain the rightful independence of our nation, and seeking to promote the common good, with due observance of prudence, justice and charity, so that the dignity and freedom of the individual may be assured, true social order attained, the unity of our country restored, and concord established with other nations, do hereby adopt, enact and give to ourselves this constitution.

I firmly believe that all the democratic people of the world believe in God and ask for the protection of God. In a declaration of such importance I feel it must be a duty to embody in the first article some recognition of the authority of God, and the principle that the rights we may have are derived from the supreme authority of God.

Mr. MICHAUD: I do not know whether anybody is supposed to second this motion, but I am pleased to do so with these remarks, however. When Mr. Marquis read the text of his amendment I was of the opinion that the word "endowed" instead of "vested" would be more appropriate to the situation. Then I heard him read in the American text a sentence from which apparently he was inspired where the word "endowed" is used. With this suggestion I am pleased to second the amendment.

Mr. MARQUIS: I am glad Mr. Michaud made that remark. As to the drafting of my amendment I am glad that the English speaking members, and the French member who speaks English so well, can correct it. I did not use the word "endowed" because it was used in the second sentence and I did not want to repeat it. That is the only reason why I tried to find a word that would be suitable. Naturally the members of the committee are able to advise on the best English draft. The only thing I want is the principle and the idea.

The CHAIRMAN: This motion raises an important question of procedure. I want to point out that at the last meeting of the committee it was agreed that instead of passing resolutions on these sections we would simply have a discussion and not take them up clause by clause as we would a bill. I quote from page 38 of the last report of the committee.

The CHAIRMAN: Following the report of the steering committee we will have to take this declaration of human rights and go through it. The question as to how we shall go through it we shall settle then. I am going to suggest that, instead of undertaking a vote and carrying it item by item as we do the sections of a bill, that we read it and the members express their views individually as to the dangers in it; as to the possible changes that should be made in it, and after there has been sufficient discussion, to go on to the next item. I shall suggest that.

Mr. HACKETT: I think that is an excellent suggestion, for at least this phase of the work. Undoubtedly in a discussion of this kind there will emerge a few questions which will be highly controversial and, I think the suggestion of the chairman is a very wise one in dealing with questions of this kind. It will enable us to see the question in its entirety before we attempt to deal with the details which are bound to be controversial. I should like to move that the chairman's suggestion with regard to procedure be accepted.

The CHAIRMAN: It has been moved by Mr. Hackett—Carried.

Unless the committee wishes to reverse that procedure I think that is the procedure that we ought to follow, and if we do follow that procedure I would invite the fullest discussion on Mr. Marquis' suggestion, but the committee will take no decision on it whatever.

Mr. MARQUIS: Would it be possible to adopt it as a comment and to include it in the report? Naturally, Mr. Chairman, I understand that this committee cannot change the declaration which is before us as a working paper, but if I understand correctly we have it before us so that we can make comments on it and make a report to the House in order that the government may draw the attention of the international committee to these points.

The CHAIRMAN: Yes.

Mr. MARQUIS: So my views are, if it is agreeable to the committee, that this suggestion be brought before the international commission in order that they may take the proper steps to embody that amendment in the declaration, if it is possible.

Mr. MICHAUD: May I add one remark? Mr. Marquis has just remarked that the second sentence seems to be a contradiction of the first one, "They are endowed by nature." Some people when discussing these big problems always refer to nature as the source of all creation. Others refer to God. The term "Creator" is an appropriate suggestion. Then from the standpoint of those who do not profess to believe in God it may be that they will consider that the term "Creator" can be interpreted as nature. In any event, the second sentence might be left out as it adds very little more to the first sentence as suggested by Mr. Marquis, "all men are born free and equal in dignity, being endowed by their Creator with inalienable rights," and drop the rest of the article. With

the term "Creator" there it may be more acceptable than the term "God." It may satisfy materialists and atheists, whereas the term "God" may not. At the same time when we Christians use the term "Creator" naturally we think of God and nothing else.

Hon. Mr. GOVIN: I have no mandate to speak on behalf of the atheists and materialists to whom Mr. Michaud has just referred. It seems to me, however, that the word "Creator" would not be more acceptable to them than "God." I do not think there is any objection even from a religious point of view, to referring to nature. Of course, there is such a thing as human nature, and there are some such things as human rights. The only other comment which I should like to make is that it is a question of principle which really, important though it may seem, is only a question of procedure. If I understood correctly the comments made at the last meeting by the chairman and the resolution which was adopted it was that we were not to pass resolutions to amend the declaration but that we would have a frank and open discussion as we are having just now, and finally I would assume we would make some kind of recommendation.

The CHAIRMAN: Yes.

Hon. Mr. GOVIN: It seems to me that the point which has been so eloquently discussed during the past few minutes both by Mr. Marquis and Mr. Michaud is exceedingly important. In my own opinion, it is the most fundamental question which will come before this committee. In order of what I would call spiritual priority, it would prevail above anything else. Is Canadian democracy willing to follow the example which has been given, among others, by our neighbours to the south? By the way, that is nothing new to the English speaking world. We have, in both houses, prayers at the beginning of every sitting. In almost every speech from the Throne there is an invocation to Divine Providence. So far as I know, the majority of the country, almost uniformly, believes in human brotherhood which is affirmed in this article 1 we have been discussing.

I am proud to affirm, also, that we believe in the fatherhood of God. Therefore, I would say that the suggestion made is quite agreeable to me and that, in so far as I can, I would enthusiastically endorse the principle advocated by Mr. Marquis and seconded by Mr. Michaud. In our recommendation, we should call to the attention of the interested parties the importance of an affirmation in the existence of God in a purely non-denominational way, so that it might be acceptable to those who are not openly atheists or agnostics.

The CHAIRMAN: I think there should be a full discussion of this point. I say that because none of these documents, the declaration or the covenant, imply any positive religious belief on the part of the people who subscribe to them. There may be a reason for that. I do not know just exactly what the reason is. I suppose it is a human right, not only to worship as you see fit, but not to worship at all if you see fit. I suppose that is a human right in Canada. I am not expressing any views as to whether that should be a right or not, but I think that is the right of every Canadian. I think, possibly, in an international gathering, it would be hard to do anything which would imply that that right does not exist. For that reason, I think some care should be taken in this matter.

I should like to hear the members of the committee express as frankly as they think they should just what their views are, as to introducing a reference to the Creator into this document.

Hon. Mr. TURGEON: Mr. Chairman, I should like to suggest that we follow the suggestion that you made at the last meeting which you read a few minutes ago. Part of that is that,

Instead of undertaking a vote and carrying it item by item as we do the sections of a bill, that we read it and the members express their views individually as to the dangers in it; as to the possible changes that should be made in it and, after there has been sufficient discussion, to go on to the next item.

Now, I am recommending that we accept and stay with that suggestion which you made, and mainly for this reason; if we pump to motions to amend sections, section after section, we are likely to go through the declarations without giving them full and clear consideration.

Your suggestion implies not acceptance of the suggestion by failing to amend it, but it implies that the members of the committee should put on the record their suggestions. I think this motion which has been proposed, instead of being proposed by the two members as a motion upon which we will cast votes at this moment, should go as an expression of opinion.

Dealing with it in that way, I should like to make this expression of opinion, and I am simply saying what I have said often in speaking to the public. My expression of opinion deals first with the expression which came from Mr. Marquis that we should imply, in some form, that the human being mentioned in the Declaration of Human Rights received those rights at the time of his creation and that those rights cannot be taken away from him either by governments or by employers; that the government cannot step in and take from a human being a right which has been granted to him at the time of his creation. I am not making any motion, I am just making that as a comment in connection with our discussion of this first item.

Mr. MICHAUD: The term "unalienable"?

Hon. Mr. TURGEON: I am not using any word.

Mr. MILLER: So far as I am concerned, I am not in this line-up at all. I would be in favour of anything that related to our religion. However, it did occur to me that this was omitted for the reason that there would be a lot of different religions represented in the United Nations conference, Buddhist, Brahmans and so on.

Mr. MARQUIS: They believe in God.

Mr. MILLER: I do not know whether they do or not. I suppose they all believe in some sort of creation, but I am not informed fully on those religions. However, at the same time, the United Nations might have to consider that. I should like to know whether or not the United Nations have considered it and whether there was any particular reason for leaving that out. Was it a question upon which agreement could not be obtained?

Mr. RIDDELL: I do not know whether that point was discussed in the proceedings. We can try and find that out and report on it at the next meeting.

Mr. HERRIDGE: Personally, I can subscribe wholeheartedly to the resolution. However, I must associate myself with the attitude of the chairman at the previous meeting. This is very different from a bill, it is a rather intangible subject all the way through. If we go through it section by section and then have comments made, we have an opportunity of reading *Hansard*. After we have completed that, we are in a much better position to draw up some recommendations. Otherwise, we may amend item 1 and find that in item 7 there may be some conflict which would change our opinion.

Hon. Mr. CRRERAR: I was about to say that that raises the question of how we shall bring to the notice of the government any changes which might be suggested to these articles. Mr. Marquis has suggested changes with which I am wholly in sympathy. I think, perhaps, it might be said a little differently. I would suggest that the word "nature" might be deleted in the second line and the word "Creator" put in its place. They are endowed by the Creator with

reason and conscience. With this amendment I would heartily support it—I would heartily support Mr. Marquis' suggestion for that matter, too, but that is a suggestion which might be conveyed in a report to the government. This procedure would get away, at the moment at any rate from actually amending the article which it was understood we would not do at this stage.

The CHAIRMAN: Is there any further discussion?

Mr. HANSELL: I think the motion is only by way of a suggestion to the government who will have the final responsibility for making a reply. I am in agreement with the motion. I quite understand Mr. Miller's observations. I think it is a correct supposition that there are nations that, perhaps, do not look upon the Creator as we do, but that does not mean, Mr. Chairman, that Canada, a Christian nation, should adopt an Act which from the beginning eliminated God. I rather think that is an argument for recognizing Him. If the United Nations wishes to discard our suggestion, that is their responsibility. I am suggesting this, if you discard the Creator when you start, then you are inviting collapse, anyway. Now I believe it would be a very excellent gesture for Canada to take the initiative in that respect.

My second observation is this: we make suggestions and ultimately arrive at the proper wording. We are coming to the place where words mean something. I know we would be accused of splitting hairs, but we cannot help that. There may be a difference in the meaning of the word "vested" and the word "endowed." I think we will have to get a dictionary and commence a little search. We should know what that difference is. I am not so certain that the actual words used here—"all men", that is a collective term and "their Creator" is a collective term; I am not a grammarian so I may be speaking out of the top of my hat, but it seems to me, "all men are born free and equal in dignity, being vested by the Creator", would be more powerful than their Creator. I am open to correction on that because, as I say, I am not a grammarian. We have to watch these things if we are going to make suggestions. Words mean something.

As the Secretary of State for External Affairs stated in the reply, this is a tremendously important document. We are dealing with the human rights of individuals who are created in the image of God. We have to be mighty careful how we monkey with these human rights.

Hon. Mr. GOVIN: The remarks you have just made, Mr. Hansell, are exceedingly interesting. Of course, when we come to an English text, we feel very nervous. We would have said, in the French text, the Creator, but I would rather suggest we leave the question of drafting a recommendation in precise terms until we finish our work.

Mr. HAZEN: I believe it is the feeling of this committee that we should avoid theological discussions. I feel certain such a course will not get us anywhere at all. I can agree with the remarks Mr. Miller made. I think Gordon Graydon, after he attended the first meeting of the United Nations said he discovered when he got down there they were unable to open these meetings with prayers because the nations who attended did not even agree on a God or a Creator. Therefore, the meetings were not opened with a prayer.

Now, I am in sympathy with Mr. Marquis' suggestion. If I may put it this way, he thinks that the word "Creator" should be introduced in this declaration somewhat in the same form as it is used in the Declaration of Independence. I do not agree with the amendment which he proposes and I could criticize it, I think, but I do not want to take up the time by doing so. He says they are "vested by their Creator with unalienable rights." Then, he goes on to say, they are endowed, not by their Creator but by nature. So, I think, while it is worthy, it is open to a good deal of criticism. I do not think we are in a position to make a proper draft of what we, perhaps, have in mind. I think perhaps

we could leave it at that. The only other point I want to refer to in the section is the words "all men." I referred to it before. In the draft that was submitted by the United States the words used were "every one." If the word "men" is to include women, and is to be all-embracing it seems to me the words that should be used are the words "every one." Somebody has taken objection to that for some reason, but in article 4 the words used are not "all men." The words used are "every one." We would not be adopting a much different wording if we used the words "every one" instead of the words "all men."

Mr. HANSELL: Personally I think that is a technicality. All men are not born free because men are not born. You can carry it that far. It is infants that are born. That is the extent to which you can go. It is generally recognized in all literature when you use the term "all men" you mean the human race.

Mr. MILLER: What does the Bible usually use?

Mr. HANSELL: It uses that. I do not want to offend Mr. Hazen with any theological discussion, but "all men" is a term used to recognize the human race.

Mr. HERRIDGE: I think it is stronger English. It is a rather grand opening phrase. I think that is why it is used. It is stronger than "every one."

Mr. HAZEN: Then individuals in a country who want to can put their own interpretation on what those words mean.

The CHAIRMAN: May I make this observation. Subsequent articles say there is to be no discrimination between men and women, that there is to be no discrimination on the ground of sex.

Hon. Mr. TURGEON: That is one reason why I think we should stay with your suggestion, make our remarks, but not take a vote on any particular article until we have made a closer study of the whole document.

Mr. MICHAUD: We are only expressing views.

Mr. MARQUIS: As to the remarks made by Senator Crerar as to the second sentence of article 1 "they are endowed by nature", I would not have any objection to changing "nature" to "Him", referring to God.

Hon. Mr. GOUIN: With a capital H.

Mr. MARQUIS: With a capital H. Perhaps that suggestion might be referred to a grammarian who might put it in correct form in order that everybody may express his opinion on the subject.

The CHAIRMAN: Is there any further discussion on Mr. Marquis' suggestion?

Hon. Mr. GOUIN: I have only one remark to make, that it would really seem much more normal to use the expression "every one" in all articles. Except for article 7 where we have the expression "any person" in all articles the expression "every one" is carried right through, and on thinking it over it seems much more logical.

The CHAIRMAN: You cannot say that every one is born free and equal very well.

Mr. HAZEN: Can you not say it subject to the qualification that Abraham Lincoln made?

The CHAIRMAN: I am not thinking about the sense of it. I am thinking about the form of it. It would be incorrect to say that every one is born free and equal.

Mr. HAZEN: Every one has access to an independent and impartial tribunal. Every one has the right to life, liberty and the pursuit of happiness. Every one is entitled to all the rights and freedoms set forth in this declaration, every one shall be entitled to protection under law, but only all men are born free and equal.

The CHAIRMAN: I feel we are talking about language here rather than substance. If you use the term "every one" you would have to say every one is born free and equal to every one in dignity and rights, which would be very awkward.

Hon. Mr. TURGEON: I should like to draw attention to the translation. I should like to ask Mr. Michaud and Mr. Marquis if the translation into French would indicate anything. I refer to article 1 and article 3, for instance.

Hon. Mr. GOUIN: In French you sometimes have "toute personne" and sometimes you have "tout individu" as in article 4.

Hon. Mr. TURGEON: Article 1 is what struck me. The translation of article 1 is "tous les hommes."

Hon. Mr. GOUIN: Yes.

Mr. MICHAUD: Personally I think "tous les hommes" is the appropriate expression to begin the declaration. After that when you refer to every person or every individual it clearly refers back to all human beings. While I am making a few remarks I want to say by way of repetition that as to the second sentence of article 1 I fail to see what it adds to the first sentence. In the comments made by Mr. Henry apparently a number of countries have suggested that this declaration should be in more concise form. The gist of this is that all men are free and equal, no discrimination. The second sentence is, "they are endowed by nature with reason and conscience", and so on. Nothing we can say there will add anything more to the amount of judgment and conscience that they have. I do not see that it adds anything. Even if this were incorporated into the covenant I do not see how it would afford any greater protection to the individual.

The CHAIRMAN: You attach no importance—

Mr. MICHAUD: My suggestion is that we would gain by having it deleted, the second sentence.

The CHAIRMAN: You attach no importance to the duty outlined in the last few words?

Mr. MICHAUD: That was one of the objections to the declaration, that it should not have any duties in it.

The CHAIRMAN: No, the objection by some of the nations is that it does not stress duties as much as it should. I did not hear any objection on the ground of duties of individuals.

Hon. Mr. GOUIN: It was the duties of the states, which means quite an objection, because it is a most complicated subject if we enter into that question. I should like to remark I would be greatly disappointed if we deleted from article 1 the reference to human brotherhood. A declaration of human rights, without that element of universal brotherhood, becomes for me a meaningless document.

Mr. MARQUIS: If I may add a word regarding the suggestion that I made the way I have it drafted now it would read:

All men are born free and equal in dignity being vested by the Creator with unalienable rights. They are endowed by Him with reason and conscience, and should act towards one another like brothers.

The CHAIRMAN: Is there any further discussion on that suggestion? Mr. Henry, Brazil made some comment on article 1?

The WITNESS: Yes, sir, there was a comment from Brazil to this effect. That government says:

It would seem that this article could be dropped as an independent provision. Only a part of it, namely the statement that all men "should act towards one another like brothers" might be retained and incorporated

into article 2 since it involves a duty which should go along with the other duties of the individual, stated in that article. The remainder of article 1 has a certain philosophical and mystical quality. Unfortunately, it is not exactly true that all men are endowed by nature with reason and conscience.

Those comments are in committee document No. 22. I believe those are the only comments on article 1 which have been received.

The CHAIRMAN: Is there any further discussion on this article?

Mr. HANSELL: If you said "every one" then the Brazilian observation would be correct, because every one is not born with reason.

The CHAIRMAN: Mankind is.

Mr. HANSELL: In that case you have to use a term which is accepted as a general term, "all men are born." You get my meaning there?

The CHAIRMAN: You are talking about generality if you say "all men", and if you say "every one" you are particularizing to such an extent it becomes untrue.

Mr. HANSELL: Exactly.

Mr. HERRIDGE: I have one comment to make on the further suggestion Mr. Marquis made, having in mind that we are criticizing a document which is being treated on an international basis, where he said, "they are endowed by Him with reason and conscience." Would it be possible to say there, "endowed by Him through nature"?

Mr. MARQUIS: I have no objection to that at all.

The CHAIRMAN: Is there any further discussion on this? I think the discussion has been very helpful. Let us now take article 2. Mr. Henry, have there been any comments on article 2 that you would like to bring to the attention of the committee?

The WITNESS: There have been comments by the governments of Mexico and Brazil.

By the Chairman:

Q. Would you tell the committee what they have been?—A. Mexico has made comments which are found in committee document No. 21. The comment is very simple. It merely suggests that the first sentence of the article should be amplified so that the article will read as follows:

In the exercise of his rights every one is limited by the rights of others, by the legal safeguards for the liberty, general welfare and security of all, and by the just requirements of the democratic state.

Beyond the suggested wording no further comment is made.

The government of Brazil has made comments appearing in committee document No. 22 at page 3. The Brazilian government reiterates the suggestion made in respect of the first article that it should be added that all should act towards one another like brothers, or at least it is suggested in a fraternal spirit.

The text would thus become complete, for the exercise of the rights of each one is limited not only by the rights of others but also by this duty of fraternity.

Then it is suggested:

Instead of "just requirements" it would be better to say "legal requirements." The requirements of the state should not be motivated by a vague and subjective notion of justice, but by strict legality.

THIS IS MUCH SUPERIOR VERSION
THIS IS THE DISCUSSION

It is then stated that:

The Brazilian government is in accord with the view expressed by the representative of the United Kingdom that the state should not be regarded as "limiting" the rights of the individual. It would be preferable, however, to say that the exercise of these rights is "conditioned" by the rights of others, by the legal requirements of the state and by the duty of fraternity.

Finally it is suggested by the Brazilian government that the proper position for this article with the suggested rewording should be after all others dealing with individual rights. The restriction contained in article 16, No. 3, of the covenant, should be included in this article.

The CHAIRMAN: Is there any discussion on article 2?

Mr. HAZEN: I might say there was another suggestion made to which Mr. Henry did not refer. That was the suggestion of the representative of the United Kingdom which is on page 22 of document No. 18, and which was referred to in the suggestion he just read made by Brazil. The United Kingdom stated that it is the duty of the state not to limit but to promote—

Hon. Mr. GOUIN: What document is that?

Mr. HAZEN: Page 22 of No. 18, that the duty of the state should not be regarded as limiting the rights of individuals but as promoting the rights of all. I think that is right.

He proposed the following alternative text which he suggested should be placed on record which reads as follows:

In the exercise of his rights, everyone must recognize the rights of others and his obligations to society so that all may develop their spirit, mind and body in wider freedom.

Personally, I prefer that language to the language of the present article 2.

Hon. Mr. GOUIN: Yes, I think the British suggestion is excellent. It is quite clear.

The CHAIRMAN: Is there any further comment?

Mr. MARQUIS: Mr. Chairman, I draw the attention of the committee to the fact that at the end of the article the words, "wider freedom" are used. Freedom is freedom. I do not know that we can enlarge on the scope of what is called freedom. We have freedom to exercise our rights within the limits of the law, and we cannot pass those limits. I do not know why the word "wider" is used. If we exercise our rights within the scope of the law, we have all the freedom we can use or can desire. I think that word is not necessary at all. It means that there is something beyond freedom.

Hon. Mr. GOUIN: My impression would be that although in theory we enjoy freedom in fact, so far as I am concerned, my own freedom is limited by a terrible number of circumstances and contingencies. I must say, quite frankly, that I aspire to greater or wider freedom for my intellectual and even physical development as well as for the development of my children. It is an aspiration.

I think it is simply another way of expressing—well, the precept of happiness which you have mentioned in the American documents which you have read to us. Deep in our hearts, I believe we aspire to better conditions for everyone.

Mr. MARQUIS: I would agree with you if this were a preamble or an introductory note before the article, saying that this is purported to give wider freedom and if, in the article, freedom were defined. Here, it is drafted as a law, and if you have to interpret wider freedom, I do not know where we will go.

After the International Commission has passed this International Declaration of Human Rights, we will know the scope of the freedom of all people.

IN CONSIDERING THE PROPOSED

Then we will know the limits of what we can do and what we cannot do. The assumption is that that will be freedom, within the scope of this International Declaration of Human Rights.

Hon. Mr. GOUIN: For me, wider freedom means better opportunities. I think we all agree that equal opportunity for all is the goal. I might say that our people in Canada do not enjoy equal opportunities. I do not think they do in any other country, either. We are all trying to improve conditions but we have not reached perfection.

The CHAIRMAN: I think there are degrees. In ordinary parlance, we use the term, strive for wider freedom. Looking at the British suggestion, I understand that the meaning is that if everyone recognizes the rights of others and his obligations to society, then all will be able to develop their spirit, mind and body in wider freedom than otherwise would be the case.

Hon. Mr. GOUIN: There is an expression in French which we like, *la faveur de liberté*. In our ancient law, we have that beautiful expression and it is one which carries out that meaning.

Mr. MARQUIS: You can read it in the French text.

Hon. Mr. GOUIN: Do you agree with that French text?

Mr. MARQUIS: I did not look at the French text.

Mr. MICHAUD: I have no objection to the word "wider" as raised by Mr. Marquis but my comment here is much along the lines I made on article 1. The second sentence is more or less superfluous. I believe that suggestion has been made by one state, by Brazil, I think, as Mr. Henry said. There are two parts, the limitation upon the rights of others and the requirements of the state and then that government suggested something else.

By the Chairman:

Q. Did they suggest something else?—A. Instead of "just requirements" it would be better to use "legal requirements".

Mr. HAZEN: One suggestion was that the second sentence in this article and the second sentence of article 1 might be simplified or brought together.

The WITNESS: That is Brazil's, sir. They suggest that the words "all should act towards one another like brothers", should be somehow incorporated in the second article.

Mr. HANSELL: I am inclined to think that the United Kingdom's suggestion on page 22 is the better wording. It omits part of the draft declaration in article 2. It suggests that, in the exercise of his rights, everyone must recognize the rights of others and his obligation to society so that all may develop in spirit, mind and body in wider freedom. Mr. Hazen has called our attention to that. It cuts out that part with reference to the state. Now, I do not believe the Brazilian suggestion is a good one, to make legal requirements instead of just requirements. In the first place, you are dealing in this article with human personality. You are doing something so he is enabled to develop his spirit, mind and body. You are dealing with personality and you cannot legalize personality. I think it would be just as well to cut that part out and accept the suggestion of the representative of the United Kingdom.

Mr. MICHAUD: I was not quite through, Mr. Chairman. The difference between article 2 and the one suggested by the United Kingdom is that, in the draft declaration, the term used is, "is limited in the exercise of his rights". In the British declaration it says, "everyone must recognize" which would imply that the individual is going to decide the extent to which the liberty of others is going to restrict him. The suggestion in the draft declaration is that he is

limited by someone deciding for him. He has no option. The law states what his restrictions are. If you use the term, "must recognize", it is up to the individual to determine what his limitations are.

Mr. HANSELL: I disagree with Mr. Michaud there. I do not think you can write laws which limit freedom.

Mr. MICHAUD: Every law we pass in parliament limits freedom.

Mr. HANSELL: I know that, but you are dealing here with the rights of personality and there is a sense in which an individual, as a person, must recognize his obligations towards society. Now, I do not think you can legalize that.

Hon. Mr. GOUIN: There is one thing which it is necessary to take into consideration. There is a reference to section 16, paragraph 3 of the covenant and Brazil's comments are to be found on page 27 of document 18. I think it would be a good thing if we considered them. They read as follows:

The above rights and freedoms shall be subject only to such limitations as are prescribed by law and are necessary to protect public order and welfare, morals and the rights and freedoms of others.

If we are mentioning the limitation or conditioning of rights, I think it would be rather advisable to put that reference at the very end of the declaration. Rights are not unlimited, in a certain sense because, my own rights are conditioned by the rights of the other members of this committee. It might be advisable, in due time to consider the advisability, if we wish a reference to the limitation of rights, to having only one reference because otherwise we come across limitations in every section. It is much better to have one clause dealing with the principle of the limitation of rights.

Mr. HANSELL: I think perhaps that would be all right.

The CHAIRMAN: Is there any further discussion on article 2? It is six o'clock anyway. What about the next meeting? Will it be tomorrow or next Tuesday? I think we had better proceed with this discussion tomorrow afternoon. The committee is adjourned until tomorrow at the same hour.

The committee adjourned until Friday, May 14, 1948, at 4.00 p.m.

SESSION 1947-1948



SPECIAL JOINT COMMITTEE OF THE SENATE
AND THE HOUSE OF COMMONS

ON

HUMAN RIGHTS

AND

FUNDAMENTAL FREEDOMS

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 4

FRIDAY, MAY 14, 1948

WITNESS:

Mr. D. H. W. Henry, Counsel, Department of Justice, Ottawa.

OTTAWA
EDMOND CLOUTIER, C.M.G., B.A., L.Ph.,
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1948

MINUTES OF PROCEEDINGS

FRIDAY, 14th May, 1948.

The Special Joint Committee on Human Rights and Fundamental Freedoms met at 4.00 o'clock p.m. The Joint Chairmen, Right Honourable J. L. Ilsley and Honourable Senator L. M. Gouin were present. Mr. Ilsley presided.

Also present:

The Senate: Honourable Senators Crerar, Turgeon, Wilson.

The House of Commons: Messrs. Beaudoin, Hansell, Herridge, Marquis, Miller, Rinfret, Whitman.

The Committee resumed consideration of the Draft International Declaration on Human Rights.

Articles 3 and 4 were reviewed.

Mr. D. H. W. Henry, Counsel, Department of Justice, was called. He made a statement on the comments of member governments, United Nations, relative to Articles 3 and 4 of the draft declaration, and was questioned.

The witness was retired.

On motion of Mr. Marquis, the Committee adjourned at 5.35 o'clock p.m. to meet again at the call of the Chair.

J. G. DUBROY,

Clerk of the Committee.

MINUTES OF EVIDENCE

HOUSE OF COMMONS,
May 14, 1948.

The Special Joint Committee on Human Rights and Fundamental Freedoms met this day at 4.00 p.m. The Right Honourable Mr. J. L. Ilsley (Joint Chairman) presided.

The CHAIRMAN: Yesterday we were discussing Article 2. Are there any further comments on Article 2 of the declaration. If not we will pass to Article 3. Article 3 reads:

1. Every one is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race (which includes colour), sex, language, religion, political or other opinion, property status, or national or social origin.

2. All are equal before the law regardless of office or status and entitled to equal protection of the law against any arbitrary discrimination, or against any incitement to such discrimination, in violation of this Declaration.

David Henry, Department of Justice, recalled.

By the Chairman:

Q. Mr. Henry, have there been any comments by other states on that article?—A. Yes, sir, there have. I might say at the outset again, just to remind the committee, the reason there have been given to you no comments by the United Kingdom and the United States is that those governments have not submitted comments in detail on the declaration. The United Kingdom has only submitted comments on the covenant and the United States has made general comments on the declaration, which I gave to you yesterday, and only detailed comments on some of the articles in the covenant. That explains why you are not receiving some comments from those two countries.

The Netherlands has commented on Article 3. That government would delete the words "regardless of office or status" which appear in paragraph 2 of the article. It is suggested that the word "status" may be interpreted in a restrictive sense as meaning civil status. Such an interpretation should be excluded, in the opinion of that government, because if accepted it appears to imply that discrimination on the grounds mentioned in paragraph 2 would be lawful. If the suggested deletion is made it becomes clear that paragraph 2 has in view the prohibition of the same discrimination as in paragraph 1.

South Africa has suggested that the words "political or other opinion, property status, or national or social origin" go beyond the scope of the charter of the United Nations. That government submits that it is not known what purpose those words are intended to serve. It is also suggested that to protect every person against incitement to arbitrary discrimination would require legislation which would constitute a further exception to freedom of expression, which is provided for elsewhere. I assume that the government of South Africa is referring to the necessity of legislation in its own territory.

Brazil would place this article at the head of the document as article 1 because it is suggested that its text indicates that that would be the proper position for it. Those are the only comments, so far as I am aware that have been made.

The CHAIRMAN: Would any of the members of the committee like to comment on article 3?

Mr. MARQUIS: I think that the comment of the Union of South Africa is proper concerning the words "political or other opinion". Any group which might believe in the overthrow of the government by force of violence would be free to do anything they liked to do, according to the drafting of this section.

Hon. Mr. GOVIN: I did not understand you very well.

Mr. MARQUIS: You see they say:—

Every one is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race (which includes colour), sex, language, religion, political or other opinion,—
and so on. Therefore everybody who has an opinion, such as a group which would like to overthrow the government by force, would be free to act.

The CHAIRMAN: Mr. Marquis, does this not mean that a person shall not be denied any rights and freedoms on account of his opinions, whatever they may be, but may nevertheless, be deprived of his rights and freedoms by reason of his acts. Is that not the meaning of the article?

Mr. MARQUIS: It is pretty vague.

The CHAIRMAN: It is a fundamental distinction. There are many persons who believe that no one shall be punished for his opinions but may nevertheless be punished for his acts.

Mr. MARQUIS: I am of that opinion, too. We cannot read the minds of people. We are obliged to judge them according to their acts.

Mr. HERRIDGE: This means they can have the opinion as long as they do not advocate the opinion.

The CHAIRMAN: Yes. It may be made an offence to express certain opinions if they lead to certain results. Hence the laws against seditious libels, blasphemous libels, defamatory libels, but I think there in an attempt here in the minds of the draftsmen to distinguish between opinions on the one hand and acts or words on the other.

Mr. HANSELL: That may be the explanation but it does not say so. "Every one is entitled to all the rights and freedoms set forth in this Declaration...."

Mr. HERRIDGE: If you read article 2 it says there:—

In the exercise of his rights every one is limited by the rights of others and by the just requirements of the democratic state.

That definitely governs that clause.

Mr. WHITMAN: That is not article 3.

Mr. HERRIDGE: No, but it is in article 2.

The CHAIRMAN: It would seem to me it is open to argument that article 3 does go beyond the words of the charter. The words of the charter are very important.

Mr. WHITMAN: Could that be interpreted to mean that every one is entitled to all the rights and freedoms set forth in this declaration without distinction, etc., except communists? Is that what political and other opinion might be interpreted as?

The CHAIRMAN: I would interpret this as meaning that a person is not to be deprived of his rights and freedoms because he has communist views, that is, he shall only be punished if he does something or says something which constitutes an overt act on his part.

Mr. WHITMAN: Your interpretation would be similar to the interpretation of the British, where a man can advocate anything, even including communism, provided he does not act in such a way as to imperil the state.

The CHAIRMAN: This does not seem to refer to expression. This seems to refer to opinions only.

Mr. MARQUIS: Yes, but those opinions must be expressed in order that we know what they are. They must be public opinions. According to this clause, a group of persons who might express communistic opinions would be entitled to all rights and freedoms, so the government is debarred from the power of prohibiting, banning, or outlawing such groups.

Mr. WHITMAN: That is correct, unless the person who has those opinions acts in a manner detrimental to the state. We have that principle operating here now. We had a Communist member in the House of Commons, and as long as he was a Communist and did not advocate something against the state he was still able to have his freedom and enjoy it.

Mr. MARQUIS: Will we be able to change that?

Hon. Mr. CRRERAR: Is not the point this? In the case of a Communist he believes sincerely in certain philosophies of government. If he advocates that philosophy and urges the bringing about by force the aims which he has, then he immediately runs contrary to our existing law and he is punishable. If by means of persuasion he endeavours to convince people that he is right and asks for their support on that ground he should not be interfered with.

Mr. MARQUIS: That is the point. Can we accept that persuasion?

Hon. Mr. CRRERAR: I make this observation. If you are going to deny a person who believes in a communistic form of government, which is a very indefinite and ephemeral thing, the right to get up on a platform and explain his policies and urge people to support them—if you are going to deny him that right, where are you going to draw the line? Will we deny the right of existence for instance to a peculiar religious sect. I have seen people out on the prairies who are called Holy Rollers because they are an extreme religious sect. Where do you draw the line? I think the guiding principle must be whether or not the advocate urges his reforms by way of revolution. If he does, then clearly he comes under our existing law and can be punished, but I frankly hesitate to put any circumscription on the right of an individual to express his own opinions as long as he does so within the framework of existing law.

Mr. HANSELL: I quite agree there, but I would like to ask the position of an individual state, such as Canada, if it accepts this declaration and then for some reason or other desires to outlaw some certain party or association?

The CHAIRMAN: It would likely be urged that the outlawing of a political group is discrimination against a body of men because of their political opinions. Those supporting the measure would deny that was so and they would say they were not outlawing the body because of its political opinions but because the probable result of its actions would lead to violence.

Mr. MARQUIS: I wish to submit this point for the consideration of the members of the committee. We have our own concept of democracy, we have laws, and we are always limited by some rules which are determined by the law of the land. When some group comes along to change that body of law perhaps that is where we should draw the line in order to preserve our legal status as a nation, our concept of liberty, and to prevent some other associations or groups from changing that concept. It seems to me that as a country we have the right to preserve what we have and to adopt some regulations and some law to

that end. I do not say it would be a good thing to outlaw some association or some party, but perhaps we will have to adopt some measures in future to preserve our own body of law, our own constitution, and to prevent some association or group of individuals from trying to make radical change and to disturb our concept of living.

HON. MR. CRERAR: Would we apply that theory, for instance, to the suppression of socialists? Now socialists, in the full meaning of their socialist theory as I understand it, advocate the abolition of the profit system. They advocate the supremacy of the state in ordering the commerce of the country and, thereby, very largely the lives of the people. To me, quite frankly, that means increasing the power of the state as against the individual, and the end of the road ultimately is the loss of personal freedom and liberty. Believing as I do, would I be justified in saying a socialist may be debarred or excluded from advocating his principles?

MR. MARQUIS: I would not draw the line there.

HON. MR. CRERAR: Very good, but just where can we draw the line on freedom of speech, so long as the freedom is exercised within the laws of the country? That is the problem, quite frankly, Mr. Marquis.

MR. HANSELL: I think, Mr. Chairman, the senator is learning. Following my observation made a little while ago what I wanted to really point out was this. If a state accepts a declaration of this kind and then sees fit to outlaw some party or association or society, then there is no particular reason for having an international bill of rights? We might just as well have our individual national bills of rights.

THE CHAIRMAN: As was said at one of the earlier meetings of the committee, the adoption of an international bill of rights would undoubtedly have an effect on domestic legislation. It would be appealed to, even the case we are considering here, and if we adopt this language I am sure you would have members of the House of Commons and the Senate saying, in dealing with for instance the LaCroix Bill, that what we were attempting to do was to deprive people from their rights and freedoms because of their political opinions, for perhaps either a good or a bad reason.

MR. MARQUIS: I presume if we accept a section of this declaration as drafted we cannot come back afterwards and say we will adopt some measure in contradiction.

THE CHAIRMAN: I think the proponents of the bill would argue very strongly in asking support of a bill of that kind that they were not punishing persons or undertaking to punish persons for their political opinions, they were undertaking to prevent them from doing harm, overt actual harm. That is a right which is not taken away by this proposal at all.

MR. MARQUIS: Which would mean that we should keep this section but if those people infringe the law, prosecute them before the courts.

THE CHAIRMAN: That is not exactly what I meant.

HON. MR. GOVIN: Section 33 has some bearing, indirectly, on the subject which we are discussing. It is the last section of the declaration on page 19 of our document 18.

Nothing in this declaration shall be considered to recognize the right of any state or person to engage in any activity aimed at the destruction of any of the rights and freedoms prescribed herein.

Let us think now of anarchists. I am convinced that all over the world just now there are laws against anarchists, even in the USSR. No nation can tolerate anarchism.

MR. MARQUIS: But what constitutes anarchism is not considered to be the same there as it is here.

Hon. Mr. GOVIN: Just now, I want to be quite clear on this. I am not trying to make a case against the USSR and I am convinced that in that country or political entity, anarchism is certainly prohibited. I am not discussing the merits of the system. I take it for granted any state, whether a democratic state or not, that is not the question I am discussing, any state is obliged to have legislation against anarchism because it is the negation of the political entity.

I see in section 33 which I have just quoted and in section 2 which has been mentioned previously, the human limitation which we find in the just requirements of the domestic state. I say we are always in a position to condemn, to put outside of the law, to declare outlaws if we wish to use the old term, any group which has activities aimed at the destruction of the state. Senator Crerar was, I think, referring to the rather good old democratic principle which allows any minority, by peaceful means, to try to become the majority. I am not at all a socialist, but I would not for a moment say we should have a law in Canada which would prohibit socialism as such, nor could we think of it obtaining in Canada under the present circumstances. I think Senator Crerar was giving the same opinion. We are opponents of the socialists, but we are loyal opponents because we believe we are good democrats.

We say, "All right, advocate your system and we will advocate our own system." Exactly what line should be drawn between a socialist preaching only what I would call purely constitutional reform—of which I do not at all approve but which he has the right to preach—and what I would call a constitutional market, I do not know. Other disciples of Marx were said to be communists since, by way of improving themselves, they never devised reform by peaceful means. You may say, for instance, the capitalist state is bound to disintegrate naturally. That it is, so to speak, a process of nature and, as a matter of fact, that is the thesis of Marx as well as of Lenin. If someone states the capitalistic state is bound to disintegrate, I cannot say that he commits a crime. On the contrary, if someone preaches what we used to call direct action, then it is not as a communist that he is condemned but, in the Criminal Code, there are sections which apply to that. Any political party, whether it be of the extreme left or the extreme right would be in the same position.

Mr. HERRIDGE: I listened to this discussion with great interest. I think we all agree that the basis of the democratic state is the right to express opinions and change views by argument under the law. I think if we take Mr. Marquis' opinion in the light that he wants to protect our own conception of society, our own views in certain respects, we would have a fossilized state. We would never progress. We have prominent cabinet ministers in Great Britain who were rationalists but who would not even subscribe to the existence of the Creator about whom we were speaking yesterday. The same thing applies to education. I think the point is that so long as these arguments or these opinions are advanced honestly within the law, without attempting direct action or attempting to overthrow the state by force or there is no evidence of a threat to the state through lack of loyalty to the state, a person has a right to express his opinion.

Hon. Mr. TURGEON: If I may make a comment, I am not in favour of changing this by excluding communists or others. I think I can see very clearly the objective of the thoughts of Mr. Marquis. I agree with Senator Crerar that the ultimate objective of communism would be the creation of a purely socialistic state. Communism, in my interpretation, is more than a philosophy of government. Communism is a belief that the state desired by them can be achieved

only by forcible revolution and can come only through a clash of classes, and can come in only when all classes except one have been forcibly extinguished. I think that is what Mr. Marquis has in mind.

At the same time my own opinion, speaking personally, is that we should not in a declaration of human rights go so far as to state that a person is not entitled to hold that opinion. Last session, when this committee was dealing temporarily with a bill then before the House of Commons to make the communist party an illegal party, I went out of the way to state I would be opposed to the passing of that bill in principle. However, there is a second feature to communism in addition to its philosophy of government, the creation of a certain state, which is the fact that that cannot be won except by a revolutionary process which means a fight between classes. I think that is what Mr. Marquis has in mind. Though I hold that opinion I would not want to exclude this article from the declaration of rights.

The CHAIRMAN: South Africa took exception to these words; property status, or national or social origin. Those are important words. Is there any comment on the main words of the section; property status, or national or social origin?

Hon. Mr. GOUIN: This applies, Mr. Chairman, to the Japanese in Canada. We all realize that very well.

Mr. BEAUDOIN: Yes, and to the Indians as well.

The CHAIRMAN: I was going to say, to the Indians as well. Does this for example mean that the Indians on reserves must be allowed to vote?

Hon. Mr. GOUIN: I would say, Mr. Chairman.

The CHAIRMAN: Is not the right to vote one of the freedoms set forth in this declaration?

Hon. Mr. GOUIN: In section 21—everyone without discrimination has the right to take an effective part in the government of his country—that means the right to vote as I understand it.

Mr. WHITMAN: Has not the Indian surrendered some of his rights by having accepted treaty money or something in lieu thereof?

Hon. Mr. TURGEON: They are in a special position at the moment.

Mr. MARQUIS: Doesn't this mean that they should have the right to vote?

Hon. Mr. GOUIN: I should imagine that was conditioned on what had happened in the past in a certain sense. Morally, I think it would depend largely on the generations which are to come, and I would expect that eventually most of them would have that right.

Mr. WHITMAN: It can only be given to them by consent.

Hon. Mr. GOUIN: They have the right to choose to be wards of the state and not vote, or to vote and have freedom.

The CHAIRMAN: I think we are discussing the last article Senator Gouin read, the right to vote, and we should reserve our discussion on that until we reach that point in this document; but, in any event, we will have to know what it means. It means in effect that supreme court judges, county court judges along with everyone else must be given the right to vote, that everyone has the right to vote, to take part in the government of his country; and if we take these articles literally we run ourselves into all sorts of peculiar situations.

Mr. WHITMAN: I suggest, sir, that it is a matter of interpretation.

The CHAIRMAN: The words of the charter make distinction as to race, sex, language, religion, etc. The South African government took exception to this and said the words do not appear in the charter and were not authorized by the charter.

Mr. BEAUDOIN: May I direct your attention to articles 17 and 18. There is a paragraph there which says, "no person may be interfered with on account of his opinions"; and there is a footnote there which says that the charter is not final on these two articles until a report is received from the International Conference on the freedom of interpretation of opinions.

The CHAIRMAN: Yes. I do not know what the ultimate date of these articles will be.

The WITNESS: We have drafts of those, which will be submitted later, which have been decided upon.

The CHAIRMAN: Oh yes. Well now, is there any further discussion on article 3? We have been concentrating our attention on paragraph 1. Is there anything in this objection which was made to paragraph 2, and to the words "office or status"? The Netherlands government took exception to that. For what reason, do you know?

The WITNESS: The reason the Netherlands government took exception to that was that in their view the word status may be interpreted in a restrictive sense as meaning civil status and that such an interpretation should be excluded because if included it might indicate that the other matter mentioned in paragraph 1, as a basis of discrimination would be lawful within this section.

The CHAIRMAN: Is that so?

The WITNESS: Yes, sir. They thought that the word status might well be omitted, and that the words regardless of office or status should be taken out.

Hon. Mr. TURGEON: Both office and status?

The WITNESS: Yes.

Hon. Mr. TURGEON: It means the same thing I suppose.

The CHAIRMAN: What does it mean? What does the article as it is interpreted here mean, "regardless of office or status"? What evil, or what apprehended evil is guarded against by the use of these words?

The WITNESS: My view of that, sir, is that all the declaration attempted to do was in paragraph 2 to give effect to what we know as the rule of law, and apply that to all persons regardless of whether he is a man or a woman, or regardless of whether he is an official of state or an ordinary citizen; in effect, to say that he is subjected to the same laws and these laws are applicable to him in all respects in the same way as to all other individuals. In some countries women are under disabilities; for instance, in our own country there are distinctions made in respect of minors and lunatics. They are under certain legal disabilities; and what one has to consider is whether an article such as this is intended to override that. The view I have taken of it is this; that, briefly, all that is meant is that the rule of law will apply. The rule of law, if you like me to sum it up, is simply this: That it is inherent in the British constitution and has been carried into the Canadian constitution that you have the following result; first, supremacy of regular law in ordinary matters; and, second, equal subjection of all classes to the ordinary law. I think that is all that is meant by paragraph 2. I might say, sir, that the whole paragraph appears to be nothing more than a prohibition against discrimination. It is not intended to lay down a general principal that people may do thus and so, but rather that the proposed declaration will be applied to all persons without discrimination. Discrimination is the keynote of the article.

Mr. MARQUIS: Might that not be construed as a restriction? If you keep to the general wording that all people are equal before the law; naturally, all people are equal before the law, if the law is enacted; but we must keep in mind the possibility of restrictions.

Hon. Mr. GOUIN: I find myself more confident when I use French. You will observe it says here, "tous sont égaux devant la loi sans consideration de fonction ou de rang—" Then, you will see also the word "état"; a word which translated means "state." We always use that word. At first I was thinking, for instance, of the matrimonial status, or what we call in our system of law the incapacities of the married woman, but the expression "rank" would not apply at all to married women. It would be a case of a civil servant, for instance, and it will be a distinction between say the mayor of any city and his employees, or anything of that kind. I must confess this section seems to me to be rather vague. Then we already have in the first paragraph of this article the same idea. If we are entitled to all the rights and freedoms it seems to me that we are equal. We have the same rights and the same freedoms. Then they say we have them before the law. Of course, if we have them it is before the law. The words "before the law" could be put in the first paragraph of the article after the fourth word, and it would read, "Every one is entitled before the law to all the rights and freedoms,—" and so on.

Mr. MARQUIS: It is a repetition, or a particularizing.

Hon. Mr. GOUIN: The only new thing I see in the second paragraph of the article is these words, "before the law" which could very well be inserted somewhere else if they want precisely to insist upon what we call egalite juridique, or legal equality.

Hon. Mr. TURGEON: Just what does this phrase mean, "protection against any incitement to such discrimination"? Is that intended to take away the freedom of expressing political opinions?

The CHAIRMAN: That is what one of the states said. They said those words of themselves constitute a limitation of freedom of speech.

Hon. Mr. TURGEON: It could, with a certain interpretation.

Hon. Mr. GOUIN: I would understand that this would cover the case of any agitation to disfranchise, for instance, a certain part of our population either on account of their racial origin or on account of their religion, and so on.

The CHAIRMAN: That is what it is intended to do.

Mr. HANSELL: If I may go back to the first paragraph I would say that some of these paragraphs would appear to be not any too well thought through. I do not want to split hairs, but I do not see any reason for that parenthesis, the words "such as race (which includes colour)." What else distinguishes race? You may just as well say this, "without distinction of any kind such as race (which includes colour), sex (which includes men and women)." It is superfluous. You do not need it.

The CHAIRMAN: I think colour is different from race.

Mr. WHITMAN: I wonder if this does not apply possibly not so much to Canada as it does to some other nations which may have brought that in. I am thinking particularly of the United States where they have a colour question which we do not have in this country. I wonder whether this article possibly applies more specifically to the United States than it does to Canada.

Mr. HANSELL: I think race is all inclusive.

The CHAIRMAN: It can apply to Canada all right.

Mr. MARQUIS: The Japanese and Chinese, Indians, Eskimos.

Mr. HANSELL: They are all races. I do not see the reason for it, but I am not going to be a stickler on it.

The CHAIRMAN: Somewhere in these articles there is the right of movement of citizens within their own country, and if you wish to have a law preventing

a movement of the Japanese from one part of the country to the other which we have at the present time it could very well be argued it is contrary to this declaration.

Mr. HANSELL: That is the second thing we have brought up today. I cannot help thinking this declaration prevents human rights. To my mind it certainly prevents the right of the state to be master of its own household.

The CHAIRMAN: It does that all right. It applies limitations upon the rights of the majority.

Mr. HERRIDGE: I am surprised, Mr. Chairman—

The CHAIRMAN: It applies limitations upon the right of freedom.

Mr. HERRIDGE: I was going to say that I am surprised to hear Mr. Hansell arguing the supremacy of the state in that sense.

Mr. HANSELL: I argue in the sense of the sovereignty of the state, the right of the state to pass its own laws without interference from outside. I certainly do. I do not think I am seeing too far when I say that what we are doing is to tie ourselves legally to an outside authority.

The CHAIRMAN: Well, it has not any legal effect. It merely has a presuasive effect.

Mr. HANSELL: I recognize that.

The CHAIRMAN: But the whole idea of a bill of rights, if we were to adopt a bill of rights, is to place limitations upon the supremacy of parliament as it exists in Great Britain, and as it exists in Canada, with very minor limitations.

Mr. HANSELL: I would consider that a danger.

The CHAIRMAN: That is another question. That is B or C in the order of reference. We are still on A.

Mr. HANSELL: We will have to meet the danger when we come to B and C.

Mr. MARQUIS: I entirely agree with Mr. Hansell about the parenthesis. I do not know why they put those words in brackets, "which includes colour." There is no distinction. They should be all on the same basis, colour, sex, language, and so on. I do not know what is the idea.

The CHAIRMAN: Is there any further discussion on article 3? This is a very important article, this matter of discrimination against groups within a country because of their race, sex, language or religion. That is a very important principle, and it will be important that this be well and properly drafted.

Hon. Mr. TURGEON: As a British Columbian may I say a word with respect to the effect of this on the Japanese question, not so much because of the effect of it but because of the comments that have been made. We must not forget that the Japanese were not moved purely because of race or colour. They were moved because of war, because of a great danger from lack of loyalty or subversive attitudes, and because it was definitely proven that some of the Japanese there had come to Canada purely for the purpose of serving Japan at the expense of Canada if war ever developed.

It is true that a good many purely innocent persons were very much inconvenienced but the whole question of the movement of Japanese out of the coastal area, and of the permission for them to go back while the world is in this troubled state, is not in any way whatever related to what is included here, discrimination of race or colour. It has a different bearing and a different foundation entirely, and while some economic relations come into it my own opinion is that their removal is not a case of race or colour. I want to make that as a comment.

The CHAIRMAN: In anything I said I would not be admitting for a moment that the government had acted improperly in an emergency period. If it were

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adopted as a permanent policy the argument would become much stronger, at any rate, that there is some conflict between such a permanent policy and the principle of article 3.

Hon. Mr. GOUIN: I should like to remark also in so far as it would be a question of provincial legislation either in British Columbia or anywhere else, if there is discrimination on account of race, sex or religion the federal authorities in Ottawa cannot do anything about it, in my view. In my humble opinion even a declaration of a principle in this declaration would not increase our jurisdiction. It would not increase it in any way.

The CHAIRMAN: This declaration has not anything to do with jurisdiction. It does not confer any jurisdiction on the dominion that they do not otherwise possess.

Mr. MARQUIS: It cannot change the constitution.

The CHAIRMAN: No.

Hon. Mr. GOUIN: It is adherence to certain fundamental principles, but it would be a good thing that we make up our minds because we are discussing each section and if we come to the conclusion that we are abandoning in a certain sense a part of our sovereignty it would be too bad. We would have worked in vain. There is no doubt if we take a pledge, so to speak, to comply in our legislation with the principle which we are discussing just now we are not merely paying lip service to the cause of freedom and equality and brotherhood. We are to be sincere about it and we intend every one of us to do the very best we can do to adhere to this principle.

The CHAIRMAN: Is there any further discussion on article 3? I think then, we can pass to article 4. "Everyone has the right to life, to liberty and security of person".

The WITNESS: The government of the Netherlands suggests the article be revised to read as follows: "everyone has the right to life, to bodily integrity, and to liberty of person". It is suggested that the right to security of person was expressed vaguely and perhaps the wording conforms more closely to article 6 of the draft covenant.

Hon. Mr. TURGEON: What was the expression they used?

The WITNESS: Bodily integrity.

Mr. MARQUIS: Will you read it again?

The WITNESS: "Everyone has the right to life, to bodily integrity, and to liberty of person". The government of Brazil suggests there should be included the restriction contained in article 5 of the covenant and the implication of article 6. The limitation is the execution of the sentence of a court following conviction for a crime for which the death penalty is provided by law. The principle stated in article 6 of the covenant is that it shall be unlawful to subject any person to any form of physical mutilation or medical or scientific experimentation against his will. It is suggested those provisions be placed in this article. Those are the only comments which have been received.

The CHAIRMAN: What is the value of the declaration that everyone has the right to life? What is the evil apprehended if you do not say that? Certainly there is an exception in countries which have capital punishment. I suppose that is covered by a subsequent section and so therefore all the declaration amounts to is that everyone has the right to life, except those whose lives are taken away by process of law.

The WITNESS: That is correct, sir. As a matter of fact article 4 with respect to liberty and security of person should be probably read together with section 5. They seem to go together. With respect to 5 you have mentioned the right to life and there is no doubt you are up against a problem that runs through the whole declaration. You are striving towards a general test or

standard which is not to be taken as absolute in all cases, because, as soon as you have rights becoming made absolute, you cease to have a properly organized society. Therefore, those rights must always be subject to modification such as the necessity for the imprisonment of people who have committed crimes. There is also the necessity for restraining one citizen who might violate the rights of another citizen. You can never have absolute rights or absolute freedoms. In so far as it is suggested every person has the right to life, that can surely only be a general statement that the life of a person is sacred and if he is to be deprived of it, it is only as a result of the proper application of the laws of the state. There is the other side which has also to be taken into consideration. The state cannot legislate to give life to any person. It is not within the power of the state. You cannot take the words literally and they are only principles. That is to my mind the essence of the whole declaration.

Mr. MARQUIS: Is there anything in the declaration concerning the death penalty in connection with the enforcement of law? I have not seen anything.

The CHAIRMAN: No, neither have I.

Mr. MARQUIS: It seems to me that we are going as far as advocating the removal of capital punishment.

Hon. Mr. GOUIN: The terms are so absolute that it would be my impression that it is necessary to provide especially for capital punishment under the normal course of the law.

Mr. MARQUIS: If a person has the right to life he has not the right to take a life of another, and if he takes that life he may be punished. As this section is worded I cannot be sure that the state will have the right to enforce a law which provides for capital punishment.

The CHAIRMAN: Is there another article that permits capital punishment?

The WITNESS: Not in express terms, sir. If you will look at paragraph 2 of article 7 you will find that the declaration expressly recognizes that persons shall be tried in accordance with that law and shall be punished in a proper manner.

The CHAIRMAN: The person still has the right to life.

The WITNESS: Yes, but according to article 4 he has still the right to liberty.

Mr. MARQUIS: Article 7 says that "no person shall be subjected to torture or to cruel or inhuman punishment." Perhaps hanging is considered to be cruel.

The CHAIRMAN: No, no.

Mr. WHITMAN: It says that persons shall be liable to punishment in accordance with the general principles of law recognized by civilized nations. Which are the civilized nations? Great Britain has done away with capital punishment, does that mean she is a civilized nation?

The WITNESS: That again is one of the generalizations which makes it very difficult to say what the test is. It is a subjective test. We are a civilized nation and we consider it a proper form of punishment. Great Britain is a civilized nation but that country decided to abolish capital punishment. You must come to a decision as to what we, as an individual nation, consider is a proper test. When you are reading that article surely you have to say that if article 4 provides that "everyone has the right to liberty", and article 7 provides that "nothing in this article shall prejudice the trial and punishment of any person for the commission of any act which, at the time it was committed, was criminal according to the general principles of law recognized by civilized nations"—there must be a derogation from the absolute right to liberty, and I think by implication to the right to life is whether capital punishment is a lawful form

of punishment. Surely this article is intended to provide that a person's life shall be inviolate at the hands of others, and at the hands of the state, in principle.

Mr. MARQUIS: I think clause 1 of article 7 will cover the situation. No person shall be liable to any greater punishment than that prescribed for such offence by the law at the time the offence was committed.

Hon. Mr. CRERAR: I am afraid a few of us will have to go now or there will not be a quorum in the Senate.

The CHAIRMAN: The meeting is adjourned.

The meeting adjourned to meet again at the call of the chair.

SESSION 1947-1948



SPECIAL JOINT COMMITTEE OF THE SENATE
AND THE HOUSE OF COMMONS

ON

HUMAN RIGHTS

AND

FUNDAMENTAL FREEDOMS

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 5

WEDNESDAY, MAY 19, 1948

WITNESS:

Mr. D. H. W. Henry, Counsel, Department of Justice, Ottawa.

OTTAWA
EDMOND CLOUTIER, C.M.G., B.A., L.Ph.,
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY

1948

MINUTES OF PROCEEDINGS

WEDNESDAY, 19th May, 1948.

The Special Joint Committee on Human Rights and Fundamental Freedoms met at 4.00 o'clock p.m. The Joint Chairman, Right Honourable J. L. Ilsley, presided.

Also present:

The Senate: Honourable Senator Wilson.

The House of Commons: Messrs. Beaudoin, Breithaupt, Cournoyer, Dechene, Hansell, Hazen, Herridge, LaCroix, Marier, Marquis, Miller, Probe, Robinson (*Simcoe East*), Smith (*York North*), Whitman, Zaplitny.

Copies of the following were filed with the committee:

1. File No. 32, Comments from the United Kingdom and South Africa on the Draft International Declaration on Human Rights, E/CN.4/82/Add.4, 27th April, 1948.
2. File No. 33, Comments from Norway on the Draft Declaration on Human Rights, E/CN.4/82/Add. 5, 30th April, 1948.
3. File No. 34, Comments from Egypt on the Draft Declaration on Human Rights, E/CN.4/82/Add.6, 1st May, 1948.
4. File No. 35, Comments from India on the Draft Declaration on Human Rights, E/CN.4/82/Add.7, 4th May, 1948.
5. File No. 36, Comments from United Kingdom on Draft Declaration on Human Rights, E/CN.4/82/Add.9, 10th May, 1948.

The committee resumed consideration of the Draft International Declaration on Human Rights.

Articles 4 to 10 were reviewed.

Mr. D. H. W. Henry, Counsel, Department of Justice, Ottawa, was called. He made a statement summarizing comments of member governments, United Nations, relative to the draft declaration, and was questioned.

The witness was retired.

The committee adjourned at 6.00 o'clock p.m., to meet again at the call of the Chair.

J. G. DUBROY,
Clerk of the committee.

MINUTES OF EVIDENCE

HOUSE OF COMMONS,

May 19, 1948.

The Special Joint Committee on Human Rights and Fundamental Freedoms met this day at 4.00 p.m. The Right Honourable Mr. J. L. Ilsley (Joint Chairman) presided.

The CHAIRMAN: We were on article 4 of the declaration. I think Mr. Henry had some documents or communications that he would like to mention to the committee.

D. H. W. Henry, Counsel, Department of Justice, recalled.

The WITNESS: Mr. Chairman, since the last meeting comments have been received from the United States and the United Kingdom which we did not have the benefit of before. With respect to article 4, as I assume it is most convenient to bring the comments of these governments in the appropriate place, both these governments suggest no change be made in the draft as it is now before this committee. That would indicate that the present form is satisfactory to both those governments.

By Mr. Hazen:

Q. The United States and who else?—A. The United States and the United Kingdom.

By Mr. Hansell:

Q. Is that in respect of the entire draft or just article 4?—A. No, sir, that is with respect to that particular article. We now have detailed comments on most of the articles in the document from those two governments. There is a further source of information which possibly should be placed before you. At Lake Success the drafting committee has been meeting during the past two weeks or more, and has now taken up discussion of the draft declaration. The first report we have of that discussion deals with article 4 with which apparently the proceedings opened.

In respect to this article Mrs. Roosevelt, the chairman, suggested that the substantive rights should be expressed under an over-all clause commencing, "every one is entitled to". That suggestion was made here last day and seems to be the stand taken by the United States that there should be a definite assertion that every person is entitled to certain rights, and that under that formula the specific designation of the rights should follow.

The representative of China stated that he supported that suggestion and added that there was a Chinese draft declaration available which might be taken into consideration in that respect. Mr. Chairman, I am afraid we have not received the Chinese draft, but I understand it is a very worthy document, and has received favourable comment from the United States government.

After discussion the proposals to include the following phrases—and I will quote the phrases—"from the moment of conception", which it was suggested be inserted, and the phrase "regardless of physical or mental condition", and the phrase "to live in dignity and to develop one's personality adequately",

and the phrase "and persons unable to maintain themselves shall have the right to aid and protection", were all voted upon and rejected. The original wording of article 4 was accordingly adopted, and therefore as approved by the drafting committee reads:

"Every one has the right to life, to liberty and security of person."

Mr. Chairman, I think that brings the committee up to date.

The CHAIRMAN: Is there any further discussion of this article?

By Mr. Hazen:

Q. Has a person the right to the pursuit of happiness?

Mr. HERRIDGE: That is an academic aspect of it.

Mr. MARQUIS: It was in the Declaration of Independence.

Mr. HAZEN: I have in mind the wording of the American Declaration of Independence, "every one has the right to life, liberty and the pursuit of happiness". Were the words "pursuit of happiness" considered by this committee which drafted this international declaration on human rights? Was there any discussion over those words, and if so, what was it?

The WITNESS: I am not aware there was.

Mr. HAZEN: I am surprised there should not be because they must have had before them the American Declaration of Independence, and those are the words that were in it. One might almost think that the representatives of the United States on that committee would rather have favoured those words. If they have not there may be some explanation.

By the Chairman:

Q. You do not know of any discussion of that phrase?—A. No, I am not aware of any discussion. It would appear in committee document 18 if there were a discussion, and I do not see it opposite article 4 in the comments. I might also point out in the analogous article of the suggested declaration put forward by the United States that phrase did not appear in the first article which says, "every one is entitled to life, liberty, and equal protection under law". I think if it had been seriously urged the United States would probably have put it forward as a suggested form of draft.

By Mr. Marquis:

Q. It is probable they had attained that goal at that time, the pursuit of happiness, and did not include that.—A. Yes. There is also this possible explanation, that it is an extremely wide phrase, and possibly is a natural corollary of the other rights having been guaranteed which are mentioned in the covenant, so that you do not need to expressly state it.

By the Chairman:

Q. If you have liberty you can pursue happiness.—A. I think that is the suggestion, at any rate.

By Mr. Hansell:

Q. Are we to understand that security of person applies essentially to the body, a person's body? We are splitting hairs here again, but is there any element of economic security in that? Is that what it means, or could it mean that?

The CHAIRMAN: I would think not, myself; I do not think this means economic security at all. Would you think so?

The WITNESS: I would not think so. There are a number of articles later which specifically deal with economic security, and I do not think it was intended to include it here.

By Mr. Marquis:

Q. It concerns only the individual?—A. That is right.

Mr. HANSELL: Well, I think economic security concerns the individual. I do not quite get the meaning of the phrase, "security of person."

By Mr. Whitman:

Q. Does that mean security from arrest or from imprisonment without trial? Would that be what is suggested there?

The CHAIRMAN: Was there any discussion of the phrase, "security of person"? Bodily integrity was used by one of the other states.

Mr. MARQUIS: There was a comment—I think from the Netherlands—suggesting that some other words be used.

Mr. HANSELL: Bodily integrity means more to me than security of person.

The WITNESS: It is correct that the government of the Netherlands suggested that that phrase was too vague, and that it should be taken out and some other more concise and clear phrase expressed.

By the Chairman:

Q. It is supposed to be a safeguard against arbitrary arrest and detention, is it not?—A. Yes, I think that is correct. I submit that it is a well recognized type of phrase for a country such as ours where we are familiar with the provisions against arbitrary arrest and where we are familiar with the provisions which provide habeas corpus proceedings for any person who is arbitrarily arrested.

By Mr. Hansell:

Q. That is the term that is used in that connection?—A. Yes. It could go much wider than that though because I would suggest bodily security also means freedom from having your person violated at the hands of others, but there again in Canada we have laws which provide some sort of recourse to the individual if his person is in any way violated, either by the state or by individuals.

The CHAIRMAN: Is there any further discussion on article 4? It is interesting that they agreed on that article in the committee. If there is no further discussion we will take article 5.

No one shall be deprived of his personal liberty or kept in custody except in cases prescribed by law and after due process. Every one placed under arrest or detention shall have the right to immediate judicial determination of the legality of any detention to which he may be subject and to trial within a reasonable time or to release.

What are the comments of other states on that article?

The WITNESS: Mexico has suggested that the following wording be added, "No one may be imprisoned for purely civil debts." The government of Brazil makes its comment by reference to article 9 of the covenant which provides in detail for cases in which detention or arrest may be effected. That government considers that the necessity for including such exceptions indicates article 5 of the declaration should not be drafted in terms as broad as those suggested. It is suggested that the words "by due process" be substituted for "after due process."

The comment received from the United Kingdom indicates that if article 4 is accepted then article 5 seems to be unnecessary. The United States has forwarded a revised draft of article 5 which reads as follows:

Every one is entitled to freedom from being arrested or detained without being promptly informed of the reasons for the arrest or detention, and without being entitled to a fair hearing within a reasonable time, or release.

Mr. HERRIDGE: That language is not nearly as good as in the article here. I think it is better stated in article 5.

Mr. MARQUIS: I do not know what point there is in having the words "after due process", when it is laid down that no one shall be kept in custody except in cases prescribed by law. If the law prescribes what is to be done when somebody is arrested it does not seem to me that in a declaration such as this the words "after due process" should be used. It is an addition to the principle involved in the words, "except in cases prescribed by law." If you follow the law you will have to take some process in order to apply the law.

Mr. MARIER: You mean those words would be useless?

Mr. MARQUIS: I think so. It seems to be a catch. What kind of process is to be used when somebody is arrested? When we have somebody arrested we have the Criminal Code. We lodge a complaint against an individual, and a judge decides if he is to be kept in custody for major reasons or if he should be bailed.

The CHAIRMAN: I think the draftsman has in mind the distinction between law and procedure.

Mr. MARQUIS: Probably.

The CHAIRMAN: And that not only must there be a law ante-dating the arrest and authorizing the arrest, but that certain procedure must be followed, too. There must be due process. Of course, the Criminal Code says there may be arrest without warrant in criminal cases. I do not know how those sections would be harmonized with the requirement that there must be due process.

By Mr. Whitman:

Q. Was there any other criticism from any other European nation?—
A. Those are the only comments which have been forwarded by the governments, but there have been—

Q. I was thinking about political prisoners, people who have been arrested for political offences. Where would they come in? Would the words "except in cases prescribed by law" allow Russia to carry out the arrest and detention of political prisoners on a political charge which we would not consider in this country at all.—A. That may be included—I am not sure it is—in the words "after due process". In the United States the Supreme Court has had occasion to give a great deal of attention to the due process clause in the American Bill of Rights and in the 14th Amendment, and it has been pretty well concluded now, I think, that due process, whether it is in legislation or in the actual execution of laws, means upon proper legal principles and not arbitrarily. The suggestion the chairman has just made that there can be arrest without warrant in certain cases is perhaps merely the first step because a person arrested without warrant would still have his rights of habeas corpus.

By Mr. Probe:

Q. You could not detain him?—A. You could not detain him without giving him the reason why he had been arrested.

Mr. MARQUIS: If we refer to the French version we see it is exactly as the chairman has said. It is "selon les formes legales prescrites", legally prescribed

procedure. I should like to know if this section prevents countries from adopting some new procedure, if this clause can be voided, if a country has only to adopt some procedure under which it could decide that it might arrest somebody and keep him in custody and have him cross-examined by the chief of police, and so on. I think that nobody could object to that.

Mr. MARIER: This article does not prevent any country from using the actual law.

Mr. MARQUIS: It does not mean the law as it existed at the time of the adoption of the clause.

The CHAIRMAN: Oh, no.

The WITNESS: No, sir. In fact, I think if you look at article 32 you will find that that requires the law in the state to be in conformity with the purposes and principles embodied in the charter. Article 33 which follows it indicates that the declaration is not intended to permit anything which would destroy rights and freedoms.

By Mr. Marquis:

Q. So that the law that might be adopted should be in accordance with the general principles indicated in the declaration?—A. That is what is apparently intended, sir.

By Mr. Whitman:

Q. In other words, you mean we will have a uniform law throughout the world which will prescribe whether or not a man can be arrested and detained.—A. I should not think that would be the result because it would be practically impossible owing to the fact you have a difference first of all in the ideological outlook on the part of various states.

By Mr. Marier:

Q. The procedure can be different in every country?—A. That is right, and it would depend upon the organization of the state how the procedure would be laid out, but I think article 5 is intended to avoid arbitrary laws not based upon some reasonable principles of justice. I think that must be read into it. The question of political prisoners was raised a few minutes ago. That is a question which, it seems to me, depends upon the outlook of the nation concerned. Some nations may consider, for instance, that one political party should be outlawed, and any person belonging to that party found guilty of an offence, and possibly imprisoned or otherwise punished. It seems to me that would be a question for the General Assembly to consider at some point as to whether in the view of the nations as a whole, each acting on its own subjective concept of what is right, that type of law is not within the limits of the declaration.

By Mr. Marquis:

Q. Mr. Henry, do you not think article 3 covers that point, and that you cannot outlaw any political party because we must respect freedom of opinion?—We have discussed that article, and it was argued the other day that in some cases it might be said the opinion of a party goes beyond mere opinion, and strikes at the roots of the state. I am merely putting forward the argument that some suggest. I do not say that I recognize it, but that can be argued.

By Mr. Robinson:

Q. Would that first sentence of article 5 not be clarified if it read "No one shall be deprived of his personal liberty except in cases prescribed by law, or kept in custody except after due process"? I was thinking particularly in

our law of the arrest of someone after close pursuit. He could be arrested, and that would be prescribed by law, but then he could not be kept in custody except after a charge had been laid. That would be due process.

Mr. MARIER: It is important also to mention when he is arrested he is arrested according to the form prescribed by law.

Mr. HANSELL: Would there not be cases where that is not so? For instance, could a government, even our own government, proceed to arrest people apart from the law? I have reference to the recent espionage investigation.

Mr. MARQUIS: There was a law; there was an order in council providing for that. It was based on the law.

Mr. HANSELL: That is it.

Mr. MARQUIS: There should always be a law under which we proceed. We cannot have somebody arrested without any legal provision.

Mr. HANSELL: Could this be interpreted as outlawing an order in council?

Mr. MARQUIS: If an order in council is adopted under the law it is embodied in the law.

Mr. WHITMAN: Would it be impossible for a government to act as our government acted in the recent espionage cases?

Mr. MARQUIS: I do not think so. If there is a general law authorizing the government to adopt an order in council the order in council is a part of the law, and the arrest is made under the law.

The CHAIRMAN: First let us take Mr. Robinson's suggestion. I think that should be examined to see whether that would not be an improvement. It is hard to form a judgment on it as to whether or not it would be. With regard to the article as a whole in reading it I immediately thought of the espionage cases. I should think, having in mind the second sentence, that the procedure followed there would perhaps be inconsistent with this article, were it not for article 33. Article 33 says:

Nothing in this declaration shall be considered to recognize the right of any state or person to engage in any activity aimed at the destruction of any of the rights and freedoms prescribed herein.

Possibly that might put a different complexion on it.

Mr. MARQUIS: Article 33 gives the right to have these persons arrested, but according to article 5 the individual shall be brought immediately before a court. Therefore it would be impossible for the government to have an investigation made, pending the individual being brought before the court, in order to protect the state, and to prevent these people from maintaining their ring of espionage.

The CHAIRMAN: Yes. Then the question arises about the defence of Canada regulations, the internment of so many persons in camps, who were not given a trial. There was an investigation that took place but it was not a trial in the ordinary sense of the term. Is there not some article in this declaration that provides that in a war, for example, or in a state of emergency that the state has the right to shut people up for quite a while without a trial?

The WITNESS: No, sir, not in the declaration. I think that appears in the covenant at article 4, but for some reason it has not been carried into the declaration. Yes, it is article 4 of the covenant on page 25 of committee document 18. I suggest the reason it was not carried into the declaration is that the declaration is after all an expression of general ideals, and that there must be implied in it certain derogations from at least the absolute nature of the ideals laid down. Therefore it would seem that it was not intended to put in the covenant any limitation provision to indicate that in certain cases rights which are expressed in the covenant and the liberties could be modified

in some way. I suggest it was intended that should be implied in appropriate cases.

Mr. MARQUIS: The declaration is prepared for people who are ready to live in peace, and are supposed to live always in peace.

The CHAIRMAN: I must say I find it harder and harder to understand the true nature of this declaration. What Mr. Henry has said is that this is a statement of ideals. It is not to be interpreted as binding. It is just something to aim at, something that it would be nice to do if you find that you can do it.

The WITNESS: That brings one almost to a cynical conclusion. I do not think that is quite intended. All the nations which have replied, in general, seem to recognize there is a moral obligation to carry out the provisions of the declaration once it is adopted. That seems to run fairly clearly throughout all the comments, especially throughout the comments of the great powers. It is not merely an idle document, but something which is intended to be morally binding and over which each nation will exercise its conscience when it comes up against some provision in its laws which seems to conflict with this declaration.

By the Chairman:

Q. What I should like to know is this—we shall not consider the espionage trials which were controversial, but let us consider something which is not controversial, the defence of Canada regulations. If Canada voted for the adoption of article 5 in the United Nations would we not be charged with inconsistency if a war broke out in two years time and we started to do what we did during the last war? Would it not be said, you cannot do that; you are to have trials promptly. You cannot get away from it. You did not say anything about war or emergency in your declaration. You just said everybody shall have the right to a trial, shall have the right to immediate judicial determination within a reasonable time or to release. This would mean that those people who were put in internment camps would have to be tried and you would have a lot of publicity which would be prejudicial to the war effort.

Mr. PROBE: In the case of internment, is there any short-cut procedure of an expeditious nature to resolve the validity of the detention?

The CHAIRMAN: I was not in the Department of Justice at the time, but I think during the last war competent committees, usually with a judge on them, went around the internment camps to hear the stories of these men. These committees advised the Minister of Justice whether they thought the men were unjustly detained.

Mr. PROBE: That would be due process of law?

The CHAIRMAN: It is certainly not a trial.

Mr. WHITMAN: Were these men not tried first before they were put into the internment camp?

The CHAIRMAN: No.

Mr. WHITMAN: Do you mean the mayor of Montreal, for instance, went to the camp without a trial? Was there not some kind of a trial?

The CHAIRMAN: No, I remember the day it happened.

By Mr. Marquis:

Q. If the covenant is adopted, will the declaration be binding? Will the articles in the declaration be binding on the same basis as the covenant or will they become part of the covenant? As the chairman says, this article goes rather far if it is not part of the covenant. Perhaps it is not the same thing? —A. No, sir; the covenant and the declaration will always remain two separate things. I believe it has been suggested that the declaration be embodied in the covenant as a preamble and, at the same time, be kept separate as a declaration.

The same article four in the covenant to which we referred allows the state, under the legal obligation of implementing the covenant, what I interpret as the right to derogate from these obligations. It seems to me to indicate it is intended there shall be some derogation from the provisions of the declaration in cases of great national emergency, not because there is anything expressly in the declaration which says that, but if a nation enters the declaration and the covenant, the covenant is the binding instrument. There, in express terms, protection is given in those cases of national emergency to depart from the express provisions. If the covenant is the legal, binding instrument, surely, a fortiori, the declaration is the less binding and can be departed from in a proper case.

By the Chairman:

Q. Why should it not be expressed in the same way as the covenant, then?
—A. Perhaps it should. I would think that would probably be a reasonable idea except for this; once, in a general statement of principles, you begin to say there are exceptions, you do appear to destroy the declaratory nature of the document.

Q. You just tell the truth, that is all.

Mr. PROBE: One is the ideal and the second is the sort of business application.

By Mr. Marquis:

Q. Mr. Henry, do you not think the government of each country should have the right to declare what is in the public interest, and to have some kind of reservation, some list of exceptions? According to this article, the government has not the right to declare it is in the public interest to adopt special emergency measures to protect the country. Suppose there were a conspiracy to overthrow the government. We would have to take those people before a judge and we would not have time to make any investigation?—A. Of course, that might be argued but I do think it is intended that in a case of that kind, assuming that you are bound by the covenant, it is intended that you take appropriate action under article IV of the covenant and derogate from those liberties and those rights, notwithstanding it is not mentioned in the declaration. The covenant is the legal and binding instrument, whereas the declaration merely declares in general what are the rights of the individual.

By Mr. Hazen:

Q. Could we adopt the declaration and not the covenant? In that case, should there not be something in here, as the chairman suggests? It may happen that we finally agree on the declaration of human rights and the covenant may never be agreed upon. In any case, it seems to me there should be some qualification.

The CHAIRMAN: I find it difficult to understand the effect of subscribing to the declaration. It is subject to unexpressed exceptions for the reason that, if we express the exceptions we destroy the resounding effect of the declaration. I do not think that is a very good reason.

The WITNESS: I would think, probably, that is the main reason which has been advanced for not having such a clause in there. I see no reason, apart from that, for not including one.

The CHAIRMAN: There is no doubt that is a great article, that is a great principle. It is a principle which has evolved through centuries of experience. People are entitled to a trial and they should be protected against arbitrary arrest and arbitrary detention. There is no doubt about that. It is the principle of habeas corpus, Magna Carta, the petition of rights and the bill of rights. It is a great principle.

Mr. HANSELL: Essentially, though, we have never broken the principle.

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The CHAIRMAN: We are charged with breaking it in the defence of Canada regulations to some extent and, certainly, in the procedure followed in the espionage cases.

Mr. HANSELL: There was nothing else which could have been done under the circumstances.

The CHAIRMAN: That is what we say.

Mr. HANSELL: That is true. I was on the defence of Canada regulations committee during the war. War broke out and the state had to be protected. Things were done which were considered to be in the best interest of the state. Yet, we had delegations appearing before that committee asking for similar things as those contained in this declaration. The same people, I might say, in some respects that are clamouring for a bill of rights now appeared then. They may have good intentions, but I do not see how we could have acted in any other way; that is my profound conviction.

By Mr. Herridge:

Q. I should like to ask Mr. Henry if this is a declaration of human rights which is accepted, more or less with reservations, why is there not some head note or clause to the effect that it is a statement of ideals. It is very confusing to anyone reading it. You take it for granted if a person signs such an instrument, a person assumes he has to live up to it. Why is there not some clause to the effect this is a statement of ideals or an objective to which to work?—A. I think, probably, the reason for that was it was intended that the laws of each state would eventually be brought into conformity with the provisions of this declaration. In fact, it is so stated in the last two articles. The consensus of opinion among all the states is that this is a declaration of ideals. It is intended only to be a declaration.

By Mr. Marquis:

Q. Is that declaration supposed to be embodied in the law? If it is embodied in the law of the country, it will become the law of the country?—A. That is correct, sir, but that would depend upon the action taken in modifying the domestic law of the state concerned.

Q. I want to make that point clear. You see, you have a declaration. Suppose Canada adopts this declaration and it is embodied in the text of the law. It will then become the law of the land, if there is no reservation made and if we are obliged to adopt the declaration as it is enacted. I do not know how we can escape under article V?—A. That assumes, of course, that you turn the declaration into a statute which I do not think was the intention.

Q. That is my question; that is the point I raised—A. I do not think that is the intention.

Mr. ZAPLITNY: Is this not the position? If any country were to adopt the ideals expressed in this declaration, they would not be in any one statute. They would find their way into the various statutes of the country in due time. In that way, of course, we are not committed to the wording of the declaration at all. The wording would be in the statutes themselves. It might be quite different, but the principle would be there.

The CHAIRMAN: I think that is correct. Is there any further discussion on article V? If not, we will go to article VI.

The WITNESS: Excuse me, sir, before we go to article VI, would it be worth while telling the committee what happened at Lake Success with respect to article V?

The CHAIRMAN: Yes.

The WITNESS: In the drafting committee, the United Kingdom representative and the representative of China suggested that this article was unnecessary since the question of liberty was already covered in article IV, and that article V dealt not so much with a principle but with the means of securing liberty and should, therefore, properly be placed in the covenant.

The Russian representative suggested that, as the covenant will be the binding instrument on the states which accept it, and whereas the declaration has a broader significance in that it merely imposes a moral obligation, he would oppose the deletion of article V from the declaration. He proposed adding to the article a provision that the right to compensation for illegal arrest or deprivation of liberty be guaranteed. This suggestion, I might say, was defeated later when a vote was taken.

It was suggested by the representative from Chile that there be added the right to humane treatment during the period when one was deprived of liberty. It was considered that was not necessary since it was thought to be covered by article VII.

The net result of the discussion was that articles V, VI and VII, which are inter-related, were referred to a subcommittee for further drafting. These articles are in that position at the moment.

By Mr. Marquis:

Q. I think it would be a good suggestion to state in the report that this article should not be embodied in the declaration. It seems to me what is provided in article V concerns only procedure and does not concern principles at all. I think the United States and China made that comment, too?—A. Great Britain and China.

The CHAIRMAN: I take note of what you have said. I think it is a very good article, myself.

By Mr. Hazen:

Q. Would it be possible to not deal further with these articles, V, VI and VII, until we hear the result of the re-drafting, or should we have comment on them now? Apparently, they have gone to a committee to be re-drafted.

The CHAIRMAN: I think we might as well plow through them as they are. We may prefer these to the re-drafted versions. They might not be improved in the re-drafting. I think we might go through them all as they are expressed here.

Mr. PROBE: Is it not true that article V, as it stands now, contains the substance of habeas corpus?

The CHAIRMAN: I think that is right.

Mr. PROBE: We recognize article V in Canada?

The WITNESS: That is correct, sir.

Mr. ROBINSON: It is interesting to note that article V is carried into the covenant itself in article IX. In article IX it is stated,

No person shall be deprived of his liberties save—

There are seven exceptions which are very restricted. They certainly would not cover your comments on the defence of Canada regulations.

The CHAIRMAN: There must be some other clause in the covenant that does?

The WITNESS: Article IV.

Mr. ROBINSON: Article IV only refers to article II.

The WITNESS: Article II in the covenant, I think, was intended to set forth the general principles which the states undertook to accept. I am very much

afraid that the principle of article IV is going to be adopted by states in cases of necessity, whether or not it was intended to be. It is the type of thing you cannot get away from.

Even our own principle of habeas corpus, in times of war in Great Britain which has been the centre of rights of this type, has been abandoned. The principles of habeas corpus have been abandoned in times of war under statute, and proper statutory provisions made for protecting the persons accused. Arbitrary arrests, and so forth, do take place under these exceptional conditions. While it might not be desirable to derogate from these rights, I think the practical answer is that it will have to be recognized.

Mr. MARQUIS: It should be so stated, though.

The CHAIRMAN: Yes, you should be careful to express it in some way.

I think we should continue with article VI, unless there is something else in article V which you wish to discuss. Article VI reads as follows:

Everyone shall have access to independent and impartial tribunals in the determination of any criminal charge against him, and of his rights and obligations. He shall be entitled to a fair hearing of his case and to have the aid of a qualified representative of his own choice, and if he appears in person to have the procedure explained to him in a manner in which he can understand it and to use a language which he can speak.

Are there any comments on that article?

The WITNESS: Yes, sir, the government of South Africa in a comment indicated that no objection is taken to the principle of this article so far as it relates to judicial proceedings. With respect to quasi-judicial authority, it is observed that they must follow the elementary rules of justice apparently laid down in the article. If this is so they must, for example, allow the parties an opportunity of presenting their case, but are not necessarily bound to grant them or the representatives an oral hearing. At least, I understand that is the view taken at the moment in South Africa.

That government says, frequently it is sufficient if they allow the parties to submit written representations. However, if this article by the use of the word "hearing" means it may be interpreted that quasi-judicial tribunals must, in every case, be bound to hear oral representations, there are many changes which have to be made in the laws of South Africa. In some cases, such changes may be found impracticable. The Union government considers there are occasions when the interests of justice require the court should exercise its discretion to hold a trial in camera.

The government of Brazil suggests that, after the last word of the draft article, there be added the words, "And in which he could be understood", to complete the guarantees given to the accused in the matter of expression.

The United Kingdom has furnished a re-draft of the suggested article which, in their view, should read as follows:

Any person is presumed to be innocent until proved guilty. Everyone shall be entitled to a fair hearing. No one shall be subjected to torture or to inhuman indignity.

By Mr. Hazen:

Q. Is that article VII?—A. That is article VI. It is suggested that this re-draft replace articles VI and VII, so far as the United Kingdom is concerned. It is suggested that the present wording falls half-way between a declaration and a covenant.

The United States has also furnished a proposed re-draft of article VI which reads as follows:

Everyone is entitled to freedom from conviction or punishment for crime except after a public trial within a reasonable time before a fair, impartial and independent tribunal; and the right to a fair hearing before an impartial and independent tribunal in the determination of any criminal charge against him or of any of his rights or obligations.

There is no comment with that draft. The progress of discussions at Lake Success was covered in the remarks I made with respect to article 5, and you will recall that this article No. 6 was referred to the subcommittee for redrafting, and we have not that redraft back yet.

The CHAIRMAN: The question that will arise here is as to these quasi-judicial tribunals.

Mr. PROBE: What is the meaning of that phrase, in order to understand the South African position there?

The CHAIRMAN: I should like to hear what Mr. Henry says about that. What do you think the South African mean by quasi-judicial tribunals? Let us bring it down to earth. Is a conciliation board a quasi-judicial tribunal?

The WITNESS: I should think that would be included, and possibly a royal commission.

Mr. HAZEN: The decision of a minister of the Crown would be quasi-judicial. He hears the evidence. He is not bound by any principles of law. After he hears the evidence he can form his own judgment. He is not bound by legal principles in coming to the conclusion that he does. That is a quasi-judicial decision. That may not be a very full definition of it, but I think that embodies some of the elements. In judicial proceedings there has to be evidence. Then there is argument, and the consideration of the evidence by the tribunal, and then the application of the law to the facts as they are found. All of those elements are not present in a quasi-judicial proceeding.

Mr. PROBE: Then the liberty of the person is hardly involved in a quasi-judicial proceeding.

Mr. HAZEN: His rights are very much involved. It seems to me that as to this section and section 7 that the comment that has been made applies. I have a note of it here. Article 4 states a principle, but article 5, article 6 and article 7 do not state principles so much as they state methods or means of securing or establishing the principle.

The CHAIRMAN: Yes.

Mr. MARQUIS: That is the point.

Mr. HAZEN: If they were all eliminated I do not think it would affect the declaration on human rights a great deal. There is the principle, and then we go on and say how that principle is to be secured. Is it necessary to set out methods to secure the principle we state in the declaration? I do not think it is.

The CHAIRMAN: It might be better not to put it in the declaration.

Mr. HAZEN: If we do I think we will have to go on and say a good deal more.

Mr. MARQUIS: It has to be repeated in the covenant.

The CHAIRMAN: Yes.

Mr. MARQUIS: So it would be put in the two places.

By Mr. Herridge:

Q. Was there any reason for including this statement as to procedures in what is presumed to be a declaration?—A. I think the only reason is that with many democratic states these principles are held to be so fundamental that it was felt they should be set forth in writing in the declaration, but there has

apparently not been unanimity on it because you will notice that the draft declaration suggested by the United States at page 21 of committee document 18 does not have that statement of the procedure. Article 1 is apparently intended to cover the whole field.

The CHAIRMAN: Are there any other comments on article 6 or article 7?

Mr. HAZEN: It seems to me if we are going to state the means of establishing a principle or enforcing it, as these articles seem to do, then we might very well provide that there is a right of appeal from a decision or judgment. There is no provision in any of these articles for a right of appeal. Article 7 refers to offences and crimes, and if we want to be very careful about it you might also provide that the accused or person charged with an offence shall be present in court when the judgment is delivered and entitled to a copy of the judgment that is delivered, the reasons for the judgment. If we are going to go into great detail about these things those are provisions that it should contain. It seems to me in a declaration of human rights we do not want to get into details of that kind.

Mr. MARQUIS: Mr. Chairman, in article 7, paragraph 3 there is one principle. It reads:

No one shall be subjected to torture, or to cruel or inhuman punishment or indignity.

That seems to be a principle. It is not a matter of procedure, but the rest of the article relates to procedural matters rather than to principles.

The CHAIRMAN: It may be worthy of note that the United States representative in putting forward a very much abbreviated declaration of rights did not abbreviate these very much. If you look at article 7 of their abbreviated declaration on page 22 you will see they provide for public trials, assistance of counsel, and so on.

Mr. MARQUIS: Perhaps it would have been better to make it shorter.

The CHAIRMAN: Apart from those things does the committee wish to make any further comments on articles 6 and 7?

Mr. HANSELL: I think paragraph 2 of article 7 is extremely general in the last part of it, "according to the general principles of law recognized by civilized nations." I do not know who is going to interpret that. I suppose every nation thinks itself to be civilized.

The CHAIRMAN: What that paragraph 2 means is that nations may make a wide variety of acts crimes if they wish. If they wish they will not be prevented from making them crimes if they are criminal according to the general principles of law recognized by civilized nations. They may vary from country to country. We make some things crimes that are not recognized as crimes by the general principles of law recognized by civilized nations. I am not at all sure that the provisions of the Lord's Day Act, offences against the Lord's Day, are recognized as criminal according to the general principles of law recognized by civilized nations. I am not sure there, but we make them criminal.

The WITNESS: It is also suggested that the second paragraph may refer to the Nuremberg trials and similar tribunals.

By the Chairman:

Q. You have some comments on article 7?—A. Yes.

Q. Let us have those.—A. There are comments from the Netherlands government on article 7. That government indicates that since the article deals with two matters as follows: (1) The protection of the individual against unjust treatment, and (2) the general doctrine that a person shall not be convicted of an offence which was not an offence when the act was committed, that punishment shall not exceed what is imposed by law, and that for a breach of the law a person

shall be tried and punished, that the article should be divided into two separate articles, the first to contain the first proposition, and the other to consist of the remaining propositions. That is purely a mechanical change.

The government of South Africa suggests that there are many statutory qualifications to the presumption referred to in this article. I assume by this the South African government means that some of its legislation contains provisions which modify the principle that every person is presumed to be innocent until proved guilty, and it is not unusual to find such provision in legislation with respect to certain subject matter. It is considered by South Africa that the expression "cruel or inhuman punishment or indignity" is somewhat vague.

The standards of cruelty, inhumanity and dignity vary according to the times, places and circumstances. Any punishment which is clearly excessive, may be said to be cruel and inhuman in relation to the offence committed, and whether or not it is regarded as clearly excessive in a particular community, depends upon the protective needs and the general concepts of justice prevailing in that community.

For example, hanging for petty offences only fairly recently has been considered cruel and inhuman. On the other hand there are many today who regard corporal punishment and solitary confinement for any offence to be too inhuman to be tolerated.

It is pointed out further that the United Nations may quite probably have to deal with mental cruelties. The test of indignity will depend upon national and personal notions, prejudices and susceptibilities. The union government accordingly suggests that the words "or to cruel or inhuman punishment or indignity" should be deleted from the provision, and I assume, as they have referred in their remarks to the covenant where these words appear, that in dealing with the declaration they would take the same view. Their government has not commented directly on the article but has referred us to the provisions of the covenant and their comments thereon which are those which I have just expressed.

By the Chairman:

Q. Does not the Bill of Rights of Great Britain in 1688 make some reference to cruel and unusual punishments? Do they not use the term "unusual punishment"?—A. I do not recall offhand whether that is so. I can find out.

Q. It seems to me I remember that it does, that they were confronted with torture and one thing and another by the King, King James II, and they did not like it, and they wrote something in there to stop these cruel and unusual punishments, I believe.

By Mr. Marquis:

Q. According to this clause could an accused be sentenced to be whipped? Is it not cruel? There are many crimes which are punished in such a way.—A. As South Africa has, I think, quite pertinently pointed out that may depend upon the individual outlook of the nations concerned.

The CHAIRMAN: I think it will have to be left at that. This idea of cropping ears, and one thing and another, is out of date. It is out of style, but whipping goes on right along. It is quite a common thing.

Mr. MARQUIS: Many judges say that it is very important in some cases to sentence the accused to that punishment.

The CHAIRMAN: We do not use the pillory any more. That would be a cruel or inhuman punishment in our view, and also mutilations of any kind.

Mr. HERRIDGE: Each nation will place its own views on that.

The CHAIRMAN: They will have to put their own interpretations on those. Are there any other comments on that?

The WITNESS: Yes, sir. The government of Brazil suggests that paragraph 2 should be deleted because it seems to involve an unacceptable derogation of the principle that there is no crime without a statutory provision, but it is also suggested that there might be added a provision that no one can be compelled in any way to refuse responsibility for an act or an omission of which he is accused. The United Kingdom applies the draft which was prepared for article 6 to this article also. Perhaps it would be appropriate if I read it again.

By Mr. Hazen:

Q. What exhibit is that?—A. This is committee document 36 at page 4 where you will find the comment about articles 6 and 7. A suggested revised draft of those two articles has been combined. It reads as follows:

Any person is presumed to be innocent until proved guilty. Every one shall be entitled to a fair hearing. No one shall be subjected to torture or to inhuman indignity.

Q. What page is that?—A. That is on page 4 of committee document 36. The United States has also submitted a revised draft of article 7 which reads as follows: "Every one is entitled to the right to be presumed innocent of crime until proved guilty; freedom from ex post facto laws; and freedom from torture or mutilation or cruel or inhuman punishment or indignity". There is no comment with the redraft. At Lake Success, as I have already indicated, this article was referred to the subcommittee to be redrafted, and we have not received it yet.

The CHAIRMAN: Are there any further comments on that before we pass on?

Mr. HAZEN: I should like to make a comment on the first sentence, "Any person is presumed to be innocent until proved guilty". I am very much in favour of that. I think a person should be presumed innocent until he is proved guilty, but that is not the law of the land in this country in a great many cases. Our liquor laws put the onus on the accused. Our Customs Act puts the onus on the accused. I think there was an Act introduced into the House and passed last year—I have forgotten what it was but I know there was a good deal of discussion on it—which put the onus on the accused. The person charged is presumed to be guilty until he proves his own innocence. I hope we adopt this wording as it is, but I must say that it is not the law in this country at the present time.

The CHAIRMAN: In no case does a mere arrest shift the onus.

Mr. HAZEN: Once a man is charged the onus is on him to prove his innocence.

The CHAIRMAN: In what offences?

Mr. HAZEN: In liquor cases. That is so in a good many of the liquor Acts of the different provinces, in certain provisions of the Customs Act, and the Foreign Exchange Control Board Act. That is another case that comes to my mind.

Mr. ROBINSON: The onus does not shift until a prima facie case has been made.

Mr. MARQUIS: There is a prima facie case as soon as he is arrested under the Excise Act.

The CHAIRMAN: I am very much surprised. I do not remember a single case of any kind where mere arrest shifts the onus.

Mr. HAZEN: Not arrest. A man is charged with an offence and he is arrested. He may not be arrested at all. He may be summoned but once he gets into court then he is presumed guilty until he proves his innocence, in too many cases in this country.

The CHAIRMAN: I should like to know a single specific instance where that is the case. I gave some thought to this. I introduced a provision in the Criminal Code shifting the onus. There are dozens of them where the onus is shifted but it is always shifted by something. It is shifted by the possession of property or by the possession of foreign currency or by the possession of drugs, or something which raises a *prima facie* case. Then the onus is shifted to him to prove that he did not have knowledge or he comes within certain exceptions. That is the general pattern of those offences where the onus is shifted. You might imagine a section where, if a person's breath smelled of liquor he is presumed to be intoxicated, but you would never have a section where he was presumed to be intoxicated simply because he was proceeded against. I do not think there are any cases where the onus is shifted merely by the authorities proceeding against a man. I do not think so.

Mr. MARIER: The Liquor Act in the province of Quebec is the same thing. If a fellow is found in possession of a bottle of liquor which is not supposed to be liquor sold by the provincial commission then he has to prove that he obtained that in the proper way.

The CHAIRMAN: That is reasonable; you have to have something in those cases.

Mr. MARIER: There must be a case against him, first.

Mr. MARQUIS: In the case I had, I think there was a matter of possession. When there is a seizure of liquor, under the Quebec Liquor Act, the person accused must be in possession of the liquor. If he has sold liquor, there is a charge against him, but I think the Crown has to produce evidence. The onus is not on the accused. The Crown has to prove he is guilty, unless they have a *corpus delicti* or something seized.

The CHAIRMAN: The Official Secrets Act shifts the onus and it is argued it is shifted too readily under that Act. Mere communication with agents of a foreign power raises the presumption that secrets are being communicated. The fact of communication has first to be established. There is always something there which raises a *prima facie* case before the onus is shifted.

Mr. HAZEN: A *prima facie* case is a case at first view. On first view, you say a man is guilty and he has, then, to prove his innocence.

Mr. HANSELL: Was that not so under the defence of Canada regulations?

The CHAIRMAN: I forget, now.

Mr. HANSELL: I think it was. I think the onus was on the one detained to prove his innocence.

The CHAIRMAN: I would say it would be utterly impossible to have any system of enforceable criminal law if the Crown in every case had to prove every ingredient of the offence.

Mr. HAZEN: In a case of theft or in a case of assault, the Crown has to do that. Look at the criminal code and you will see the Crown has to prove every article of the offence in regard to a great many crimes. A good many of these provisions are to assist the authorities in securing convictions without getting proof.

The CHAIRMAN: I think I could, if I had a list—I had one prepared a while ago—of the instances in the Criminal Code where the onus is shifted. I think I could show it is not a case of trying to save the Crown trouble, it is to save the Crown from discharging an impossible task.

For instance, if the offence is that a man knowingly did something, the Crown cannot prove the state of his mind. All the Crown can prove is some act which indicates that was the state of his mind. Once the Crown has proven that act or certain circumstances, then the burden is on the accused to

prove that he did not perform that act knowingly. In that way, the onus is shifted. It has to be shifted, otherwise the Crown could not get any convictions no matter how diligent it might be.

Mr. MARQUIS: That does not mean that the Crown has to prove the excuse, the fact is proven.

Mr. MARIER: The fact must be proved by the Crown. There is a fact to be proved by the Crown and after the fact is proved then it is for the accused to prove that the fact is not a criminal offence.

Mr. HAZEN: In this article VII, the first sentence would be better worked if it said, "Any person is presumed to be innocent until a prima facie case is made out against him."

The CHAIRMAN: It is more accurate. It is less effective. Are there any other comments on article VII? We shall pass on to article VIII which reads as follows:

Slavery, in all its forms, being inconsistent with the dignity of man, shall be prohibited by law.

Are there any comments on that?

The WITNESS: Yes, the comments are very short. The United Kingdom has suggested a more comprehensive text as follows:

Slavery or enforced servitude in any form, being inconsistent—and so on. They simply substitute those few words.

The Government of the United States suggests the following draft:

Everyone is entitled to freedom from slavery or forced or compulsory labour.

At Lake Success, the drafting committee has adopted the following wording:

Slavery is prohibited in all its forms.

By Mr. Whitman:

Q. Would conscription of man-power in peace-time come under that?—Is not that enforced service by the state?—A. I scarcely think that could be called slavery. I think they are getting at something more fundamental than the requirement for forced labour being carried out. There is something, I think later in the declaration, which deals with that idea. Slavery is something which really goes to property rights.

Perhaps I might read a definition which is to be found in Halsbury's Laws of England which would, perhaps, clarify the point.

Slavery has been defined as service for life for bare necessities, with power in the master over the person and property of the slave. A right to all the acquirements of his labour and a right of alienation, and the like power and right over the slave's descendants.

Perhaps that answers the question.

The CHAIRMAN: I do not think slavery raises any difficulties. Forced labour does, though, I think.

Mr. MARQUIS: Compulsory labour is not slavery. People may be compelled to work but they have their freedom in working; their salaries, their own properties and so on. It is not the same thing at all.

Mr. MARIER: It does not give the right of property to any one.

Mr. HANSELL: I do not like the wording, "in all its forms".

Mr. MARQUIS: I think, at Lake Success, there was a new draft of that article. It was shorter and seemed to be better.

The WITNESS: Yes, there was. I will read it again.

Slavery is prohibited in all its forms.

Mr. HERRIDGE: Slavery is simply considering the human body as property, really. I think that covers it.

The CHAIRMAN: Yes.

Mr. MILLER: How far has the drafting committee at Lake Success gone? Are they ahead of us or are we ahead of them?

The CHAIRMAN: I think they are ahead of us.

Mr. MILLER: Are we keeping in touch with their changes?

The CHAIRMAN: Yes, Mr. Henry has read some of them to you.

Mr. MILLER: I was wondering if that is what those were.

The WITNESS: That is right. We have all the reports up to today's.

The CHAIRMAN: It might be argued that, in effect, the working of political prisoners almost instituted slavery, not slavery in the sense of the ownership of the individual, but it might also come to that. Where you have large number of political prisoners who are forced to work for long periods of time, so far as they are concerned, they might as well be slaves.

Mr. WHITMAN: The same would be true of imprisonment with hard labour.

The CHAIRMAN: Imprisonment with hard labour might be a little different.

Mr. MARQUIS: They are under the sentence of the law. This applies to free people and not to those who are condemned to imprisonment.

The CHAIRMAN: Shall we take up article IX?

Everyone shall be entitled to protection under the law from unreasonable interference with his occupation, his privacy and his family. His home and correspondence shall be inviolable.

Are there any comments on that?

The WITNESS: Yes, the government of the Netherlands suggested the article should read as follows:

No one shall be subjected to unreasonable interference with his privacy, family, home correspondence or reputation.

The comment is as follows:

In order to enable legal exceptions to the principle of the inviolability of home and correspondence, the first sentence of article III proposed by the United States is to be preferred to the text as proposed by the commission.

The government of South Africa suggests that the article goes too far in declaring home and correspondence inviolable as it would preclude the execution of search warrants and the opening of mail insufficiently addressed in order to return it to the sender.

Mr. HERRIDGE: That is hair-splitting.

The WITNESS: The government of Norway would like to insert a limitation by adding these words:

Except in cases prescribed by law and after due process.

The government of Brazil says that the draft they would suggest is as follows:

Everyone shall be entitled to protection under law, not only from unreasonable interference with, but also from any offence against his reputation, his privacy and his family.

It is considered proper to mention freedom from threats, terror or oppression. The inviolability of the home is subject to restrictions arising out of the necessity for repressing crime, and it should be so stated in the article. The inviol-

ability of correspondence should appear in article XVII which deals with freedom of expression, in the view of the Brazilian government.

The United Kingdom suggests that the inviolability of the family is better included under article XIII and the revision suggested by that government is as follows:

There shall be respect for the sanctity of the home and for the privacy of correspondence. The law shall afford protection for a person's good reputation.

The government of the United States suggests the following draft:

Everyone is entitled to freedom from unreasonable interference with reputation, family, home or correspondence.

Now, at Lake Success, the article was adopted in re-drafted form as follows:

Everyone is entitled to protection—

By Mr. Hazen:

Q. Is that one of the exhibits from which you are reading now?—A. No, it is a teletype which has been sent to me.

Everyone is entitled to protection under the law from unreasonable interference with reputation, family, home or correspondence.

Mr. MARQUIS: I believe that is better because, as article IX is drafted now, particularly with regard to the last sentence, a man could kill his wife and the police pass by, hear the cries and are unable to enter. The police would have to wait until the husband called them and said, "I just killed my wife, come in."

Mr. ROBINSON: That is all right, is it not?

The CHAIRMAN: Are there any other comments on that article? It would appear to me the article has been improved.

Mr. HAZEN: I believe the article is superfluous. If we are going to have a short, concise declaration, it may very well be left out. Article IV which provides,

Everyone has the right to life, liberty and security of person—

It seems to me, it covers this sufficiently.

Mr. HANSELL: I should like an elaboration on the words, "interference with his reputation". Does that mean a person is free from criticism? You could hardly criticize a person without reflecting, in some respect, upon his reputation.

Mr. HERRIDGE: You reflect upon his ideas not upon his reputation, if you do it properly.

Mr. HANSELL: You may have something there.

Mr. WHITMAN: I think you do reflect upon his reputation. I remember, sir, when you were Minister of Finance and increased the taxation during the war, I think your reputation was not enhanced by that fact. You had to do those things, but severe criticism was piled upon you. Would there be any way of stopping that criticism under this section?

The CHAIRMAN: No, you could not say that was unreasonable interference with reputation. This would be ordinarily interpreted with reference to the slander and libel laws of the country. A man's reputation cannot be taken away from him except when it is in the public interest or something of that sort.

Mr. MILLER: We seem to get back to that basis every time a point is brought up. We seem to get back to our own laws every time. We may as well have our own laws and be done with it.

The CHAIRMAN: Shall we pass on to article X?

Subject to any general law not contrary to the purposes and principles of the United Nations Charter and adopted for specific reasons of security or in general interest, there shall be liberty of movement and free choice of residence within the border of each state.

Individuals shall have the right to leave their own country and, if they so desire, to acquire the nationality of any country willing to grant it.

Are there any comments on this article?

The WITNESS: Yes, the government of the Netherlands suggests that paragraph 2 of the article, after the word "individuals", there be inserted the words, "who are not subject to any lawful deprivation of liberty or to any outstanding obligations with regard to national service tax liabilities or voluntarily contracted obligations binding the individual to the government."

The comment of the Netherlands is that an unrestricted right to emigrate is inadvisable. A question may be raised whether a government, in view of an urgent national necessity, may not retain within the borders of the country persons exercising a special profession. It is suggested freedom to emigrate should not be given to persons who have undertaken special obligations to the government which they have not fulfilled. Finally, it is suggested, persons who are lawfully imprisoned should not be allowed to leave the country.

Mexico suggests in paragraph 2 the words, "temporarily or permanently", should be inserted. The paragraph would read,

Individuals shall have the right to leave their own country temporarily or permanently and, if they so desire, to acquire the nationality of any country willing to grant it.

Brazil suggests that the statement of principle in paragraph one is followed immediately by a restriction, while that in paragraph 2 is presented in absolute terms and this restriction appears in article XI of the covenant. It is suggested that reference should be made in the article to the guarantees of the alien against arbitrary expulsion which appears in article XII of the covenant.

Egypt has made a comment by way of pointing out with respect to paragraph 2 some legislation makes it obligatory for nationals who shall acquire foreign nationality to have prior authority from their own government.

The United Kingdom has submitted a re-draft of the opening words which they consider to be inappropriate for a declaration of ideals.

By Mr. Hazen:

Q. Are you reading now from one of the exhibits?—A. Not at the moment.

Q. May I suggest, when you read from an exhibit you give us the number of the exhibit and the page so we can look them up afterwards if we so desire?—A. Yes, the material which I have recently read is not yet an exhibit.

The United Kingdom suggests a re-draft in the opening words of the section of article X. It would read,

There shall be liberty of movement and free choice of residence within the borders of each state.

That is to be found in document 36 at page 4.

With respect to paragraph 2, on the same page of the same document, it is suggested that the United Kingdom assumes this means that the individual may divest himself of his nationality if he wishes to do so, but that government sees no need to include the point if the revised draft suggested is adopted.

The government of the United States' comment will be found in a document not yet circulated to the committee including a re-draft of this article. The re-draft reads as follows:

Everyone is entitled to freedom of movement and residence within the borders of each state and freedom to emigrate and to acquire the nationality of any state willing to grant it.

At Lake Success, the article as approved reads as follows:

Everyone is entitled to freedom of movement and residence within the borders of each state.

That is paragraph 1. Paragraph 2 reads as follows:

Everyone has the right to leave any country, including his own.

Mr. HERRIDGE: In that case, what would you do with people who had infectious diseases and who were quarantined?

The CHAIRMAN: That is certainly an exception.

Mr. MILLER: It does not say they can enter any other country. They can leave any country.

Mr. HERRIDGE: The first clause says they shall have freedom of movement in this country.

By the Chairman:

Q. Is this article directed against segregation laws and regulations saying that negroes, for example, shall live in a certain district in a city and in no other district?—A. I think, in part, that would be correct. The other thought which occurs to me is that there have been reports of some people not being permitted to emigrate from Russian influenced territory. Possibly it was something of that nature which was also in mind.

By Mr. Zaplitny:

Q. On that point, is there a comment from Russia?—A. There is no comment from the Russian government, sir, as such. I could read to you the comments of the Russian representative at the United Nations, if that would be helpful.

Mr. Pavlov, the Russian representative, thought that in paragraph 2 of article X, the obligation of an individual to his state is not mentioned. Neglect of such obligations, he said, led to Quislings, Petains, etcetera. Elements which would encourage people to neglect their obligations to their state he said, were implied in the present wording of the article. He proposed therefore the following amendment to paragraph 2,

Individuals shall have the right to leave their own country in accordance with the established laws of that country.

Mr. Pavlov further indicated that the question of Emigration was entirely a question of domestic concern. He was not prepared to listen to any sermons, nor tolerate any intervention in the internal affairs of the Soviet Union.

Mr. ZAPLITNY: If that attitude is carried through, it makes this entirely inoperative, of course.

The CHAIRMAN: Oh, yes. The committee dropped paragraph 2 altogether, did it not?

The WITNESS: Yes, the final approved paragraph 2 was:

Everyone has a right to leave any country, including his own.

That was adopted by the committee and it excludes the proposal of the Russian delegate.

The CHAIRMAN: Well, might it not be necessary for Canada to prevent doctors or trained nurses, or something like that, from emigrating to the United States if we had a terrible demand for them? Suppose our people were suffering, might not such a policy be necessary under certain circumstances?

Mr. HAZEN: That raises the whole question of human rights.

The CHAIRMAN: Do countries not do that right along and say certain classes of people cannot emigrate because they are needed at home?

Mr. HAZEN: Yes, but it still raises the whole question of human rights.

Mr. ZAPLITNY: Except in a case of extreme emergency such as a war or some national disaster, I would think if we believe in human rights and the things we are discussing it would be incongruous to suggest any nation or state should have a right to retain an individual who wishes to go somewhere else because that immediately establishes the supremacy of the state over the individual to which we, as a general principle, all object. If we allow any wedge to get in there at all and to say that, in peace-time or under ordinary circumstances, a state shall have the right to retain its individuals, then it makes the whole article meaningless. If we are going to accept the principle of free movement internationally, then it will have to be all in one piece.

Mr. HANSELL: It does protect internationally and it does protect freedom within our own country. You deny freedom of movement right now by raising the restrictions on currency. How could a person go into the United States? A person could go there, but would have to come back again as soon as his money ran out.

Mr. HAZEN: That is one suggestion, in connection with paragraph 2, that anyone should have the right to leave any country, including his own. I think those are the words that are there. I believe they should have added the words, "And take with him what belongs to him", or "and take his personal property with him". Unless the state is going to override the freedom of the individual, he should also take with him what he owns when he moves.

The CHAIRMAN: What about when he goes on a visit?

Mr. HERRIDGE: I think every state would consider its own interests first at such a time. If we had a great flight of capital from Canada, the state would take action to stop it.

Mr. MILLER: I think the question has been raised before, and we do not want to get away from the procedure you have laid down, but are we going to have somebody give us an opinion as to just where our laws and this declaration, if it is finally adopted, are going to dovetail or where they are going to be in conflict? If they are in conflict and if this declaration is finally adopted, is it going to overrule our laws? That is what is confusing me. As a Canadian, I do not want to see the United Nations making laws for our country. I want us to have the right to make our own laws; that is what is beclouding me at every meeting.

The CHAIRMAN: I think before you came in I did say it was becoming harder and harder for me to know how far the moral obligation to carry these principles into our legislation went. If it were to be accepted as a fairly binding moral obligation, then nearly all these articles would require lists of exceptions, it appears. The more we discuss them, the more exceptions to the statements made in this article occur to one's mind.

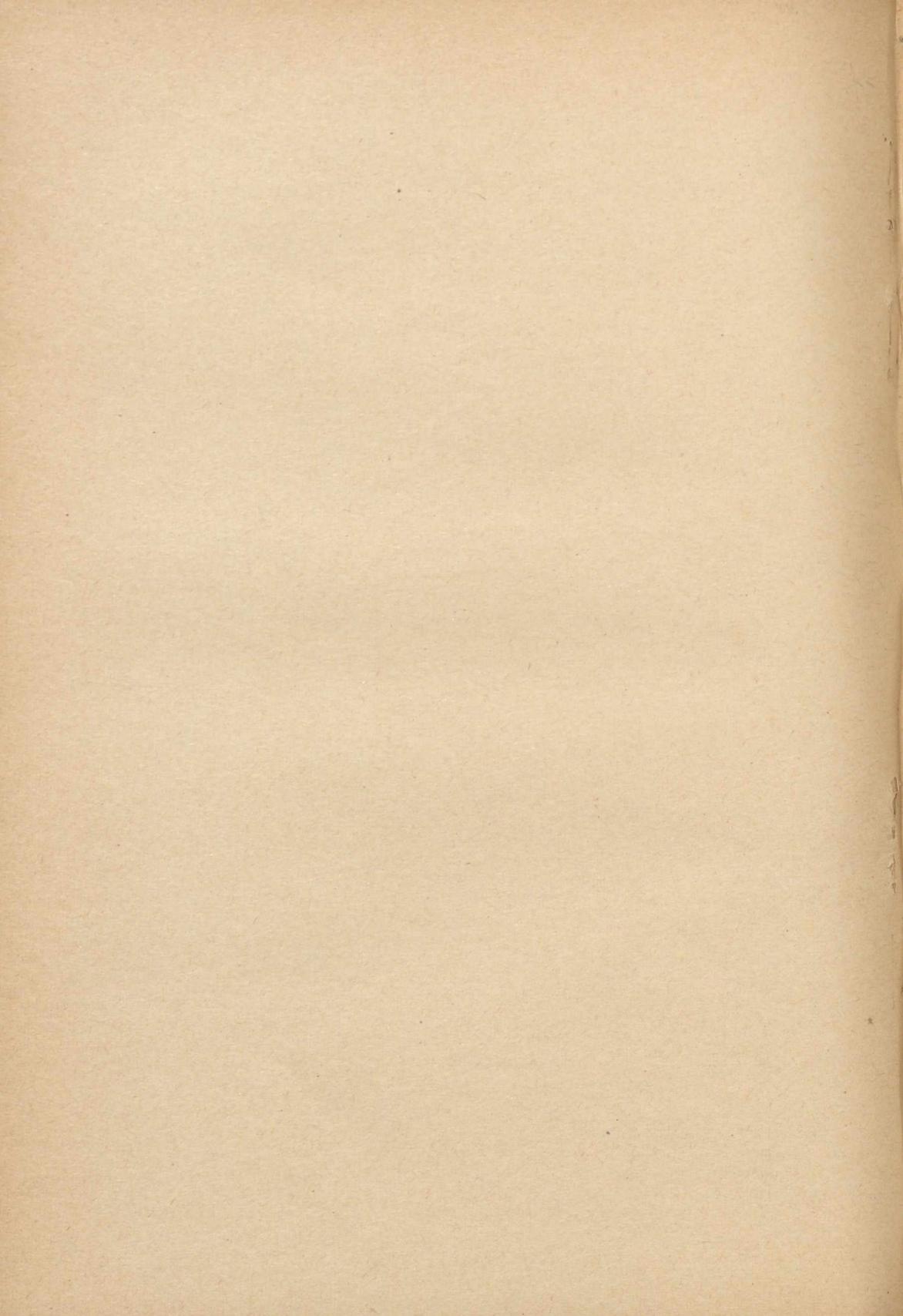
Mr. HANSELL: I think this second paragraph is nearly impossible.

The CHAIRMAN: It is just about six o'clock. I am advised that there are four committees meeting tomorrow afternoon. Shall we attempt to get a quorum tomorrow afternoon? The Senators are all away and we have to get our quorum entirely from the House of Commons. We are not going to get through this declaration if we are not careful. I do not know of any other way of going about it, however, other than going through the declaration.

Mr. HERRIDGE: Points are brought out and we see all the difficulties.

The CHAIRMAN: Perhaps it would be better if we adjourned the meeting to the call of the chair. I will do the best I can.

The committee adjourned to the call of the chair.



SESSION 1947-48



SPECIAL JOINT COMMITTEE OF THE SENATE
AND THE HOUSE OF COMMONS

ON

HUMAN RIGHTS

AND

FUNDAMENTAL FREEDOMS

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 6

FRIDAY, MAY 21, 1948

WITNESS:

Mr. D. H. W. Henry, Counsel, Department of Justice, Ottawa.

OTTAWA
EDMOND CLOUTIER, C.M.G., B.A., L.Ph.,
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY
1948

MINUTES OF PROCEEDINGS

FRIDAY, 21st May, 1948

The Special Committee on Human Rights and Fundamental Freedoms met at 11.00 o'clock a.m. The Joint Chairman, Right Honourable J. L. Ilsley, presided.

Also present:

The Senate: Honourable Senators Crerar, Wilson.

The House of Commons: Messrs. Croll, Dechene, Hackett, Harkness, LaCroix, Marier, Smith (*York North*).

The Committee resumed consideration of the Draft International Declaration on Human Rights referred to member governments of the United Nations.

Articles 10 to 14 were reviewed.

Mr. D. H. W. Henry, Counsel, Department of Justice, Ottawa, was called. He made a statement summarizing the comments and suggestions of member governments relative to the articles of the declaration under review and was questioned.

The witness retired.

The Committee adjourned at 1.00 o'clock p.m. to meet again at the call of the Chair.

J. G. DUBROY,
Clerk of the Committee.

MINUTES OF EVIDENCE

HOUSE OF COMMONS

May 21 1948.

The Special Joint Committee on Human Rights and Fundamental Freedoms met this day at 11 a.m. The Right Honourable J. L. Ilsley (Joint Chairman) presided.

The CHAIRMAN: We were discussing article 10 when we adjourned the other day. Mr. Henry has received some additional comments on article 10 which perhaps should be placed before the committee.

D. H. W. Henry, counsel, Department of Justice, recalled.

The WITNESS: There is one comment which the committee might wish to note. It is in document 18 at page 23. This comment was made previously to the drafting committee by the representative of the Philippines, and it reads as follows:

It was recognized that the right of emigration, affirmed for immigration into and transit through other countries. It is recommended that these corollaries be treated as a matter of international concern and that members of the United Nations co-operate in providing such facilities.

Perhaps it would be appropriate if I again read to the committee the final draft of article 10 as it was adopted the other day by the drafting committee.

(1) Every one is entitled to freedom of movement and residence within the borders of each state.

(2) Every one has the right to leave any country including his own.

The CHAIRMAN: Are there any further comments on that article before we pass on?

Mr. MARQUIS: Mr. Chairman, I see at the beginning of article 10 the words:

Subject to any general law not contrary to the purposes and principles of the United Nations charter and adopted for specific reasons of security or in general interest.

and so on.

I ask myself if those words should not be embodied as a general article and applied to all the sections where limitations are imposed. This limitation applies only to article 10. I feel that there will be the same kind of limitations concerning all articles where principles are stated and that the rights of a country should be protected in order that each country may adopt regulations to protect the public interest. It would cover all the articles, and if it is possible to make a suggestion of that kind I feel it will permit the adoption of all the general principles. I feel that if it is in the public interest to adopt regulations to protect the safety of the state it would be better to have it said in the declaration itself.

The CHAIRMAN: I would feel better about the declaration if it were all subject to some such clause as that. The only thing is it might be odd to make a statement such as this, subject to that provision all men are born free and equal in dignity and rights, that is to say, a statement of that kind is subject to any general law not contrary to the purposes and principles of the United Nations charter and adopted for specific reasons of security or in the general interest.

Mr. MARQUIS: Yes, but perhaps if it were stated at the end of the declaration that nothing in this declaration would prevent a state from adopting regulations to protect the safety of the state, or to safeguard public interest, or some such principle as that, it would be better. Naturally what the honourable chairman is saying is all right. It would not cover a general principle which is entirely a matter of right for each individual.

The CHAIRMAN: I think myself that is a very good suggestion because if you do not have some clause of that kind there will be continual argument of the kind we have had in this committee, argument that there was no exception to the principle laid down, and we can think of proper exceptions to nearly every clause.

By Mr. Croll:

Q. Did I understand Mr. Henry to say that the clause that was adopted was adopted just recently, the last clause he had reference to?—A. That is right, sir. The drafting committee of the human rights commission is meeting now, and within the last few days adopted that article in final form to submit to the commission. That was adopted, in fact, on May 17.

Q. If I appear to repeat a question that has already been asked you will forgive me for it, but I am interested in the words, "the right to leave any country, including his own." Was that agreed to by all the members of the committee? Was that a unanimous recommendation?—A. That was approved by five votes to none with two abstentions.

Q. Who were the abstainers?—A. I am sorry, my information does not give that.

Q. Who voted for it? Does it say that?—A. No.

Q. I think it is important to see who the abstainers are because it is notorious that particular part of the section is not applicable in many countries in Europe, particularly those countries behind the iron curtain, as we often call it, that they are not being given the right to leave any country, including their own. I wonder whether their representatives have agreed to it, or have approved of it in the committee. That is my point. Can you enlighten us on that?—A. I will attempt to find out how the vote went and perhaps let the committee know next time we meet.

Mr. HACKETT: The suggestion of Mr. Marquis indicates to my mind that we are stating principles, and then we are going to put in a rider that they shall not have application in any individual case. It may be necessary to put in a provision of that kind to get support, but when we have a diluted principle, or a principle which is not of universal application, how far ahead are we? In the confines of the committee I can say, without it being thought that I am doing anything more than taking an example, that the principle stated would clash with what was done concerning the Japanese in Canada, as I understand it.

The CHAIRMAN: Yes.

Mr. HACKETT: The exceptions suggested by Mr. Marquis would warrant what was done.

The CHAIRMAN: Yes.

Mr. HACKETT: When you get to that point it seems to me that you have merely said, "Here is a principle that is not of universal application". My query is what is the usefulness of stating a principle if it is not of universal application?

The CHAIRMAN: The usefulness is that it is a principle to be adopted and respected unless there are strong or special reasons to the contrary. I think that nearly all these articles are subject to exceptions, if you take the wording of them. We have gone over a lot of them. The principle is laid down, for

example, that everyone has the right to life. Everyone has not the right to life if you agree to the principle of capital punishment. The principle is laid down in this article that everyone shall have the right to leave their country. I think it should be open to a country to deny exit permits if, let us say, doctors or trained nurses were very greatly needed in the country and they were leaving because they could get higher pay somewhere else. I think it might be necessary for a temporary period to deny them exit permits under certain conditions. All those difficulties have been pointed out as we have gone through these articles. The answer has been, "Oh well, these are general principles; there will have to be exceptions from time to time". That has made great difficulties.

Mr. LACROIX: All these articles have exceptions.

Mr. CROLL: For the same reason you can argue it is not worth while to have the ten commandments. Yet they are there. They are moral principles. Many people feel bound by them.

Mr. HACKETT: They feel more ardently that their neighbours are bound by them.

Mr. CROLL: Yes, that is a good observation, but nevertheless all of us will agree it is very useful and necessary in our lives to have those principles. There are people who deviate from them. Then we bring in the Minister of Justice.

Mr. HACKETT: Thank you for your answer, Mr. Chairman.

Mr. MARQUIS: Is it not true there is no general rule without an exception, and that the exception confirms the rule? We have that in grammar. We have that in everything. We have a general principle to follow but in the matter of governing people I think there should be some exceptions, and if the governments of every country do not want to abrogate their rights to administer and to legislate there must be some kind of limitation to protect the rights of the nation. That would not necessarily mean that we want to discard the principle in itself. We would be bound to follow the general rules subject to the exceptions which may apply in some circumstances that may arise or that may exist in the different countries.

Mr. LACROIX: Has Russia approved the article?

Mr. CROLL: That was the question I asked and I did not get an answer.

Mr. HACKETT: To take a practical instance, I cannot speak for everybody, of course, but I was under the illusion that when the United Nations decreed the partition of Palestine that a decision had been taken to carry it out. When it came to carrying out that decision the reluctance of those upon whom the burden fell to carry it out was such that we seemed to have a new interpretation of the duties of the General Assembly and of the Council which, according to me, means that no decision of this great body is ever susceptible of forceful implementation.

Mr. CROLL: You say forceful implementation?

Mr. HACKETT: Yes. I was under the impression, and I may be wrong, that when the United Nations decreed that there would be partition that the United Nations was going to take the necessary means.

Mr. LACROIX: To sustain their decision.

Mr. HACKETT: To sustain their decision by force, and when we got to the point of doing that we found that the clauses under which, in my mind, anyway, that illusion had arisen did not have, according to the interpretation of the people who were entrusted with enforcement, the significance that I thought they had. If that has any bearing on the discussion here it points to a type of futility. That may not be a good word, but it is within the range of what I mean.

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The CHAIRMAN: I got the impression, I must say, that the readiness of some countries to subscribe to this declaration without exceptions is caused, to some extent, by the fact that it has no juridical force; that it is not a treaty they are signing. They are prepared to subscribe to it, but not necessarily to carry it out. They will try to carry it out or they will aim at it. They will say these are good principles. I think that is the case.

They would be very much more careful about signing the covenant. The covenant itself, I think, will not contain all the exceptions which would be necessary in a well-drafted statute. If the covenant gets before the court sometime, I would doubt whether anyone would know just what some of the clauses in the covenant mean, no matter how well it is drafted. I think that has been the experience of the United States. Their bill of rights was obscure, to some extent, until interpreted by the courts.

Mr. HACKETT: Yes, there came a strong man like Marshall who interpreted and now it is being diluted by a court which has a different point of view.

The CHAIRMAN: Yes. I would think any attempt to put the covenant into legislation would result in specious legislation. Any attempt to do that necessitates a great deal of litigation.

Digressing a little, I feel that if Canada were to adopt a domestic bill of rights, the result would be a great deal of litigation. After a while, perhaps, the meaning of these general clauses would be settled by the courts and litigation would subside. It must be remembered that the United States supreme court reversed itself after awhile.

If we subscribe to anything like this declaration, we must realize there will be exceptions to the wording.

It is all right to say every rule has an exception but that does not apply in drafting a statute. The exceptions have to be stated or the rule itself applies.

Mr. MARIER: Mr. Chairman, instead of putting exceptions to article 10 or the various articles of the declaration, perhaps we could put in a general article such as article 32. It states,

All laws in any state shall be in conformity with the purposes and principles of the United Nations as embodied in the Charter, in so far as they deal with human rights.

Perhaps, by a general clause such as that, we could reserve certain rights in case of an emergency for the benefit of any country. The same general principle would apply to all the other clauses instead of applying exceptions to each clause individually.

The CHAIRMAN: That is what Mr. Marquis suggests. He suggests there ought to be a general clause, a sort of escape clause.

Mr. MARIER: Yes, because if we start stating exceptions to every clause in cases of emergency, we will never be through with any of these clauses.

Mr. MARQUIS: I presume there could be a general limitation clause put in at the end of this declaration of rights.

Mr. HACKETT: Thank you, Mr. Chairman, for your answer. In this committee we are dealing with human rights and in another committee we are dealing with the Geneva Trade Agreement. I have been impressed, especially after the short and very interesting experience I had last Autumn, that the escape clauses are so numerous the chance of applying the principle when it is counter to the interests of a dominant entity are extremely remote. If that be true, what is the purpose of going on with these principles which everybody admits, I think, should apply to everyone except himself?

Mr. LACROIX: You are right.

The CHAIRMAN: Well, I think the subscription to this will have some effect on legislation.

Mr. HACKETT: That is probably a very fair answer.

The CHAIRMAN: I believe the signing of the Charter has had some effect, especially that discrimination clause in the Charter. It is a very important clause and it is repeated in this declaration.

I do not know, but perhaps our attitude should be something like that of South Africa. The South Africa comment is very analytical and not too respectful to a great many of these clauses. I do not know whether you wish to elaborate on that.

Mr. HACKETT: I do not know what it is, but I do know the attitude of the white population in South Africa towards the black population is one which, living as we do in a northern country where we have not the same problems, would not fall upon a very sympathetic ear.

The CHAIRMAN: No. Perhaps, we had better go on. There is nothing more in article 10, so let us turn to article 11.

Everyone shall have the right to seek and be granted asylum from persecution. This right will not be accorded to criminals nor to those whose acts are contrary to the principles and aims of the United Nations.

Are there any comments on that article, Mr. Henry?

The WITNESS: Yes, sir. There is now in the hands of the committee a document numbered 37 which is a collation of the comments which were received up to April 30, 1948. It is a convenient reference for those who wish to follow the comments.

At page 24 of document 37, the Netherlands government suggests it is possibly doubtful whether the problem of asylum comes within the scope of the declaration. That government has preferred not to make a commitment at this time.

The government of Brazil draws attention to the fact that the article provides asylum which shall not be accorded to criminals. It is suggested that an exception to this should be made in the case of persons accused of crimes of merely a political nature.

Mr. HACKETT: We know that, while it is probably buried in a limbo which will never yield up its dead, there is a treaty between the United States and Canada which makes smuggling a crime. It entitles the government of the United States to come to Canada and arrest people who might have—

Mr. MARQUIS: Not inside this country; they have to arrest the people over the border.

Mr. HACKETT: No, you read the treaty. I merely mention that to show it would entail a very careful definition of a criminal. At one time, in some parts of the world, horse stealing was a crime for which people were hanged. We would have to have, I would think, a very careful definition of what is meant by criminals and what sort of infractions of the law constitute crimes.

Mr. MARIER: The definition of crimes differs in every country.

Mr. HACKETT: Certainly.

The CHAIRMAN: Does this include, for example, those accused or guilty of political crimes in other countries, those who offended against some law or advocated what another state or country said they should not advocate? Let us say that the situation becomes such the persons feel they have to flee. Ordinarily, we were always taught they could go to England, at any rate, and England would grant them the right of asylum.

Mr. HACKETT: A lot of the population in the part of the country from which I come and possibly the part of the country from which the chairman comes was made up after the Civil War of people who had done things which were considered reprehensible and even capital offences in the United States. They found complete protection here.

The CHAIRMAN: So far as they are concerned, this article is ineffective if they are guilty of a criminal offence. It does not do any harm nor does it do any good, so far as they are concerned. It does not mean we have to keep them out, nor does it mean we have to let them in.

Mr. MARQUIS: Each country, individually, defines what constitutes a crime. This does not change the situation at all. I do not know if it would be possible to have a definition of crime which would satisfy all the nations who may agree to this declaration. I am entirely in accord with you, Mr. Hackett, but it is rather difficult to find one definition. One nation may decide a certain infraction is a crime and another nation may decide a different infraction is a crime.

Mr. HACKETT: Up to a few years ago, extradition treaties between most countries—Mexico was one exception—had a few well-defined infractions which were considered crimes and which warranted extradition.

The CHAIRMAN: I think I was wrong in saying we would not have to keep them out because this is a positive declaration. It says, "The right to seek and be granted asylum from persecution. This right will not be accorded to criminals—". As you see, it may be a statement that will not let persons accused or guilty of political crimes in, let us say, countries of eastern Europe come to this country. That may be one reason it is in there. It may be a dangerous article, from that point of view.

Mr. HACKETT: That was the decision in the famous Thaw case. In the United States, they have a term, "moral turpitude", whatever that means, for keeping people out.

Mr. LACROIX: Would it mean if we agreed to that article we could refuse to allow communists to enter Canada?

The CHAIRMAN: No, it does not mean that.

Mr. MARQUIS: Unless we declare they are criminals.

Mr. MARIER: A man is not supposed to be a criminal because he is a communist.

Mr. LACROIX: The article says,

This right will not be accorded to criminals nor to those whose acts are contrary to the principles and aims of the United Nations.

Mr. MARIER: A communist will be a criminal when your bill is passed.

Mr. LACROIX: You could pass an order in council forbidding the entry of communists into Canada.

The CHAIRMAN: Well, is there any further discussion on that article? It may be, Mr. LaCroix, if a country said it is a crime to be a communist, the right of a man who is a communist and who, therefore, is a criminal in this country that I have assumed to exist, shall not have the right to seek or be granted asylum from persecution. I do not know what that means, but it sounds as if he might be debarred. If you could do that to communists, you could do it to anti-communists where it is a crime to be an anti-communist.

Mr. MARIER: But he could be a fellow who is not desirable and we would be forced to give him asylum, then.

Mr. MARQUIS: Perhaps it would be better to have the article drafted as it is here. If you define what constitutes a crime, it will prevent our government from defining what constitutes a crime in this country. Under this article, we have a right to decide what constitutes a crime and we can forbid undesirable emigrants from coming to the country.

The CHAIRMAN: Did you say that the drafting subcommittee agreed on this article as drafted?

Mr. HARKNESS: Yes, with two exceptions.

The WITNESS: That was the last article, sir. There has been an amended text for article 11 adopted by the drafting committee which I could read now or after the other comments of the governments, whichever you desire.

By the Chairman:

Q. Perhaps you had better read it now.—A. “Everyone has the right to seek and may be granted in other countries asylum from persecution. Prosecution, genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations, do not constitute persecution”. This text was adopted by six votes in favour and none against with one abstention. The abstention in this case was USSR.

By Mr. Hackett:

Q. Would you read that again?—A. Yes, sir. “Everyone has a right to seek and may be granted in other countries asylum from persecution. Persecution, genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations do not constitute persecution”.

Q. Just what does that mean?

Mr. MARIER: Prosecutions?

By Mr. Hackett:

Q. I am thinking of our attitude toward people who came here in great numbers before the war to escape impossible conditions of livelihood. Those persons were accepted here largely because of the terrible ostracisms under which they were labouring at home. What bearing does this clause have upon the attitude of the Canadian government toward those people?—A. Well, sir, the sense seems to be that any person may seek asylum but the granting of asylum on the part of the government concerned is discretionary because they have changed the wording to say that everyone has the right to seek, and may be granted in other countries, asylum from persecutions. The point Mr. Hackett suggests would be a question of discretion of the government who is asked to admit the individual.

Q. Then do they not define what persecution is?—A. Yes, they suggest that prosecutions which arise generally from non-political crimes do not constitute persecution.

Mr. MARQUIS: Prosecution for political crimes is persecution.

The CHAIRMAN: That may be. Once it is established there is in fact persecution then the person persecuted has the right to seek asylum. That is all the right which is given and the rest of the clause says that asylum may be granted. It does not go very far.

Mr. HACKETT: No, and it limits it again by restricting the meaning of the word persecution. The people whom I have in mind might be persecuted according to the definition when their life was made almost unbearable.

Mr. HARKNESS: The addition of the word “may” makes the whole thing practically meaningless, does it not? It removes all onus on any country to grant asylum and as long as there is no onus on any country to grant asylum it means that anybody can be a refugee from his own country, which amounts to meaning nothing. I would say the clause as amended is practically worthless.

Mr. HACKETT: I think we must accept what the chairman has said. There is very little that is mandatory and it is hoped that a statement of what should be done may yield some general benefit although it is not susceptible to enforcement.

The CHAIRMAN: Do you think it is necessary to read the comments made on that clause and which led up to the final draft?

Mr. HACKETT: The comments of the Union of South Africa are very interesting.

The CHAIRMAN: Perhaps you might read them, Mr. Hackett.

Mr. HACKETT: Mr. Henry has them in front of him, perhaps he could read them?

The WITNESS: Yes, I have the comments and perhaps I might read the comment in full: "The first part of this article appears to be in conflict with every restrictions on immigration existing anywhere in the world. The second part seems to say that criminals and persons who have acted 'contrary to the principles and aims of the United Nations', are not to be granted asylum from persecution. This would mean that once convicted of a crime or once having acted contrary to those principles and aims the offender forfeits his right to asylum, on whatever grounds he may be persecuted. There is the further objection that the phrase 'those whose acts are contrary to the principles and aims of the United Nations' is so wide and vague as to mean everything and nothing. Would this category of persons include, for instance, the members of a government who pursued a policy which is contrary to a recommendation of the United Nations? Would the supporters of such a government fall within the same category?"

There have been comments from the United Kingdom and from the United States. The United Kingdom comment is contained in document 36, pages 4 and 5. The U.K. government suggested the following draft: "Everyone shall have the right to seek and may be granted asylum from political, racial and religious persecution." It was suggested "that the second sentence of the present draft should be omitted and the comment is made that a criminal seeking refuge is not a person seeking asylum from persecution. A prohibition against giving refuge to criminals is hardly suitable in a declaration of ideals."

Mr. MARQUIS: This seems to be an improvement on what existed before because when somebody was persecuted in some countries he had not the right to leave the country. According to this draft he has the right to seek asylum elsewhere and it remains in the hands of the other country to decide whether it will receive him.

The CHAIRMAN: I think it may have some positive value there.

The WITNESS: The comments of the United States are to be found in document 41 at page 5. Their comment is merely a suggested revised draft which reads as follows: "Everyone is entitled to the right to seek and be granted temporary asylum in other countries to escape persecution."

The CHAIRMAN: Perhaps we can pass on to article 12, which reads: "Everyone has the right everywhere in the world to recognition as a person before the law and to the enjoyment of fundamental civil rights."

The WITNESS: The Netherlands government, at page 25 of document 37, suggests that it must be understood that this article does not exclude a legal provision that special categories of individuals, for instance married women, will need the authorization of other individuals when they have to appear before a court of law. I think perhaps the principle is well recognized in Canada; for instance, minors must sue by their next friends or guardians.

Mr. HACKETT: Yes, as do married women.

The WITNESS: Married women, and lunatics.

The CHAIRMAN: What was the occasion for the article? What abuse was there thought possible in the minds of the draughtsmen?

The WITNESS: I am not sure what they particularly had in mind, but it seems to me it is a further elaboration of the general articles appearing at the beginning of the declaration.

The CHAIRMAN: I suppose there have been outlaws in the past. There have been persons, centuries ago at any rate, who were outlaws and who could not appear before the courts at all. They had no right. Has that been the case in recent times? Are there any countries in the world today where people have no right to appear before the courts?

Mr. HACKETT: I do not want to say there are people who have no right, but in the view of those who voted laws affecting Christians in the early days, there was considered to be a partnership between the man and the woman and they each had their department in which they were more or less supreme but the head of the partnership, for business purposes, was the man. The woman under that theory was not free to engage in litigation without the authorization of the partner or business manager. The rights were, of course, family rights and they were enforceable only through an action brought by the head of the partnership, or the "community" as it is called in Quebec. That has given rise to a good deal of agitation and adverse comment. Of course the other side of the argument was to the effect that the woman was the owner of half of everything that fell into the partnership and that was the beneficial side of the arrangement as far as she was concerned, but she could not appear in the courts without the authorization of her husband. In many cases where her rights appeared to be involved they were family rights and they could only be exercised by the head of the community. To that extent we have outlawed persons if you will use that expression.

The CHAIRMAN: Was there a final draft agreed upon?

The WITNESS: Yes, there was, sir.

Mr. HACKETT: I might add that I do not suppose anything we do here can modify the civil law.

Mr. MARQUIS: Should not this article read as follows: "Every mentally able major person—".

The CHAIRMAN: Yes, but there must be something implied here to indicate that we are not including lunatics and minors.

HON. MR. CRERAR: Has there been any definition submitted anywhere with respect to "fundamental civil rights". This article asserts "everyone has the right to the enjoyment of fundamental civil rights". What is the meaning of that term?

Mr. MARIER: Perhaps you should read the comments of South Africa which appear at page 25 of document 37.

The WITNESS: The comments of South Africa read as follows: "This article introduces a further refinement of confusion into the already chaotic picture of proposed fundamental human rights. It purports to include in such rights, the right to the enjoyment of so-called fundamental civil rights. This is a definition of the unknown, by what is even more unknown. What are fundamental civil rights? Are we to have another convention and another declaration to define these? Are we to delve from fundamentals to fundamentals until we have cut every root of national autonomy?"

The CHAIRMAN: What are the other comments?

The WITNESS: The comment from Brazil, sir, was to the effect that this article should be incorporated with article 3 of the present draft, which is of a much more general nature. It was felt that was a better position in the document for this clause. The United Kingdom government whose comments appear in document 36 at page 5, give the suggestion that the article might well be moved up to a position before article 4. The government of the United States has proposed a draft which appears in document 41 at page 6. The draft reads as follows: "Everyone is entitled to the right to recognition as a person before the law."

The draft as finally approved by the draughting committee at Lake Success reads as follows: "Everyone has everywhere the right to recognition as a person before the law."

Hon. Mrs. WILSON: Even married women are persons then?

Mr. MARIER: There is no doubt about that.

Hon. Mrs. WILSON: I thought you were classing them with lunatics a moment ago.

Hon. Mr. CRERAR: The law would be the law of the country in which the person resided.

The CHAIRMAN: Yes. I wish I knew what worried the person that started to set this article down on paper. What is the purpose of the article? What evil is it designed to guard against? Is there any indication anywhere?

The WITNESS: I have not seen any, sir, but the examples which have already been discussed are examples of persons who are under disabilities, and there are others. I think what they seemed inclined to guard against is the deprivation of the right of an individual to appear before courts. I do not know if any examples of that have come up in any countries at the present time. I suggest that perhaps the draughtsmen were looking to the future and felt they should make sure every person should have legal rights apart from his fundamental rights.

Mr. MARQUIS: Article 1 reads:

All men are born free and equal in dignity and rights.

If they are equal in rights they have the right to appear before the court. It is a real consequence of having full rights.

Mr. HACKETT: That is again qualified. A husband must give his consent. There are one or two exceptions, but if he refuses she goes to the court and gets it. For instance, where a husband has been remiss in his duties in the administration of her affairs, of the affairs of the community, she goes to the court and says, "This man is mismanaging."

The CHAIRMAN: I would not take those provisions as any exception to this principle at all. Those are more procedure than anything else.

Mr. HACKETT: A matter of discipline.

The CHAIRMAN: It does not mean that a married woman is not being recognized as a person by the law. For me the difficulty with this provision is to know why anyone ever—

Mr. HACKETT: What was the origin of the worry.

Mr. MARQUIS: When we want to prove too much we prove nothing.

The CHAIRMAN: Perhaps we cannot get very much further with that one. Let us take article 13.

"1. The family deriving from marriage is the natural and fundamental unit of society. Men and women shall have the same freedom to contract marriage in accordance with the law.

2. Marriage and the family shall be protected by the state and society."

Mr. MARIER: That is very vague.

The CHAIRMAN: Yes. What are the comments on that?

The WITNESS: The comments of some of the governments are found in document 37 at page 26. The government of Mexico considers that the article fails to lay down the principle of freedom to contract marriage sufficiently broadly, and proposes the following draft:

Men and women shall have the same freedom to contract marriage, and the law guarantees them that freedom without distinction as to race, nationality or religion.

Brazil suggests that there is a flaw in the drafting technique of this article in view of the fact that it has been stated in some of the comments previously that the word "men" comprises both men and women. In this article, however, it is clearly indicated that the words "men and women" are to be used in a restrictive sense. It is suggested it would be preferable to use an expression such as "every one" or "every person." You will recall that is in accordance with the suggestion of the United States, too, which would like to see some such heading before every article.

The Brazilian government has suggested that certain additional wording might be desirable as follows:

Married persons shall have the right to reside together in any country from which they cannot be lawfully excluded.

Then the Brazilian government put on record the following draft prepared by the Inter-American Juridical Commission which it suggests should be added to the article.

The parents have the right of paternal power over their children during the minority of the latter and the essential obligation to maintain and support them.

It is suggested that this might be improved as follows:

Parents shall have parental power over their minor or non-emancipated children, involving the obligation to provide them with sustenance and education.

The comments of the Union of South Africa on this article indicate that the words, "men and women shall have the same freedom to contract marriage in accordance with the law," are obscure and then they ask the following questions:

Is it the intention to say *inter alia* that there shall be no difference as to the respective ages at which men and women may contract marriage, that where there is an *annus luctus* for a widow there must be the same *annus luctus* for a widower, and that where a state recognizes the right of men to contract polygamous marriages, it is bound also to recognize the right of women to contract polyandrous marriages? It may be said that the answers to these questions are to be found in the words "in accordance with the law," but if that is so, this provision becomes meaningless, because that would leave every state free to impose legal restrictions upon the freedom of women to contract marriage which are not applicable to men, and vice versa.

There is also a comment which appears in document No. 18 at page 23. It is a comment which was made before the drafting committee when the first draft was prepared. The representative of Lebanon suggested an amendment to article 13 by substituting the following for the second sentence of the text and two other sentences following it.

The family deriving from marriage is the natural and fundamental group unit of society. It is endowed by the Creator with inalienable rights antecedent—

By Mr. Hackett:

Q. What is the page—A. It is 23.

It is endowed by the Creator with inalienable rights antecedent to all positive law and as such shall be protected by the state and society.

The representative of the United Kingdom suggested the following additional wording.

Married persons shall have the right to reside together in any country from which they cannot be lawfully excluded.

That was the draft which Brazil suggested might well be incorporated. The representative of Uruguay at the same page suggested that his country would not accept any national or international document, whether legal or political, embodying assertions of a religious nature, on account of his country's constitution which provides for the separation of church and state while at the same time it ensured freedom of worship and instruction.

There have also been comments on article 13 by the United Kingdom and the United States. The United Kingdom comment is found in document 36 at page 5. The following redraft was suggested. It is in four parts.

(1) The family deriving from marriage is a natural and fundamental unit of society. (2) Marriage and the family should be protected by law.

Q. Just a moment, please. I have the page. "His Majesty's government wish to suggest the following text in lieu of the original one."—A. Two paragraphs down under article 13.

Q. Thank you.—A. "(2) Marriage and the family should be protected by law."

By the Chairman:

Q. Should be?—A. "Should be protected by law."

(3) Men and women shall have equal rights to contract or dissolve marriage in accordance with the law.

(4) Marriage shall not be contracted before the age of puberty and without the full consent of both intending spouses.

The comments of the United States' government appear in document 41 in the form of a new draft which is found at page 6 under the heading, article 13. I beg your pardon, there is not a new draft. It is considered by the government of the United States that this article is unnecessary as the rights are sufficiently protected elsewhere throughout the declaration. At Lake Success the revised draft adopted by the drafting committee reads as follows:

(1) Men and women shall have equal rights as to marriage in accordance with the law. Marriages may not be contracted without the full consent of both intending spouses and before the age of puberty.

(2) Marriage and family shall be protected by the state and society.

Mr. HACKETT: The question of equal rights would seem to raise a difficulty with regard to the forum for divorce. It would mean a multiplicity of such jurisdictions.

The CHAIRMAN: Well, does this have anything to do with divorce?

Mr. HACKETT: It says, the right to contract marriage, and, I suppose that if you are going to get into something the implied right of getting out of it goes with it. If people have equal rights to marriage, then you may have more than one forum which could decree a dissolution of marriage which is a contradiction, it seems to me, of the accepted doctrine of marital domicile. I am sure that you, Mr. Chairman, are familiar with the practice of people who go from Canada to a neighbouring state take up residence there for a period of time that satisfies the laws of that state and get a divorce. Our courts have held such divorces to be invalid, if that court was not the court of the marital domicile. The marital domicile is—well, I shall not go into that, but it is one and, in this instance, it seems to me there would be two.

The CHAIRMAN: I would not have thought, in reading it, it went as far as that.

Mr. HACKETT: I shall not urge that.

The CHAIRMAN: It may, and there may be that implication from the acceptance of this principle.

Mr. HARKNESS: Is not this whole clause somewhat in the nature of an unjustifiable attempt to interfere with the religious ideas, habits, customs and laws of certain people. For example, child marriages are permitted in India and China and polygamous marriages throughout the Moslem world. This article would appear to me to be interfering somewhat with that. It does not seem to me the United Nations or ourselves, as a party to it, should be attempting to impose our ideas of what the family should be and what marriage should be on another people who have different ideas.

The Moslems, have, as part of their religion, the idea of polygamous marriage. In this country, it is a crime. However, I see no reason why we or the United Nations should try to make it a crime for all people whose religion calls for it. It would seem to me that the whole article is more or less in the nature of an unjustifiable attempt to force people of different cultures to come together on what we might call the norm.

By the Chairman:

Q. Would you tell us what was agreed upon again?—A. I will read the final draft.

1. Men and women shall have equal rights as to marriage in accordance with the law.

By Mr. Hackett:

Q. Just stop there for a moment. Does that generic term of marriage not include dissolution as well as the contract of marriage? Would you not think so?—A. It does not say so.

Q. Just read that again.—A. "Men and women shall have equal rights as marriage in accordance with the law."

Q. That means equal rights to enter and equal rights to dissolve.

The CHAIRMAN: Yes, it appears to.

Mr. HARKNESS: It seems to me the whole general question of marriage is one in which the United Nations should not interest itself. It is a matter of national or religious custom and ideas. It is not a thing in which we should try to interfere.

Mr. MARQUIS: If the second sentence of the drafted article 13 were deleted, I think it would suit the purpose because it would state a general principle.

The family deriving from marriage is the natural and fundamental unit of society.

If we delete the second sentence and go to the third, it would read,

Marriage and family shall be protected by the state and society.

The CHAIRMAN: Then, I suppose the family there does not necessarily mean the family where there is a monogamous system only.

Mr. MARQUIS: The family would be organized according to the law of the country, if it is a general principle that the family is the natural and fundamental unit of society. There is nothing to prevent a country adopting laws legalizing polygamy or monogamy.

Mr. HACKETT: I think it comes back to Mr. Harkness' statement. We are talking of the family in terms of a Christian family which is something distinct from unions between men and women in countries in which the Christian religion does not prevail.

Mr. MARIER: Why not keep the last paragraph? It will be sufficient, in my opinion.

Marriage and the family shall be protected by the state. This would be a general principle covering everything.

The CHAIRMAN: I think the first sentence, probably, is more or less unobjectionable, that the family derived from marriage is the natural and fundamental unit of society. It may be organized differently in different countries but I suppose that must be the case. I suppose it would be an unnatural type of society where there was no marriage.

Mr. MARIER: It is covered by the second paragraph.

Marriage and the family shall be protected by the state.

Mr. MARQUIS: The first one suggests what a marriage is.

Mr. MARIER: What is the use of stating it.

Mr. MARQUIS: It is for that that the declaration is enacted.

Mr. HARKNESS: I think the whole thing should be left out.

The CHAIRMAN: We have the comments of the various members of the committee.

Mr. HACKETT: I interrupted Mr. Henry when he was reading what the chairman asked him to read.

The WITNESS:

1. Men and women shall have equal rights as to marriage in accordance with the law. Marriages may not be contracted without the full consent of both intending spouses before the age of puberty. Marriage and the family shall be protected by the state and society.

By the Chairman:

Q. This comes out against child marriages, does it not?—A. It certainly appears to.

Q. You do not happen to know whether on that drafting committee there were countries represented in which polygamy is lawful?—A. I think I could give you the names of the representatives. According to my information the following countries are represented on that committee: Australia, Chile, China, France, Lebanon, the United Kingdom, the United States of America, and Russia.

Mr. HACKETT: You will remember, Mr. Chairman, that the very able gentleman from Lebanon—I think his name was Malik—declared that he was a Christian to lend strength to his argument. He declared that the majority of the population of that country was not Christian.

The CHAIRMAN: I was under the impression the majority of the population of Lebanon was Christian but certainly the majority of the Arabs are Mohammedan.

Mr. HACKETT: That may have been the point he was making because he was trying to point out that he was not making his statements because of his relationship to any religion or because of association with his own religion.

The CHAIRMAN: Article 14: "Everyone has the right to own property in conformity with the laws of the state in which such property is located. No one shall be arbitrarily deprived of his property."

What are the comments?

The WITNESS: The comments are found in part in document 37 at page 28. The government of Brazil suggests that it is not sufficient to say no one shall be arbitrarily deprived of his property and that it should also have the words "without prior and fair indemnity."

Mr. HACKETT: The bank's gold.

Mr. MARQUIS: Without expropriation.

The WITNESS: The Union of South Africa suggests that if it is the intention to say the state may not deprive any person of his property, rather than making a limitation which would render it altogether ineffective, it would be desirable to redraft the article. There are also comments from the United Kingdom in document 36 at page 5.

Mr. HACKETT: Those comments would be interesting.

The WITNESS: They appear about two-thirds of the way down page 5. "Everyone has the right to own property." The meaning of this text is that some right of ownership of private property is regarded as an essential human right. It is not intended to mean that every sort of property must be susceptible of private ownership.

Mr. HACKETT: That is the doctrine of socialism.

The WITNESS: The comments of the American government are in document No. 41 at page 6. That government has merely submitted a new draft which reads as follows: "Everyone is entitled to the right to own property in conformity with the laws of the state in which that property is located and to freedom from the arbitrary deprivation of his property."

At Lake Success it was suggested that the limitation in this provision should be deleted because if a limitation is placed in this provision it might be necessary to place limiting provisions in other articles also. The government of Chile thought it was a meaningless article because, under the present declaration, the government or the state can pass laws prohibiting private ownership. The Russian delegate suggested that the words "individually or collectively" should be added in the first paragraph. He indicated the practice in Russia included communal ownership. I might read the final draft: "Everyone has the right to own such property as meets the essential needs of decent living, which helps to maintain the dignity of the individual and of the home; and not to be arbitrarily deprived of it."

Mr. MARIER: Does it mean that if the individual had too many properties he might be deprived of part of his property?

Mr. HACKETT: As the witness said this is predicated upon collectivism as well as individual ownership.

Mr. MARIER: Yes, but if you limit that to a decent living it means that a man who has large holdings might be deprived of part of them.

Mr. MARQUIS: No, he has a right to have holdings. It does not say that he could not have more.

The CHAIRMAN: No, but it leaves the state free to take the excess away from him.

Mr. MARIER: Yes.

The CHAIRMAN: Which is what has been done in many countries where they limit land holding to 125 acres.

Mr. HACKETT: I do not think it is going too far to say it is a denial of the right to have private property—if it is not a denial it is at least a curtailment.

The CHAIRMAN: I do not see that it is a curtailment. The article just says that so far as those who have signed the declaration are concerned they are not affirming that a person has the right to own anything more than is necessary for dignity of the individual and so on. All the clause says is that the individual has the right to own that much property. Any law that deprived the individual of the right to own anything at all would be contrary to this declaration.

Mr. HARKNESS: As long as the individual was left with a suit of clothes and a handkerchief or two there would be no contravention of this clause.

The CHAIRMAN: It would be argued that those things would not be sufficient. The individual should have personal possessions and sufficient of those things required in a home.

Mr. HACKETT: It is 1 o'clock.

The CHAIRMAN: The meeting will adjourn.

SESSION 1947-48



SPECIAL JOINT COMMITTEE OF THE SENATE
AND THE HOUSE OF COMMONS

ON

HUMAN RIGHTS

AND

FUNDAMENTAL FREEDOMS

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 7

WEDNESDAY, JUNE 2, 1948

WITNESSES:

Mr. D. H. W. Henry, Counsel, Department of Justice, Ottawa.

Mr. R. G. Riddell, Chief, First Political Division, Department of External
Affairs, Ottawa.

OTTAWA
EDMOND CLOUTIER, C.M.G., B.A., L.Ph.,
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
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1948

MINUTES OF PROCEEDINGS

WEDNESDAY, 2nd June, 1948.

The Special Joint Committee on Human Rights and Fundamental Freedoms met at 4.00 p.m. The Joint Chairman, Honourable Senator L. M. Gouin, presided.

Also present:

The Senate: Honourable Senators Burchill, Crerar, Turgeon.

The House of Commons: Right Honourable J. L. Ilsley, and Messrs. Breithaupt, Hackett, Marquis, Michaud, Miller, Whitman.

In Attendance: Mr. D. H. W. Henry, Counsel, Department of Justice, Ottawa, and Mr. R. D. Riddell, Chief, United Nations Division, Department of External Affairs, Ottawa.

Copies of the following were distributed:

- (a) Letter, dated 21st June, 1947, from the Civil Liberties Association of Manitoba, relative to the Kellock-Taschereau Commission;
- (b) Judgment, May 1943, Supreme Court, United States, re Martin v. City of Struthers;
- (c) Judgment, June, 1942, Supreme Court, United States, re Jones v. City of Opelika, and Jobin v. Arizona;
- (d) Judgment, May 1945, Supreme Court of Ontario, re Drummond Wren.

The Committee resumed consideration of the Draft International Declaration on Human Rights referred to member governments of the United Nations.

Articles 14 to 23 were reviewed.

Mr. Henry was called. He made a statement summarizing the comments and suggestions of member governments, and also reported on the work of the Drafting Committee, Commission on Human Rights, relative to the articles under review and was questioned.

On his arrival shortly after the Committee commenced its proceedings, the Right Honourable J. L. Ilsley assumed the Chair.

Mr. Riddell was called. He made a statement and was questioned.

Consideration of the Draft International Declaration on Human Rights was temporarily suspended while the Chairman reported on the meeting of the Steering Committee held Thursday, 27th May. He advised the Committee that the Steering Committee had agreed to receive, on or before Monday, 7th June, written representations only in respect of the Order of Reference to the Committee and that oral representations in respect of such written representations could be received, at the discretion of the Committee, on a subsequent date.

Accordingly, letters to this effect had been forwarded to the following:

- (a) The Committee for a Bill of Rights, Toronto;
- (b) The Civil Rights Union, Toronto;
- (c) The representative of a number of Chinese organizations, Toronto;

If you have no comments, perhaps we should proceed to article 15. I will read article 15.

Everyone has the right to a nationality. All persons who do not enjoy the protection of any government shall be placed under the protection of the United Nations. This protection shall not be accorded to criminals nor to those whose acts are contrary to the principles and aims of the United Nations.

Well, Mr. Henry, we will be glad to hear from you.

The WITNESS: Some of the governments' comments are found in document 37 at page 29. The Netherlands government suggests that the first paragraph of the article should be deleted, since it appears from the second paragraph that the object of the article is to insure that everyone will have the right to invoke some official protection. It is suggested that paragraph (1) is not necessary since it is quite clear from paragraph (2).

If the suggestion that the protection of the United Nations be given to stateless persons is accepted, the Netherlands government says the question arises whether such protection should be given by the United Nations themselves or whether it would be preferable to entrust this task to the International Refugee Organization.

Brazil has suggested a revised draft which reads as follows:

No state shall deny its nationality to a person having right by birth, in accord with local legislation, nor deprive of such nationality any person who may have acquired it by birth, except by motive of an act declared by law to be incompatible with subsistence of nationality.

Then, the Brazilian government suggests it would be advisable to include the following which was proposed by the inter-American Juridical Commission.

Every person shall be entitled to renounce his nationality, whether such nationality be native or acquired, and to adopt the nationality of another state.

It is then suggested it might be convenient to add the following words:

—in accordance with the laws of the latter and without detriment to prior obligation.

The Union of South Africa has made some comments. It suggests that this provision seems to imply some underlying obligation on the part of a state in whose territory a stateless person may be resident, to grant that person its nationality. It may even imply that there is an obligation not to denationalize any person, where the result would be to make him a stateless person. That government suggests if this is the intended implication, it would require the revision of laws relating to nationality in the Union of South Africa since, in terms of these laws, there is no legal obligation to naturalize if certain requirements are not complied with. Further, there is no restriction which would prevent denaturalization where the person concerned would become stateless.

It is then suggested that the provision that all persons who do not enjoy the protection of any government should be placed under the protection of the United Nations comes perilously close to the recognition of the United Nations as a super state. To make this protection effective, the organization would have to issue passports, and may have to appoint officers exercising the functions of diplomatic or consular representatives in states harbouring any considerable number of stateless persons. It is suggested the United Nations would, presumably, have the same status to make representations as to the treatment of such persons as a state would have in regard to the treatment of its own nationals, and that may open another door to international pressure in internal affairs.

Then, with respect to the final sentence which relates to criminals and persons whose acts are contrary to the principles of the United Nations, the Union of South Africa makes the same comment which it made with respect to article 11, that it is so wide and vague as to mean everything and nothing.

Hon. Mr. TURGEON: Reverting to the article itself, the second section, who would declare a person to be a criminal? This protection—that is the protection of the United Nations—this protection shall not be accorded to criminals. Would the United Nations declare them to be criminals or would they have to accept the judgment of some state?

(At this point the Rt. Hon. Mr. J. L. Ilsley assumed the chair).

Mr. MARQUIS: I think they are those who are condemned by the courts.

The WITNESS: I believe that is the primary meaning. There are two classes of persons to whom reference is made. The first reference is to criminals. I think that must mean criminals in the sense that they have contravened some domestic law of a state and have been convicted of an offence under the domestic law.

The second group are those whose acts are contrary to the principles and aims of the United Nations.

Hon. Mr. TURGEON: It is the first group I mentioned because many of your stateless persons are, ipso facto, declared to be criminals by certain governments who are demanding their repatriation.

The WITNESS: That, of course, is again a question of the application of domestic law in each case.

Hon. Mr. TURGEON: Where would it apply to what we call the D.P.'s of the moment?

Hon. Mr. GOUIN: I think Senator Turgeon possibly has in mind the fact that some D.P.'s have been ordered to return to their country of origin. They refused to do so in some cases. It is possible that the country of origin has decided their failure to do so constitutes a criminal offence.

Hon. Mr. TURGEON: I am referring to those people who have not been ordered to go back but who are in camps at other places, perhaps in Sweden, outside of their country of origin and the country of origin says or may say that they are criminals and should be repatriated. It is that group I have in mind. Who will declare them to be criminals in a manner which, under this clause, must be accepted by the United Nations?

Hon. Mr. GOUIN: Perhaps the reporter could read what the Honourable Mr. Turgeon said for the benefit of Mr. Henry?

(The reporter read the following:)

I am referring to those people who have not been ordered to go back, but who are in camps at other places, perhaps in Sweden, outside of their country of origin and the country of origin says or may say that they are criminals and should not be repatriated. It is that group I have in mind. Who will declare them to be criminals in a manner which, under this clause, must be accepted by the United Nations?

The WITNESS: I suppose that would depend on the nature of any extradition agreement that this country may have with the country concerned. Beyond that I cannot go, because it certainly is clear difficulty is going to arise as to the definition of a criminal. Where we have an agreement to extradite persons convicted of offences in the country of origin, then Canada would be obliged, presumably, to act in accordance with the terms of the agreement to which she has subscribed.

The difficulty, it seems to me, arises in trying to define what is meant by the word "criminal" as used in a general declaration of this kind because it is well recognized one state may declare some sort of act to be a criminal act, yet it may not be considered to be a criminal act in another state. There again, all I can say is you must come down to the terms of the extradition agreement which you have with that particular state to see whether or not you must act in returning an individual.

By Hon. Mr. Turgeon:

Q. Why? I may read it wrongly, but I understand this statement to say that criminals shall not be accorded this protection. Action by the United Nations is barred, not by any particular state.

"All persons who do not enjoy the protection of any government shall be placed under the protection of the United Nations." Now, that can be done only by the United Nations, can it not? "This protection shall not be accorded to criminals." That means the United Nations cannot give the protection of the United Nations to any person who is a criminal.

Now, the question I was asking was, what is the authority which must be accepted by the United Nations to declare such a person is a criminal? I do not think extradition enters into it, as I read it?—A. That is correct; perhaps extradition would only come in in applying this article to whatever action was proposed in the state concerned.

Q. That is a bar to action by the United Nations?—A. Yes, the section seems to imply that the United Nations is going to be the protecting body.

Q. And cannot act towards criminals?—A. Yes.

Q. That is why I am asking this question?—A. There is no definition of what a criminal is.

Mr. MICHAUD: Would it not be necessary to have the determination of whether or not a person is a criminal left to the United Nations?

Mr. HACKETT: It must be, because there is nobody else to determine it. This deals with people who have no nationality.

Mr. MARQUIS: If a person is found guilty in a particular country, will the United Nations intervene and decide he is not a criminal?

Mr. MICHAUD: Let us take the case of our friend Gouzenko. There is no question but that he must be considered a criminal by his country. We have given him nationality, but what would have happened to him before we did that?

Mr. MARQUIS: Let us take that other fellow, Mickey MacDonald, who has escaped from prison. Will he be recognized as a criminal by the United Nations or will he be subject to the law of the country in which he is found? He is a criminal according to the laws of our land.

The CHAIRMAN: And according to the law of every land. There will be no difficulty about that.

Mr. MARQUIS: About that particular case, perhaps not, but let us consider another case. Suppose a country decides a man is a criminal. He is sentenced to prison. What will happen if his case comes before the United Nations? Will there be some sort of appeal court in that particular case?

The CHAIRMAN: I should imagine if any one of the United Nations attempted to apply paragraph (2) of article 15 and placed under the protection of the United Nations certain persons in the displaced persons camps, there might be an argument on the part of certain countries that those persons were criminals and therefore could not be accorded the protection of the United Nations. Then, I think the United Nations would have to decide that question as to whether or not they were criminals.

Mr. MILLER: What tribunal will be set up to unravel all the confusion this declaration, if adopted, is going to create? Could any tribunal unravel it?

The CHAIRMAN: I suggest there might be resolutions or proposals to refer difficult questions to the Court of International Justice. I do not know what the jurisdiction of that court is, though.

Hon. Mr. GOUIN: I am inclined to think that this article suggests a principle. Take an individual whose own country has declared he has lost his nationality and, at the same time, or previously, he has been declared a deserter or guilty of a criminal offence. It may be the crime of being a deserter or of failing to register at some time. It may be the crime of treason.

Then we have that poor individual who, apparently—Mr. Henry will correct me if I am wrong—would not have any recourse, himself, to the International Court. The International Court, as a matter of general organization is there to hear states or organizations enjoying what we call international personality.

I suppose the normal thing would be to apply, first of all, to the general secretaryship. Mr. Trygve Lie would then decide whether or not he could come to some sort of a decision. After that, unless there were some special committee appointed, I would say only the General Assembly could deal with the matter. It is very, very heavy machinery and in the case of a poor, humble person such as myself, it would be almost a hopeless case.

Hon. Mr. CERERAR: It seems to me, Mr. Chairman, there is something in this section which needs to be cleared up. For example, I believe it is a criminal offence in Poland to write a letter to the newspapers or publicly criticize the government. Assume for the moment that someone does that. He is a criminal, then, in the eyes of the Polish government. He escapes from Poland. He has no country, so he comes under the protection of the United Nations according to the first part of the article.

Now, he is under the protection of the United Nations. The Polish government discovers his whereabouts. They make a demand on the United States to give him up on the grounds he is a criminal. He is a criminal in the eyes of Polish law, but that is an unjust law in our view. What shall the United Nations do in that case? Does this section obligate it to surrender this individual to the Polish government?

Mr. MARQUIS: The International Court of Justice should have the right to decide a case of that kind.

The CHAIRMAN: Do you know what the jurisdiction of the International Court of Justice is? I believe it is set out in the Charter. It will take too long to look that up. I do not think any of us knows what it means to be placed under the protection of the United Nations. I believe this is so vague it does not mean very much.

Mr. RIDDELL: Mr. Chairman, would it be in order for me to say a word about the background of this particular clause?

The CHAIRMAN: Yes, I wish you would.

Mr. RIDDELL: As Senator Turgeon has pointed out there are, at the moment, several hundreds of thousands of persons in Europe who have been disowned by their own country. They are not regarded as being citizens of their own country and they have not yet acquired the citizenship of another country. Those persons are now, in fact, under the protection of an organ of the United Nations, the International Refugee Organization. This organization does not claim to be a sovereign body in any sense, but it does provide individuals with papers on which they can travel and perform various other services for them. In some cases, the activities of the International Refugee Organization follow the person to the place at which he resettles during the period prior to the time in which he becomes a citizen of the country in which he has resettled. I think it was against the background of the existence of these individuals that this clause was written into the declaration.

Now, exactly the same question arose, as Senator Turgeon will remember, in connection with the International Refugee Organization. There was written into the constitution of the International Refugee Organization a provision that the benefits of that organization should not extend to persons who were war criminals. Who was to decide who were war criminals? The procedure at the moment is that if a person is receiving protection or is being cared for by the International Refugee Organization and the state in which he originated considers he is a war criminal it makes a case before the administration of the International Refugee Organization. A decision is made to either surrender him or not surrender him

on the basis of that case which is made. It is a semi-judicial process which is meeting the situation, at the moment, on a rather rough and ready basis.

It would seem to me, that if this clause were implemented, if, in fact, the United Nations were to set up machinery by which large numbers of persons could be given the protection of a state by the United Nations, this clause would have to be elaborated in great detail. One of the details which would have to be elaborated would be the question of who is to determine whether a man is a criminal and should be sent back to his place of origin. That would involve something in the nature of extradition proceedings between the United Nations and the country of origin and some judicial process but it is rather a long and complicated process to work out.

Hon. Mr. TURGEON: There are just two things in connection with your statement. First, the term used here is just, "criminal". It is not necessarily related to any war activity. This article decides that the "criminal shall not receive the protection of the United Nations". Therefore, there is no question of the United Nations deciding to give up the protection he has got. He is never to get it if he is a criminal. It is for that reason I suggested, just for the record, I am not arguing about it, there will have to be a determination made as to who determines the criminality and what that criminality shall include. The person will never have the protection of the United Nations. If he has it, he is not entitled to it. If he has it in fact, physically, he is not entitled to it morally or legally, so far as you can use that expression in connection with that article. He has never had the protection of the United Nations. He is not entitled to it. If he has it, he has it under false pretences.

Mr. MICHAUD: I should like to ask you what you think of the suggestions of Brazil as to article 15?

Hon. Mr. GOUIN: Would you mind reading that again?

Mr. RIDDELL: The suggestion of Brazil is as follows:

No state shall deny its nationality to a person having right thereto by birth, in accord with local legislation, nor deprive of such nationality any person who may have acquired it by birth, except by motive of an act declared by law to be incompatible with subsistence of nationality.

I would think, Mr. Chairman, it would be very difficult to enforce on a state or to secure the observation of a regulation by which a state was not entitled to say, in regard to an individual, we do not regard him as a citizen any longer. If a man picks up his belongings and leaves a community saying, I am having nothing more to do with it. We admit that is the right of an individual and I would think it would be hard to deny the right to the state itself to say, all right, this fellow has left. So far as this state is concerned, we no longer regard him as our responsibility.

Mr. MICHAUD: The part below that covers it, does it not? The part below states,

Every person shall be entitled to renounce his nationality—

Mr. RIDDELL:

Every person shall be entitled to renounce his nationality, whether such nationality be native or acquired, and to adopt the nationality of another state.

Mr. MICHAUD: That is quite true, but the first part would limit the powers of the state.

Mr. RIDDELL: The right of the state to say to an individual of that nature, all right, you are no longer our responsibility.

Mr. MICHAUD: There is a proviso at the end, "except by motive of an act declared by law—". That must be the law of that state. Let us say Russia

says, if our citizens commit certain acts they lose their status as Russian citizens. That seems to be provided for at the end of the first paragraph. It does not seem to infringe upon the sovereignty of a state.

Mr. RIDDELL: The Brazilian suggestion is an alternative way of putting it. It lays emphasis of the right of that individual to renounce his nationality rather than on his right to find protection somewhere else when he has renounced it.

Hon. Mr. GOUIN: I believe there are two distinct questions. 1, the question of being deprived of nationality and the other, the question of renouncing it. If you remember, at the end of the first world war, there were a number of Turkish subjects who had served with our allies against Turkey. As a consequence of that, they were deprived of their Turkish nationality; Armenians and so on.

Generally speaking, I am inclined to think that any citizen who served against the power to whom he belonged, whether morally he acknowledges the sovereignty or not he is under the jurisdiction of a certain state, and he takes up arms against that state, he is declared to be a traitor. If we accept the suggestion of Brazil, this would evidently be the motive of an act declared by law to be incompatible with the substance of nationality.

In the same way, our Czech allies during the first world war had been serving against Austria. Probably at a given moment they were deprived of their Austrian nationality. Of course, with the victory of the allies that act of the Austrian government did not have any very serious consequences.

Let us take the case of France. Vichy deprived, for instance, General DeGaulle, a great hero in my own opinion, of his French nationality. Afterwards, Free France, as we called the government of Algiers, deprived large numbers of Frenchmen who were still fighting for Vichy of their nationality. At the present time, I am inclined to think there is still a number of Frenchmen, possibly even in Canada, who are denationalized.

On looking at article 15 and reading the first line,

Everyone has the right to nationality,

I would ask myself, are we not going very far? We are entitled to the protection of our state as long as we are loyal to that state. If we become, clearly and beyond any doubt, traitors, could we take away from that state the right to say so and so is serving in the ranks of the enemy so we will take away his nationality. He is refusing to register. He is refusing to accept compulsory military service, and so on.

Moreover, when we continue and we read the second paragraph, we see that they contemplate at once the possibility of some citizens being deprived of their nationality. It is said, in such a case, they will have the protection of the U.N.O. If they were stating that U.N.O. will issue passports as was done after the first world war with the system known as Nansen passports, that would be one thing. Passports of that type were given to all our Armenian allies. I would say that would be clear enough. It is humane and I would not take objection to it.

The first sentence of the second paragraph seems to be exceedingly generous. The giving of protection, I am afraid, would be only an empty phrase. Who would effectually grant that protection? Who, again, would be entitled to it?

Then, when we come to the last sentence which has been discussed we see we have been giving, apparently, with one hand a very hollow promise and withdrawing it with our other hand. The fact that a person is a criminal or a traitor, perhaps, apparently will be decided by his country of origin, rightly or wrongly. You take those cases concerning the Frenchmen which I have just mentioned, perhaps in this room we would not be in perfect agreement as

to whether or not Mr. So and So should have been deprived of his citizenship. My allegiance was to DeGaulle, if you want to know. This is not a unanimous point of view. It is a case which, after all, is not new. The U.S.S.R. is not the only political entity concerning which the question of denationalization has arisen. We had that after the first world war and we people of French origin had it in a very tragic way when we had that conflict between my friends of Free France and Vichy. This is a very serious article and it seems to me it may give rise to the most serious difficulties.

The CHAIRMAN: Yes, it will, but the principle of the article is that the nations who subscribed to this declaration will see to it that there are not innocent stateless persons floating around the world. If Canada, for some reason or other, felt she had to deprive certain persons of Canadian citizenship who would otherwise have it, Canada should have an obligation to see that those persons obtain that citizenship somewhere else. If that proves to be impossible, then by subscribing to this article we subscribe to the principle that, if it cannot be worked out that they shall become citizens of any country, then they will have an international body which will give them some protection. I think that is the principle of the article.

We may have cases of Canadian citizens who, through circumstances, were caught in Germany at the time of the war and who performed acts, under compulsion, which apparently were against Canada. Now, it may be necessary to deprive them of Canadian citizenship until some time or other. I do not know if it would be or not, but if so, we should recognize the duty imposed on us to see that they have a state. It may be the new Germany. If they are criminals, perhaps they are not entitled to be anything but international outlaws. If they are not criminals, they should not be left to drift. There should not be thousands of persons adrift in the world without any state. I think that is the principle of it. The difficulties would have to be ironed out in covenants and treaties.

Mr. HACKETT: In other times, the church granted sanctuary to the outcast.

The CHAIRMAN: Yes, I think so.

Mr. HACKETT: It is something which may be likened to the suggestion which is made here.

Hon. Mr. CRERAR: That may apply if we consider this as applicable only to the present stateless persons in Europe or elsewhere, but we are laying down a declaration, as I understand it, which will be the basis of the treatment of these and other people in future years.

I come back again to the illustration I used a moment ago. Some person violates the law of Poland by making a speech against the government. By that act, under Polish law, he is a criminal. He escapes, for instance, to Canada. The Polish government makes application for extradition. We say our extradition laws do not cover such an offence.

However, he has entered Canada irregularly and illegally. He comes under the purview, then, of our immigration authorities who say, "Well, you must get out." He has no state except the state of Poland. Now, as I understand it, in such a case, he could claim the protection of the United Nations. If the United Nations accept him, then Poland says to the United Nations, "Well, this man is a criminal in the eyes of Polish law. We want him surrendered". What is the United Nations to do in such a case?

The CHAIRMAN: They will have to settle that question themselves as to whether he is or is not, I think.

Mr. MICHAUD: Following the remarks of Mr. Crerar, before anything can be done for that man, you would have to recognize the principle that a person has the right to renounce his nationality. According to the suggestion made

by Brazil, if the Polish law does not extend a citizen the privilege of renouncing his nationality, then it would appear to me there is nothing else which could be done by any organization. He would have to be repatriated, even against his will.

Hon. Mr. CRERAR: Yet, that is the very thing the section aims to guard against.

Hon. Mr. TURGEON: It was for that reason I asked who would declare the criminality of an individual.

Mr. MICHAUD: There is one principle there which I think, to discuss this intelligently, we should either approve or disapprove and that is the right of a person to renounce his nationality, whether or not he is guilty of any crime. A person may very well say, "I do not like this country Poland, I want to go to Canada." He escapes and comes to Canada. He has not committed any offence against the laws of Poland, but the Polish government claims him. They apply to this government to have him extradited, even though he does not want to return.

Mr. MARQUIS: It is stated in article 10 that,

Individuals shall have the right to leave their own country and, if they so desire, to acquire the nationality of any country willing to grant it.

This principle is included in the declaration.

Hon. Mr. GOUIN: This would imply the right to renounce one's nationality. Generally, the country of origin has refused to acknowledge naturalization. This has been the case, particularly in France. People who were naturalized continued to be subject to a call to serve in the French army. I am not criticizing; I merely give that as an example.

Mr. WHITMAN: What about the man who has been accepted as an immigrant in a country and has become a citizen. Afterwards he commits some misdemeanor or a criminal act and the country wishes to get rid of him. Could that country then cancel his citizenship and return him to his country of origin, or what would happen in that case? Could a man's citizenship be cancelled by a state?

Hon. Mr. GOUIN: It has happened again and again.

Mr. MARQUIS: Mr. Chairman, what will happen to those people from Czechoslovakia who left their country in an aeroplane the other day and landed in England. They are supposed to be coming to the United States. If I understand correctly, they stole the aeroplane and landed in the United Kingdom. Therefore, they committed a crime by stealing the aeroplane. Now, they are seeking refuge in other countries. They are criminals and could be repatriated, I suppose, to Czechoslovakia.

The CHAIRMAN: I do not think we are making very much progress on this article.

Hon. Mr. GOUIN: There is only one question which I should like to ask. I think Mr. Henry would be able to give us an example of someone whose acts would be contrary to the principles and aims of the United Nations. Mention is made of that at the very end of article 15. Would he be an international outlaw of some kind? Would he be an aggressor, for instance, or some kind of anarchist who encouraged a minority in a certain country to take up arms against another country and commit an act of open aggression?

The WITNESS: I suppose it would cover people who were guilty of offences such as inciting to war or stirring up race hatred or the type of offence which might arise from attempting to stimulate discrimination against groups. Those might be considered acts contrary to the principles of the United Nations.

Hon. Mr. GOUIN: So, any warmonger or any anti-semitic leader might come within this provision?

The WITNESS: I would think so. I wonder if it would be helpful to the committee, in view of the discussion about the definition of a criminal if I pointed out that that part of the section has been dropped in the official draft.

Hon. Mr. TURGEON: The part we have been discussing?

The WITNESS: The part we are discussing. I did not have an opportunity of finishing the comments which I wished to read.

As a matter of fact, while the question of defining a criminal was not discussed in the drafting committee, nevertheless, I notice that my information indicates the United Kingdom representative thought that the second paragraph of the text which is now before the committee was not clear and should be deleted. I have no doubt that it was owing to the type of thing which was raised by Senator Turgeon, and that is one of the reasons it was deleted.

As Mrs. Roosevelt pointed out, the whole question of stateless persons has been, by a recent resolution of the Social and Economic Council, brought under study by the council and it was considered that the question was too wide for the drafting committee to go into thoroughly. I assume from this it was for these reasons the words in question were dropped and the draft as finally adopted by the drafting committee was,

Everyone has the right to a nationality.

This is the first sentence of the draft at present before you.

Perhaps, Mr. Chairman, I should read the comments which were put forward by the other governments to place them on the record.

Mr. MARQUIS: Is that all that was adopted by the committee?

The WITNESS: This is the final draft, sir.

Everyone has the right to a nationality.

Mr. MILLER: Does not that whole thing make us ridiculous? That is what I think about this whole thing. Here we sit and talk for 45 minutes about something which no longer exists. We are behind the re-drafting committee and we are making ourselves ridiculous, are we not? I do not think any country in the world would draft a statute in comparable language to that which we are discussing every day. It is so indefinite.

The CHAIRMAN: It is not a statute.

Mr. MILLER: It is a declaration which might have the force of law if ultimately adopted. In any event, Mr. Chairman, may I make one suggestion? It is now twenty minutes to six and I think we should revert to item No. 2 on the agenda and have the report of the steering committee.

The CHAIRMAN: I was going to report the other day the results of the meeting of the steering committee, but I can do so now very simply. We felt that after we had finished going over these articles we should examine the representations made by those who wish to make either oral or written representation to the committee. There is a committee for a bill of rights, Toronto; there is the Civil Rights Union, Toronto; there is the representative of a number of Chinese organizations; there is the representative of the congregations of Jehovah's Witnesses of Canada; there is the Canadian Jewish Congress, Montreal; and the Canadian Daily Newspapers Association, Toronto. They have asked to appear to make representations to this committee. It was impossible to have a meeting of this committee the other day when we had planned to hold one, and I took it upon myself to have these organizations written to, and they were told in a letter that we would like to have them submit their representations in writing, instead of coming personally, and that the representations should be here on or before June 7.

Therefore, I suggest that we go over the rest of these articles—and perhaps we could do that at this meeting and the next meeting—and after that that we meet to consider the representations of these six or seven organizations. These organizations will not be making any representations about a declaration of

rights; they will be making representations in support of a bill of rights for Canada. The steering committee was unanimous that it was desirable to have them support their representations in writing, rather than to make them orally, at least at the outset. They were told, I believe, that if we thought they should support their written representations by oral presentation they would be notified to that effect.

Now, perhaps we could go on; and if the drafting committee has dropped any part, perhaps Mr. Henry could tell us. It must be borne in mind that what the drafting committee has drafted is not necessarily final.

Hon. Mr. TURGEON: We may reinsert it.

The CHAIRMAN: Yes, we may reinsert it. These provisions would seem to appeal to the Geneva group; let us take article 16.

The WITNESS: The final draft of article 16 reads as follows:

Individual freedom of thought and conscience, to hold and change beliefs is an absolute and sacred right. Every person has the right, either alone or in community with other persons of like mind and in public or private, to manifest his beliefs in teaching, practice, worship and observance.

The only changes are in the last two or three words; they have simply been transposed.

Hon. Mr. TURGEON: A fellow can be against his party in the House?

The WITNESS: The comments of the Netherlands government and several of the others are found in document 37 on page 31. The Netherlands government suggests that the first paragraph of the article should read as follows:

Every person shall have the right to freedom of thought, religion, conscience and belief, including the right, either alone or in community with other persons of like mind, to hold, adopt and manifest any religious or other belief, to practise any form of religious worship and observance and he shall not be required to perform any act which is contrary to such worship and observance.

It is then suggested that consideration be given to whether the words, "he shall not be required to perform any act which is contrary to such worship and observance" do not go too far for certain cases in which the refusal to perform such an act would be contrary to existing legislation. It is further suggested that there should be added to paragraph 2 the words, "and to persuade other persons of the truth of his beliefs." And the Netherlands government indicates it considers that the freedom of conversion to other persons should be permitted.

The Mexican government suggests that the article is not correctly drafted in view of the provision of article 2, and merely proposes a drafting change as follows:

Individual freedom of thought and conscience and freedom to hold and change beliefs are fundamental human rights.

And it is suggested that the second paragraph of the article be redrafted as follows:

Every person has the right, either alone or in community with other persons of like mind, to manifest his beliefs by means of worship, the observance of rites, practices and teachings in churches or other places provided for by the national law applicable.

The comment of Brazil is that in the first paragraph it might be better to say, "unrestricted" instead of "absolute and sacred," as applicable to the rite; and it is further suggested that the manifestation of beliefs in public or in private is subject to restrictions arising out of requirements of public order and that this should be stated in the article.

There are some other comments. There are comments which have been made by governments in other documents. The United Kingdom has made a comment which is found in Committee Document 36 at page 6. This comment is one which is common to articles 16, 17, 18 and 19. It is suggested that the group could be amalgamated and could be more concisely stated as follows:

There shall be freedom of religion, of expression of opinion, and of peaceful assembly.

The United States redraft of this article appears in document 41.

Mr. HACKETT: Did you say it was on page 6?

The WITNESS: Page 6, sir, of document 36.

Mr. HACKETT: What did it become?

The WITNESS: You will find that the second comment down on page 6. That is the United Kingdom comment.

The comment of the United States is in document 41 at page 7, where the following revision appears:

Everyone is entitled to freedom of religion, conscience, and belief, including the right, either alone or in community with other persons of like mind, to hold and manifest any religious or other belief, to change belief, and to practise any form of religious worship and observance.

The comments of the Australian government are very short. It is suggested that the words "of like mind" should be deleted.

Mr. HACKETT: What document is that?

The WITNESS: That is found in document 42 on the second page.

The government of Egypt, in document 34, has made some general comments which are applicable to articles 16, 17, 18 and 19. It is suggested that the freedoms and rights enumerated are not in the declaration made subject to any restrictions, but in the covenant they are subject to restrictions, and it is considered that both drafts should be brought into line in that respect. Therefore, the Egyptian government suggests that restrictions should be specifically mentioned in these articles.

Now, the government of France has submitted a revision of article 16 in a document which I understand has not yet been circulated, and this revision reads as follows:

Personal freedom of thought and conscience, freedom to hold or change one's beliefs, are absolute and sacred rights.

Every person has the right, either alone or in association, to manifest his beliefs, subject to respect for public order by teaching and practising them, and by worship and observance.

The CHAIRMAN: That certainly sounds good to me.

Hon. Mr. GOUIN: I think that is a good point about public order. If we refer to the covenant, the third paragraph of article 16 reads in the following way:

The above rights and freedoms shall be subject only to such limitations as are prescribed by law and are necessary to protect public order and welfare, morals and the rights and freedoms of others.

We have had the case in Montreal of some so-called sects which were performing acts of gross immorality, even crimes against nature, perfectly horrible things, and they were called religions. Those people were arrested and sentenced. They believed more in sacrilege than in religion, and we have to provide for that. We have to go on with these things, otherwise we would be giving our blessing to that sort of thing. We do not call that religion at all.

The CHAIRMAN: Are there any further comments on article 16? This article in the Bill of Rights in the United States providing for worship has

resulted in a great deal of litigation in the Supreme Court of the United States, and I may say that anything that is adopted will be lacking in precision and productive of litigation if it were to become law.

Hon. Mr. GOUIN: Even as a principle I think there should be restrictions made concerning public order.

The CHAIRMAN: Now, Mr. Henry, articles 17 and 18 were left out of this, and there were certain new drafts made.

The WITNESS: That is correct, sir. A document has been circulated to the committee—I believe it is No. 18-A—in which a revision of articles 17 and 18 appears; but my information is that at Lake Success it was decided that there should be transmitted to the Commission on Human Rights the following text, which was proposed by the United Nations conference on freedom of information at Geneva:

Everyone shall have the right to freedom of thought and expression; this right shall include freedom to hold opinions without interference and to seek, receive and impart information and ideas by any means and regardless of frontiers.

There shall be freedom of expression either by word, in writing, in the press, in books or by visual, auditive or other means. There shall be equal access to all channels of communication.

The CHAIRMAN: Is there any comment on those articles?

The WITNESS: Some of the comments have been made individually on articles 16 and 17. Perhaps I should read right through them and then you will have the consensus of both articles.

The CHAIRMAN: I do not know. Would they be helpful to us? Do you think we had better try to move a little faster?

Mr. HACKETT: I favour the suggestion of the chairman.

Hon. Mr. GOUIN: In article 16, paragraph 1, we have a reference to freedom of thought, and from the text just read by Mr. Henry in article 17 we would start again with the reference to freedom of thought. I think one reference is enough.

Hon. Mr. TURGEON: Articles 17 and 18 are in brackets. Are they just suggestions?

The WITNESS: Yes; they were put in brackets to indicate that they were not official.

Mr. HACKETT: I do not understand the term "suggestion" means approval; it means taking communication.

The CHAIRMAN: Yes. It is not necessary to read all the comments. I am thinking of those words, "freedom . . . to seek, receive and impart information and ideas by any means and regardless of frontiers". Is there an absolute right to impart ideas?

Mr. HACKETT: If we go too far with that we will upset our spy trials.

The CHAIRMAN: There must be some limitation to the right to impart ideas, I think.

Mr. HACKETT: Yes.

The CHAIRMAN: It is a good idea, generally speaking—the right to impart ideas; but there are some ideas you are not allowed to impart. Is not that true under the Criminal Code?

The WITNESS: That is correct, sir.

Hon. Mr. GOUIN: There is article 33 concerning the activities of any person aiming at the destruction of any of the rights and freedoms prescribed therein.

The CHAIRMAN: I feel that we will not get very far by dwelling on those articles unless somebody has some point they would like to put forward.

What about article 19, now?

Everyone has the right to freedom of peaceful assembly and to participate in local, national and international associations for purposes of a political, economic, religious, social, cultural, trade union or any other character, not inconsistent with the declaration.

Will you give us the most relevant comments on that?

The WITNESS: I should, perhaps, read the final draft first. There was very little comment at the United Nations which has been reported, but the draft adopted reads as follows:

Everyone has the right to freedom of peaceful assembly and to participate in local, national, international and trade union associations for the promotion, defence and protection of purposes and interests not inconsistent with this declaration.

The CHAIRMAN: There cannot be objection to that, surely.

Hon. Mr. TURGEON: I should like to say one thing in passing, that the framers of this declaration reserve to themselves the right to say what cannot be done; it must be not inconsistent with this declaration. This is a declaration of human rights, yet nobody can go beyond what we, if we accept, say can be done. I am not arguing about it, but we are making a limitation ourselves in our own document of human rights.

The CHAIRMAN: It is a positive assertion of a right to participate in associations for the furtherance of anything in this—

Hon. Mr. TURGEON: Or anything approved by the framers of this declaration.

The CHAIRMAN: Yes.

Hon. Mr. TURGEON: If we do not approve it they cannot do it.

The CHAIRMAN: I do not know. It is not necessarily the case. There is a positive assertion of the right to form associations for the promotion of those ideas.

Hon. Mr. TURGEON: If it is not inconsistent—

The CHAIRMAN: —with this declaration.

Hon. Mr. TURGEON: And the declaration is the whole document.

The CHAIRMAN: Yes. Is there anything more we should stop for in that?

The WITNESS: There are some comments that a limitation should be placed here. It might be helpful, perhaps, to refer to document 18 at page 23, where it is indicated by the drafting committee that it is understood that no individual or association that aims to destroy the fundamental rights and freedoms set forth in the declaration can claim protection under this article.

The CHAIRMAN: That is clear from the article itself.

The WITNESS: I think it probably is, but special mention was made by the drafting committee in its report.

The CHAIRMAN: Could we pass on to article 20:

Everyone has the right, either individually, or in association with others, to petition or to communicate with the public authorities of the state of which he is a national or in which he resides, or with the United Nations.

This is the right of petition. Are there any comments on this?

The WITNESS: The right of petition was fairly thoroughly discussed at Lake Success and the present text was adopted by the committee. It reads in the same form as that which is now before you. The difficulty which arose there was this: In view of the differences of opinion as to how petitions were to be received in the United Nations, a decision was held over until the discussion

was had on the matter of implementation. The United Kingdom stated the difficulties in this way: first, is the author of the petition to be immune from penalties and liabilities for making the petition and, if so, under what conditions. Secondly, what is to be done by the United Nations with the petition which is received.

The United States thought that perhaps instead of using the term "petition" the word "communicate" would perhaps be more clear. At the conference, the governments of Chile and France suggested an immediate reply should be given to a petition when it was received and the French representatives further suggested that a petition under this article should be confined to a matter which relates to human rights. I think that probably epitomizes the discussion.

By the Chairman:

Q. It was agreed to leave the article in its present form, subject to the last few words which were left in abeyance, is that correct? When you come to the right to petition the United Nations it was said it was too soon to take that up until you decided what the procedure will be on the petition, is that correct?—
A. Yes, that is substantially correct. The article was sent on to the Human Rights Commission in its present form, but in the report the drafting committee notes it decided not to consider the text finally until the article on implementation had been redrafted. Therefore, the text was not changed at this time.

The CHAIRMAN: Well, I suppose there is a lot of law on the right to petition. It is misunderstood. For instance, this housewives' organization felt they had the right to see members of the government personally, specifically the Minister of Finance. They felt they had a right to communicate with members of the government, a right to visit, to call and make verbal representations to members of the government. I suppose that is not a right which the citizens of a country necessarily have.

Mr. HACKETT: I suppose he enjoys a right of delegation.

The CHAIRMAN: Yes. I have never thought that the government was obliged to receive or consider representations to it, I thought the right of petition or I was under the impression it was a right of petition to parliament. I do not know about that, however.

Hon. Mr. TURGEON: It does not say the government must give them an answer.

The CHAIRMAN: No, that is the reason two or three states said, if it is to be given, you have to answer; you have to acknowledge receipt.

Well, I do not think there is much more we can do about that one.
Article 21:

Everyone without discrimination has the right to take an effective part in the government of his country. The state shall conform to the will of the people as manifested by the elections which shall be periodic, free, fair and by secret ballot.

There must have been a good many comments on that.

The WITNESS: Well, as a matter of fact, sir, they have been combined in the final draft which is submitted by the commission, both 21 and 22. Would it be convenient if I read the final draft? I should explain the final draft is merely the final draft of the drafting committee of the Commission on Human Rights. What they have decided upon has now been submitted to the Commission on Human Rights, which is at the present time sitting, deciding upon several more final drafts which will be the product of the Commission on Human Rights. At the present time we are just dealing with the drafting committee.

1. Everyone without discrimination on grounds of race, sex, language, religious belief, or social origin and not under any legal disability, has the right to take an effective part in the government of his country. The state shall conform to the will of the people as manifested by elections which shall be periodic, free, fair and by secret ballot;

2. Everyone shall have equal opportunity to engage in public employment and to hold public office in the state of which he is a citizen or a national;

3. Access to public employment shall not be a matter of privilege or favour.

There was an alternative text submitted by the United States.

Mr. HACKETT: Yes, that is true; an alternative practice.

The WITNESS: Is it the wish of the committee that I read them the alternative text of the United States? The United States draft has also been forwarded to the Commission on Human Rights.

The CHAIRMAN: What do they say?

The WITNESS:

Everyone is entitled to:

- (a) the right to take effective part in the government of the state of which he is a national, including the right to participate in free and fair elections held periodically by secret ballot and including the opportunity to hold office and to engage in public employment;
- (b) the right to a government which conforms to the will of the people with full freedom for minority opinion and persist, if such is the the people's will, to become the effective majority.

There was a rather interesting comment.

The CHAIRMAN: There is nothing in the United States text about equal rights to public employment or rights to public employment not being a matter of privilege or favour?

The WITNESS: No; including the opportunity to hold public office and engage in public employment.

The CHAIRMAN: Yes; but how do you appoint postmasters, for example? Does everybody have the right to be a postmaster in the United States without any privilege or favour? Do they have an equal right with everyone else? They do not cover that point.

The WITNESS: They do not cover that point specifically, no.

Mr. HACKETT: The whole article rests upon the assumption that democratic government as we know it is the best form of government for all peoples regardless of their development, tradition or inclination.

The CHAIRMAN: Yes.

Mr. HACKETT: Rather a broad assumption?

The CHAIRMAN: Yes.

The WITNESS: The United Kingdom government in the original committee meeting made a comment which is reported in document 18 at page 24. With respect to the secret ballot it was suggested by the representative of the United Kingdom, and it was apparently agreed, "that in non-metropolitan territories the use of such balloting procedure as the secret ballot could not be imposed when its effect might be contrary to the intentions of article 74(b)"—I think 73(b) is meant—"of the Charter, or to the obligations contained in the relevant parts of the Trusteeship Agreements."

I think the thought the representative had in mind was that, as the Charter requires the signatories to develop self-government and take due account of the political aspirations of peoples according to the particular circumstances of each

territory, it might not be proper to force upon certain trust territories or territories which are colonial or non-self-governing, for which the metropolitan state has the responsibility, a method such as a secret ballot when they are not ready for it. I think that is all that is intended there. I felt I should draw it to the attention of the committee.

Mr. HACKETT: Who determines whether they are ready?

The CHAIRMAN: The scheme upon which the United Nations works is to encourage people towards self-government. Their trusteeship may be necessary for a while, perhaps for a long while in some cases, but it should all be with a view to eventual self-government. I suppose there comes a time when they attain it. Most of them attain it through one means or another and not always by the road of trusteeship. India, for example, did not and neither did Burma or Ceylon or some of those other countries.

Hon. Mr. GOUIN: I think it is an important statement and the position is very well taken. There are territories where the secret ballot could not possibly work at the present time. It is very unwise to make that assertion without even referring to the possibility a territory might not be ready for it.

The CHAIRMAN: It hardly seems to have a place in a declaration of human rights. It is a declaration which suits this country very well and, perhaps, it might suit the United States. There are other countries, however, which it does not suit. It does not seem to me it has a place in declaration of human rights.

Hon. Mr. GOUIN: Human rights, I understand, to be those rights which man shall enjoy for all time. The secret ballot is, after all, a most recent innovation.

The CHAIRMAN: Yes. You have dealt with article 22. It says,

Access to public employment shall not be a matter of privilege or favour.

That is supposed to be the principle of the Civil Service Act.

Mr. HACKETT: There are preferences there which are established.

The CHAIRMAN: What place has that in a declaration of human rights?

Hon. Mr. TURGEON: I do not think section 21 has any place there, either. I have a lot of sympathy for the position taken by Mr. Hackett, that we are assuming our form of government is the only one, regardless of the degree of development of the people.

The CHAIRMAN: Now, let us go to article 23.

Everyone has the right to work.

The state has a duty to take such measures as may be within its power to insure that all persons ordinarily resident in its territory have an opportunity for useful work.

The state is bound to take all necessary steps to prevent unemployment.

Those are not human rights, those are governmental responsibilities which are being defined.

Mr. HACKETT: They are objectives.

The CHAIRMAN: There must have been a great deal of comment on this.

The WITNESS: The witness at Lake Success did not get beyond article 22. From here on, we have no considered drafts by the drafting committee. The draft which appears in document 18, in each case, has been forwarded, with alternative drafts submitted to the Human Rights Commission. Consequently, the present draft has gone before the Human Rights Commission. Perhaps I might mention that an alternative text was submitted by the United Kingdom which brought in a new element.

Their suggestion was as follows:

Everyone has the right to work or maintenance.

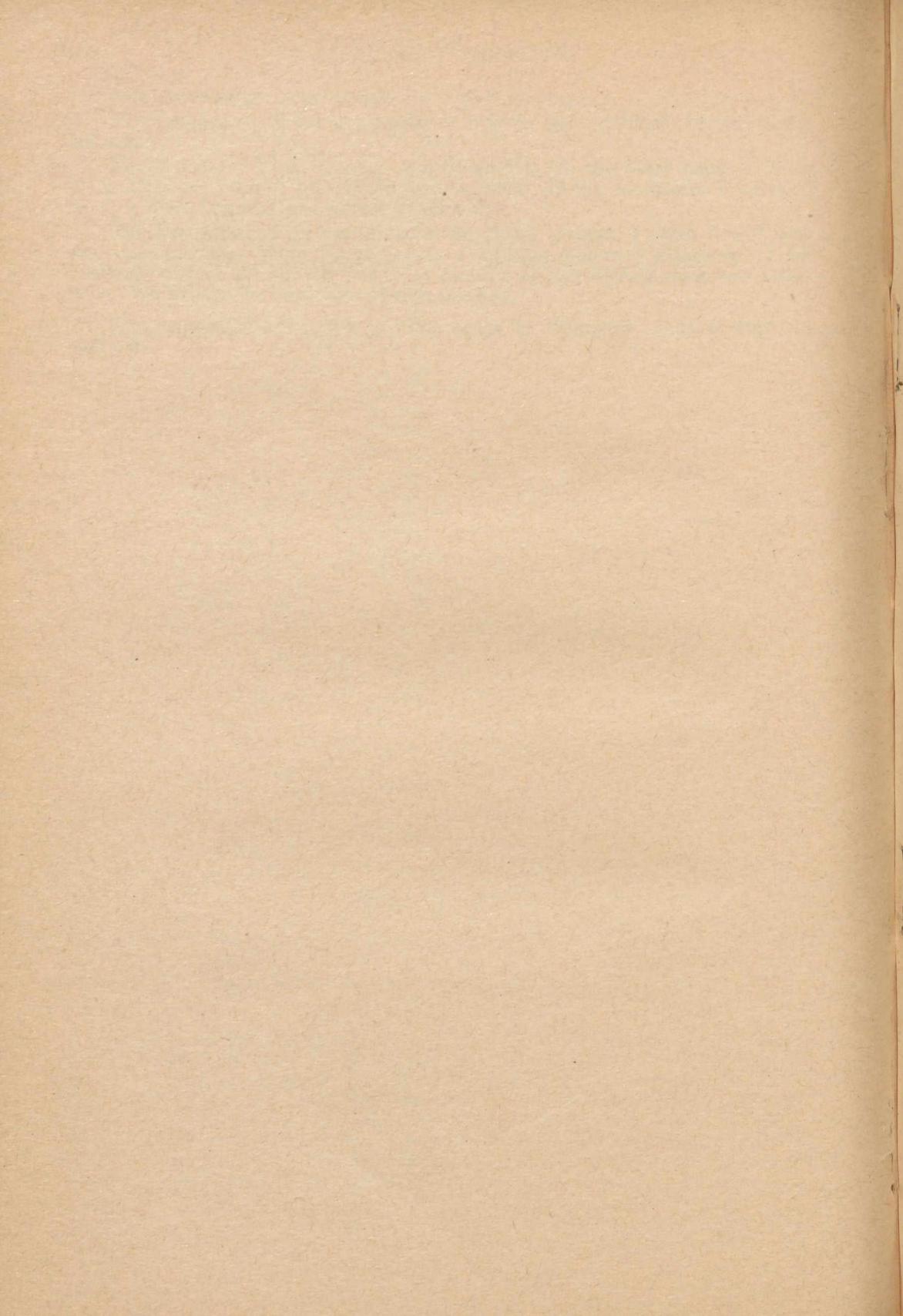
Hon. Mr. GOUIN: Some people are unable to work.

The CHAIRMAN: I did not realize it was so late. Perhaps we had better adjourn.

Mr. HACKETT: I am anxious to adjourn but, on the other hand, I know there are some reasons for expediting this work. If the committee is inclined to sit a little longer, I am willing to remain.

The CHAIRMAN: I do not think we can finish tonight. I think it will take one more meeting. What about having a meeting tomorrow afternoon? I am informed notices are already out for a meeting at four o'clock tomorrow afternoon. We will try to finish this at that meeting.

The committee adjourned to meet again on Thursday, June 4, 1948, at 4.00 p.m.



SESSION 1947-48



SPECIAL JOINT COMMITTEE OF THE SENATE
AND THE HOUSE OF COMMONS

ON

HUMAN RIGHTS

AND

FUNDAMENTAL FREEDOMS

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 8

THURSDAY, JUNE 10, 1948

WITNESS:

Mr. D. H. W. Henry, Counsel, Department of Justice, Ottawa.

OTTAWA
EDMOND CLOUTIER, C.M.G., B.A., L.Ph.,
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY
1948

SPECIAL JOINT COMMITTEE OF THE SENATE
AND THE HOUSE OF COMMONS

HUMAN RIGHTS

AND
FUNDAMENTAL FREEDOMS

MINUTES OF PROCEEDINGS AND EVIDENCE

NO. 1

THURSDAY, JUNE 10, 1963

U.S. GOVERNMENT PRINTING OFFICE: 1963

MINUTES OF PROCEEDINGS

THURSDAY, 10th June, 1948.

The Special Committee on Human Rights and Fundamental Freedoms met at 4.00 p.m. The Joint Chairman, Right Honourable J. L. Ilsley and Honourable Senator L. M. Gouin were present. Mr. Ilsley presided.

Also present:

The Senate: Honourable Senators Leger, Turgeon.

The House of Commons: Messrs. Fournier, Fulton, Hackett, Hansell, LaCroix, Marier, Marquis, Michaud, Rinfret, Whitman.

In Attendance: Mr. D. H. W. Henry, Counsel, Department of Justice, Ottawa, and Mr. R. D. Riddell, United Nations Division, Department of External Affairs, Ottawa.

The Committee resumed consideration of the Draft International Declaration on Human Rights referred to member governments of the United Nations.

Articles 23 to 33 were reviewed.

Mr. Henry was called. He made statements summarizing the comments of member governments and also reported on the work of the Drafting Committee, Commission on Human Rights, relative to the articles under review, and was questioned.

A suggested Draft International Declaration on Human Rights forwarded by the Chinese delegation to the United Nations was read.

The Committee went into executive session to consider procedure with regard to written representations.

During the course of the proceedings the following was read:

28th May, 1948.

DEAR SIR,—At a meeting, Thursday, 27th May, the steering committee of the Special Joint Committee of the Senate and the House of Commons on Human Rights and Fundamental Freedoms agreed to receive written representations in respect of its order of reference, a copy of which is enclosed.

Accordingly, you are invited to forward, on or before Monday, June 7, 1948, written representations on the subject-matter of the order of reference. Your submission will be read to the assembled committee and so provide an opportunity to discuss your views. If the committee should consider that some aspects of your submission require amplification, you may be invited to make supplementary oral representations on a subsequent date.

To provide for a prior distribution to members of the committee, it is requested that fifty copies of your brief be forwarded no later than the 7th June.

Yours very truly,

Clerk of the Committee of Human Rights.

The above letter was sent to the following:

The Canadian Jewish Congress, Montreal; The Canadian Daily Newspapers Association, Toronto; The Civil Rights Union, Toronto; The Committee for a Bill of Rights, Toronto; The representative of the Congregations of Jehovah's Witnesses in Canada; The representative of organizations representing the Chinese people in Canada.

The Committee adjourned at 6.00 o'clock p.m., to meet again this day at 8.30 o'clock p.m.

EVENING SESSION

The Committee resumed at 8.30 o'clock p.m. The Joint Chairman, Right Honourable J. L. Ilsley, presided.

Also present:

The Senate: Honourable Senators Leger, Turgeon.

The House of Commons: Messrs. Fulton, Hackett, Hansell, Marquis, Michaud, Rinfret, Whitman, Zaplitny.

The Committee went into executive session to consider procedure.

In open session.

The Committee considered written representations received from groups and organizations which had expressed a desire to place their views before the Committee.

The following which are not printed in the evidence were read to the assembled Committee:

- (a) Letter dated June 4, 1948, from the Committee for a Bill of Rights, Toronto;
- (b) Submission of Committee for a Bill of Rights in support of Statement for a Bill of Rights;
- (c) Letter dated June 6, 1948, from the Civil Rights Union, Toronto.
- (d) Brief dated June 4, 1948, submitted by the Civil Rights Union of Toronto;
- (e) Brief dated June 9, 1948, submitted by the Canadian Jewish Congress, Montreal.

The Committee adjourned at 10.10 o'clock p.m. to meet again at 4.00 o'clock p.m. Tuesday, 15th June.

J. G. DUBROY,
Clerk of the Committee.

MINUTES OF EVIDENCE

HOUSE OF COMMONS,
June 10, 1948.

The Special Joint Committee on Human Rights and Fundamental Freedoms met this day at 4.00 p.m. Hon. Mr. J. L. Ilsley, (Joint Chairman), presided.

The CHAIRMAN: We were on article 23 of the International Declaration on Human Rights the other day.

Mr. HACKETT: What made you stop?

The CHAIRMAN: We stopped due to the lapse of time.

Hon. Mr. GOUIN:

- “1. Everyone has the right to work.
2. The state has a duty to take such measures as may be within its power to ensure that all persons ordinarily resident in its territory have an opportunity for useful work.
3. The state is bound to take all necessary steps to prevent unemployment.

Mr. MARQUIS: I do not see what is the use of the second paragraph. The first and the last paragraph seem to include the meaning of the whole article. If the state is bound to take steps to prevent unemployment naturally it is its duty to take measures within its power to ensure that all persons have an opportunity for useful work.

The CHAIRMAN: I think perhaps Mr. Henry had better read the final draft of the drafting committee.

D. H. W. Henry, Advisory Counsel, Department of Justice, recalled:

The WITNESS: Mr. Chairman and gentlemen: The commission on Human Rights has adopted a final draft within the last day or two. It reads as follows:

Every one has the right to work and just and favourable conditions of work and pay, and to protection against unemployment.

Every one is entitled to receive equal pay for equal work.

Every one is free to form or join trade unions for the protection of his interests.

You will notice that really combines articles 23 and 24. Perhaps it would be proper if I merely drew to the attention of the committee the points which have been raised by governments in connection with these articles very briefly to indicate the train of thought. A question was raised as to whether articles in this declaration should mention duties of the state in view of the fact that the declaration is a declaration of rights of individuals.

The question of compulsory labour was brought up, and I may say that has now been resolved by the new draft of article 5 which has been adopted by the Human Rights Commission. That was the draft article which related to slavery. That article has been revised by the commission to read as follows:

No one shall be held in slavery or involuntary servitude.

That was designed to take care of the practice of compulsory labour.

A further point that was raised was that the declaration should not prohibit such measures as family allowances. Under the provision which says that there must be equal pay for equal work I think it was merely the intention of the governments concerned to make sure that it would be possible to make gratuitous payments to individuals in need.

A further point that was raised was whether or not the declaration might tend to exclude beneficial provisions relating to the working conditions of women in that the declaration seeks to put women on the same footing as men.

Mr. MARQUIS: May I ask a question? Would this clause prohibit dividends advocated by a certain political party?

Mr. HACKETT: You do not expect an answer to that, do you?

Mr. HANSELL: I will give the answer. The clause carried to its conclusion would certainly prevent dividends being paid. I am not going to pursue that angle but since the point has been brought up I would suggest that I do not like the term "work". I would rather have the term "useful employment." Work is a type of slavery.

Mr. HACKETT: A type of what?

Mr. HANSELL: Slavery.

Mr. HACKETT: What was said about the sweat of your brow?

Mr. HANSELL: I know what Mr. Hackett refers to. Everybody does not earn a living by the sweat of their brow. I do not think many members of parliament do. There is another point while we are on the article. I suppose it is in order to discuss it now?

The CHAIRMAN: Yes.

Mr. HANSELL: It is specifically mentioned one has the right to join a trade union for his protection which I believe is an admirable statement, but if you are going to carry fundamental freedom to its proper conclusion and give it its proper value then the same thing should be stated in reverse, that a man has the right to withdraw from a trade union without affecting his gainful employment. If he is forced to join a trade union before he can be employed then we are denying him a fundamental freedom. That is what it involves when we begin to discuss it in the light of some of our modern trade union movements. I am a trade union man. I have got to be because I represent trade unions, but when we are discussing fundamental freedoms that is another matter. I doubt whether the closed shop is giving people their optimum fundamental freedom. I make that as an observation.

The CHAIRMAN: Is there any further discussion along that line?

Mr. MICHAUD: I am inclined to take the same view, that a workman should be free to join or not join a trade union as he desires.

Mr. HANSELL: Without it interfering with his desire for gainful employment.

Mr. MARQUIS: How is the part relating to trade unions drafted?

By Mr. Michaud:

Q. Would you read the draft, please, as it concerns trade unions?—A. The part that concerns trade unions reads as follows:

Every one is free to form or join trade unions for the protection of his interests.

Mr. HANSELL: There is nothing stated there in respect to the freedoms of the one who does not want to join a trade union. It just says he has the right to join. It does not say he has the right to withdraw from it.

Mr. HACKETT: Or abstain.

Mr. HANSELL: Or abstain from joining and still work.

Mr. MARIER: That is a point. In some closed shops a man cannot work if he does not join the union.

The CHAIRMAN: Your comment is there is a certain evasiveness about this draft.

Mr. HANSELL: Yes, and it only presents one side of the picture in respect to freedom of employment.

Mr. MARQUIS: This draft implies the idea of being obliged to join a union, if there is a union, in order to secure employment.

Mr. MICHAUD: How does the so-called Rand formula fit into that? Just what is the gist of the Rand formula?

The CHAIRMAN: I do not know that there is anyone here who can answer that.

Mr. HACKETT: I will not.

The CHAIRMAN: The Rand formula was—

Mr. MICHAUD: For the Ford strike at Windsor.

Hon. Mr. TURGEON: You read the revised version of No. 5. Would you read it again, please?

Mr. HACKETT: Just a minute. Does the Rand formula mean that a person need not be a member of a trade union but he must pay the fees?

Mr. MICHAUD: That is my impression.

Mr. WHITMAN: That is the Rand formula.

Mr. MICHAUD: That is my impression. I am not positive about it. If that is the Rand formula it certainly is an interference with the freedom of an individual to abstain from joining a trade union.

Mr. HACKETT: One can see, if he wants to be fair, a distinction between being a member of an organization which would possibly impose definite restrictions on his conduct and one which would tax him for the upkeep of an enterprise with which he was not wholly in sympathy.

Hon. Mr. LEGER: In other words, he must pay for the benefits which he gets from the union.

Mr. MICHAUD: In his estimation it may not be a benefit. If he refuses to abstain he does not consider it a benefit.

Mr. HACKETT: I am not suggesting my observation is an answer to Mr. Hansell's query.

Mr. HANSELL: The whole tendency of the age seems to be to tie peoples' hands rather than to free them. That is the thing you have got to be careful of in writing a declaration of human rights, that the very document designed to give freedom ties the hands and takes freedom away from individuals.

Hon. Mr. GOUIN: As it reads it does not create an obligation to join a trade union. We find the obligation out of the text of the article in a practice which has now become rather general when we have that so-called security clause. It means to work in that shop, if it is a closed shop, you have to belong to the trade union, or if it is what we call merely a trade union shop you have to pay fees even if you are not a member of the trade union. However, when we have before us the text which has been submitted, and which was read a few minutes ago, we do not impose upon anybody the obligation to join a trade union. It is the right to join a trade union, and the proposition would be should we go further than that and have a clause protecting better than section 23 the right to work because under the interpretation we would give in olden times the right to work it was precisely the right to work independently without belonging to a trade union. However, things have moved a good deal since that time. Under the present circumstances I would rather suggest that we be satisfied merely with

stating in article 23 the right to work and in another paragraph of the same article, if I understand correctly the amendment which has been introduced in the so-called final draft, we would also recognize what we call the right to organize. I am under the impression that is about the best we can do just now. I want to repeat the right to work would be a question of interpretation. Everything in the present world seems to be in the process of evolution just now.

Mr. HACKETT: If there is anybody in the committee who does not need anybody to speak for him it is Mr. Hansell, but it seems to me his question is not answered by what you have said. As I understand his statement he says that we are erecting a structure of fundamental liberty. You have got a statement that people may form unions. He says that the counterpart of that—and it is a statement of a freedom just as much as the one that they may join for purposes of their own—is that they may abstain from joining for the same reason.

Mr. HANSELL: That is it, as a right to freedom without being penalized.

Mr. MARIER: Do you suggest a man would have the right to work without joining a union, without being forced to join a union?

Hon. Mr. GOVIN: I have tried to make myself clear, and I am very sorry that I have failed to do so. My suggestion was that it was not wise to go as far as stating the right not to belong to a trade union, and that the expression which I repeat, "every one has the right to work," in my own humble opinion should be interpreted as meaning precisely that everyone has the right to work independently without being obliged to join a trade union. That is what I tried to explain. That may not be a good thing at all, but I think it is pretty clear.

Mr. HACKETT: Whatever one may think about what you said, I do not think there is any doubt about everybody understanding it, but it seems to me that if we accepted your proposition then there is no reason to state that they should have the right to organize or the right to have a union because that would flow from the premise as you have stated it as the right to abstain flows from it, but if you are going to particularize and say because men are free they have the right to organize, then I think the counterpart of it is they have the right not to organize or they have the right to abstain from organizations for the same reason and for the same end.

Mr. MARQUIS: Mr. Chairman, following the argument made by Mr. Hackett, I think that when it is stated that everyone has the right to work, that includes collectively individual work and when the particularizing arises, it is pretty hard to particularize in one sense and not to particularize in the other. So when Mr. Hansell says we have the right to join a trade union, we should have the right to abstain from joining a trade union as well. But the general principle as stated in the first paragraph—I do not see why they should add to that.

Hon. Mr. TURGEON: I would like to put on the record a word of warning. I am afraid that those who are drafting this—

Mr. HANSELL: Whom do you mean?

Hon. Mr. TURGEON: The United Nations Council, because we are considering what they are sending to us—are drifting away from the principles underlying a declaration of human rights and coming down to a statement of political and economic policy. I am saying this more as a warning than as an objection because, if it is going to become a statement of policy, either economic or political jointly, it is going to meet with a great many objections that would not be aroused by a simple declaration of human rights.

We are set up, as a committee of parliament, to discuss the question of human rights and fundamental freedoms; but we are fast coming into a discussion of economic conditions and political rights for freedom rather than

the other. I had the thought in mind when I asked you kindly to re-read that revised section 5. I think it was section 5.

The WITNESS: Revised draft, section 5, reads as follows:

No one shall be held in slavery or involuntary servitude.

Mr. MARQUIS: What is the meaning of voluntary servitude?

Mr. HACKETT: Labour camps, matrimony.

The WITNESS: The word is "involuntary" servitude. I mentioned that because in discussing the articles which we are now discussing the point had been raised that they did not provide for compulsory labour.

Hon. Mr. TURGEON: Yes. I want to leave that warning with you.

The CHAIRMAN: I think that Senator Turgeon is right about that. I agree with him that probably this does not have a place in a declaration of rights. If it has a place—and I do not think it has—there are questions which arise for the consideration of governments, the kind of questions that come up before governments, such as whether the people have the right in one province to join any trade union that exists in Canada. That is the right which presents itself in the Prince Edward Island legislation and it is not necessary to say that the labour organization which presented the brief relied on this general statement that everyone has the right to join a trade union and organize, therefore they have the right to join our trade union.

What trade unions do people have the right to join? I do not know whether there were any trade unions in Germany under Hitler. I do know he dissolved certain trade unions, but he formed others. I think he said: there are your trade unions and you have the right to join them. Probably he said: you have got to join them.

Hon. Mr. GOUIN: When we merely formulate the principle to organize—if I understand correctly my own philosophy—we are confirming a natural right, the right to organize, just the principle. Now, we cannot have a whole labour code in this so-called declaration of rights. We have the right to work. We have the right to organize. I would say that in the exercise of that right, such a question, for instance, as closed shop—this declaration of rights is not the proper place to discuss it, because it is a very difficult problem and a very intricate problem, and because conditions are not the same all over the world. The right to organize is a personal right. I for one would feel exceedingly sorry if we were in favour of eliminating it from this draft. I think we must find a simple formula which tries to reconcile the different ideas of the members of this committee, a formula which confirms this fundamental right. There is no possible doubt about the right to organize; that it is a fundamental right.

Mr. MARQUIS: It is not a consequence of the right to work?

Hon. Mr. GOUIN: No, sir. That is not the way I understand it.

Mr. MARQUIS: If you have the right to work, then you can work individually or you can work collectively.

Hon. Mr. GOUIN: I do not want to be long.

Mr. MARQUIS: I just put the question to you because I know that you are an authority in this domain.

Hon. Mr. GOUIN: Oh, no. I am merely a man of good-will. I say that we are living in a society and we have the old definition that man is a social being living in society. We have to group together. We have the family first. Certain animals have lived independently, almost from the moment of their birth. But such is not the case with man.

So we say: you have the family and then you have a group of families and in the same way as you have a natural family, you have also the professional

family, and a certain number of men who happen to be farmers have the right to group together to form what I would call, so to speak, an agricultural family; and in the same way, carpenters may form a group which may become allied with what we might call the building trades; and that is generally considered as being the right to organize.

The right to work is not necessarily connected with the right to organize. You may have the right to work and you may be absolutely deprived of the right to organize.

After the revolution of 1789 with the *Loi Chapellier*, and similar revolutions all over Europe, when trade unions were outlawed, it took a long time, and it took almost a civil war in Great Britain with the Chartists, to come back to the recognition of what is in my statement, not only of philosophy but of theology, what is a natural right—not as essential as the natural right to marry and have children, but in a minor sense the right inherent to the human personality.

Now, when we come to the very very difficult question of the closed shop, there is so much trouble about it. But sincerely, I am not able to enter into any argument. I must say that we must try to establish a safeguard for the future; and the only process I can imagine—and I shall be terribly frank—is almost to dodge the issue for the time being. Not to pledge ourselves in favour of so-called security clauses, or the closed shop. At the same time not to formulate something which I am afraid is not acceptable to labour in Canada. I have no intention of speaking for them.

Hon. Mr. TURGEON: What you say about man's natural group instinct is perfectly correct, but the only objection I see to it is that we are getting away from a declaration of human rights and getting into the manner in which a country, through its government, shall develop its natural resources.

I would not be surprised if we had something saying that industry is entitled to tariff protection, or that people earning a living from industry are entitled to tariff protection, or that no country should have tariff protection, because we are getting into a political and economic declaration of policy rather than one of human rights.

To my mind the declaration of human rights is an important object; but it should confine itself to what generally is implied in human rights. This document is getting into every field of activity in which a state may become engaged deliberately or through pressure of circumstances. I am not objecting to anything you are saying about human rights or the group instinct of the mass or anything of that kind. I am simply saying that I am afraid that instead of this document which is drafted, we are going beyond what was their objective when they were established as a committee, which was to prepare a declaration of human rights. This is going much farther to my mind than a mere declaration of human rights.

The CHAIRMAN: Still, the right to organize is a fairly broad sort of right.

Hon. Mr. TURGEON: Yes, but we are going into other rights, equal rights, equal pay. Generally, human rights are different to that. A man has certain rights as the Associate Chairman says; a man or a woman have certain rights, but as the member for Stanstead said at a meeting some weeks ago, this document would try to enforce upon a so-called native population a system of government which requires generations to be reached properly. That is, roughly, what you said the other day when we were talking about the right to have an effective part in politics. What we are trying to state here would drive many nations out of the organization because they are not prepared to adopt some of the principles in it.

I do think that all the nations are prepared to adopt this as a basis of fundamental human rights. This is going farther. I am not referring now only to the section, I am thinking of the whole thing. I am particularly basing what

I say on what Mr. Hackett said the other day, about another section, not that which related to labour unions, or the right to work. It was another section entirely; the right to take part in politics.

Mr. MARQUIS: Is it not true that workmen are part of the machinery in industry and if we want to protect their individual freedoms, then they must have the right to organize in order to be protected? Because, today, industry is so developed that men, individually can do much for their own protection, and if they are organized, if they enter into a trade union, they have that right. As it is stated in the declaration of rights, they may be individually protected; and so they may go to a state of principle for the protection of the individual workers who will have the right to enter the union for their own protection.

Hon. Mr. GOVIN: That is the right to organize.

Mr. MARQUIS: Yes.

Hon. Mr. GOVIN: I am sure that in the mind of the member who has just spoken it does not mean that he is part of the machinery of industry. I am sure the member who has just spoken is conscious of the necessity of the individuality of the workman who still has, of course, his personality which is the most sacred thing which possibly exists.

Now, trade unions of course are an old, old thing. They go back to the tenth century when there flourished what were known as guilds. The trade union was there for the purpose of promoting common welfare, not only on behalf of the employers, but the employees as well. There was not the feud between capital and labour because capital did not exist.

It was purely and simply what we would call a family of industry. Through a certain number of years of apprenticeship and so on a worker might become not an employer, but rather a father of a small industrial family, and when the trade union came back into existence, coincident with the Industrial Revolution, at the beginning its purpose was precisely to protect the right of the individual who could not protect himself so long as he was isolated.

On one side you had just one man who had no reserves because he was not a capitalist, and on the other side, on the contrary, you had organized capital; so you had organized labour, and on that account, to put it quite frankly, at that moment you had many abuses committed by the trade union.

And at the moment they may tend to suppress the right of the individual, but it is purely and simply an abuse which is an indication of the object which justifies existence.

But if we come merely to the principle of the right to organize, it is confirmed now, I think, almost everywhere in the world. To what extent is it applied? Well, that is quite different; but when we want to see whether or not—and I am trying, for the sake of my good friend Senator Turgeon, to make the issue very clear—the right to organize is a natural right, that is what we should be dealing with.

I am perfectly in accord with Senator Turgeon in his declaration. We should be dealing with natural rights and not with the so-called political rights. The right to organize is a natural right; and as I have said, there are lots of other things which may be added after that, such as the rights of the working classes, which are not natural rights. I would go so far as to say that the right to vote by secret ballot is not a natural right at all.

Mr. MARIER: I was not present at the last meeting of the committee, but article 19 already provides for joining trade unions. You said that everyone has the right. I do not know whether that section was adopted as is, or modified; but if it was adopted as it is, then it is provided that everyone has the right to freedom of assembly and so on.

The CHAIRMAN: Yes, that is the right of organization.

Mr. **MARIER**: To join trade unions; so if it is already adopted I do not see why we should repeat this one.

Hon. Mr. **GOUIN**: There are many representations of this declaration and that is why in article 19 you have a reference to the trade unions, but it is in rather vague language; associations for the purpose of trade unions. I would never express myself that way. You already have there the right to organize. That is sufficient, I would say.

Mr. **MARIER**: If it has been adopted, as it has, I do not see why it is necessary to repeat it.

Mr. **MICHAUD**: I have a note to the effect that it was recommended by the commission for the purpose of interest, not inconsistent with this declaration, instead of in lines 4 and 5.

The **CHAIRMAN**: Mr. Henry might read what was officially adopted in respect of article 19.

The **WITNESS**: I have the draft forwarded by the committee to the Commission on Human Rights:

Everyone has the right to freedom of assembly and to participation in local, national, and international trade union organizations for the promotion, defence, and protection for purposes and interests not inconsistent with this declaration.

Mr. **MARQUIS**: Then what is the use of repeating it?

Hon. Mr. **GOUIN**: I am inclined to think it is sufficient.

The **CHAIRMAN**: Perhaps we had better pass on.

Mr. **HACKETT**: May I make this suggestion at this point? These questions are all very interesting, but any one of them would enable this group to debate with increasing interest for a very protracted period. I am only offering this suggestion as a *modus operandi*, but it seems to me that we cannot debate on these matters as fully as we would like, and possibly, if we read them and attempt to draft a caveat at the end—which has been the practice there—we might be making more progress than if we debated or attempted to find a common denominator for each section.

The **CHAIRMAN**: Yes. Well, I think perhaps there should be some comments on each as we go along, provided they do not take too long. Let us pass on to articles 24 and 25.

Mr. **HANSELL**: There is just one point. We have a lot said in respect to the duty of the state. I think that is uncalled for in a declaration of human rights and fundamental freedoms. We are not dealing with the duties of the state at all, and even though we were dealing with them I think it quite wrong to say that it is the duty of the state to furnish work or to see that the people go to work. There we enter into another economic phase which is subject to interpretation and subject to the progress of civilization. If you take that at its face value, you will be disregarding entirely the possibility of entering into—well, I should not say the possibility of entering into, because we have already entered into a power age, into a machine age, and a machine age puts men out of employment.

Now, that is fundamental. Then, if you carry that to the extreme, the duty of the state is to find employment. And there you are going absolutely opposite to the progress of civilization.

As an illustration—and I am not going to take up much time—here is a situation arising where, economically, a period of unemployment takes place nationally, and a depression is on. What are you going to do with the unemployed? Are you going to put them to work with picks and shovels? Are you going to do

that when huge machinery can do the same work just for the sake of conforming to what is stated here, the duty of the state is to furnish employment? You see how contradictory it is.

Personally, to my mind, I think it is silly. A simple statement that everyone has the right to employment, to gainful employment, would cover it all.

Hon. Mr. GOUIN: I think the remark is very very well founded. This is supposed to be a declaration of rights of the individual, not a declaration of the duties of the state. They have mixed together those two things which are altogether different, and we should do our very best, I think, to make it very clear that we want to try to formulate the natural rights, the rights of the individual. That is all.

The CHAIRMAN: Now gentlemen, may we take up articles 25 and 26? Article 24 was dealt with along with article 23, so we can now take articles 25 and 26. I will ask Mr. Henry to give us what the Commission on Human Rights finally decided to recommend. What did the Commission on Human Rights finally decide to recommend in lieu of articles 25 and 26?

The WITNESS: The Commission has not found a final draft of these articles as yet; but it has referred the two provisions to the drafting committee to prepare a draft and that was just done yesterday and the result has not been had. The nearest thing to a draft which we have, apart from that which is before you, is a proposal which reads as follows:

Everyone has the right to a standard of living adequate for health and well being, including security in the event of unemployment, disability, old age or other lack of livelihood in circumstances beyond his control.

Mr. HACKETT: That, again, is a statement of political economy, not human rights.

Mr. MARIER: They do not mention any duty of the state in that case.

The WITNESS: The question of the duty of the state was again brought up. Most of this one refers to economic policy.

Mr. MARIER: If we start with the duties of the state, we must start with the duty of the individual towards the state.

Hon. Mr. GOUIN: There would be no end to that procedure, we should stick to the rights, and that is all. If you formulate the right of social security, it is surely sufficient and we should not go away beyond that.

The CHAIRMAN: Are there any further comments on article 25 and article 26? If not let us take up article 27. What does the Commission on Human Rights say as to article 27?

The WITNESS: The Commission has not reached this article as yet, but the committee has before it article 27 as it now stands, and there are one or two comments on that to which I might refer, as a matter of interest. It has been suggested there may be difficulties as to what extent education is to be considered a right and the distinction may be drawn in this connection between fundamental education and an education which is other than fundamental. The second point which has been raised is whether it is within the scope of the declaration to say that education should be free and compulsory.

There is a shorter draft of this article which was proposed by the United States and it might be of interest to the committee to hear it. It reads as follows: "Every one is entitled to the right to free fundamental education and to equal access on the basis of merit to higher education."

Hon. Mr. GOUIN: If you will allow me to refer to exhibit 18 of the declaration on page 24, concerning precisely article 27, we have there a very interesting

suggestion from the Philippines. They wanted to add the following paragraph: "The right of private education will be respected, and in such places or countries as desire it, religious education shall be permitted in the schools."

I do not intend to enter into a debate, but I merely wanted to call the attention of the members of this committee to this question which is an exceedingly important one and which, in my opinion, is even vital. There would be no end if we were to discuss the aspects of the problem.

Mr. HACKETT: I do not want to go into that, but Senator Gouin probably knows there was a decision of the Supreme Court of the United States rendered the other day which said that that right does not exist and that it was unconstitutional; and in Idaho—I think it was—the right was denied where it had been exercised by common consent of all the people.

The CHAIRMAN: The draft as adopted or as suggested by the Commission on Human Rights would seem to indicate that some provision must be made for the costs of higher education for those who cannot afford it—is that correct?—provided they have equal merit with those who can afford it. Is that the meaning?

The WITNESS: That seems to be the suggestion, sir.

Mr. FULTON: Unless we adopt something along the lines that Senator Gouin directed to our attention to authorize the right private education it seems to me we are getting to the position which Mr. Hackett has called to our attention in the United States, where everybody can be compelled to have exactly the same education. If we say that education is compulsory then you have to protect the rights of private education.

The CHAIRMAN: Perhaps it means that. I doubt it. I would not mean that everybody will be compelled to get education that way. If they get education privately they are getting education. To guarantee compulsory education is merely an assurance that you have no illiterates.

Mr. HANSELL: The language is very confusing and contradictory. How can you talk of compulsion and freedom at the same time? I do not see how you can do it.

Hon. Mr. GOUIN: Quite right. Take the first sentence, "Every one has the right to education," and after that we get into the question of the duties of the state again.

Mr. HANSELL: When you compel people to do things you are taking away their freedom. I believe in compulsory education; but it does not coincide with a bill of fundamental rights.

The CHAIRMAN: You should compel respect for freedom, should you not?

Mr. HANSELL: I do not know whether you should. You cannot compel respect, because respect is a principle.

The CHAIRMAN: I think we have the views of the committee on article 27. Now, let us take article 28. This goes into the specification of education and says:

Education will be directed to the full physical intellectual, moral and spiritual development of the human personality, to the strengthening of respect for human rights and fundamental freedoms and to the combating of the spirit of intolerance and hatred against other nations or racial or religious groups everywhere.

Mr. MARQUIS: This is not a general principle; this is the means of applying principles; and these principles should be accepted in each country and every country. As it is stated in 27 and 28 it is not acceptable in Canada because education is under the jurisdiction of the provinces. It is as stated in this declaration it would be of no use for our country and I suppose the same thing applies in other countries too.

Mr. MICHAUD: I cannot see what it adds to the previous article.

The CHAIRMAN: I think, perhaps, the general view is that this has no place in a declaration of human rights. This is a description of what kind of education the framers of the document thought people ought to be compelled to receive.

Hon. Mr. GOUIN: I do not think it is the proper place for it.

The CHAIRMAN: Let us take article 29.

1. Every one has the right to rest and leisure.

2. Rest and leisure should be ensured to every one by laws or contracts providing in particular for reasonable limitations on working hours and for periodic vacations with pay.

Now we are getting some place.

Mr. WHITMAN: How often do they get vacations?

The CHAIRMAN: They should be frequent and they should be long.

The WITNESS: Mr. Chairman, there are no comments from the United Nations on this article.

Hon. Mr. GOUIN: Nobody has suggested compulsory vacations. For myself I would be in favour of them.

The WITNESS: The only governmental comment which I think is worth while drawing to the attention of the committee is that paragraph 2 of the article be omitted; that paragraph 1 is sufficient by itself.

Mr. HANSELL: I think so.

Mr. MICHAUD: I cannot see what paragraph 1 adds to article 5; There shall be no compulsory labour and no involuntary servitude. Does it not follow from article 5?

Hon. Mr. GOUIN: It is important to have an article concerning rest. Take Sunday services; they are in a certain sense connected with the matter of rest. The right to rest is a natural right, and paragraph 2 in my humble opinion should be omitted; it is not in the proper place. I am in favour of the idea.

Mr. MARQUIS: This is a matter of internal economy; it is not a matter of an international declaration of rights.

Mr. MICHAUD: If there is to be no slavery or compulsory labour it follows that the right to rest and have leisure follows.

Mr. MARQUIS: What about those islands in the Pacific where they do not work at all? They rest all day because it is too hot to work. You should have no declaration of rights.

The CHAIRMAN: All you can say is that they do not need this article there. I think we can say that paragraph 2, while popular, is misplaced in the opinion of the committee. What about article 30?

Mr. HACKETT: Paragraph 1, I suppose, is just a reiteration that there should be no slavery.

The CHAIRMAN: I think it goes further than that.

Hon. Mr. GOUIN: Yes, it goes further than that. You may not be a slave and yet you may not have a vacation. I did not have one for twenty years and I was not a slave.

The CHAIRMAN: Let us go on to article 30 now:

Every one has the right to participate in the cultural life of the community, to enjoy the arts and to share in the benefits that result from scientific discoveries.

Has that been altered?

The WITNESS: No, sir, there are no comments from the United Nations on that. The only comment of a government worth quoting is that it has been sug-

gested that the words "without detriment to literary, scientific and artistic or property rights" should be added.

Mr. WHITMAN: Do scientific discoveries include the atomic bomb?

The CHAIRMAN: Article 31 seems to be absent.

Hon. Mr. GOVIN: I think you can forget completely about article 31.

The CHAIRMAN: Mr. Henry tells me they have had some discussion about it. Could you tell us how that stands?

The WITNESS: The situation as to article 31 is that there are two drafts which are yet to be considered. The drafting committee did not reach article 31 and the Commission on Human Rights has not reached article 31. The original draft prepared by the drafting committee, previous to the recent discussions, is before you as the first text on page 47 of document 37; and the second text also on that page was proposed by the sub-commission on the prevention of discrimination, and protection of minorities which went more fully into the question. Now, the comments which have been received raised these points: should the provisions of this article apply only to nationals of the states concerned and not to foreigners; secondly, should the provisions not apply to groups formed by immigration of persons into an existing state? That is something along the lines of the first suggestion.

And the third point, which I think it worth while to draw to your attention is this. Some of these comments may be found on page 47 of document 37—I am merely paraphrasing them. There are some comments which were made by Great Britain upon the whole principle—no, that is not right. There is a third point which I wish to draw to your attention and that is: should not minority rights as such be left out of the declaration and dealt with in the convention on minorities. If all men are to be given equal treatment it is suggested by one government the problem of minorities should disappear entirely.

The CHAIRMAN: This subject-matter is very important and very difficult and very hard to cover by a general principle. I refer to the rights of minorities.

Mr. RINFRET: Is not this contrary to section 133 of the British North America Act? It deals with the use of the French language in the federal departments and in the province of Quebec. We would have to amend our British North America Act if we are to adopt this.

The CHAIRMAN: I do not know which one you are speaking of.

Mr. RINFRET: I am speaking of article 31, generally.

Mr. MICHAUD: Section 133 of the British North America Act does not purport to set out fully the linguistic rights in Canada.

Mr. RINFRET: We would have to amend section 133 of the British North America Act if we want to follow this.

Mr. FULTON: What does section 133 provide?

Mr. RINFRET: It provides that the French language will be an official language in the federal administration and in the province of Quebec and before the federal courts.

Hon. Mr. TURGEON: That the French language shall be official only in those.

Mr. MICHAUD: Shall be official there.

The CHAIRMAN: The language is that:

Either the English or the French language may be used by any person in the debates of the houses of the parliament of Canada and of the houses of the legislature of Quebec; and both those languages shall be used in the respective records and journals of those houses; and either of those languages may be used by any person or in any pleading or

process in or issuing from any court of Canada established under this Act, and in or from all or any of the courts of Quebec.

The Acts of the parliament of Canada and of the legislature of Quebec shall be printed and published in both these languages.

It does not contain any prohibitions; it contains certain guarantees, that is all.

Mr. FULTON: There is nothing inconsistent.

The CHAIRMAN: It would be perfectly legal for the proper legislative authority to provide that those privileges or rights should be extended to other provinces, I should think.

Hon. Mr. GOUIN: In Manitoba, for instance, they had both languages, and then they abolished the French language in the legislature.

The CHAIRMAN: All I can see is that the proper legislative authority is only bound in these cases; but the proper legislative authority is free in all other cases.

Hon. Mr. GOUIN: Mr. Chairman, I think that the first paragraph, which we find on page 19, in my opinion seems to be quite reasonable and it might be just as well, perhaps, if you read it so that everybody could offer comments.

The CHAIRMAN: Perhaps you would read it.

HON. MR. GOUIN:

In states inhabited by a substantial number of persons of a race, language or religion other than those of the majority of the population, persons belonging to such ethnic, linguistic or religious minorities shall have the right, as far as compatible with public order, to establish and maintain schools and cultural or religious institutions, and to use their own language in the press, in public assembly and before the courts and other authorities of the state.

Hon. Mr. TURGEON: Who will determine what is compatible with public order?

The CHAIRMAN: Who will define "substantial"? There may be some very small ethnic, linguistic or religious minorities. In fact there are.

Mr. FULTON: Surely in our courts if a witness cannot speak English he gives evidence in whatever language he speaks and they have an interpreter. There is nothing inconsistent there. There is nothing to prevent a religious, racial or any group in Canada from maintaining their own language newspaper, as far as I know.

The CHAIRMAN: No, but I do not think there is any guarantee that they will always have the right to do so.

Mr. MICHAUD: As far as I know there is no legal text which guarantees either the right of the English speaking people of Quebec to the teaching of their language in their public schools, or the teaching of French in the other schools. I do not believe there is any text of any sort to protect those rights.

The CHAIRMAN: There is a section about religion.

Hon. Mr. GOUIN: I thought there was a section about language for the English speaking minority.

Mr. MICHAUD: It is considered a natural right and respected.

Mr. MARIER: In the school law there are clauses and provisions.

Mr. MICHAUD: There is nothing in the B.N.A. Act.

The CHAIRMAN: The B.N.A. Act refers to the rights of religious groups, not to racial groups in respect to education.

Hon. Mr. TURGEON: The two provinces that had those rights before Confederation.

The CHAIRMAN: Those two preferences in the British North America Act, one to certain language rights and the other to certain religious rights in respect to education, are generally cited as the only two constitutional provisions respecting civil rights of people in the Dominion of Canada. They are the only two constitutional ones I know of. That is correct, is it not?

Mr. HACKETT: That is my understanding.

The CHAIRMAN: There the Dominion of Canada has not complete freedom. Legislative bodies are bound by those.

Mr. MICHAUD: It does not purport to cover the whole field?

The CHAIRMAN: Oh, no, but the rest of it is left to the proper legislative authorities in Canada. In respect to those two matters the British North America Act ties the hands of the dominion or the province as the case may be.

Mr. MICHAUD: And a minimum of guarantees.

The CHAIRMAN: Yes.

Mr. HANSELL: Apart from religion and language does this not cut into the autonomy of the provinces in respect to schools?

The CHAIRMAN: Oh, yes, it would. Let us take article 32 now.

Mr. HANSELL: There is just one other point by way of observation in the matter of having the right to maintain schools and cultural and religious institutions. Does any group of people have a right to organize a school of atheism? I ask the question by way of observation. There is something in the Criminal Code respecting that, is there not?

The CHAIRMAN: I do not think so. There are provisions against blasphemous libels, but they are libels. I do not know of anything that prevents one person from trying to convert another person to atheism.

Mr. HANSELL: I think when you get that far you are departing from freedom and going into license.

Mr. HACKETT: Yes, and then, of course, that assumes again for the person who may not be a Christian, what is truth?

Mr. FULTON: Is atheism a religion? It would not be defined as a religious school, would it?

Mr. HANSELL: It might easily be defined as a cultural school.

Mr. HACKETT: It assumes a definition of truth.

The CHAIRMAN: Is Mr. Hansell asking what would be the case if we adopted this draft?

Mr. HANSELL: I put it in question form but it was an observation.

The CHAIRMAN: You are just asking what the law is now in Canada.

Mr. HANSELL: I added that. I thought there was something in the Criminal Code but you reminded me it was a matter of blasphemy. I cannot help feeling in the back of my mind—perhaps it is intuition more than it is reason; I do not know, and you may say it is visionary or imaginative, if you like—that contrary forces to our way of life and civilization are behind this document. I have started a lot there. If you were to ask me to get up and prove it step by step and step by step of course I could not do it, but the proof may come a hundred or two hundred years from now.

Mr. HACKETT: But civilization would have to be defined and there are many and they are at points contradictory.

Mr. FULTON: Mr. Hansell said our way of life and our civilization.

Mr. HANSELL: What we regard as our Christian Canadian democratic civilization. A few adjectives might help.

The CHAIRMAN: Perhaps we had better pass on to article 32. Has article 32 been altered?

The WITNESS: No, there are no comments.

The CHAIRMAN: There are no comments on this. Would the members of the committee like to make any comments on article 32?

Hon. Mr. GOUIN: It is worth while reading.

All laws in any state shall be in conformity with the purposes and principles of the United Nations as embodied in the charter, in so far as they deal with human rights.

Mr. MARQUIS: So the declaration will be binding. When we began our study of the declaration it was said it was only a declaration of principles. This says that all laws shall be in conformity, so we will have to amend the law.

Mr. MICHAUD: We are imposing a duty on the state there.

Mr. MARQUIS: We will have to amend our laws in order that they may be in conformity with this declaration.

Mr. FULTON: Does this not refer to the charter of the United Nations rather than the charter of any document on human rights?

Hon. Mr. GOUIN: It refers to the charter—

Mr. MARQUIS: In so far as they deal with human rights, and we are dealing with human rights now and this is the declaration. Therefore I feel that if we adopted the declaration we should be morally bound to amend our law in such a way that it will be in accordance with that declaration.

Mr. MICHAUD: I think that statement is correct.

The CHAIRMAN: I think so too.

Hon. Mr. GOUIN: But we can keep that in suspense until we meet to prepare our recommendations. It is one of the most important articles.

Mr. MARQUIS: Perhaps the committee will not be of the opinion that it should adopt the declaration. I will not presume what the decision will be.

The CHAIRMAN: Mr. Henry points out that a moral obligation would exist whether or not this article were here.

Mr. MARQUIS: Yes. It may be interpreted in a very broad sense according to our mentality, but if we adopt the articles as they are stated and if we amend the law in conformity with those articles it will go very far.

Hon. Mr. GOUIN: In Canada we have a distinction between our dominion parliament and our various legislatures, and even if we want to act in accordance with it we cannot.

Mr. MARQUIS: Anybody will have the right to rise in the House of Commons and move an amendment to such and such a statute in order that it may be in conformity with this declaration.

The CHAIRMAN: Undoubtedly.

Mr. MARQUIS: If we have adopted these principles I do not know what we will do.

The CHAIRMAN: Undoubtedly. That is the very purpose of the declaration, that these principles will be quoted as reasons for passing laws or repealing laws or amending laws.

Mr. MARQUIS: It would be better to give many more days to private members at that time.

Mr. HACKETT: I think it was stated in the press one of the determining factors in the recent election in South Africa was the adherence of the government to principles which included statements not unlike these.

The CHAIRMAN: Yes. I do not know if that is correct or not.

Mr. HACKETT: I do not either.

The CHAIRMAN: But I suspect it was correct.

Hon. Mr. GOUIN: I think we might go on to article 33 which reads as follows:

Nothing in this declaration shall be considered to recognize the right of any state or person to engage in any activity aimed at the destruction of any of the rights and freedoms prescribed herein.

Have we any comments on that, Mr. Henry?

The WITNESS: There are no comments from the United Nations but there have been two comments which governments have made which I think are worth while drawing to the attention of the committee. First of all it has been said that possibly the declaration should be stated in its text not to be exhaustive but merely to be exemplary. Secondly a possibly quite valid objection has been taken by the United Kingdom to having an article of this type applicable to the whole declaration. As an example it is stated that perhaps it might be desired to limit freedom of expression, freedom of association, to matters which did not have as their object the destruction of the fundamental rights and freedoms which the declaration is attempting to encourage, but if that is the object then a provision should be placed in these articles because if it is made applicable to the declaration as a whole there is a possibility that it might provide encouragement to invade such rights as the right to a fair trial and the others that are found in sections 5 to 9 of the present declaration. That is merely a comment that has been made. Whether or not it strikes members of the committee as having much force I do not know.

By Hon. Mr. Turgeon:

Q. Are all the five great powers members of this commission on human rights?—A. Yes, they are, sir.

Q. Have all five of them made comments on these various articles?

Hon. Mr. GOUIN: Not on the last one.

By Hon. Mr. Turgeon:

Q. On the various articles?—A. In one way or another they have. Some have not made comments but have produced a redraft of the article. Others have produced comments such as ours found in document 37, but I think I am right in saying they have all taken some part in attempting to solve the difficulties of this draft.

By Mr. Hackett:

Q. By restatement?—A. Either by restatement or by comment or by both.

Q. Or by elimination?—A. Or by elimination.

By Hon. Mr. Gowin:

Q. Was there any formal comment received from the U.S.S.R.?—A. I do not think they have made a submission in writing, but their delegate is on the drafting committee and is also a member of the Human Rights commission, and he has made a great number of comments.

By Hon. Mr. Turgeon:

Q. Have you a memorandum of those comments that were not made in writing?

The CHAIRMAN: You will remember what is on page 21 in the middle of the first column.

The representative of the Union of Soviet Socialist Republics felt that the draft declaration on human rights, as prepared by the commission is not sufficient for the protection of the essential human rights. Consequently, he reserved his right to present, at a later state of the work, a Soviet draft declaration on human rights.

That is on page 21, paragraph 9.

Hon. Mr. GOUIN: At an earlier meeting of the committee I said that personally I would be exceedingly anxious to be made acquainted with any such submission if it were made by the U.S.S.R.

By the Chairman:

Q. It has not been received?—A. No, sir. We have not a comprehensive submission but the Soviet representative made a fairly lengthy address at the opening of the Human Rights commission in which he criticized the draft which had been prepared by the drafting committee. I could give you a short summary of that if you desire it.

Hon. Mr. GOUIN: I think it would be interesting to have it either now, or to have it in writing, if you prefer.

The CHAIRMAN: Now, I expect that the committee, if it makes a recommendation in respect to this declaration of human rights, will likely suggest that this declaration be greatly shortened and simplified; and leaving out reference to duties of the state and so on. That is what I gather from the discussion that has taken place here, and I think it might be helpful if Mr. Henry put on the record now a declaration of human rights which has received much praise; and that is the one which is submitted by the Chinese.

The WITNESS: That is document No. 43, sir.

Hon. Mr. GOUIN: It is very short, it is just one page.

The CHAIRMAN: I think it had better be read; it is very short. I feel it more nearly meets the sentiments of this committee than the one we have been discussing.

The WITNESS: It is a draft which was submitted by the Chinese delegation and it reads as follows:

Article I

Every person has the right to life.

Article II

Every person has the right to freedom of conscience and belief, to freedom of assembly and of association, and to freedom of information, speech and expression.

Article III

Every person has the right to a decent living; to work and leisure, to health, education, economic and social security.

Article IV

Every person has the right to take part in the affairs of his government directly or through his representatives.

Article V

Every person has the right to equal protection under law.

Article VI

Every person has the right to seek asylum from persecution.

Article VII

No person shall be subjected to unreasonable interference with his privacy, family, home, correspondence or reputation.

Article VIII

No person shall be subjected to arbitrary arrest or detention.

Article IX

No person shall be held in slavery or involuntary servitude or be subjected to torture or to cruel or inhuman punishment or indignity.

Article X

Every person is entitled to the human rights and fundamental freedoms set forth in this declaration without distinction as to race, sex, language or religion. The exercise of these rights requires recognition of the rights of the others and the just requirements of the community in which he resides.

Mr. MARQUIS: That is better than the other one.

The CHAIRMAN: That is a remarkable declaration, the more you think of it.

Hon. Mr. GOUIN: Yes, and it gives both the substance and the essential principles, yet it sticks to natural rights.

Hon. Mr. TURGEON: And that is by the Chinese in Canada?

Hon. Mr. GOUIN: Oh, no, no, the Chinese government.

The CHAIRMAN: Would you like to hear what the Soviet Union said about the declaration?

Hon. Mr. GOUIN: I think it would be important to have it.

The CHAIRMAN: Let us see what the Soviet Union said about the declaration.

The WITNESS: The Soviet representation is from Mr. Pavlov, who was a member of the drafting committee which prepared the revision of the draft which is now before the committee; and when the draft in this revision was sent a week or two ago from the drafting committee to the Human Rights Commission of the United Nations, these general comments as taken from a United Nations' press release were made: It was the view of the Soviet delegation that the declaration should contain three basic requirements:

1. It should guarantee respect for human rights and fundamental freedoms for all without distinction as to race, nationality, class, religion, language or sex, in accordance with the principle of democracy, state sovereignty and the political independence of states.
2. The declaration should not only proclaim rights but guarantee their realization, regard being had to the peculiarities of each country.
3. The declaration must not only define the rights, but also the obligations of citizens towards their country, their people and their state.

The declaration, he said, should not be purely a pious statement of rights as some delegates have proposed.

The U.K. delegate, Mr. Pavlov continued, had proposed that the realization of these rights should be promoted through teaching and education. This program, he said, should not be limited to youths and students.

To illustrate the range of rights to be laid down in the declaration according to the view of the Soviet Union, Mr. Pavlov said that, for example, as far as the right to property was concerned, protection should be sought for both private

and individual property as well as for group or state property in the socialist co-operative sense. He suggested that the commission might either limit itself to use the term "right to property" in a general sense, leaving its interpretation to sovereign states according to their national economic systems or else, if the commission decided to specify the concept of property, it should list not only the right to "private" property but also the rights to property as understood and exercised under different economic systems.

On the right to work, Mr. Pavlov said, that his delegation views this provision as one which will guarantee the elimination of economic crisis and unemployment and lead to the growth of production. The rising generation in the Soviet Union, he said, does not know what unemployment means.

He said it would be impossible for him to demand of the United States that unemployment there be eliminated since the system in the United States would not permit that.

As a step towards solution of the problem of unemployment, Mr. Pavlov asked for the inclusion of concrete measures for its elimination.

Another point which Mr. Pavlov has made fairly consistently throughout the discussion is that the declaration should provide for the prohibition of Fascism. He said that in his view the concept of Fascism required no more legal definition than that of democracy, and he pointed to the frequent use of the word "democratic" in the draft.

He said, that his delegation believed that the basic shortcomings of both the draft declaration and the draft covenant of human rights lay in their lack of any condemnation of Fascism.

Hon. Mr. TURGEON: Lay in what?

The WITNESS: Lay in their lack of any condemnation of Fascism.

With respect to racial discrimination, Mr. Pavlov said that he considered the present provisions were too weak and open for arbitrary interpretation; and that the Soviet delegation believed that the bill of human rights should expressly condemn all incitement to and propaganda for discrimination.

Discussing the status of negroes in the United States, Indians in South Africa and other racial minorities, Mr. Pavlov cited a number of examples of what he described as flagrant discrimination. In the Soviet Union, he said, such acts of discrimination were punishable by law.

With respect to the right to education, Mr. Pavlov said, its implementation was guaranteed in the Soviet Union. In the United States, on the other hand, he said, there were millions of Americans who were either illiterate or had received so poor an education that they became easy victims to propaganda.

With respect to the work as a whole carried out by the drafting committee, Mr. Pavlov said that very little improvement had been made on the Geneva text. That is the one which is just before you.

Hon. Mr. GOUIN: Document No. 18.

The WITNESS: He said that in some cases the committee had actually moved backwards.

He then drew attention to a number of Soviet proposals which had been rejected by the drafting committee and he contended that the Committee had, in fact, done nothing but add limitations to the rights proclaimed by the commission at its previous session.

That concludes the material which I have given as the basis or substance of Mr. Pavlov's remarks.

(The committee went into executive session.)

The committee resumed at 8.30 p.m.

The CHAIRMAN: The question has been raised as to whether we are still continuing the examination of the international declaration on human rights. My understanding of the situation is that we have concluded that apart from what we may wish to say later in any recommendation that is made by the committee, and that we are now about to consider the representations that have been made to the committee with respect to a bill of rights for Canada.

Hon. Mr. TURGEON: That is what I understood this afternoon before I left. I had to leave before you were finished.

The CHAIRMAN: At a later date we will have to consider what the committee feels it can say with respect to the International Declaration on Human Rights, but it was understood some weeks ago that we would merely get the comments of the committee and then pass on to another part of the inquiry without undertaking to pass any sections, amend any sections or take any action in respect of language. If that is satisfactory I suggest we go on tonight by placing before the committee these representations that have been made.

(The committee went into executive session.)

SESSION 1947-1948



SPECIAL JOINT COMMITTEE OF THE SENATE
AND THE HOUSE OF COMMONS

ON

HUMAN RIGHTS

AND

FUNDAMENTAL FREEDOMS

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 9

TUESDAY, JUNE 15, 1948

WITNESSES:

Mr. F. P. Varcoe, Deputy Minister, Department of Justice, Ottawa;

Mr. D. H. W. Henry, Counsel, Department of Justice, Ottawa.

OTTAWA
EDMOND CLOUTIER, C.M.G., B.A., L.Ph.,
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY

1948

MINUTES OF PROCEEDINGS

TUESDAY, 15th June, 1948.

The Special Joint Committee on Human Rights and Fundamental Freedoms met at 4.00 o'clock p.m. The Joint Chairmen Right Honourable J. L. Ilsley and Honourable Senator L. M. Gouin were present. Mr. Ilsley presided.

Also present:

The Senate: Honourable Senators Bouffard, Fallis, Horner, Leger, Turgeon, Wilson.

The House of Commons: Messrs. Beaudoin, Cournoyer, Croll, Diefenbaker, Hackett, Hansell, Marier, Marquis, Robinson (*Simcoe East*), Whitman.

In attendance: Mr. F. P. Varcoe, Deputy Minister and Mr. D. H. W. Henry, Counsel, Department of Justice, Ottawa.

The Chairman filed copies of replies received from some attorneys-general of provinces and deans of Canadian law schools in reply to the question submitted by the 1947 Special Joint Committee on Human Rights and Fundamental Freedoms, namely—" . . . power of the Parliament of Canada to enact a comprehensive bill of rights applicable to all of Canada". (Circulated to members as Committee document No. 25).

The Chairman presented the following as a Third Report of the Steering Committee:

It is recommended:

1. That the Committee conclude the reading of briefs received from interested organizations.

2. That an officer of the Department of Justice be called to comment upon a bill of rights:

- (a) enacted by federal statute;
- (b) enacted as an amendment to the B.N.A. Act.

And in particular to comment with respect to its effect upon dominion and provincial legislation now existing or to be reasonably anticipated.

3. That the Committee then take up the drafting of a final report and consider recommendations to be included therein.

On motion of Honourable Mr. Turgeon, the said report was concurred in.

The Committee resumed the consideration of written representations received from groups and organizations which had expressed a desire to place their views before the Committee:

The following which are not printed in the evidence, were read to the Committee:

- (a) A brief from organizations representing the Chinese people of Canada;
- (b) A brief presented by the Canadian Daily Newspapers Association.

Mr. Henry was called and questioned in respect of recommendations made in the written representations reviewed by the Committee.

Mr. Varcoe was called. He made a statement commenting on the effects of a bill of rights in regard to dominion and provincial legislation and was questioned.

The witnesses were retired.

The Committee adjourned at 5.25 p.m. to meet again at 4.00 o'clock p.m. Wednesday, 16th June.

J. G. DUBROY,
Clerk of the Committee.

MINUTES OF EVIDENCE

HOUSE OF COMMONS,
June 15, 1948.

The Special Joint Committee on Human Rights and Fundamental Freedoms met this day at 4.00 p.m. Hon. Mr. J. L. Ilsley (Joint Chairman) presided.

The CHAIRMAN: The committee will please come to order. The clerk of the committee suggests that we acknowledge the receipt of these letters from the attorneys-general and the deans of law schools and so on. They are contained in committee document No. 25 which is a copy of the correspondence.

Now, the steering committee met this morning and decided to report to the committee as follows:

Your Steering Committee presents the following as its

THIRD REPORT

It is recommended:

1. That the Committee conclude the reading of briefs received from interested organizations.

2. That an officer of the Department of Justice be called to comment upon a bill of rights;

(a) Enacted by federal statute;

(b) Enacted as an amendment to the B.N.A. Act.

And in particular to comment with respect to its effect upon dominion and provincial legislation now existing or to be reasonably anticipated.

3. That the Committee then take up the drafting of a final report and consider recommendations to be included therein.

I may say in presenting that report that the main matter we considered was as to whether after these briefs are read the persons who submitted them should be sent for and asked to come and give oral evidence. Now, there is not very much time; and we came to the conclusion that the first thing to do, after these briefs were before the committee, was to have the officers of the Department of Justice give some evidence as to the implications of accepting the suggestions that were placed before the committee. Does anybody move the adoption of the report of the steering committee?

Hon. Mr. TURGEON: I so move, Mr. Chairman.

Mr. DIEFENBAKER: Mr. Chairman, there is one matter I should like to bring to the attention of the committee. Somebody phoned me up a little while ago and said that Mr. How had a submission to make, but it was not quite ready and would be filed on Friday. Subject to him being able to file it—I do not know what it is—

The CHAIRMAN: I have a pretty good idea what it is. There has been some correspondence about it. If it were before us now we would treat it as the other briefs or submissions are being treated; it would be read to the committee. If he does not get it in until Friday, perhaps we will not be able to read it; we will simply circulate it among the members of the committee.

Mr. DIEFENBAKER: I think it appears in the Canadian Bar Review.

The CHAIRMAN: I thought it would be exactly that article which appeared in the Canadian Bar Review. However, it may be something else.

Mr. DIEFENBAKER: Mr. Friedman wished to have an opportunity of filing it.

The CHAIRMAN: Yes, he will have that opportunity.

It has been moved that the report of the steering committee be adopted.
Carried.

(The committee went into executive session to hear the reading of briefs.)

The CHAIRMAN: If the report of the steering committee is followed we will now ask some representative of the Department of Justice to give the committee an idea of the implications of the passing of a federal statute to give effect to some of these representations, that is, the enactment of a bill of rights by federal statute rather than by constitutional amendment. Perhaps I should first ask Mr. Henry, who is here, if it is true that all the briefs and submissions to the committee that have been presented and read request a constitutional amendment rather than a federal statute? Is that correct?

Mr. HENRY: That is correct, sir.

The CHAIRMAN: What about the one from the civil rights union?

Mr. HENRY: That does not in so many words request a constitutional amendment, but the implication of pages 10 and 11 is that it would be by constitutional amendment. On page 11 the following words appear:—

The question is whether the Canadian people need and want a bill of rights. If they do then the next step is to see what constitutional changes would be needed in order to bring it into operation.

The CHAIRMAN: Yes. The submission of the committee for a bill of rights expressly asks for a constitutional amendment, does it not?

Mr. HENRY: That is right, and submits a suggested draft bill.

The CHAIRMAN: The submission of the Canadian Jewish Congress asks for what?

Mr. HENRY: That is concerned mainly with the international bill of rights which we studied previously.

The CHAIRMAN: Does it request anything in the way of a Canadian bill of rights?

Mr. HENRY: Apparently not; they confine themselves to comments on the international declaration.

The CHAIRMAN: The submission of the organizations representing the Chinese people of Canada asks for what, a constitutional amendment?

Mr. HENRY: What they mainly desire is the repeal of certain existing measures.

Mr. MARQUIS: They refer to employment.

Mr. HENRY: Perhaps their most general submission appears on page 9 of the brief. It reads:—

We therefore invite you to recommend that parliament establish as a right (1) that every person shall enjoy the right to buy or rent property without discrimination because of race; (2) that every person shall enjoy the right to obtain accommodation in a hotel or gain admission to a theatre or use the facilities of any public place without discrimination as to race.

Apart from that general comment I think the intention is to deal with specific existing measures.

The CHAIRMAN: In so far as they ask for any general enactment it is an enactment by the parliament of Canada?

Mr. HENRY: That is the suggestion on page 9, that parliament establish certain rights.

Mr. MARQUIS: As far as the parliament of Canada has jurisdiction.

The CHAIRMAN: Yes; they do not say anything about jurisdiction.

Mr. MARQUIS: They do not distinguish.

The CHAIRMAN: That is the submission of the organizations representing the Chinese people. The submission of the Canadian Daily Newspaper Association requests a constitutional amendment, does it not?

Mr. HENRY: That is right.

The CHAIRMAN: Rather than a federal statute, and we have not yet received the submission of the representatives of the Witnesses of Jehovah?

Mr. HENRY: We have merely an article which they forwarded and they have asked that a further submission be circulated when they have had an opportunity to print it.

The CHAIRMAN: I recall they forwarded us merely a statement of the law in the United States and a defence of the bill of rights in the United States, or the principles of the bill of rights in the United States?

Mr. HENRY: That is correct, sir.

The CHAIRMAN: When we come to consider our recommendations the steering committee thought the first question that should be considered would likely be how much consideration should be given to this proposal for the enactment of a federal statute which could be called a bill of rights. That suggestion was made in the House of Commons and indeed the amendment to the resolution which was accepted in the House of Commons appears to be based upon the possibility that the enactment of a federal statute will be given consideration because that amendment suggests that the prospective terms of that statute be referred to the Supreme Court of Canada for an opinion as to jurisdiction. I will read the amendment. The amendment was:

That the committee shall have power to recommend (a) that there be referred to the Supreme Court of Canada such questions as in the opinion of the committee are necessary to determine to what extent the preservation of the fundamental freedoms of religion, speech, press and assembly, and the maintenance of the constitutional safeguards of the individual, are matters of federal jurisdiction; or (b) that there be referred to the Supreme Court of Canada a draft bill of rights, containing such provisions as in the opinion of the committee should be included therein, to determine whether or not it is within the powers of the federal parliament to enact such a bill of rights for the Canadian people.

It was the view of the steering committee that before we address ourselves to that question as to whether consideration should be given to the enactment of a federal statute we should get some further information as to the possible consequences of such a step on the legislation of the provinces and of the dominion. For that reason they recommended that an officer of the Department of Justice be called to comment upon a bill of rights enacted by federal statute. Mr. Varcoe, the Deputy Minister of Justice, is here. I should like to ask him to make as clear as possible what the situation would be that would arise if a bill of rights were enacted by the parliament of Canada.

F. P. VARCOE, Deputy Minister of Justice, called.

The WITNESS: I will try to do so, but it is quite a task to undertake to discuss what the implications, effects, and so forth, are of a statute that has not taken form yet, and we do not know what it contains. I thought that such a statute might take a form something like the following. If parliament were to undertake such a thing I should think that parliament would first of all consider something like this. I have scribbled this out rather hurriedly.

(1) It is an offence, punishable as hereinafter provided for any person wilfully to do any act which has the effect of obstructing or preventing

- (a) the free exercise of religious worship by any person,
- (b) the peaceable assembly of any persons,
- (c) the printing or distribution by any person of a newspaper, magazine or other such publication,
- (d) any person from lawfully communicating by speech or writing with any other person.

Then it goes on:

(2) An offence against this section is punishable on summary conviction or on the election of the attorney-general on indictment by fine or imprisonment, and so forth.

If such a statute as that were passed the only justification constitutionally for it would be criminal law, I should think.

I want to discuss now for a few minutes the implications, as the chairman puts it, of such a bill as that. Before considering it I should like to remind the committee that under our system every person in the country is free to do anything that he wishes to do subject only to such restrictions as the law imposes on him. That being the case a bill of this kind must be directed against things that would be otherwise lawful for persons to do. Therefore the statutes which would authorize things which this statute would now attempt to avoid would be either dominion statutes or provincial statutes. If they were dominion statutes there would be no need to have such a thing as this because if there is such a dominion statute which imposes undue restrictions on freedom of the inhabitants that statute could be repealed or amended.

If on the other hand this bill was directed towards provincial legislation you immediately have a conflict with the provinces. The accusation would be that parliament was attempting to regulate the affairs of the provinces. As I see it that would be the situation. Those are the implications that I see in this sort of scheme. I do not know whether I have made that quite clear, but if you had a statute of this kind enacted by parliament I repeat it would be directed against things that were otherwise lawful, and the lawfulness of those things would depend upon either dominion or provincial statutes. If the lawful act you are trying now to make unlawful was the result of a dominion statute it seems to me the proper course to follow would be to amend or repeal the dominion statute. If on the other hand the lawfulness you are trying to make unlawful results from a provincial statute then you are clearly enacting a law that would be in prospective conflict with provincial legislation. Is that clear?

By the Chairman:

Q. Yes, but let me ask you a few questions about that. What would the effect of passing such a federal statute be on future dominion legislation?—A. I should have mentioned that. Of course, it would have no effect on future dominion legislation because parliament is a sovereign legislature and cannot be restricted by itself. That is, it can always repeal or amend its own legislation, so that if such a statute as this were enacted it could be repealed at the next session of parliament.

Q. And it would effect no constitutional safeguard against future Acts of the dominion parliament?—A. No, that is correct.

Q. And what effect would it have on future provincial legislation?—A. Well, it would operate against future provincial legislation if it was repugnant to the provincial legislation. You would be restricting the provinces indefinitely.

Q. You would only be restricting the provinces if this statute had constitutional effect?—A. Oh, quite, yes. Certainly I am assuming such a bill as

this would be tested out very early in its life to determine whether it was or was not a valid exercise of the powers of parliament, but as I say if it is valid it would be valid because of it being criminal law. } 2

By Hon. Mr. Turgeon:

Q. Suppose a law of that nature were passed by the federal parliament; ordinarily would the court test come when provinces which had provincial statutes clashing with this would bring it to the courts, or would action under the provincial law and the breach of the federal law bring about the test in court?—A. I should think a breach of this statute would bring about the test.

Q. Under the justification of the provincial statute would bring about the test?—A. Yes.

Mr. MARQUIS: It seems to me in Canada there is pretty wide freedom and perhaps a bill of this kind seems to try to impose some restrictions on the population rather than to enlarge the freedom of the population. As Mr. Varcoe said a few minutes ago every citizen is free in the country. Naturally when we have to study an international declaration of human rights, those who had to study that declaration contemplated that in the world at large. There are many countries where there is not much freedom, but here in Canada everybody has the right to act and to do what he thinks fit to do. The only restrictions we have have been passed by parliaments and the legislatures of the provinces. The people represented by their members in the House of Commons or in the provincial legislatures have felt that it was proper to adopt these laws and these regulations.

If we adopt a bill as general as this may be I do not know where we would wind up in view of the matter of provincial jurisdiction, where civil rights are under the jurisdiction of the provinces in nearly all cases.

The CHAIRMAN: It is quite obvious if we attempted to enact a federal statute such as the draft statute which Mr. Varcoe submitted for purposes of discussion we would at once have on our hands a conflict with the provinces. We know that because we have the views of some of the attorneys general. We have the views of deans of law schools which deny expressly our right to enact a comprehensive bill of rights by federal statute. We know that to begin with. } 3

It may be that the extent of federal powers is uncertain, and that litigation could go on. Perhaps it would not be settled in one case. It might be settled in a series of cases. We do not know what would stand and what would not, but after we are all done we have no constitutional safeguard so far as future acts of the dominion parliament are concerned.

Mr. MARQUIS: Yes, and if we adopt such a law it might be changed every year. If it were an amendment to the constitution it would remain the same. It would be done in conference with the provinces, and all the parliaments would be represented. I do not know what would be the use of adopting a law which would increase certain conflicts which may be in existence. I think such a law should arise through evolution when the people of every province are ready to adopt the same views. It is a natural process, but if this procedure were followed it would be rather a technical trial of a new scheme, and I feel there is some resentment in that direction right now.

The CHAIRMAN: Are there any other members of the committee who would like to express any views?

By Hon. Mr. Leger:

Q. If you made it a general law subject to the approval of the provinces it would seem then you would certainly have jurisdiction?—A. You mean parliament and the provinces should concurrently pass the same law?

Q. Exactly.—A. Well, that would be all right until there was some conflict with that general law that I am now imagining. It is purely imaginary.

Q. It would be all right until a province objected.—A. Until a province passed some statute that interfered with one of these freedoms.

Mr. MARIER: Even the federal government can pass a new statute to restrict certain liberties which already exist at the present time for certain reasons which we cannot foresee for the time being.

The CHAIRMAN: Legislation passed by a provincial parliament would no more bind future legislatures than legislation passed by the dominion parliament would bind future parliaments.

Hon. Mr. LEGER: Exactly.

The CHAIRMAN: There would be no constitutional safeguard there. The reason I am bringing this up is because I have come to a conclusion, and I do not mind announcing my conclusion. I am not doing so as a member of the government or because I am retiring from the government, but I am stating as a member of the committee that I do not feel that the government of Canada should be asked by this committee to give consideration, certainly not favourable consideration, to the enactment of a bill of rights by federal statute. That is the conclusion I have come to, and that is the view I am going to express in this committee. I am going to submit the view that any consideration that we suggest should be a consideration of the other suggestion that has been made by all except one of those who have made submissions, and that is a constitutional amendment. I expressed these views to the steering committee this morning, and that is the reason the steering committee thought we should have advice from the Department of Justice upon a bill of rights enacted by federal statute first, and secondly enacted by an amendment to the British North America Act which would, of course, affect the constitutional safeguards all right but might have most debatable consequences otherwise. I am suggesting that this committee might just as well talk about that other branch of the submissions rather than this one because I think the case against this one is very, very strong.

Mr. MARQUIS: Such an amendment could not be made without having a conference of the provinces in order to discuss points which may be under the jurisdiction of the provinces.

The CHAIRMAN: The enactment of such a federal statute?

Mr. MARQUIS: No, an amendment to the constitution.

The CHAIRMAN: An amendment of the constitution should not be entertained at all without consultation with the provinces, I think everybody would agree with that.

Mr. MARQUIS: I think it might be preferable to have the provinces and the federal government agree on certain points than to have a disagreement on a federal statute adopted *ex parte* by the federal government.

The CHAIRMAN: I agree with what you say.

Mr. HANSELL: I do not quite see how you can pass a federal bill of rights that would be workable unless the provinces surrendered some of their rights.

The CHAIRMAN: No.

Mr. HANSELL: It is not a matter of co-operating with the provinces and saying "If you pass this legislation then we can pass a bill that is workable", for the reason that five years hence the provinces may want to reverse their decision.

The CHAIRMAN: I will be glad to hear any further views or comments on the proposal that a bill of rights be enacted as a federal statute.

Mr. HANSELL: There is another phase of the matter I would like to ask Mr. Varcoe about because he has a clever legal mind, and this subject has bothered me considerably in this whole matter. It is a little difficult for me to

make myself clear, but would Mr. Varcoe care to express his opinion on this: how is it possible to legislate in order to give freedom to citizens? I can understand how you could legislate to restrict freedom, and I can understand how you could legislate to give to citizens something of material value. You might even legislate to give citizens the national dividend which you might say would give them a certain economic freedom. But here we are all free people. Now, how can you legislate to give that freedom?

The WITNESS: By making it an offence for any person to interfere with that freedom.

Mr. MARQUIS: To present some restrictions.

Mr. HANSELL: I think that is a good answer; but the very principle of that answer is that we are restricting the freedom of someone else.

The WITNESS: I suppose it can be said that every duty corresponds to a right; that is, everyone has a right on one side and a duty on the other. I heard a clergyman say the other day that the first bill of rights was the Ten Commandments; they command people to do certain things and prohibit people from doing certain things, and each one of those commands involves a right on the part of somebody else.

Hon. Mr. GOUIN: In other words, "Thou shalt not steal" creates the right of property.

Mr. HANSELL: I can understand that. Does it not in principle go this far, that a man is free just so long as his freedom does not interfere with the freedom of others? Would not that be the case?

The WITNESS: That is a good theoretical statement of our system, I should think.

Mr. MARQUIS: A man is free to enjoy his liberty as long as he does not deprive his brother of enjoying the same thing.

Mr. MARIER: I wish to ask a question with regard to the proposed bill you have submitted—

The WITNESS: I am not proposing it.

Mr. MARIER: No, I know; you propose it will be an offence to do certain things to prevent these liberties which we are supposed to enjoy, but you cannot put them in general terms; you will have to put in some restrictions in some of these cases because you will have to refer to the existing statutes which already prevent the exercise of certain liberties.

The WITNESS: Some limitation will have to be placed upon that. Actually I had the limitation with me here but I did not bother about reading it.

Mr. MARIER: For the liberty of the press you will have to have some restrictions on the one hand because there is already the existing law.

The WITNESS: This taken by itself would produce absolute liberty and perhaps absolute anarchy.

Mr. MARIER: It means that at the end, instead of giving more liberties you are restricting some of the liberties which you were exercising in the past, because there is no statute to determine we had the liberty of human rights.

The WITNESS: This is a very imperfect scheme.

Hon. Mr. LEGER: What was your proviso?

The WITNESS: The proviso was: "Provided that it shall be a defence to any charge hereunder for the accused to establish that the act complained of was lawfully done in the exercise of a right or the performance of a duty pursuant to a valid law in that behalf."

I came to the conclusion that more or less nullified the whole of what went before.

Hon. Mr. LEGER: It would be for the courts to decide—

The WITNESS: I came to the conclusion, as Mr. Marier suggests, that rather than have a general protective or excluding clause like that you would have to take them one by one, seriatim, and name them: the Criminal Code; the various statutes. It would be quite a task to do that.

The CHAIRMAN: Is there any further discussion on the suggestion which has been made that we enact a bill of rights as a federal statute? If there are any further questions we will consider them later when we write our report. I have told the committee what my view is, and it is not favourable.

Mr. MARIER: It is mine also. We have no power to ensure a bill of rights, because we would be conflicting with the provinces.

The CHAIRMAN: Can we pass on to the plan suggested by the committee for a bill of rights? It is that there be a constitutional amendment, and to make this specific can we discuss the bill of rights that they themselves suggested for insertion in the British North America Act and get some evidence as to the implications of that course of procedure? Would you be prepared to go on with that, Mr. Varcoe?

The WITNESS: I have not studied that. I do not think I would be of any assistance to the committee to-day.

Mr. MARQUIS: I do not know that we should discuss the proposed bill. Perhaps it would be better to have consultation with the provinces to resolve if the provinces are ready, in turn, for a discussion of that kind. Actually it would be impossible to debate or to comment on a bill of rights of that kind without knowing the opinion of the different provinces on that subject.

The CHAIRMAN: Mr. Marquis, what is the use of instituting consultations with the provinces until we make up our minds whether we think anything of this kind would be desirable even if they did consent?

Now, there has been a good deal of talk about a bill of rights in this country, and we are told that a petition was signed by 500,000 people. The petition set out in the beginning of this document and was signed by very eminent Canadians all over the country. A smaller committee seems to be composed of men who have given this matter a great deal of thought; highly intelligent persons who have done a great deal of work on preparation and have evolved a short, simple bill of rights for incorporation into the British North America Act, and it comes before this committee, and they make their submission. They offered to come and give evidence orally. We feel that probably there will not be time for that; but let us see what that leads us into even if the provinces were all agreeable to it going into the British North America Act. Is not that sensible?

Mr. MARQUIS: What I had in mind was that this bill as drafted should be referred to the provinces for their answer. I understand your point of view that we should first discuss it in the committee in order to get an opinion and to give an opinion, and they will give their own opinion afterwards.

The CHAIRMAN: Yes.

Mr. MARQUIS: I am in entire agreement with you on that point.

The CHAIRMAN: It is half-past five now and we are not prepared to go on with this, and I suggest that in a few moments we adjourn. To me this is very interesting. I will suggest to the committee the kind of questions I would like to have answered, and they are these:—

If this suggested bill of rights were incorporated into the British North America Act, could we have a War Measures Act? Does this bill of rights make it illegal for any legislative body in Canada to subject any person in Canada to arbitrary arrest or detention? Persons may be subjected to arbitrary arrest and detention under the War Measures Act.

Does it make it impossible for us to meet an emergency? Is it necessary to make an exception in favour of an emergency?

Have the exceptions been omitted designedly or are exceptions unnecessary?

It becomes unconstitutional if this is adopted to abridge freedom of speech or of expression or of the press.

Now, under what exceptions, express or implied, can we pass a law against criminal libel? Last night I was debating in the House of Commons as to whether we should amend the section in the Criminal Code preventing the distribution of crime comics. Supposing that parliament next year decides to prevent distribution of crime comics, can the person who distributes them, upon being prosecuted, plead the British North America Act once it is put in that the freedom of the press exists; or is there some implied exception in respect of the Criminal Code? If so, under what does it arise? There seems to be some exception in the United States of America. Is it peculiar to the American constitution, or is it inherent in the British constitution? The problem would never arise in England because parliament is supreme in Great Britain, and parliament ceases to be supreme in Canada the moment this goes into the British North America Act and any breach of these provisions become defences in the courts when existing laws are sought to be enforced.

What are the consequences in as far as dominion laws are concerned? What are the consequences in as far as provincial laws are concerned? What are the consequences in as far as reasonably to be anticipated federal laws and provincial laws are concerned?

Those are all questions that must be answered if we are to deal responsibly with this proposal.

Hon. Mr. HORNER: I thought it would be interesting to have some of these prominent people come before the committee and for you to put those questions to them personally to see what their reaction would be.

The CHAIRMAN: They may have an excellent answer to these questions; but I think the first thing to do is to see what the answer of the Department of Justice is to some of those questions. There may be a good answer.

Mr. MARQUIS: I think the Deputy Minister of Justice could make some valuable comments on the interpretation of those sections and the implications which may derive from the sections as indicated. I understand that some other witnesses may come and give their own opinion, but as to the application of the sections it is a matter of interpretation before a court or a judge. He is obliged to decide, according to the law, and we have the law before us and I think Mr. Varcoe is the right man to give an interpretation and make comments when we have examined these sections.

The CHAIRMAN: I would like to ask, and probably will ask tomorrow, what are the consequences of preventing the suspension of habeas corpus? The British parliament has been suspending habeas corpus in emergencies for hundreds and hundreds of years. If this goes into our constitution it becomes impossible for habeas corpus to be suspended in Canada either by the provinces or the dominion. What are the consequences of these steps? I want to get the answers.

What are the consequences of the provision that everyone has a right to be represented by counsel? Persons have a right to be represented by counsel in our courts at the present time; not the constitutional right, but established right; but they do not have the right to be represented by counsel everywhere. They do not have the right when they go to see a minister, nor have they had for the last twenty or thirty years when they appeared before a conciliation board had that right. Once this goes in is it impossible to regulate the attendance of counsel, or can a man taking a case before anybody always have a lawyer along and insist on his lawyer going with him?

Hon. Mr. HORNER: Lawyers should not object.

Mr. MARQUIS: Some associations ask not to be represented by counsel sometimes. You see, it has been used in another way before some boards in Quebec. I remember that some associations asked not to have any counsel with them.

Hon. Mr. GOUIN: I think your points, Mr. Chairman, were remarkably well taken, because this contemplated bill of rights would to a very large degree abolish the sovereignty of a parliament here in Canada. It would be almost a radical departure from the British system of the sovereignty of parliament in cases of emergency, as you pointed out very clearly. I am of opinion that the constitutionality of Acts or of orders in council would be attacked, and probably those Acts and orders in council would be declared unconstitutional, because there is no implied exception such as I can see in the text which we are discussing. The parliament of Canada and the legislatures would give back in a certain sense a very large percentum of their sovereignty. In other words, under the pretence of protecting the rights of individuals our own country would be going not forward but backward; the statute of Westminster, in other words, would be practically repealed. The dominion of Canada would cease to be, in my opinion, a sovereign and independent nation within the British commonwealth.

The CHAIRMAN: At any rate, I should like to have an answer to my questions or see whether there is an answer.

Hon. Mr. GOUIN: Certainly that is a vital question.

Mr. MARQUIS: There is another principle: the people have the liberty to pass laws through their duly elected representatives, people who are duly elected at an election, and with this they would be deprived of the right of changing the laws on these particular points. So we lose part of our freedom.

Hon. Mr. GOUIN: I call that deminutio capitis, to use an expression of Roman law.

The CHAIRMAN: I will ask in order to give full notice of the questions I would like to have answered: what is the value of a provision that people have the right of lawful association, assembly or organization? Is it not implicit in the use of the word "lawful"? If the right exists, does not the right always exist to do anything lawful? And is it not senseless to put in your constitution a provision of what is lawful shall be lawful?

Hon. Mr. GOUIN: It is at least a repetition.

The CHAIRMAN: I would like to know the meaning and the effect of the provision that a person shall not be subjected to unreasonable interference with privacy, family, home or correspondence. Does it mean that the courts will be endowed with the jurisdiction to determine reasonableness by some rule of their own? That is the kind of question I would like to have answered.

Hon. Mr. GOUIN: The discretion of parliament would be replaced by the discretion—

The CHAIRMAN: Of the courts, yes. Are we departing, if we do this—are we moving away from the protection of rights by legislative action into a field of protection of rights by court action? Are we doing that? Are the battles for liberty of the future to be fought in the courts instead of in legislative halls if we adopt this?

Mr. MARQUIS: We have that word "arbitrary" in this section; who may decide what is arbitrary or not?

The CHAIRMAN: There may be good answers to all these questions, but I should like to have them.

Now, gentlemen, we will adjourn until tomorrow afternoon.

PART OF THE
OPPOSITION

CANADIAN
HUMAN
RIGHTS

A MASS OF
CONFUSION

SPECIAL COMMITTEE OF THE SENATE
AND THE HOUSE OF REPRESENTATIVES

HUMAN RIGHTS

FUNDAMENTAL FREEDOMS

REPORT OF THE COMMITTEE

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SESSION 1947-48



SPECIAL JOINT COMMITTEE OF THE SENATE
AND THE HOUSE OF COMMONS

ON

HUMAN RIGHTS

AND

FUNDAMENTAL FREEDOMS

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 10

THURSDAY, JUNE 17, 1948

WITNESS:

Mr. F. P. Varcoe, Deputy Minister, Department of Justice, Ottawa

OTTAWA
EDMOND CLOUTIER, C.M.G., B.A., L.Ph.,
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
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1948

MINUTES OF PROCEEDINGS

THURSDAY, June 17, 1948.

The Special Joint Committee on Human Rights and Fundamental Freedoms met at 4.00 o'clock p.m. The Joint Chairmen, Right Honourable J. L. Ilsley and Honourable L. M. Gouin were present. Mr. Ilsley presided.

Also present:

The Senate: Honourable Senators Crerar, Horner, Roebuck, Turgeon, Wilson.

The House of Commons: Messrs. Beaudoin, Croll, Diefenbaker, Fulton, Hansell, Robinson (*Simcoe East*), Smith (*York North*), Stuart (*Charlotte*), Whitman.

In attendance: Mr. F. P. Varcoe, Deputy Minister, and Mr. D. H. W. Henry, Counsel, Department of Justice, Ottawa.

The following, moved by Mr. Diefenbaker, was filed as a notice of motion to be taken up when the question of recommendations in the final report is considered by the Committee:

That the Minister of Justice be requested forthwith to refer to the Supreme Court of Canada for determination by that Court of:

(a) The question as to the power and jurisdiction of the Parliament of Canada to enact a Bill of Rights respecting the fundamental freedoms of religion, speech (including radio), press and assembly as well as the constitutional and traditional safeguards of the individual.

(b) The question of the extent to which such fundamental freedoms or constitutional safe-guards are within the legislative competence of the Provinces.

Mr. Varcoe was called. He made a statement in relation to the effect of the enactment of a Bill of Rights as (a) a federal statute; (b) as a constitutional amendment; and, in particular, to its effect on existing and prospective provincial and dominion legislation, the common law, the sovereignty of Parliament, and the prerogative of the Crown, and was questioned.

The witness retired.

A submission, "The Case for a Canadian Bill of Rights", from the representative, Congregations of Jehovah's witnesses, was filed by the Chairman and copies distributed to all members.

The Committee adjourned at 6.05 o'clock p.m. to meet again Monday, 21st June, at 4.00 o'clock, p.m.

J. G. DUBROY,

Clerk of the Committee.

MINUTES OF EVIDENCE

HOUSE OF COMMONS,
June 17, 1948.

The Special Joint Committee on Human Rights and Fundamental Freedoms met this day at 4.00 p.m. Right Hon. Mr. J. L. Ilsley (Joint Chairman) presided.

The CHAIRMAN: Gentlemen, the committee will come to order. It was agreed at the last meeting that at this meeting the Deputy Minister of Justice would give his views as to some of the implications of the bill of rights suggested by the committee for a bill of rights which was read to this committee at a recent session.

Mr. DIEFENBAKER: Mr. Chairman, before Mr. Varcoe gives his evidence would you allow me to say a word or so in view of your statement the other day? I was unable to be present and you indicated your views by the questions which you asked. I do not want to get into a controversy, holding rather divergent views to yours. You asked a simple question as to whether or not the parliament of Canada had the power to pass any bill of rights whereby constitutional freedoms of Canadians would be protected, and I realize that there is a great division of opinion on that subject and that Mr. Varcoe will give us his opinion today.

The CHAIRMAN: Not on that point.

Mr. DIEFENBAKER: Not on that point?

The CHAIRMAN: No.

Mr. DIEFENBAKER: Possibly I may continue with what I have to say. Amongst those who have divergent views there are those who hold that the parliament of Canada cannot pass laws to preserve constitutional freedoms of Canadians because of the fact that in most cases, with the exception of the criminal law, the matters fall within the legislative competence of the provinces. Well, that is a legal answer, but my answer to that would be that if that be true then the freedoms that accompany Canadian citizenship become in fact provincial variables; we would find ourselves in this country with nine kinds of Canadians whose freedom in each individual case would depend on the home address of each Canadian.

The CHAIRMAN: Mr. Diefenbaker, will you permit me to say a word on the question of order? The steering committee, before the last meeting of the committee, considered the order in which these matters were to be taken up, and it was agreed, and we found that the committee as a whole adopted the steering committee's report in this regard, that the question of the enacting of a bill of rights by means of a federal statute would be considered first; and secondly, we would consider the question of enacting a bill of rights by means of a constitutional amendment. Now, we discussed the question to some extent of enacting a bill of rights by means of a federal statute; we took no action on that; we left that for consideration when the recommendations of the committee were being formulated; and I announced my own conclusion that I came to, that I did not think that favourable consideration should be given to an attempt to enact a bill of rights by means of a federal statute.

We got then to the next stage where we would consider the alternative method, which is the one favoured by all except one of the bodies which have made recommendations to this committee, and that is by means of a constitutional amendment. Now, to be strictly in order, what you are saying now should come when we consider the recommendations. There will be plenty of opportunity to do that then.

Mr. Diefenbaker: Possibly, Mr. Chairman, you would permit me to proceed a little further, because what I have in mind is this, that because of that dispute or difference of opinion I am suggesting a motion moved by myself and seconded by Mr. Fulton:

That the Minister of Justice be requested forthwith to refer to the Supreme Court of Canada for determination by that court of:

- (a) the question as to the power and jurisdiction of the parliament of Canada to enact a bill of rights respecting the fundamental freedoms of religion, speech (including radio), press and assembly as well as constitutional and traditional safeguards of the individual;
- (b) the question of the extent to which such fundamental freedoms or constitutional safeguards are within the legislative competence of the provinces.

I pass that to you, sir, as one comes back to the point we always arrive at, a stalemate, no matter what discussion we may have, and each would have his own opinion depending on the consideration he has given the subject; each endeavouring to be as honest with himself and with the committee in his interpretation of what the law is. And it is because of that that at this time I make this motion, so that between now and the next session we in parliament will know the degree to which there was a division of jurisdiction in the matter of fundamental freedoms as between the dominion and the provinces to the end that any enactment made by parliament will in fact be an enactment within the legislative competence of parliament and to which the answer cannot be given that by this enactment the rights under the British North America Act that have been allocated to the provinces have in any way been infringed upon or entrenched upon.

The CHAIRMAN: Now, on the question of order. Is the meaning of this resolution that this committee request the Minister of Justice to do this?

Mr. Diefenbaker: Yes.

The CHAIRMAN: Is not that beyond the terms of reference of the committee?

Mr. Fulton: The minister has raised a point of order to which I would like to reply. The terms of reference of the committee as discussed at the first meeting of the steering committee and reported in the proceedings of No. 2 had to do with the question of "what is the legal and constitutional situation in Canada with respect to such rights";

- (c) and what steps, if any, it would be desirable to take or to recommend for the purpose of preserving in Canada respect for the observance of human rights and fundamental freedoms.

And it is that phase of our reference which the committee is considering at this point.

The CHAIRMAN: Right.

Mr. Fulton: I think you will agree that the motion of Mr. Diefenbaker and myself would be within the limits of the terms of reference, and what my friend is doing is giving notice, as it were, that there are some of the committee

who feel that when we are considering our recommendation this is the form that recommendation should take.

The CHAIRMAN: That is perfectly in order. This is a matter to be considered when the recommendations to the parliament which appointed us are being considered. It is quite open to any member of the committee to make an argument for a recommendation to this effect—a recommendation.

Mr. FULTON: To the minister?

The CHAIRMAN: To those who appointed us—a recommendation of the committee to those who appointed us. The clause in the order of reference, “that the committee shall have power to recommend” means to recommend in their report.

Mr. FULTON: Yes.

The CHAIRMAN: To those who appointed them.

Mr. BEAUDOIN: Therefore, this matter will stand until we come—

The CHAIRMAN: —to the recommendations. Let us take it as a notice that Mr. Diefenbaker and Mr. Fulton will wish to place that in the report, recommending a reference to the Supreme Court of Canada. That is the meaning of that, is it not?

Mr. DIEFENBAKER: Mr. Chairman, if I do not happen to be here when the committee meets to make its recommendations, I wish you would submit that motion at that time on my behalf.

The CHAIRMAN: All right.

Hon. Mr. ROEBUCK: In that case may I ask this question: would it not be necessary to have a draft bill submitted to a court? If you are going to get a decision from a court an academic proposition such as is included in this resolution would hardly be answered by a court, because there is nothing that is sufficiently definite for a court to rule on.

The CHAIRMAN: That is the position I would take when we come to discuss the recommendation. It would be open to anybody to take some specific or some concrete provisions and say, “Refer those to the Supreme Court of Canada.”

Mr. DIEFENBAKER: That is a matter of draftsmanship.

The CHAIRMAN: Mr. Varcoe produced at the last meeting a tentative sort of federal statute which, as he said, might be the kind of statute that would be considered. It would be open to anybody to say, “Why do you not refer that to the Supreme Court of Canada?”

Mr. DIEFENBAKER: That is exactly the point. The question of the draftsmanship of what is being submitted is a difficult question and it will require a great deal of consideration by the draftsmen of the Department of Justice to the end that the Supreme Court of Canada would be in the position to properly interpret the nature and scope of the bill of rights on which they are asked to determine the matter of jurisdiction as between the dominion and the provinces; and the general submission is what I now place before you.

The CHAIRMAN: Perhaps I should not be too hasty in prejudging these things, but I have been so impressed with the vagueness of everything and the drift of everything in this committee that I, perhaps, went beyond what I should have the other day; and I am quite prepared to go beyond it again today. I am going to say that unless I develop a different opinion between now and when we make the recommendation I will be opposed to the idea of dealing with this by means of a federal statute. That is what I tried to say the other day and that is by way of notice what my attitude will be when we prepare the recommendation.

Mr. DIEFENBAKER: In view of that statement would you be opposed to a constitutional amendment?

The CHAIRMAN: That is what we considering this afternoon.

Hon. Mr. ROEBUCK: Would the type of statute not make a difference? If we had a statute that was within the jurisdiction of the dominion parliament the objections that you raise would not apply.

The CHAIRMAN: Oh, yes, I do not put it entirely on that. I tried to put it the other day, perhaps not by giving my reasons completely, that inevitably we got into a debatable land productive of great conflict. That was my point the other day; and when we have practically nobody who has made submissions asking for a federal statute at all—the submissions are in favour of a constitutional amendment—and when it is remembered that a federal statute does not effect any complete guarantees because it may be repealed at the next session or at another session of the same parliament, let alone future parliaments—when it is remembered that to the extent it is valid it binds the provinces and does not bind the dominion—those are very powerful reasons in my mind against dealing with the matter by that method.

But as I say, this is all a matter for discussion when we come to make our recommendations; but for the sake of getting somewhere and getting some definiteness I am willing to be fairly outspoken on a matter of a federal statute. Those are the views I am going to put forward when we consider the recommendations. My mind is open on the question of a constitutional amendment which does effect a constitutional guarantee, because there can be no doubt about the constitutionality of that once it is passed.

Mr. FULTON: Yes, but, Mr. Chairman, is not there some doubt as to the actual dividing line between a federal statute and a constitutional amendment? A constitutional amendment requires action on the part of the federal parliament, and you are immediately going to have raised the same question: is it competent for parliament to take that action whether you pass a federal statute or whether you ask the House of Commons to pass a resolution for an address to the Imperial parliament to amend the constitution? You are going to have the same point raised: is the statute or resolution within the competence of the federal parliament?

The CHAIRMAN: No resolution asking for a constitutional amendment can possibly be beyond the competence of the federal parliament. The question of the propriety of attempting to pass a resolution is a very serious one, and if we follow precedents of the past we will have to consult with all the provinces before we attempt to introduce any such resolution. But there is no question of the validity of such a resolution—the constitutionality.

Mr. FULTON: We can pass any resolution we wish, but would not that be imposing upon the Imperial parliament the burden of saying whether this is a question that can be the subject of action by the federal parliament? In other words, to make them make the decision which we have avoided making.

The CHAIRMAN: I think the Imperial parliament has always complied with resolutions from the parliament of Canada, and I think governments of Canada have, therefore, been extremely careful and should be extremely careful to consult the provinces before they attempt to put the Imperial parliament in that position.

Mr. FULTON: My only point is: do you not really have to settle the same issue in each case, whether it is proper for the federal parliament to legislate by statute or act by way of resolution on this question? Could you not settle that question first, whether it is proper for the federal government to act, no matter what manifestation its action takes—statute or resolution?

The CHAIRMAN: That is not the preliminary question; the preliminary question is whether it would be desirable to have such constitutional amendment even if everybody agreed to it.

Hon. Mr. ROEBUCK: Have we not frequently asked for an amendment to the constitution which would infringe the rights of the provinces? Take, for instance, the Unemployment Insurance Act.

The CHAIRMAN: Right.

Hon. Mr. ROEBUCK: We amended the constitution in order to give the dominion parliament power to pass that statute, the difficulty being that it was within the competence of the provinces.

The CHAIRMAN: We got the consent of all the provinces before we did it.

Hon. Mr. ROEBUCK: We did not have to. We could have gone ahead with a resolution of both houses and asked the Imperial parliament. We asked the consent of the provinces as a matter of diplomacy.

Mr. DIEFENBAKER: I am quite interested in that statement of the minister and also the statement of the former Attorney General of Ontario. I want to be clear. Did the minister say that regardless of whether or not a constitutional amendment would infringe upon the jurisdiction of the provinces, that there was nothing either in practice or otherwise requiring the federal parliament to consult the provinces before passing such an amendment?

The CHAIRMAN: There is nothing in the law.

Mr. DIEFENBAKER: No, I understand; but is there nothing in practice?

The CHAIRMAN: Oh, practice?

Mr. DIEFENBAKER: Practice, having the effect or result of law.

The CHAIRMAN: I do not know whether it has the result of law or not, but I know that any government would be crazy to propose that parliament pass a joint resolution amending the constitution in such a way as to invade the rights of the provinces without getting the consent of the provinces. The question of law is not so important; it is just that nobody would think of doing anything else unless they wanted to disrupt the country.

Hon. Mr. GOUIN: Perhaps one could say that in decency the province should be consulted if we wish to adopt such an important change.

Mr. DIEFENBAKER: I am not one who takes the other view, because when the address came up to provide for redistribution, to change the basis of redistribution, I was one of those who suggested that the provinces should be consulted, but that was not the view of the then Minister of Justice. He practically took the view as the present Minister of Justice, even going as far as to say that language rights could be done away with by an address to parliament without consultation with the provinces—a view that I took strong objection to—and I see the Minister of Justice today has the same view as far as the power that denies the propriety of such a thing is concerned.

The CHAIRMAN: Yes, but the reason that the provinces were not consulted in the case of redistribution was undoubtedly that it lay within the constitutional power of the Dominion of Canada; no provinces were being deprived of any right granted to them by the British North America Act. It was a matter wholly within the jurisdiction of the dominion; it is a very different thing.

Mr. FULTON: There were two views on that.

The CHAIRMAN: I do not think there were two views.

Mr. DIEFENBAKER: Yes.

Mr. FULTON: Oh, yes.

Mr. BEAUDOIN: May I add this, that with reference to language rights the answer of the then Minister of Justice to Mr. Smith of Calgary West was that the power is there but the propriety is absent.

Mr. DIEFENBAKER: Yes, legally; the power is there; the propriety is absent.

The CHAIRMAN: I propose that we proceed to examine the Deputy Minister of Justice as to the implications of the insertion of the clauses in the British North America Act. They are found on page 18 of the submission of the committee for a bill of rights.

Mr. F. P. Varcoe, Deputy Minister of Justice, called:

The CHAIRMAN: Have you any views on this, Mr. Varcoe?

The WITNESS: I have made what has been a rather superficial examination of this proposed clause to be inserted in the B.N.A. Act. Much of the language, a great deal of the language that we find there is taken from the bill of rights in the United States constitution, and when we consider that they are still disputing, after one hundred and fifty years, as to the meaning of some of it, any expression of opinion that I may give must be regarded as fairly superficial.

There are one or two general remarks I should like to make before examining specific questions and specific provisions. The first of these is that a bill of rights is a definition of freedom *pro tanto*, that is it converts what is essentially a political concept into one which is essentially legal. The courts interpreting the definition exercise, therefore, a legislative power and so take the place of the legislature. I should think that that is a matter that a committee or any person advocating a change in our system would want to take account of before adopting such a measure.

Mr. FULTON: I wonder if the deputy minister would permit an interruption? Would you expand on what you mean when you state that the courts interpreting such a definition exercise legislative power?

The WITNESS: Let me give you an example of what I mean. Paragraph (c) in this draft refers to unreasonable interference with privacy. This provision comes into operation only when some statute, say of a province, has been enacted which is challenged.

Now, what is unreasonable interference is a matter of opinion; the court which passes upon that statute holding it valid or invalid, as the case may be, is exercising a quasi legislative power.

Mr. DIEFENBAKER: The interpretation is on the basis of conditions prevalent at that particular time.

The WITNESS: Not necessarily; it depends upon the view the particular judge has as to what is unreasonable.

Mr. FULTON: Is not that the same function they exercise in interpreting a statute?

The WITNESS: That is true, but it imports into the constitution an additional element of uncertainty.

In this same connection I should like to venture this remark, that I believe from an examination of the cases in the United States over a period of a great many years that when you have set out a definition of freedom the psychological tendency of persons operating under that statute is to say: "Now, this is as far as we can go, but let us go all that way." An intolerant group, for example, proposes a certain legislative measure, and when that is objected to on the ground that it is intolerant the answer made by them is—and I am sure it has been in the United States time and time again—"well, let us test it in the courts";

and the result is that you transfer what one authority called "the struggle for freedom" from the political arena to the judicial arena with some consequences that are not good.

Another point I wish to make here is that this imports a degree of uncertainty into our affairs.

Dealing now more particularly with the proposed section 148, you will note that it is only the legislatures that are restrained; there is nothing here that restrains the individual or the government. There would be nothing, for example, to prevent the Crown exercising whatever prerogative powers it may have. There is nothing in 148 to prevent the Crown from exercising prerogative powers that are not today very much used. The prerogative would remain in effect and you might expect a somewhat reactionary tendency to follow.

Mr. DIEFENBAKER: For instance, what is that prerogative power?

The WITNESS: For example, in time of war there are great prerogative powers exercisable by the Crown. Likely members of the committee may remember that in the first great war the Crown in Great Britain undertook, for example, to take property without payment of compensation under the prerogative powers, and that was upheld by the courts for a time. Finally the House of Lords held the prerogative power had been displaced by a certain statute. That was in the De Keyser's Royal Hotel case. I suggest that if you restrict the legislature without restricting the sovereign under our constitution certain powers would remain which if exercised would indicate a reactionary tendency.

Mr. DIEFENBAKER: Is it a prerogative right in time of emergency and danger for the Crown to suspend ordinary freedoms?

Hon. Mr. ROEBUCK: Habeas corpus.

Mr. DIEFENBAKER: Habeas corpus and the like.

The WITNESS: The point is that throughout our time these things have been done under statutes.

Mr. DIEFENBAKER: Yes, I appreciate that, but I am asking whether that is one of the prerogative rights.

The WITNESS: Yes, I should think so.

Mr. FULTON: Would you care to give a few of the prerogative rights which it is well established that the Crown has at the present time in Canada? My impression was that the actual prerogative rights of the Crown were largely gone.

The WITNESS: They are only in the sense that they have been displaced by statute; and remember this, that when you pass this amendment, statutes which do interfere with the liberty of the subject would have to be treated as being abrogated by the constitutional amendments and your prerogative would probably be back in full force.

Mr. FULTON: If you added to the first part of proposed section 148 the general words, "or the Governor General in Council to make regulations"—so as to limit the power to legislate by Order-in-Council?

The WITNESS: There is no doubt it could be rectified to take that into account.

Mr. DIEFENBAKER: As a matter of fact, Mr. Varcoe, in that connection is not there a provision in the bill of rights in the United States that the maintenance of these civil freedoms is subject to abrogation in time of danger or in war?

The WITNESS: No. There are two quite separate provisions. There is the bill of rights, and then there is the specific provision that congress may carry

on war, and that has been interpreted as meaning that in the case of clear and present danger the executive may override the bill of rights.

Mr. DIEFENBAKER: A provision like that in a constitutional amendment in our country would preserve the prerogatives of the Crown to wage war and act accordingly, would it not?

The WITNESS: Something of that kind might have to be considered.

The CHAIRMAN: What it would do would make it possible for parliament to pass such measures as the War Measures Act and under that Act effect arbitrary arrests and detentions.

Mr. DIEFENBAKER: That is right. In time of war and emergency, the matter of national defence in war has always had about it the privilege of parliament to infringe upon the rights of the individual as against the state. That is the basis of McKechnie's article on the subject. I think it is chapter 2 in connection with the Magna Carta that sets that out in some detail.

The CHAIRMAN: Without any bill of rights parliament can do whatever is necessary to legislate, but when you have a bill of rights apparently in the United States it was necessary to put in something precisely preserving rights.

Mr. DIEFENBAKER: Yes, as I say, there was an express provision.

The WITNESS: In answer to Mr. Fulton's question, I find I have here a list of a few of the prerogative powers exercisable in time of war: to order a blockade; place an embargo on shipping; to enter private lands; to erect fortifications; to require personal service of subjects if there is imminent danger; to prohibit exports; to imprison alien enemies and prisoners of war, and there are many more.

Hon. Mr. GOUIN: In our own constitution, section 91(7), militia and military and naval services and defence: we think that would be sufficient even if we had the amendment.

The WITNESS: This amendment says, "notwithstanding anything in this Act," which would exclude the operation of section 91 or anything in section 91 which conflicted with it.

The CHAIRMAN: For a bill of rights to be any good it would have to be "notwithstanding anything in this Act." If you leave 91 in full force the bill of rights would not restrain you at all.

Hon. Mr. GOUIN: To make it quite clear it would seem to me that the powers of the Crown even in time of war would be curtailed.

The WITNESS: I would say that the powers of the legislature would certainly be curtailed—both the legislatures and parliament; but I was pointing out that this says nothing about the prerogative, and consequently it might be open to the Crown acting independently of parliament to do many things that would conflict with the proposed bill of rights.

Hon. Mr. GOUIN: It would diminish the powers of parliament.

The WITNESS: In some cases the powers of the Crown might be enlarged.

Hon. Mr. ROEBUCK: There can never be a clash between a statute and prerogative powers, can there? When the two are antagonistic in some way the statutory power overrides the prerogative power, and the prerogative power no longer exists.

The WITNESS: That is right. This statute says nothing about the prerogative.

Hon. Mr. ROEBUCK: True, but to the extent the prerogative power would be contrary or inconsistent with this bill it would affect the prerogative powers.

The WITNESS: What I am saying is that this bill as it stands would not touch the prerogative at all; it only purports to impose a restriction on parliament and legislatures and not on the Crown.

Hon. Mr. GOUIN: I follow you now.

The WITNESS: Now, coming down to the specific questions, and some of those were posed by the chairman at the last meeting more or less in the form I have them here. One of the questions was, would the law relating to libel, criminal and civil, remain in effect? I think that is about the way the question was put. In other words, would the restriction which reads, "abridging freedom of speech and expression, or of the press or other means of communication . . ." have the effect of preventing the respective legislatures from dealing with the law of libel, criminal and civil, or would this amendment abrogate the laws that now exist?

Now, I think that it could be said that these laws would not be abrogated and that the legislatures would continue to have certain legislative powers in respect of these matters; parliament in the case of criminal libel and the legislatures in the case of civil libel.

I say this because freedom of speech, of expression and of the press has always recognized as subject to the limitation that defamatory matter may not be communicated. That has been part of our law from the outset. And when we speak of freedom of the press and of speech we mean freedom within certain limits.

The CHAIRMAN: May I ask a question? Mr. Fulton had a suggestion that we amend the criminal law in such a way as to prohibit the distribution of what are known as crime comics. Suppose this section 148 were in the constitution and a law were passed prohibiting the distribution of crime comics, could any person prosecuted successfully plead the provision of the statute stating that the freedom of speech and expression and of the press and other means of communication had been abridged?

The WITNESS: I was coming to that in a moment. Perhaps I had better follow my own line of reasoning, because my answer to that question will be a little more intelligible when I have dealt with the first question.

I should like to say one thing more about this question of libel. The existing concepts of libel would, in my opinion, continue and the laws relating to them would remain valid. But I should think it is very doubtful if either parliament or a legislature could alter those laws substantially if this came into force. For example, suppose the provincial legislature proposed to make a substantial amendment in connection with civil libel on the subject of privilege; suppose they said that this privilege of the press on certain occasions will no longer exist; I should think it would be doubtful if the legislature would have power to do that because that would surely be an abridgment of the freedom of the press as we know it today.

Mr. FULTON: It surely would not be correct to say they could not legislate with respect to libel, because although they could not abridge freedom in that way by curtailing privilege they could always make new provisions with respect to what was to be libellous. It is not correct to say they could not legislate at all, is it?

The WITNESS: I am not at all sure they could redefine libel so as to restrict the publication by a newspaper, let us say, of something that is today well recognized as publishable. I doubt if they could do that, because otherwise if parliament or a legislature can by definition change the foundation of the thing by redefining libel, there is no sense in this restriction.

Mr. FULTON: My point is that they probably could not, say, create new offences of libel, but they could surely enact new statutes or change existing statutes as to the proof of libel. They could legislate with regard to libel, but would not create new libel.

The WITNESS: They could legislate about procedure and evidence and so on, but they could not, I should think, create any new offences.

Hon. Mr. ROEBUCK: They could not extend or restrict the provisions with regard to fair comment which is pled by a newspaper as justification.

The WITNESS: I mentioned privilege as an example of that.

Hon. Mr. ROEBUCK: Yes, privilege or fair comment, because that would restrict the liberty of the press which they formerly enjoyed.

The WITNESS: Yes.

Hon. Mr. GOUIN: Your question would be, does this abridge the freedom of the press?

The WITNESS: Yes. Now, I come to the chairman's question and I shall deal with the purely civil side. Mr. Ilsley's question was: what about crime comics? I thought about that for a while this morning and I came to this tentative conclusion, that they could be prohibited only if parliament thought they were obscene or blasphemous or in some way injurious to the public morals, and if a court having before it a particular case took the same view. In other words, that could not be prohibited merely on the ground that parliament thought they were undesirable. They would have to contain some such elements as are now regarded as criminal in connection with the publication of such material.

Mr. FULTON: In other words, you mean you could not create a fresh crime and make it punishable to publish something if, in the words of the new statute, the publication were "substantially or exclusively devoted to the portrayal of crime"?

The WITNESS: Yes. I was thinking of Lord Haldane's observation when he said that criminal meant by its very nature criminal. That was later overruled, and it was held that parliament had no such restriction on it. But I believe if you put this amendment in, then in the field of criminal libel you would have imposed upon parliament restrictions so as to prohibit parliament from preventing the publication of matter, or limiting it—unless it was by its very nature criminal.

Mr. FULTON: Could parliament resort to this: that the publication of books or magazines substantially or exclusively devoted to crime shall be deemed to be against public morals?

The WITNESS: I do not think that parliament could do that. That is just redefining the freedom or attempting to, and it seems to me that would be beyond the power of parliament. I feel it would. I have not thought that out to the end. Probably I have not made a satisfactory answer; but as the situation is today parliament could say that that type of publication is bad and we are going to make it criminal to publish it, even if a large proportion of the people thought it was bad; but if you put this in then parliament could only prohibit what is on its very face obscene or blasphemous or the like.

The CHAIRMAN: Could I ask one more question? Could parliament make a stricter definition of seditious libel if we had this provision in the constitution?

The WITNESS: I had not thought of that.

The CHAIRMAN: It is very important when you consider the freedom of the press, because by monkeying with that sedition section you can restrict the freedom of the press very effectively.

The WITNESS: Yes. The same difficulty will have to be considered. It may be that as sedition has a pretty wide connotation perhaps it would not be necessary to make any redefinition.

Mr. HANSELL: Do I understand, Mr. Varcoe, that in your opinion the dominion parliament has no right by way of statute to protect the public morals?

The WITNESS: At the present time?

Mr. HANSELL: Yes.

The WITNESS: Oh, no, on the contrary.

Mr. HANSELL: How could they protect the public morals without passing some law, some legislation? I do not quite get that.

The WITNESS: Perhaps I should go over that ground shortly again. At the present time parliament has unlimited powers to enact legislation to protect the public morals in the matter of the publication of periodicals. If this amendment to the constitution were enacted then the parliament of Canada would be prohibited from abridging the freedom of the press.

Mr. DIEFENBAKER: Is not that exactly the point? Provision is made for freedom of the press in the United States constitution, but the fact that there is such a provision has not prevented the passing of the type of legislation to which Mr. Hansell has made reference, has it?

The WITNESS: I made a search to see if in any of the forty-eight states they prohibited the publication of crime comics and I could not find that they have; and I reached the conclusion they considered they could not do it but I may be wrong about that.

Mr. FULTON: Must not we make a distinction between the absolute prohibitions of publication on the one hand, and making it a criminal offence to publish certain things and leaving it to the courts to determine whether the publication comes within the definition, on the other?

The WITNESS: That would render this thing nugatory. I do not think you could get around the plain words of this amendment by suggesting the making of it a criminal offence. That would be an abridgment of the freedom of the press.

Mr. FULTON: There would admittedly be a fine argument in court. One side would say that the press never was free to endanger public morals and therefore this is not an abridgment of freedom, and the other side would say that you are restricting our rights to publish whatever we choose, and therefore you are abridging our freedom. But why not permit such argument, and let the courts decide?

The WITNESS: I might admit, sir, that Canada could, under this, legislate to prohibit these comics if they, in the opinion of a court, unduly had the effect of endangering public morals; according to the standards we have at this time.

Mr. DIEFENBAKER: Has parliament got the power today to declare that this booklet I have before me, the submission of the committee for a bill of rights, is an offence against the criminal law, regardless of what it contains?

The WITNESS: If it appears that parliament was genuinely doing that, and not doing that to effect something else, parliament has unlimited powers to prohibit. I will give you an example. In the leading case of the Reciprocal Insurers vs. Parliament had enacted a statute which provided that any person who acted as an insurance agent without taking out a licence committed a criminal offence, and that was sought to be upheld as valid criminal law. The Privy Council refused on the ground that it was an indirect scheme to license insurance agents.

Hon. Mr. GOUIN: In other words, something to contravene the constitution. It was not really criminal under paragraph 27 of section 91.

The CHAIRMAN: In the combines investigation case—the Proprietary Articles Trade Association case—they held that the Combines Act is valid criminal legislation, although it was strongly argued that it was not; that it was an attempt to regulate the freedom of persons to contract with one another.

The WITNESS: Yes, that was one argument. There have been many cases. The prohibition of the operation of street cars on Sunday was upheld as being valid criminal law.

Now, the next question I have in my notes is: what are the consequences so far as dominion and provincial laws are concerned? That is to say, if this amendment were adopted, what effect would it have on existing dominion and provincial laws?

My answer, given with some hesitation in view of the section 150, is that dominion laws now in force or provincial laws now in force which conflict with this amendment would be abrogated by the enactment of this constitutional amendment. Any law now in force which is in conflict with it would be abrogated.

Hon. Mr. GOUIN: From the date of the coming into force of that Imperial Act.

The WITNESS: Yes. I think there is authority in the United States for this proposition under their constitution.

Mr. FULTON: You said a moment ago that you had some hesitation in giving that answer.

The WITNESS: Yes, because section 150 says that rights conferred shall not be deemed to abridge any right of any person. That will have to be taken into account.

Mr. FULTON: Yes, because this section appears not to be directed against the preservation of the right of an individual under any existing statute.

The WITNESS: It is not rights we are aiming at here, it is prohibitions. Suppose you had a provision in the Criminal Code relating to the publication of a newspaper; suppose we had such a provision which restricted the publication; now, that statute would not be saved by this because there is no existing right of any person there.

Mr. FULTON: Therefore, restrictive statutes in the province would be abrogated by this.

The WITNESS: Yes. Those which confer rights would not. But I should think that most of the statutes in question would be restrictive statutes.

The next question I have is: what are the consequences of the provision preserving the rights to be represented by counsel? I do not quite understand that because so far as I know the only right that a person has to be represented by counsel is in the case of litigated matters. For example, if a person applied for a licence to operate a hotel or a tavern I do not suppose anyone would say he had a right to be represented on that application by counsel, or in any of the other great number of occasions where persons appear and sometimes do bring counsel with them.

Hon. Mr. GOUIN: Sometimes there are special Acts. The old Quebec licence law provided that the parties could be heard themselves or by counsel when making application for a licence, but that is all gone now.

Mr. DIFENBAKER: Depriving anybody of a fair trial or the right to be represented by counsel?

The WITNESS: Yes, that would have an interpretation placed on it. It is limited to a trial. I do not know whether that is important because I cannot conceive of a parliament or a legislature depriving a person who is taking part in a trial to be represented by counsel.

Hon. Mr. ROEBUCK: There is a bill before the Commons at the present time to deprive people of the right to have a lawyer appear as their counsel.

The WITNESS: Not at a trial.

Hon. Mr. ROEBUCK: It is pretty close to a trial.

The WITNESS: Not a litigated matter, anyway.

Hon. Mr. ROEBUCK: A conciliation board.

The WITNESS: Yes.

The CHAIRMAN: Were you starting to say something about witnesses?

The WITNESS: It may be that the draftsmen of this section have something in mind on the question of witnesses. Sometimes the question arises as to whether a witness can claim to have the advice of counsel, although he is not entitled to a representative by any means.

Mr. FULTON: Your view is that the words in this part of subsection (e) with regard to a fair trial confines it to matters being litigated before the courts; but to follow up Senator Roebuck's remark, would it be your view that in the case of a dispute before a labour relations board, that that would not be called a "trial" within the meaning of this section?

The WITNESS: That is correct; that is the interpretation I would be inclined to give.

Mr. FULTON: It must be at a trial?

The WITNESS: Yes.

Hon. Mr. GOUIN: Before a court; not before a board.

The WITNESS: If it were intended to extend that to the cases before labour relations boards this might have to be amended.

The CHAIRMAN: Would it give an injured workman the right to be represented by counsel before a workmen's compensation board?

The WITNESS: I do not know what the workmen's compensation statutes say upon the subject; I do not know whether they contain any provisions or not.

Hon. Mr. GOUIN: The practice in Quebec is that they are allowed to appear, but they have no right to obtain fees.

Mr. DIEFENBAKER: That is the same in Saskatchewan; but they have no inherent right to appear. That is the attitude they take in Saskatchewan with regard to the workmen's compensation board. I am not speaking about the board since the present government came in.

The CHAIRMAN: Do you take it that that subsection (e) merely preserves the right?

The WITNESS: I thought that was limited to litigated matters and would not extend to every kind of case, such as those mentioned.

The CHAIRMAN: Does it confer rights?

The WITNESS: I do not know whether there is such a thing as a right to be represented by counsel. The language is a little loose, I should say.

The CHAIRMAN: I may say that I took it that the section meant that a right was being conferred to be represented by counsel; not merely that existing rights were being preserved; that rights were being conferred.

Hon. Mr. GOUIN: Outside of any explicit statute, there is no possible doubt but that there is a custom to use counsel established for a criminal trial for instance. Nobody has ever questioned the right of the accused to have counsel; it is a fundamental right of democracy; and we have the same thing for civil proceedings in our code in our province. We provide for representation by counsel.

The WITNESS: Yes, in the Criminal Code there are provisions which indicate the accused may be represented by counsel.

Hon. Mr. GOVIN: The result of this provision is clear; it is considered as a fundamental right of a British subject that he be allowed to have the use of counsel, and a judge would never proceed against someone without having him appear.

The CHAIRMAN: We have all sorts of boards and inquiries. These boards and inquiries have semi judicial or quasi judicial duties to perform. Does this provision confer upon persons going before these boards a right to be represented by counsel?

Hon. Mr. ROEBUCK: Such as the spy inquiry. There was some objection taken to the exclusion of counsel on that occasion.

The WITNESS: Well, if you restrict this whole paragraph by means of the words "a fair trial" the answer is in the negative.

Hon. Mr. GOVIN: Technically it is not a trial.

Mr. FULTON: Would you add the words "or the right to be represented by counsel in any quasi judicial proceeding," to use the words suggested by the minister? Do you think that would make it sufficiently broad?

The WITNESS: Yes.

Mr. DIEFENBAKER: Some of these boards and some of these investigatory persons deny the accused the right of counsel. One is in the Excise Act, wherein an investigation may be made by a police officer or a member of the board of excise, and the individual summoned before the board is required to give evidence. He is denied the right of protection provided for by the Canada Evidence Act and he is also denied the right to have counsel. In one of those cases I happened to represent the accused—Rex vs. Hicks—it is a reported case—and the man who was summoned refused to give evidence unless he had counsel present and unless he was granted protection. He refused to give evidence and was prosecuted for his failure and ultimately it came before a judge of the Court of King's Bench who thought there were certain fundamental rights regardless of the statute which an individual enjoyed; but the Chief Justice of Nova Scotia, speaking for that court recently, refused to follow the Hicks case, indicating in his judgment that no person under the law as it now is has a right to be represented by counsel. In that case Judge Chisholm was dealing particularly with an excise case.

The CHAIRMAN: The point is that very often it is hard to draw a distinction between a person who is in real jeopardy and a person who is merely summoned to give evidence. A provision such as this, if it is conferring a right, must be examined carefully because perhaps everybody, witnesses and all, will be entitled to be represented by counsel.

Mr. DIEFENBAKER: There is a Court of Appeal case, Rex vs. Emele, a murder case, in the province of Saskatchewan. The Court of Appeal held in that case that the refusal on the part of the police to allow accused to have his counsel does not prevent the admission of any statement made by that accused before his counsel was finally retained. And the same point is raised that there is no fundamental right, as a matter of fact, that a person is entitled to counsel under common law. I say this subject to Mr. Varcoe's correction, but there is an exception in the case of a nobleman, a member of the House of Lords, who, if he is proceeded against in any way, is always entitled to have counsel if the charge is sedition or treason.

The CHAIRMAN: It seems to me that this subsection is ambiguous in two ways. In the first place, does it apply to trials in court or not? In the second place, does it preserve existing rights or confer new rights?

Mr. FULTON: All I see it does is put a prohibition on parliament from taking away existing rights; whether that in itself can be interpreted as creating a new right I do not know, but it seems to me to be a far-fetched interpretation. It preserves existing rights.

The CHAIRMAN: If it only preserves existing rights the question arises what are they? Nobody seems to know. It is generally agreed that if an accused were denied counsel at a criminal trial the higher courts might order a new trial. So in the courts he has a right there.

Mr. DIEFENBAKER: I do not think it goes that far. In the Vesscio case, Vesscio wanted a certain lawyer and the judge would not give him that lawyer and another lawyer was retained, and Vesscio was convicted. The Court of Appeal in Manitoba held, as I remember the judgment, that a person has not an inherent right to the counsel of his choice, and the matter is now going to the Supreme Court of Canada on a dissenting judgment.

The CHAIRMAN: It is one thing to have the right to be represented by counsel and another thing to have counsel of your choice. For instance, in the inquiries which the R.C.M.P. conduct with respect to members of their own force they are not entitled, as the practice is and probably as the law is—they are not entitled to be represented by counsel of their own choice, but they are entitled to be represented by counsel.

Mr. DIEFENBAKER: That is provided for by regulation.

The CHAIRMAN: They can select anyone they wish in the force, but they cannot bring in outsiders.

The WITNESS: The next question—unless there is something more you wish to say in reference to that—

Mr. DIEFENBAKER: There is one question I wish to ask on that section. In your research have you found that habeas corpus has ever been suspended in Great Britain by order in council or outside of parliament?

The WITNESS: Only by statute, as far as I know.

The CHAIRMAN: Has it ever been suspended in Canada at all?

The WITNESS: Not that I know of.

Mr. DIEFENBAKER: In Canada?

The CHAIRMAN: Yes.

Mr. DIEFENBAKER: It was suspended under the order in council to investigate the espionage matter when provision was made that every person held shall be deemed to be lawfully held.

The WITNESS: A habeas corpus application was provided.

The CHAIRMAN: There was no suspension of habeas corpus.

Hon. Mr. GOUIN: I wonder if some of our own statutes in Quebec are not suspended.

The CHAIRMAN: I have never heard of the suspension of habeas corpus in any province in Canada or in Canada. The instance to which my friend refers was not suspension of habeas corpus. If any person held under that order could show that he was held illegally, that he was being deprived of his liberty illegally he was entitled to habeas corpus.

Mr. DIEFENBAKER: With due respect, the order in council was that every person held under this order shall be deemed to be lawfully held, which is in effect an abrogation for it denies the court the opportunity to have shown to it that the applicant was unlawfully held.

The CHAIRMAN: He was not unlawfully held once the order was passed, but habeas corpus applies under different sets of circumstances.

Mr. DIEFENBAKER: Habeas corpus applies to circumstances where persons are held illegally, where there is no law under which they can be held. That is not a limitation. The only question at issue in habeas corpus is an inquiry by a judge as to whether or not there is any lawful reason to hold this man in custody.

The CHAIRMAN: Right.

Mr. DIEFENBAKER: There would be no lawful reason to hold a person incommunicado and deny counsel, or for the other reasons, unless the order in council has specifically said that regardless of the nature of the holding, the holding shall be deemed to be lawful.

The CHAIRMAN: I know, but the "unless" is important. If the order in council was validly passed in legislation by parliament then he was lawfully held. He had every right in the world to go and show he was unlawfully held, but he could not do it once the order was passed, and the order was passed pursuant to an Act of parliament.

Mr. DIEFENBAKER: That is the point I make. I asked the question if ever in Britain habeas corpus was suspended.

The CHAIRMAN: Let me ask another question. In Great Britain have there not been orders stating that the detention of a person shall be held to be lawful? There must have been.

Mr. DIEFENBAKER: Passed by parliament.

The CHAIRMAN: And orders made under Acts passed by parliament. They could not have carried on a war otherwise or had internment camps unless they had legislation like that, and there must have been legislation and orders coming under that legislation stating that persons detained in these camps were lawfully detained.

Mr. DIEFENBAKER: No. I would like you to read the D.O.R.A. regulations, and they provided incarceration by order of the Home Secretary and other officials shall be made under the following circumstances; and once the incarceration is made under those circumstances then, of course, the question arises as to the right of habeas corpus, and the courts held that the declaration by a minister was a declaration in effect that was not challengeable by the courts. It is quite a different thing.

The CHAIRMAN: Is that the suspension of habeas corpus?

Mr. DIEFENBAKER: No.

The CHAIRMAN: Of course, it was not, and neither was the passing of the order under the War Measures Act, which effected the same thing.

Mr. FULTON: There is this distinction, that under the Defence of the Realm Act itself, it was provided that regulations might be made that under certain circumstances people could be held—

Mr. DIEFENBAKER: That is the provision.

Mr. FULTON: Whereas, if my recollection is correct, our War Measures Act did not give any such power. What happened was simply that under the War Measures Act the Privy Council passed an order simply exercising their general emergency powers. It had never been contemplated, when those emergency powers were given, that they would be used in that way. Whereas under the Defence of the Realm Act it was contemplated they would be used that way, and the conditions under which they might be so used were laid down, and must be strictly complied with.

The CHAIRMAN: The Governor in Council stayed strictly within the powers under the War Measures Act in any order they passed, and when they did that they were acting under the authority of parliament. If the imprisonment could be shown to be illegal the right of habeas corpus is determined upon. That is different from suspension of habeas corpus.

Mr. DIEFENBAKER: We have it used here: every person held under this order shall be deemed to be lawfully held.

The CHAIRMAN: So as to make it lawful.

Mr. FULTON: So as to enable the suspension of habeas corpus.

The CHAIRMAN: Habeas corpus does not come into that at all.

Hon. Mr. GOUIN: Do you know of any case where the right to apply for habeas corpus was formally suspended, and there shall not be any application for habeas corpus?

The WITNESS: Habeas corpus has been suspended in the United Kingdom.

Hon. Mr. GOUIN: In Canada?

The WITNESS: I do not know of any case. Take the record in one of the cases that went to the Supreme Court during the last war—the Japanese case—the Chief Justice said expressly that habeas corpus was not suspended, because that was the argument they made, following along the argument which has just concluded.

Mr. Chairman, I have just a few more observations. Shall I go on with them?

The next question is: what is a lawful association? Looking at paragraph (a), it seems to me that would have to be defined or extended in some way, because as it is now it would include a partnership or a company; and surely it would not be intended that the legislature should not be able to abridge the freedom or the rights, rather, of partners or persons associated in a business way. Probably it would be sufficient for their purposes if they said lawful assembly, and stopped there.

Hon. Mr. GOUIN: They wanted to cover the word “organization”.

The WITNESS: That is one reason, but it is not a good enough reason to bring in two expressions, association and organization; they have no technical meaning at all, and certainly include all sorts of people who are associated together who must be subject to be regulated.

Now, in that connection the expression that you usually find is not “lawful assembly” but “peaceful assembly”, and they departed from that because you could not talk about peaceable association or a peaceable organization. So the drafting of that would certainly have to be vetted greatly.

Then, look at paragraph (c) which speaks of unreasonable interference with the privacy of the family and so on. I would hardly know myself what the meaning of “unreasonable” is. When we think of the development we have gone through in connection with compulsory vaccination, compulsory sanitation, compulsory education, these are all matters that someone in the past certainly would have thought of as being unreasonable interferences with the family, in the home and privacy.

Hon. Mr. ROEBUCK: It seems to me that “or” should be changed to “and”. “Interference with his and her privacy”.

The WITNESS: What is unreasonable would be for the courts to decide in determining whether or not a particular Act went too far in the way of interfering with privacy or not.

In that connection you will find this also, that you might have varying opinions from province to province. What one province might consider an act which was an unreasonable interference with the family right another province might take a different view on. One court in one province might take one view and another court in another province might take a different view. There would be a great chance for a difference of opinion. Suppose, for example, that a province decided that the problem of juvenile delinquency required

inspection of all homes, a periodic inspection of everybody's home, to determine what kind of training was being given to the children.

Hon. Mr. ROEBUCK: The same thing could happen with respect to health.

The WITNESS: Yes. That sort of thing would be resisted in some parts of the country, and in other parts of the country they might think it was reasonable interference.

Mr. FULTON: You say the courts would have to legislate in interpreting the word "reasonable". Do I take it that you think that would be a weakness?

The WITNESS: Let us take this particular case. A legislature in western Canada passes a statute which deals with education, sanitation or health, and there is this provision about interference—

Mr. FULTON: My question is, do you think it is unreasonable that a court should be called upon to act in that way, because I was going to ask you, is not that the way we call upon them to act when they are asked to decide if a provincial statute is constitutional or unconstitutional?

The WITNESS: They are not expressing any opinion. As soon as a court says, "I consider the statute to be unreasonable", he is saying, "I think it is an undesirable statute."

Mr. CROLL: He may do that in interpreting it.

The WITNESS: No, he may not; there is nothing in the British North America Act that talks about unreasonableness.

Mr. FULTON: All he is doing is trying to give a judicial interpretation of the word "unreasonable" as used in the text of this proposed section 148.

The WITNESS: He is applying his mind to this matter of reasonableness which is the function of the legislature and not the court.

Mr. FULTON: In interpreting reasonableness in the first case he would have to be guided by his own interpretation to some extent as is always the case—but when the first decision is made, subsequent courts will be guided by the precedent established.

The WITNESS: He cannot say it is good or bad because he does not like it. There comes a ground in between his mere wishes and what the legislature thinks is reasonable. His opinion is very much the determining factor.

Mr. FULTON: I cannot help thinking that he is doing the same thing as when he is deciding whether a statute is reasonable or not.

The WITNESS: There he is not thinking about his opinion as to what is a reasonable thing to do; he is simply taking the language of section 91: is this a regulation of trade and commerce; is this criminal law? Those things do not mean anything personal at all.

Mr. FULTON: Or he would be deciding: is this a matter of property and civil rights?

The WITNESS: There again he may have some predilection for something, but it would not relate to what he thought was desirable. That is what I mean. He is saying this is a desirable or undesirable thing, and that is a legislative act and not a judicial act.

Hon. Mr. ROEBUCK: Two kinds of interference are set up in this clause; the interference with privacy is not prohibited. There is reasonable interference and unreasonable interference. If he were asked to decide whether it was interference then there would be no question of judgment on his part of predilection or prejudice or a thousand other things that might enter into his mind. He says that is interference and it is prohibited, but all interferences are not prohibited.

The WITNESS: That is right, sir. Now, it is getting near to 6 o'clock and perhaps I should go on.

Mr. HANSELL: Are we not confusing in respect to this section (c) "unreasonable interference"—are we not confusing the administration of the law by a judge or a court and the making of a law by a legislative assembly or parliament? It seems to me that in our discussion we are confusing the two things. What we are trying to decide here is the proprietary or constitutional right of parliament to pass a bill of rights such as this.

The WITNESS: No, this is a measure that will be passed in the United Kingdom parliament.

Mr. CROLL: At our request. It is a mere game of make-believe. They do not pass it without our approval.

The WITNESS: I thought Mr. Hansell was talking about the constitutional power of parliament to enact this legislation.

Hon. Mr. ROEBUCK: We are talking now about the advisability of this Act.

The WITNESS: Yes; and I am pointing out that to determine what is unreasonable there is really in my view a quasi legislative act.] 2

Now, the next point I had in mind covers the words "or other means of communication..." in paragraph (a). "Abridging freedom of speech and expression, or of the press or other means of communication. . ." That would include radio, telegraph, postal services, and it seems to me one should not apply the same tests to these matters. Reading it here, as you find it here, you would have to apply the same tests, I think, in the case of a person addressing a public meeting or writing an editorial in a newspaper; you would have to apply the same test to sending a telegram or a postal letter or speaking over the radio, and yet those special types of communication are not ordinarily used for political purposes and, therefore, possibly the same thing should not be applied to them.

Mr. FULTON: You would not include the radio there, would you?

The WITNESS: That may be so, but one would scarcely say that radio should be thrown wide open. You would not say that parliament should not be denied the right to regulate radio, but you would not apply the same tests as to the publication of a newspaper.

Hon. Mr. ROEBUCK: Or to private speech.

The WITNESS: Yes, because of the special character of those means of communication.

Next I look at the paragraph about excessive bail. It seems to me the draftsman probably was thinking that he was restricting a judge from requiring excessive bail.

Mr. CROLL: There is the case of the seamen in Cornwall or Thorold. I do not know what they were charged with. It was not serious, but the judge asked about \$2,500 bail for each one.

The WITNESS: Yes, it was excessive. What I am questioning here is the drafting of this clause, because it says that the legislature shall not require excessive bail; it is not the legislature that requires bail, it is the judge.

Mr. CROLL: It leaves it wide open.

The WITNESS: This would not deal with the case of a judge at all.

Hon. Mr. ROEBUCK: This phrase comes from the British bill of rights.

The WITNESS: It is in the American bill too, but it does not appear as a restriction on the legislature.

Hon. Mr. GOVIN: It would not remedy the situation. We know in our province of cases of excessive bail, but this amendment would not solve the problem.

Hon. Mr. ROEBUCK: It is more than draftsmanship; it leaves to the judge the same right as now of determining what is excessive. No judge ever thinks he is imposing excessive bail.

The WITNESS: There is one point more, and I would like to speak for a moment about the character of our constitution as compared with the United States constitution in this connection. In our constitution our concept is that sovereignty resides in parliament. Parliament is a sovereign parliament. That is not so in the United States. In the United States the legal sovereignty is with the people.

Now, as soon as you pass an amendment like this you are taking from parliament a part of its sovereign powers. In the United States that part which is subtracted by their bill of rights remains with the people. It remains within the United States; but once you subtract this sovereign power from parliament by means of an amendment to our constitution what you are really doing is handing back to the United Kingdom parliament a part of our sovereign power, because you are saying: "Please take back from parliament and the legislatures that power to do these things." That is what the effect of this would be.

Mr. FULTON: With respect, that is not giving recognition to the fact that our whole concept has gone beyond what is the strict legal constitutional position. No one would be contemplating, in enacting this amendment to our constitution, handing back some right to the United Kingdom, because we know that the United Kingdom would itself never legislate for Canada with respect to these matters; so, to deprive our own parliament of the right to legislate would not in practice or in fact give any power to the United Kingdom.

The WITNESS: That would be the legal position, whether it is the true political position or not.

Now, I would suggest in that connection that if we had the power to make that amendment ourselves it would not be open to that objection, but as long as we have not got that power it seems to me we are in effect returning to the United Kingdom parliament a part of our sovereign power.

Mr. FULTON: Would you not narrow your words and say "in strict law" but hardly "in effect"?

The WITNESS: Let us say to do these things is clearly part of the powers of a fully sovereign parliament. If you ask the United Kingdom parliament to deprive the parliament of Canada of the power to do this, it must be admitted that the power no longer resides in this country to do these things. Where does it reside? It resides in the United Kingdom parliament. There can be no doubt about it.

Hon. Mr. GOVIN: Whether it would be exercised or not, we deprive our national sovereignty of so much; we take it away from the dominion parliament and from the legislatures.

By Mr. Hansell:

Q. Would it be correct to say that on that basis, and with regard to section (a) concerning the right to organize, that therefore parliament here would not have the authority to pass such a bill as the LaCroix bill, let us say? If this were written into our constitution it prevents us from abridging these things, one of which is the right of organization, the right of association and assembly. Would that take away the right of parliament to pass such a bill as the LaCroix Bill?—A. Well, I do not think I should be asked to pass on the LaCroix Bill because I have not examined it.

Mr. CROLL: The principle involved is to outlaw something or somebody.

By Mr. Hansell:

Q. I only used that as an illustration.—A. I see what you mean. I have not examined the bill so I did not know just what it meant, but if that bill purports to destroy an organization then it would be prohibited by this.

Hon. Mr. GOUIN: Quite right; that is a clear answer.

By Mr. Fulton:

Q. In connection with your most startling statement about giving back sovereignty and power over us to the United Kingdom parliament would you not have to consider this in that connection? I am asking for advice because I do not know the technicalities, but would you not have to consider something in connection with the statute of Westminster which declares that the dominions are fully sovereign nations.—A. Yes, but—

Q. As long as that is in force and recognized how could we be said to hand back sovereignty?—A. You have got to look somewhere else to find what it does mean, and when you speak of legislative sovereignty over and over again the Privy Council has held that the whole field of legislative power is vested in parliament or the legislatures in this country, that there is nothing left over. I am suggesting that under our peculiar system that the moment you have the United Kingdom parliament pass this amendment you are subtracting something from our total legislative powers.

Q. I grant you that, but not surely handing it back to the United Kingdom as long as the statute of Westminster— —A. Well, that power must continue to exist somewhere, and it is no longer here.

Q. What we have said in effect is that no body and no parliament or legislature shall have the power to do this.—A. We say the parliament of Canada shall not have the power. We might ask them to say no parliament has the power. You might ask the United Kingdom parliament to limit its powers as well.

The CHAIRMAN: I do not think they would do that.

The WITNESS: There is one other provision I should like to refer to for the record. Looking at section 149 for the moment there are two points I should like to mention there. The first part of it says:

The rights provided in section 148 shall be enjoyed without distinction on account of race, sex, religion or language.

In the first place section 148 really does not provide rights. It restricts parliament and legislatures from interfering with rights. That is just a question of drafting, of course. The second point to my mind is more important, and that is it presupposes that the draftsmen thought that it was necessary. I would not think it was necessary. I would think section 148 did everything that 149 suggests should be added to it, but it does suggest that without 149 parliament, for example, could pass legislation relating to a racial group which would not be an infringement of section 148. I do not understand why 149 is there at all. That is all I have to say.

By Hon. Mr. Roebuck:

Q. Summing it all up if this bill were passed would we achieve greater civil rights and fundamental freedoms in Canada or would we restrict?—A. Are you asking me to balance the two things?

Q. What would be the general effect of such a measure? Would it be to restrict civil rights and fundamental freedoms in Canada or to broaden them?—A. I do not know that I understand that question. Are you speaking about the factual situation? If this were passed would we have more rights than we have now got?

Q. Yes, or less?—A. I would say no.

Q. You would say we have less.—A. I say we would have not more for the present.

By Mr. Fulton:

Q. Would you not also say we have less chance of having some of the rights we now enjoy being taken away from us?—A. I do not personally feel apprehensive about rights being taken away.

Q. You had to give a strict interpretation of Mr. Roebuck's question. Give a strict interpretation to mine.—A. If this were passed then there is no doubt at all there are certain things that legislatures would be prevented from doing, certain things which might restrict the operations of individuals and others.

Q. So that we have not been given any more rights but it has been made a little more difficult to take rights away from us. Is that a fair statement?—A. I think so.

Hon. Mr. ROEBUCK: From individuals, but clearly we would have restricted the rights of legislatures.

Mr. FULTON: Yes.

Mr. CROLL: That is the general intention.

The CHAIRMAN: Before we break up I want to say something very important. Mr. Howe, the representative of Jehovah's Witnesses, has sent to the clerk of the committee on Human Rights, the case for a Canadian bill of rights. He does not expect it to be read, I gather, but he certainly expects it to be distributed to members of the committee and to become a part of the files or records of the committee.

Mr. CROLL: In order to have a complete record for future committees to deal with had you not better put it on the record so that if we look at it in years to come, or next year when you might not be here, then we can see just what every man had to say.

The CHAIRMAN: If it is circulated I do not think it needs to be printed. We have not even printed those that we have read so far. We read them and circulated them to the committee. It can be kept. It will be available. We will adjourn until Monday afternoon unless you are notified to the contrary in the meantime.

The committee adjourned.

SESSION 1947-48



SPECIAL JOINT COMMITTEE OF THE SENATE
AND THE HOUSE OF COMMONS

ON

HUMAN RIGHTS

AND

FUNDAMENTAL FREEDOMS

MINUTES OF PROCEEDINGS INCLUDING
THE SECOND AND FINAL REPORT

No. 11

MONDAY, JUNE 21, 1948

WEDNESDAY, JUNE 23, 1948

OTTAWA
EDMOND CLOUTIER, C.M.G., B.A., L.Ph.
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY
1948

REPORT TO THE SENATE

FRIDAY, 23rd June, 1948.

The Special Joint Committee on Human Rights and Fundamental Freedoms beg leave to make their second and final report, as follows:—

Your Committee, as a preliminary step in its enquiry resolved a portion of its order of reference of February 18, 1948, into three parts, namely:

- (a) To consider the question of human rights and fundamental freedoms, and the manner in which those obligations accepted by all members of the United Nations may best be implemented;

AND, in particular, in the light of the provisions contained in the Charter of the United Nations, and the establishment by the Economic and Social Council thereof of a Commission on Human Rights.

- (b) What is the legal and constitutional situation in Canada with respect to such rights;
- (c) And, what steps, if any, it would be advisable to take or to recommend for the purpose of preserving in Canada respect for the observance of human rights and fundamental freedoms;

for consideration in the order (a), (c) and (b).

With respect to part (a), your Committee gave immediate consideration to the draft International Declaration on Human Rights forwarded to the Government by the Secretary-General of United Nations.

Although not legally binding upon States, such a document, being a statement of principles, will tend to influence the course of legislation in States which consider themselves morally bound by its provisions, and will, therefore, promote human rights and fundamental freedoms.

As the draft Declaration has been undergoing changes at recent meetings of organs of the United Nations, your Committee decided that it should not attempt to prepare a further draft but should examine critically the principles set out in the existing draft together with such comments of other Governments as were available.

Your Committee considers that the Declaration would be more effective if stated in a shorter, more concise form. As there is no assurance that any specific draft prepared by your Committee would be accepted by the United Nations, your Committee does not suggest any particular revision of the draft submitted but recommends that the Government, in presenting its views to the United Nations, have in mind the views of members of your Committee as reported in the record of proceedings and evidence.

With respect to part (c), your Committee invited written representations from groups and organizations which had expressed a desire to place their views before your Committee. Written submissions were made by:

- (a) Canadian Jewish Congress;
- (b) Congregations of Jehovah's Witnesses;
- (c) Civil Rights Union of Toronto;
- (d) Canadian Daily Newspapers Association;
- (e) Organizations representing the Chinese people of Canada;
- (f) Committee for a Bill of Rights, Toronto.

As a result of these representations your Committee gave consideration to the enactment of a bill of rights for Canada.

Although all the briefs submitted did not recommend a bill of rights for Canada, those which contained such recommendation favoured the enactment of a bill of rights by constitutional amendment rather than by a federal statute.

At the request of the Committee; the Deputy Minister of Justice was heard in relation to the effect of the enactment of a Bill of Rights as (1) a federal statute; (2) a constitutional amendment; and, in particular, to its effect on existing and prospective provincial and dominion legislation, the common law, the sovereignty of Parliament, and the prerogatives of the Crown.

Your Committee is of opinion that to attempt to enact a Bill of Rights for Canada as a federal statute would be unwise for the following among other reasons.

The power of the Dominion Parliament to enact a comprehensive bill of rights is disputed. This is indicated by the letters received in reply to an invitation addressed by the Committee to the Attorneys-General of the Provinces and to Deans of certain law schools to express their opinions with respect to the power of Parliament to enact a comprehensive Bill of Rights applicable to all of Canada.

Clarification of the extent of the Dominion's powers by reference of questions to the Supreme Court of Canada has been suggested, but these questions, in addition to presenting serious drafting difficulties, would certainly initiate a legal and constitutional controversy with the provinces which might be far-reaching.

Despite this fact, the submission of such questions might be desirable if the answers could be taken as settling the law, and if a federal statute based on such answers effected a constitutional guarantee of human rights and fundamental freedoms. The fact is, however, that the answers would not be the equivalent in binding effect of a decision in a litigated case arising on particular facts. Moreover, a federal statute enacted on the basis of answers to such questions would not effect any constitutional guarantee of rights as it could be amended or repealed at any time by Parliament. Until amended or repealed it would bind the provincial legislatures (to the extent that it was constitutionally valid) but not the Dominion Parliament, as subsequent legislation of the Dominion Parliament inconsistent with its terms could take effect notwithstanding its terms.

It is perhaps for these reasons that the submissions to your Committee in support of a Bill of Rights favour a constitutional amendment rather than a federal statute. Your Committee is, therefore, unable to recommend that the Government give favourable consideration to the enactment of a Bill of Rights in the form of a federal statute.

In view of the fact that decisions by the Supreme Court of Canada in individual cases would be far more satisfactory than upon a general reference in determining the powers of Parliament and the Legislatures, your Committee gave some consideration to the question as to whether the jurisdiction of the Supreme Court of Canada should not be enlarged so that by leave of that Court, appeals would lie on questions of law in some instances in which there is now no appeal. Your Committee is of opinion that the Government should give consideration to such an enlargement and so recommends.

Due to pressure of time it was impossible for your Committee to call those who made submissions to your Committee to support them orally. It is possible that had those who submitted the draft Bill to amend the British North America Act been present they could have answered some or all of the numerous

questions which have arisen in the minds of members of your Committee regarding the consequences of incorporating the provisions of this draft bill in the British North America Act.

From the evidence of the Deputy Minister of Justice, however, it would appear that these consequences are so uncertain and may, in some instances at least be so undesirable, that your Committee would not be justified in recommending, without a great deal of further study, the adoption of recommendations such as those contained in the submission of the Committee for a Bill of Rights, Toronto.

Your Committee recommends that in considering proposals for the enactment of a Bill of Rights as a constitutional amendment the Government not only give full consideration to the submissions to the Committee, the evidence of the Deputy Minister of Justice and the comments of the members of the Committee, as they appear from the record of the proceedings, but also obtain the assistance of officers of the Department of Justice or an interdepartmental committee, and such others as it may consider necessary.

In making this report your Committee wishes to state its belief that Canadians enjoy a large measure of civil rights and liberties. That they must be maintained is beyond question. But to attempt to define these rights and liberties in statutory language is a task not to be undertaken lightly. The difficulty of such a task is shown by the struggles for agreement on the wording of an International Bill of Rights which have been occupying the time of the United Nations for so long. However, the meaning of human rights and fundamental freedoms is in general well understood. They exist, are enjoyed and must be preserved.

Attention may be drawn to circumstances in which fundamental rights are alleged to have been curtailed. It is desirable that such circumstances be examined critically and earnestly for they prompt the government and Parliament of the day to take stock of the extent to which Canada has maintained civil rights and liberties for her people. If imperfections appear, are recognized and are remedied progress is made towards full realization of the ideal of general observance of human rights and fundamental freedoms for all envisaged in the Charter of the United Nations.

Respect for and observance of these rights and freedoms depends in the last analysis upon the convictions, character and spirit of the people. There is much to be said for the view that it would be undesirable to undertake to define them before a firm public opinion has been formed as to their nature. It is not evident to your Committee that such an opinion has reached an advanced stage in Canada. There is need for more public discussion before the task of defining the rights and freedoms to be safeguarded is undertaken.

But whatever steps be advocated by way of statutory enactment or otherwise to preserve human rights and fundamental freedoms, Canadians must never fail to recognize that the ultimate and effective safeguard of those rights and freedoms lies in the people themselves, and in a resolute and effective public opinion.

A copy of the Printed Minutes of Proceedings and Evidence of your Committee is appended.

All of which is respectfully submitted.

L. M. GOUIN,
Chairman.

REPORT TO THE HOUSE OF COMMONS

FRIDAY, June 25, 1948.

The Special Joint Committee on Human Rights and Fundamental Freedoms begs leave to present the following as a

SECOND AND FINAL REPORT

Your Committee, as a preliminary step in its enquiry, resolved a portion of its Order of Reference of April 16, 1948, into three parts, namely:

(a) To consider the question of human rights and fundamental freedoms, and the manner in which those obligations accepted by all members of the United Nations may best be implemented;

And, in particular, in the light of the provisions contained in the Charter of the United Nations, and the establishment by the Economic and Social Council thereof of a Commission on Human Rights.

(b) What is the legal and constitutional situation in Canada with respect to such rights;

(c) And, what steps, if any, it would be advisable to take or to recommend for the purpose of preserving in Canada respect for the observance of human rights and fundamental freedoms;

for consideration in the order (a), (c) and (b).

With respect to part (a), your Committee gave immediate consideration to the draft International Declaration on Human Rights forwarded to the Government by the Secretary-General of United Nations.

Although not legally binding upon States, such a document, being a statement of principles, will tend to influence the course of legislation in States which consider themselves morally bound by its provisions, and will, therefore, promote human rights and fundamental freedoms.

As the draft Declaration has been undergoing changes at recent meetings of organs of the United Nations, your Committee decided that it should not attempt to prepare a further draft but should examine critically the principles set out in the existing draft together with such comments of other Governments as were available.

Your Committee considers that the Declaration would be more effective if stated in a shorter, more concise form. As there is no assurance that any specific draft prepared by your Committee would be accepted by the United Nations, your Committee does not suggest any particular revision of the draft submitted but recommends that the Government, in presenting its views to the United Nations, have in mind the views of members of your Committee as reported in the record of proceedings and evidence.

With respect to part (c), your Committee invited written representations from groups and organizations which had expressed a desire to place their views before your Committee. Written submissions were made by:

(a) Canadian Jewish Congress;

(b) Congregations of Jehovah's Witnesses;

(c) Civil Rights Union of Toronto;

(d) Canadian Daily Newspapers Association;

(e) Organizations representing the Chinese people of Canada;

(f) Committee for a Bill of Rights, Toronto.

As a result of these representations your Committee gave consideration to the enactment of a bill of rights for Canada.

Although all the briefs submitted did not recommend a bill of rights for Canada, those which contained such recommendation favoured the enactment of a bill of rights by constitutional amendment rather than by a federal statute.

At the request of the committee, the Deputy Minister of Justice was heard in relation to the effect of the enactment of a Bill of Rights as (1) a federal statute; (2) a constitutional amendment; and, in particular, to its effect on existing and prospective provincial and dominion legislation, the common law, the sovereignty of Parliament, and the prerogatives of the Crown.

Your Committee is of opinion that to attempt to enact a Bill of Rights for Canada as a federal statute would be unwise for the following among other reasons.

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Clarification of the extent of the Dominion's powers by reference of questions to the Supreme Court of Canada has been suggested, but these questions, in addition to presenting serious drafting difficulties, would certainly initiate a legal and constitutional controversy with the provinces which might be far-reaching.

Despite this fact, the submission of such questions might be desirable if the answers could be taken as settling the law, and if a federal statute based on such answers effected a constitutional guarantee of human rights and fundamental freedoms. The fact is, however, that the answers would not be the equivalent in binding effect of a decision in a litigated case arising on particular facts. Moreover, a federal statute enacted on the basis of answers to such questions would not effect any constitutional guarantee of rights as it could be amended or repealed at any time by Parliament. Until amended or repealed it would bind the provincial legislatures (to the extent that it was constitutionally valid) but not the Dominion Parliament, as subsequent legislation of the Dominion Parliament inconsistent with its terms could take effect notwithstanding its terms.

It is perhaps for these reasons that the submissions to your Committee in support of a Bill of Rights favour a constitutional amendment rather than a federal statute. Your Committee is, therefore, unable to recommend that the Government give favourable consideration to the enactment of a Bill of Rights in the form of a federal statute.

In view of the fact that decisions by the Supreme Court of Canada in individual cases would be far more satisfactory than upon a general reference in determining the powers of Parliament and the Legislatures, your Committee gave some consideration to the question as to whether the jurisdiction of the Supreme Court of Canada should not be enlarged so that by leave of that Court, appeals would lie on questions of law in some instances in which there is now no appeal. Your Committee is of opinion that the Government should give consideration to such an enlargement and so recommends.

Due to pressure of time it was impossible for your Committee to call those who made submissions to your Committee to support them orally. It is possible that had those who submitted the draft Bill to amend the British North America Act been present they could have answered some or all of the numerous questions which have arisen in the minds of members of your Committee regarding the consequences of incorporating the provisions of this draft bill in the British North America Act.

From the evidence of the Deputy Minister of Justice, however, it would appear that these consequences are so uncertain and may, in some instances at least, be so undesirable, that your Committee would not be justified in recommending, without a great deal of further study, the adoption of recommendations such as those contained in the submission of the Committee for a Bill of Rights, Toronto.

Your Committee recommends that in considering proposals for the enactment of a Bill of Rights as a constitutional amendment the Government not only give full consideration to the submissions to the Committee, the evidence of the Deputy Minister of Justice and the comments of the members of the Committee, as they appear from the record of the proceedings, but also obtain the assistance of officers of the Department of Justice or an interdepartmental committee, and such others as it may consider necessary.

In making this report your Committee wishes to state its belief that Canadians enjoy a large measure of civil rights and liberties. That they must be maintained is beyond question. But to attempt to define these rights and liberties in statutory language is a task not to be undertaken lightly. The difficulty of such a task is shown by the struggles for agreement on the wording of an International Bill of Rights which have been occupying the time of the United Nations for so long. However, the meaning of human rights and fundamental freedoms is in general well understood. They exist, are enjoyed and must be preserved.

Attention may be drawn to circumstances in which fundamental rights are alleged to have been curtailed. It is desirable that such circumstances be examined critically and earnestly for they prompt the government and Parliament of the day to take stock of the extent to which Canada has maintained civil rights and liberties for her people. If imperfections appear, are recognized and are remedied progress is made towards full realization of the ideal of general observance of human rights and fundamental freedoms for all envisaged in the Charter of the United Nations.

Respect for and observance of these rights and freedoms depends in the last analysis upon the convictions, character and spirit of the people. There is much to be said for the view that it would be undesirable to undertake to define them before a firm public opinion has been formed as to their nature. It is not evident to your Committee that such an opinion has reached an advanced stage in Canada. There is need for more public discussion before the task of defining the rights and freedoms to be safeguarded is undertaken.

But whatever steps be advocated by way of statutory enactment or otherwise to preserve human rights and fundamental freedoms, Canadians must never fail to recognize that the ultimate and effective safeguard of those rights and freedoms lies in the people themselves, and in a resolute and effective public opinion.

A copy of the printed Minutes of Proceedings and Evidence of your Committee is appended.

All of which is respectfully submitted.

J. L. ILSLEY,
Chairman.

MINUTES OF PROCEEDINGS

MONDAY, 21st June, 1948.

The Special Joint Committee on Human Rights and Fundamental Freedoms met, in camera, at 4.00 o'clock p.m. The Joint Chairman, Right Honourable J. L. Ilsley, presided.

Also present:

The Senate: Honourable Senators Horner, McDonald (*Kings*), Roebuck, Turgeon, Wilson.

The House of Commons: Messrs. Beaudoin, Macdonnell (*Muskoka-Ontario*), Marier, Robinson (*Simcoe-East*), Whitman.

By leave of the Committee, Mr. D. H. W. Henry, Counsel, Department of Justice, Ottawa, was in attendance.

The Committee undertook consideration of a final report to both Houses.

Pursuant to a notice of motion filed on June 17, by Mr. Diefenbaker, the following was considered:

That the Minister of Justice be requested forthwith to refer to the Supreme Court of Canada for determination by that Court of: (a) The question as to the power and jurisdiction of the Parliament of Canada to enact a Bill of Rights respecting the fundamental freedoms of religion, speech (including radio), press and assembly as well as the constitutional and traditional safe-guards of the individual. (b) The question of the extent to which such fundamental freedoms or constitutional safe-guards are within the legislative competence of the Provinces.

And the question being put, it was resolved in the negative.

The Committee adjourned at 5.30 o'clock p.m. to meet again, Wednesday, 23rd June, at 4.00 o'clock p.m.

J. G. DUBROY,

Clerk of the Committee.

MINUTES OF PROCEEDINGS

WEDNESDAY, 23rd June, 1948.

The Special Joint Committee of the Senate and the House of Commons on Human Rights and Fundamental Freedoms met, in camera, at 4.00 o'clock p.m. The Joint Chairman, Right Honourable J. L. Ilsley and Honourable L. M. Gouin were present. Mr. Ilsley presided.

Also present:

The Senate: Honourable Senators Crerar, McDonald (*Kings*), Roebuck, Turgeon, Wilson.

The House of Commons: Messrs. Beaudoin, Breithaupt, Fulton, Hackett, Hazen, Herridge, Michaud, Rinfret, Robinson (*Simcoe-East*), Stewart (*Winnipeg-North*), Whitman.

By leave of the Committee, Mr. D. H. W. Henry, Counsel, Department of Justice, Ottawa, was in attendance.

The Committee considered a draft final report to both Houses.

The draft final report, as amended, was adopted.

Ordered,—That the Joint Chairmen present said report to both Houses.

At 6.05 o'clock p.m. the Committee adjourned *sine die*.

J. G. DUBROY,
Clerk of the Committee.

