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Canada. Parl. Special Joint Comm. on Human Rights and Fundamental Freedoms, 1947.

SESSION 1947

SPECIAL JOINT COMMITTEE OF THE SENATE AND THE HOUSE OF COMMONS

ON

HUMAN RIGHTS

AND

FUNDAMENTAL FREEDOMS

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 1

THURSDAY, JUNE 5, 1947

FRIDAY, JUNE 13, 1947

OTTAWA
EDMOND CLOUTIER, C.M.G., B.A., L.Ph.,
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY
1947

ORDER OF REFERENCE

THE SENATE

TUESDAY, 3rd June, 1947.

Ordered,—That a Message be sent to the House of Commons to inform that House that the Senate do unite with the House of Commons in the appointment of a Joint Committee of both Houses 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 and observance of human rights and fundamental freedoms;

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

WEDNESDAY, 11th June, 1947.

Ordered,—That it be empowered to print, from day to day, 750 copies in English and 200 copies in French of its minutes of proceedings and evidence, and that Rule 100 be suspended insofar as it relates to the said printing.

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

3. That its quorum be ten.

Attest

L. C. MOYER,
Clerk of the Senate.

91404—1½

HOUSE OF COMMONS

MONDAY, 26th May, 1947.

Resolved—That a Joint Committee of both Houses of Parliament be appointed, and that Messrs. Benidickson, Breithaupt, Croll, Sinclair (*Ontario*), Belzile, Beaudoin, Pinard, Lesage, Marier, Rinfret, Whitman, Ilsley, Isnor, Michaud, Maybank, Mayhew, Diefenbaker, Fulton, Hackett, Harkness, Hazen, Macdonnell, (*Muskoka-Ontario*), Massey, Miller, Irvine, Jaenicke, Stewart (*Winnipeg North*), Hansell, Herridge be members of such Committee, as far as the interests of this House are concerned, 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 and observance of human rights and fundamental freedoms;

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, 30th May, 1947.

Ordered,—That the subject-matter of Bill No. 133, An Act to amend the Criminal Code (Illegal Organizations), be referred to the said Committee.

THURSDAY, 5TH JUNE, 1947.

Ordered,—That the name of Mrs. Strum be substituted for that of Mr. Jaenicke on the said Committee.

FRIDAY, 6TH JUNE, 1947.

Ordered,—That the said Committee be empowered to print, from day to day, 750 copies in English and 200 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 while the House is sitting.

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

Attest

ARTHUR BEAUCHESNE
Clerk of the House.

REPORT TO THE SENATE

THURSDAY, 5TH JUNE, 1947.

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 200 copies in French of its minutes of proceedings and evidence, and that Rule 100 be suspended in so far as it relates to the said printing.

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

3. That its quorum be ten.

All which is respectfully submitted.

L. M. GOUIN,
Chairman.

(Presented and concurred in Wednesday, 11th June, 1947.)

REPORT TO THE HOUSE OF COMMONS

FRIDAY, 6TH JUNE, 1947.

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 200 copies in French of its minutes of proceedings and evidence, and that Standing Order 64 be suspended in relation thereto.

2. That is 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.

(Concurred in Friday, 6th June, 1947.)

MINUTES OF PROCEEDINGS

THE SENATE,

THURSDAY, 5th June, 1947.

The Special Joint Committee on Human Rights and Fundamental Freedoms met at 10.30 o'clock a.m.

Present:

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

The House of Commons: Rt. Honourable J. L. Ilsley, and Messrs. Belzile, Hansell, Hazen, Herridge, Irvine, Isnor, Macdonnell (*Muskoka-Ontario*), Mayhew, Michaud, Miller, Pinard, Rinfret, Stewart (*Winnipeg North*), and Whitman.

On motion of Mr. Whitman, seconded by Mr. Isnor:

Resolved,—That Right Honourable J. L. Ilsley, M.P., be Joint Chairman.

Mr. Ilsley took the Chair.

On motion of Honourable Senator Crerar, seconded by Honourable Senator Leger:

Resolved,—That Honourable Senator L. M. Gouin be Joint Chairman.

On motion of Mr. Irvine:

Ordered,—That the Committee ask leave to print, from day to day, 750 copies in English and 200 copies in French of its minutes of proceedings and evidence.

The Committee concurred in a suggestion of the Chairman that, until the need for 750 copies is demonstrated, the printed issue of minutes of proceedings and evidence in the English language be limited to 500. The Chairman directed accordingly.

On motion of Mr. Whitman:

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

On motion of Honourable Senator Bouffard:

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

The Chairman suggested that a shorthand reporting service be provided by the reporting staff of the Senate.

The Chairman recommended that a steering committee of seven members be constituted and that it include representation from the various sections of both Houses.

It was agreed that Mr. Hansell and Mr. Stewart (*Winnipeg North*) be members thereof.

The Joint Chairmen were directed to select the remaining members of the steering committee.

Honourable Senator Crerar suggested that Honourable Senator Gouin and one other senator be members of the steering committee.

On motion of Mr. Herridge, the Committee adjourned until 10.30 o'clock a.m. Thursday, 12th June.

The SENATE,

FRIDAY, 13TH JUNE, 1947.

The Special Joint Committees on Human Rights and Fundamental Freedoms met ot 10.30 o'clock a.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, Burchill, Fallis, McDonald (*Kings*), and Wilson.

The House of Commons: Mrs. Strum and Messrs. Belzile, Benidickson, Harkness, Herridge, Irvine, Isnor, Marier, Mayhew, Michaud, Miller, Rinfret, Stewart (*Winnipeg-North*), and Whitman.

The Chairman reported the following were selected to act as the Steering Committee: Honourable Senator Turgeon, Messrs. Belzile, Diefenbaker, Hansell, Stewart (*Winnipeg-North*) and the Joint Chairmen. Mr. Hazen was selected to act temporarily for Mr. Diefenbaker.

The Chairman outlined briefly the proposed procedure recommended by the Steering Committee and presented the following:

THURSDAY, 12TH JUNE, 1947.

FIRST REPORT OF STEERING COMMITTEE

Your Steering Committtee, having considered the Order of Reference to the Committee, recommends as follows:

1. That the Order of Reference to the Committee be divided into the following three headings for consideration in the same order:—

(*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 and observance of human rights and fundamental freedoms.

2. That officers of the External Affairs Department and if practicable of the appropriate agency of the United Nations Organization be called to advise the Committee in regard to Canada's national and international participation and obligation in relation to heading (*a*).

3. Also that officers of the Department of Justice be called in relation to heading (*b*).

4. That arrangements for hearing representations from interested organizations and for considering Bill No. 133 An Act to amend the Criminal Code (Illegal Organizations) be deferred until the steps mentioned in the two preceding paragraphs are taken and your Steering Committee has given further consideration to the making of such arrangements.

All of which is submitted.

Honourable Senator McDonald (*Kings*) moved:

That the Report be adopted.

Discussion followed.

Report adopted.

It was agreed:

(*a*) To call at the next meeting an officer of the Department of External Affairs to inform the Committee relative to heading (*a*) and paragraph (2) of the First Report of the Steering Committee.

(*b*) To call if practicable at the subsequent meeting Mr. J. P. Humphrey Head of the Human Rights Commission Department of Social Affairs Division United Nations Organization relative to heading (*a*) and paragraph (2) of the First Report of the Steering Committee.

The Committee adjourned until Tuesday 17th June at 11.00 a.m.

J. G. DUBROY
Clerk of the Committee.

MINUTES OF EVIDENCE

HOUSE OF COMMONS,

June 13, 1947.

The Special Joint Committee on Human Rights and Fundamental Freedoms met this day at 10.30 a.m. The Right Hon. J. L. Ilsley, (Joint Chairman) presided.

The CHAIRMAN: The meeting will please come to order.

At the last meeting it was agreed that the chairmen of this committee should select a steering committee. That has been done. The members of the steering committee are: the chairmen of this committee, Senator Turgeon, Mr. Belzile, Mr. Diefenbaker, Mr. Hansell and Mr. Stewart. Mr. Diefenbaker is away and Mr. Hazen is taking his place until he returns.

Now the steering committee met yesterday afternoon and, after discussing the procedure that should be adopted, they came to these conclusions which they wish to report to this committee for its consideration. The terms of reference should be considered as falling into three divisions: First, 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. It was felt by the steering committee that this committee should first address itself to that division of the terms of reference. Secondly, this committee should proceed to the second division of the terms of reference, which is an examination of the legal and constitutional situation in Canada with respect to such rights; and thirdly, the committee should proceed to the consideration of the third division of the terms of reference, namely, what steps it would be advisable to take or to recommend for the purpose of preserving in Canada respect for and observance of human rights and fundamental freedoms.

To put the matter as accurately as possible I will read this first report of the steering committee.

Thursday, 12th June, 1947.

Your Steering Committee, having considered the Order of Reference to the Committee, recommends as follows:

1. That the Order of Reference to the Committee be divided into the following three headings for consideration in the same order:—

(*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 and observance of human rights and fundamental freedoms.

2. That officers of the External Affairs Department and, if practicable, of the appropriate agency of the United Nations Organization be called to advise the Committee in regard to Canada's national and international participation and obligation in relation to heading (*a*).

3. Also, that officers of the Department of Justice be called in relation to heading (*b*).

4. That arrangements for hearing representations from interested organizations and for considering Bill No. 133. An Act to amend the Criminal Code (Illegal Organizations) be deferred are taken and your Steering Committee has given further consideration to the making of such arrangements.

All of which is submitted.

Now that, briefly stated, is the course of procedure we recommend to this committee.

Is there any discussion or does anyone wish to move that the report be adopted after which there can be a discussion?

Hon. Mr. McDonald: To bring the matter to a head I move the adoption of the report.

Hon. Mr. Bouffard: I second the motion.

The Chairman: Moved by Senator McDonald and seconded by Senator Bouffard that the report be adopted. Is there any discussion?

I may say if this report is adopted we propose to have here at our next meeting, which we think should be next Tuesday, an officer or an official of the Department of External Affairs, and he will advise the committee what has been done at the United Nations, and what obligations Canada has assumed, and, perhaps, in some measure, the meaning of these obligations and he may be questioned by the members of the committee.

We propose also to get in touch now with Mr. J. P. Humphrey, head of the Human Rights Division of the United Nations Organization and ascertain whether or not he can be present on Wednesday or Thursday of next week to give us further information. I doubt whether any other witness on that phase would be required and I would then think we should proceed to hear the Department of Justice on the second paragraph with reference to the legal and constitutional situation in Canada respecting such rights.

By that time the steering committee ought to be able to make recommendations as to how we ought to proceed from that stage and what we ought to do about this bill that has been referred to us, when we will take it up, and what we will do about hearing representatives from interested organizations.

Mr. Stewart: Perhaps, Mr. Chairman, I may be permitted to say something here. I accept this agenda but it is a very short term agenda and I think your steering committee are in some doubt exactly as to the course which this committe as a whole should follow. My own feeling is this. There are thousands of people all across Canada who are looking to this committee in a very interested way. They expect something to come out of it but there is the distinct possibility that we may become bogged down in a morass of words and get nowhere. However, that is not the intention of anybody. I feel I would like to hear from the members of the committee as to what our objectives should be. For instance we have two objectives, one is the ultimate adherence to an international bill of rights and the other is the creation of a bill of rights in Canada. Those are long-term objectives and there may be short-term objectives such as suggesting to the government a draft of a constitution of a bill of rights to be sent to the international committee to help them in their deliberations. What should be our own immediate focal point? It is a thing which intrigues me very much and I would like to hear some expression from the other members.

Mr. WHITMAN: Mr. Chairman, our next meeting will be taken up with the international obligations we have assumed as members of the United Nations, is that right?

The CHAIRMAN: Yes.

Mr. WHITMAN: That will be the international obligations of all nations but we will be discussing Canada's responsibility only.

The CHAIRMAN: Yes.

Hon. Mr. GOUIN: We thought it was logical to begin with what I would call the international aspect of the question. Of course as we have been appointed members of this joint committee it seems very clear that it is, first of all, under the Charter of the United Nations where there are several references to human rights and the fundamental freedoms. There is no definition, as you all know, in the charter of those human rights and fundamental freedoms. It seems that it has been taken for granted and that they were so clear or so evident that it was not necessary to define them but, at the same time, in a certain sense they may be rather vague. There are certain human rights I would take for granted like the freedom of worship, the freedom of speech, or free expression, on which we can, I would suggest, all agree at least basically. If we want to go further than that we thought it was essential to try and ascertain if there was any documentation or information which could be obtained from the United Nations. I am inclined to believe that something interesting could be found, and could be supplied to this committee through that source and it would serve, I would suggest, as a general introduction to the subject. Then of course we have to go further on. I would not say that we are limited to stop there after this first question. I would say it was an introduction to the matter.

Hon. Mr. BOUFFARD: There is no doubt, Mr. Chairman, in so far as the constitutional rights of the government of Canada is concerned you have to be aware of this. We have to know very well how far we can go. There is no doubt that very many of the fundamental rights belong to the provinces. It might be a good thing to have the provinces before the committee to see how far they want to go in conjunction with the federal government on these liberties. There would be no practical result in defining fundamental rights and freedoms of the people if we could not do anything to assure the people that they were going to have them. If we had no power except in a very few fields like the freedom of speech and freedom of the press, I am very doubtful if the federal government has anything to do with that except in a very few cases. I do not think we ought, at the present time, to try and go as far as having in mind the drafting of a bill of rights before we know exactly what we can do. I think these first two paragraphs (*a*) and (*b*) should be very well studied before we can go anywhere. I do not see any immediate advantage in looking forward to the writing down of any bill or any law in so far as those rights are concerned at the present time.

Hon. Mr. GOUIN: The idea of having the officers from the Department of Justice to appear before this committee was precisely, if I am not mistaken, to go into that constitutional question. It is a very serious question, and a very difficult question, but again we should start from the starting point which is, of course, the obligation of Canada under the Charter of the United Nations, those obligations being of an international or external character. They were assumed by what I would call the dominion authorities, or the government, or the parliament of Canada. It was quite natural to have the committee set up here to study the question of human rights and fundamental freedoms, to see what could be done, either by the dominion parliament alone, or acting through the United Nations, or again, acting in co-operation.

Hon. Mr. BOUFFARD: Even though we have obligations, external obligations, I am not sure that the federal government has power to enact any legislation in connection with those obligations. It is similar to the situation with respect to the labour legislation passed in 1938, which arose partly through obligations entered into. Bills were introduced and passed in the House of Commons and the Senate, which were declared to be unconstitutional by the Privy Council because we had no right to pass them.

Hon. Mr. GOUIN: I would say that it is a joint field of action, so to speak. There is no doubt some federal legislation might be passed on human rights which might jeopardize human freedoms and even the question of freedom of worship, as you say, might be imperilled by some federal legislation. Any legislative power at a given moment can encroach on human rights and fundamental freedoms.

Mr. MAYHEW: May I ask if the steering committee would have (*a*) as (*b*) and (*b*) as (*a*). In other words could we have the legal position considered first?

The CHAIRMAN: That point was given consideration by Senator Gouin and myself. I do not know whether we discussed it in the steering committee but it seemed to us this was the logical order. The question of what we could call the legal aspect does not come into the matter until we know what we are expected to do or what we are asked to do.

Mr. IRVINE: With regard to the question raised here by my friend, is it possible Canada, as a member of the United Nations, undertakes in respect to this question of fundamental human rights, matters which are vested in the provinces or any of them?

Is not Canada acting as a nation in these matters? If she is acting as one of a group of nine nations we had better know.

The CHAIRMAN: That is one question which we had better leave to the officials of the Department of Justice. As Senator Bouffard mentioned a situation arose in the 1930's when we undertook to enact certain legislations because we had signed certain agreements and it was held that we did not have the power to enact that legislation.

Mr. IRVINE: Would there not be some difference between this and the labour legislation because labour legislation is more or less defined as a provincial matter. Surely any matter of general human rights, as they are conceived in the United Nations Charter, would have different status than the matter of labour legislation.

The CHAIRMAN: Well, I know that you have in mind the clause in the British North America Act which says that property and civil rights within the province is within the exclusive jurisdiction of the province.

Mr. IRVINE: The very first thing to me seems to be that if we have no power there is no use being here.

The CHAIRMAN: Yes, that is quite right.

Hon. Mr. BOUFFARD: We ought to know where we are going first.

Mr. IRVINE: Our first meeting is the discussion of the international obligations which we have assumed.

The CHAIRMAN: Yes.

Mr. IRVINE: And the next meeting?

The CHAIRMAN: The next meeting will be on the same subject if we are successful in getting Mr. Humphrey to come.

Mr. IRVINE: And following that we will have the legal explanation?

The CHAIRMAN: Yes. The first is the definition of what we are going to decide and the second matter is how far we can go.

Mr. HERRIDGE: I support that point of view, Mr. Chairman. I think we would be wise to adhere to this agenda because out of (*a*) will flow a background on which we can deal with (*b*).

The CHAIRMAN: And out of (*b*) will emerge a background for (*c*).

Is there any further discussion, if not is the motion carried?

Mrs. STRUM: Mr. Chairman, I would just like to ask a question. Do you not think human rights are more closely associated with citizenship rights than they are with civil property rights? Do you not think that citizenship rights must be associated with fundamental freedom, or else your citizenship rights are not very valuable if they are to be modified from province to province.

The CHAIRMAN: Well your question would suggest that legislation relating to citizenship is not legislation in relation to civil rights within a province. That is a legal constitutional question which I could not answer. It should be discussed with the officials.

Mrs. STRUM: I should say that if citizenship is going to apply all across Canada then human rights and fundamental freedoms, by the same token, must be equally applicable in every province.

Hon. Mr. BOUFFARD: I would like to have the opinion of the Department of Justice on that point.

Mr. WHITMAN: Do we not have two questions, the first one is the international bill for human rights and fundamental freedoms, and, secondly, the internal or domestic provisions. Are we not at the present time going to discuss this internationally? Is that correct or is it not correct?

Mr. IRVINE: The point arises that if you commit yourself to a certain policy internationally and find you cannot carry it out because some of the provinces are going some other way, you are committing yourself to something you cannot carry out.

Mrs. STRUM: In the first clause, (a), it says "And the manner in which these obligations accepted by all members of the United Nations may best be implemented;"

Does not that mean implemented here, because this is the country in which we have jurisdiction.

Hon. Mr. BOUFFARD: My impression is all these external matters which have been approved by the proper authorities in Canada. Perhaps the Department of Justice will consider the proper authority will be the central government and also the provincial governments. In the case of the labour laws the provinces had to implement labour laws before they could be properly approved in Canada.

Mrs. STRUM: Again, I do not wish to be tiring about this but the Citizenship Act was not approved by each province.

Hon. Mr. BOUFFARD: It does not confer any rights. That is to say citizenship rights would not conflict with the provincial governments. We cannot instruct the provincial government to grant a petition of rights. It is essentially a matter for the dominion government and that is one of the points which was submitted to the House and caused discussion out of which the motion arose.

Mr. MILLER: Are we not trying to decide the points before we hear the evidence. This is quite a full program and if we were to hear the evidence we could make our decisions afterwards.

Mr. RINFRET: As I read the B.N.A. the Dominion of Canada is formed with two distinct parts, one is the federal authority and the other is the provincial authority. Now we must know first what this country of ours, consisting of federal authority and provincial authority, is called upon to assume. From the moment we know what we have under each of those two internal divisions in the way of responsibility we can discuss what the constitutional rights of each is.

The CHAIRMAN: If there is no further discussion I will declare the report adopted.

The steering committee thought that we might meet at eleven o'clock instead of at ten thirty on the days on which we do meet, does that meet with the approval of the committee?

Agreed.

Hon. Mr. McDONALD: Mr. Chairman, I am sorry I was not in attendance at the last meeting, I was in Halifax. Was there a verbatim report of the first meeting?

The CHAIRMAN: There was not.

Hon. Mr. McDONALD: There was just a report of the organization meeting?

The CHAIRMAN: Yes.

The next meeting will be on Tuesday at 11.00 a.m. if it is agreeable.

Hon. Mr. GOUIN: It might be a good thing to try and acertain what the feeling of the members from the Senate is. I do not know how many would be able to be present on Tuesday.

Hon. Mrs. FALLIS: There are many other committees on Tuesday at 11.00 a.m.

Hon. Mrs. WILSON: Not on Tuesday.

Hon. Mrs. FALLIS: There is the committee on Indian Affairs, but perhaps I am the only one that is concerned.

Mr. WHITMAN: Do you propose, Mr. Chairman, that we sit from 11.00 a.m. to 1.00 p.m.?

The CHAIRMAN: Yes.

Mr. IRVINE: Has it been decided that we sit on Tuesday and Friday?

The CHAIRMAN: No, it has not been decided, but we thought we could meet here on Tuesday and then decide whether we would sit on Wednesday or Friday.

Hon. Mr. BOUFFARD: As far as the Senate is concerned Tuesdays and Fridays are very bad. I do not want to impose anything on you but the members of the Senate are not free very much after Tuesday afternoon with the evening sittings on so on.

The CHAIRMAN: If the committee thinks Wednesday would be better than Tuesday it is perfectly agreeable.

Mr. STEWART: The only objection I have is the fact that on Wednesday we, at least, hold a caucus and I believe also other parties do.

The CHAIRMAN: Yes, we often have a caucus on Wednesday.

If Tuesday meets with the general approval perhaps we could agree on that and the meeting will adjourn until Tuesday at 11 a.m. if there is nothing further before us today. I do not know of anything else to come before this committee today.

The meeting adjourned at 11.05 a.m. to meet again on Tuesday, June 17, 1947, at 11.00 a.m.

SESSION 1947

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, JUNE 17, 1947

WITNESSES:

R. G. Riddell, Esq., Chief, First Political 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
1947

REPORT TO THE SENATE

TUESDAY, 17th June, 1947.

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

Your Committee recommend that it be empowered to send for persons, papers and records, and to report from time to time.

All which is respectfully submitted.

L. M. GOUIN,
Chairman.

(Concurred in 17th June, 1947)

REPORT TO THE HOUSE

TUESDAY, 17th June, 1947.

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

SECOND REPORT

Your Committee request that it be empowered to send for persons, papers and records, and to report from time to time.

All of which respectfully submitted.

J. L. ILSLEY,
Chairman.

(Concurred in 17th June, 1947)

ORDERS OF REFERENCE

THE SENATE,

TUESDAY, 17th June, 1947.

Ordered,—That the said Committee be empowered to send for persons, papers and records, and to report from time to time.

Attest.

L. C. MOYER,
Clerk of the Senate.

HOUSE OF COMMONS,

TUESDAY, 17th June, 1947.

Ordered,—That the said Committee be empowered to send for persons, papers and records, and to report from time to time.

Attest.

ARTHUR BEAUCHESNE,
Clerk of the House.

91444—1½

MINUTES OF PROCEEDINGS

THE SENATE,

TUESDAY, 17th June, 1947.

The Special Joint Committee on Human Rights and Fundamental Freedoms met at 11.00 o'clock a.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 Burchill, Crerar, Fallis, McDonald (*Kings*), Turgeon, and Wilson.

The House of Commons: Beaudoin, Belzile, Benidickson, Croll, Fulton, Hansell, Harkness, Hazen, Herridge, Irvine, Lesage, Mayhew, Michaud, Pinard, Stewart (*Winnipeg-North*), and Whitman.

On motion of Mr. Croll:

Ordered,—That the Committee ask for power to send for persons, papers and records, and to report from time to time.

Mr. R. G. Riddell, Chief, First Political Division, Department of External Affairs, Ottawa, was called. He read a brief pertaining to United Nations Documents on Human Rights and Fundamental Freedoms and was questioned thereon. Mr. E. R. Hopkins, Legal Adviser, Department of External Affairs, Ottawa, assisted during the questioning.

The witness also filed the following papers:—

(1) Statement of Essential Human Rights (Drafted by a committee appointed by the American Law Institute and submitted to the General Assembly of the United Nations by the Delegation of Panama).

(2) Letter of the 2nd June, 1947, to the Secretary-General of the United Nations from Lord Dukeston, enclosing the following documents:—

(i) A draft International Bill of Human Rights;

(ii) A draft resolution which might be passed by the General Assembly when adopting an International Bill of Rights.

It was agreed that items (1) and (2) be printed as appendices to the evidence of Mr. Riddell. (See appendices (*a*) and (*b*) attached).

The witness undertook to obtain copies of any other suggested bill on Human Rights, or relevant papers, which have been submitted to the United Nations or otherwise.

It was agreed that the Committee at its next meeting would consider the papers filed to-day by the witness.

The Committee adjourned at 12.30 a.m. to meet again at 11.00 o'clock a.m., Friday 20th June.

J. G. DUBRAY,
Clerk of the Committee.

MINUTES OF EVIDENCE

HOUSE OF COMMONS,

June 17, 1947.

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

The CHAIRMAN: It has been brought to my attention that the committee has no power to send for persons, papers and records, and to report from time to time to parliament. Therefore, I think somebody might move a motion.

Mr. CROLL: I will move, seconded by Mr. Belzile, that the committee ask for power to send for persons, papers and records and to report from time to time to parliament.

The CHAIRMAN: You have heard the motion. Is there any discussion? Those in favour say "aye". Those against say "nay". Motion carried.

It has been arranged that to-day we shall have an official of the Department of External Affairs who will give us some information as to the obligations which this country assumed at the United Nations. I suggest that Mr. R. G. Riddell of the Department of External Affairs be called to give such information as he can.

R. G. Riddell, Chief, First Political Division, Department of External Affairs, called.

By the Chairman:

Q. What is your position in the department?—A. I am Chief of the First Political Division of the Department of External Affairs which is the division responsible for United Nations affairs and international conferences.

Q. Can you give the committee any information as to our obligations to the United Nations in respect of human rights and fundamental freedoms?—A. We have prepared in the Department of External Affairs, and have now placed in the hands of the clerk of the committee, three documents which you may wish to call to the attention of the committee. The first of these, which we have numbered Department of External Affairs Document No. 1, contains the text of measures adopted by various United Nations bodies together with a description of the machinery for considering the subject of human rights and fundamental freedoms within the United Nations.

There are two other documents which have been prepared for the committee. Document No. 2 is the text of a draft international bill of human rights which was prepared by a committee of jurists and lawyers appointed by the American Law Institute, and which was subsequently submitted to the General Assembly by the delegation of Panama.

The third document is a draft international bill of human rights which was prepared by the government of the United Kingdom and submitted to a drafting group of a commission of the United Nations which is now considering the subject of human rights.

I suggest that the committee might consider first document No. 1 which contains the relevant documentary material adopted by various bodies of the United Nations. This document commences by giving the text of the relevant sections of the charter of the United Nations. Is it your wish that I read this document?

Hon. Mr. CRERAR: Yes.

The CHAIRMAN: I think so.

The WITNESS:

DEPARTMENT OF EXTERNAL AFFAIRS DOCUMENT No. 1

HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

UNITED NATIONS DOCUMENTS

(A) The Charter of the United Nations—There are a number of references to the subjects of Human Rights and Fundamental Freedoms in the Charter.

(*a*) In the preamble of the Charter, it is stated: "We the peoples of the United Nations determined . . . to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women . . . have resolved to combine our efforts to accomplish these aims."

(*b*) Article 1, para. 3, states that one of the basic purposes of the United Nations is: "to achieve international co-operation in . . promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion."

(*c*) Article 13 provides that: "The General Assembly shall initiate studies and make recommendations for the purpose of . . . assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."

(*d*) Article 55 states: "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: . . . universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion."

(*e*) Under Article 56, all members of the United Nations "pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55."

That constitutes the text of the actual references in the charter to the subject of human rights and fundamental freedoms. The remainder of the document is a description of steps which have been taken in the United Nations to implement the general obligations which are contained in these clauses of the charter.

By Mr. Hazen:

Q. May I ask the date of the charter?—A. The charter was drawn up at the San Francisco Conference in May, 1945, and was signed on June 26, 1945.

The CHAIRMAN: Are there any other questions on the charter?

The WITNESS: I will continue on page 2.

(B) *The Economic and Social Council*

The responsibilities of the United Nations in the field of human rights and fundamental freedoms, as set forth in Articles 55 and 56 are. under Article 60*, vested in the General Assembly, and, under the authority of the General Assembly, in the Economic and Social Council. Article 62, para. 2, states that the Economic and Social Council "may make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all". Article 68 provides that "the Economic and

*Responsibility for the discharge of the functions of the Organization set forth in this Chapter shall be vested in the General Assembly and, under the authority of the General Assembly, in the Economic and Social Council, which shall have for this purpose the powers set forth in Chapter X.

Social Council shall set up commissions in economic and social fields and for the promotion of human rights, and such other commissions as may be required for the performance of its functions". In accordance with these provisions of the Charter, the Economic and Social Council proceeded at its first session to establish a Commission on Human Rights.

The point that is established in this section of the document is that the responsibility for developing the sections of the charter which refer to human rights rests with the Economic and Social Council. Canada is a member of the Economic and Social Council and will continue to be a member for one more year, subject to re-election. The Economic and Social Council therefore under these powers established a Commission on Human Rights which is described in section (C) of this document on page 2.

By Mr. Hazen:

Q. What is the date of the first session?—A. The first session of the Economic and Social Council?

Q. Yes.—A. The Economic and Social Council first met in London in January of 1946.

(C) *Commission on Human Rights*—The Commission on Human Rights was established by resolution of the Economic and Social Council on February 16, 1946, as amended by a further resolution of June 21, 1946. The states selected by the Economic and Social Council, at its third session in September, 1946, to nominate representatives on the Commission on Human Rights, together with the individuals nominated by these states are:—

The list of the 18 states which are members of the Commission on Human Rights is then given.

State	*Term of Office*	*Representative*
Australia	4 years	Col. W. R. Hodgson
Belgium	4 years	M. Fernand Dehousse
Byelorussia	2 years	Mr. V. K. Prokoudovitch
Chile	4 years	H.E. Mr. Felix Nieto del Rio
China	2 years	Dr. P. C. Chang
Egypt	3 years	Mr. Saad Kamel
France	3 years	Prof. Rene Cassin
India	3 years	Mr. K. C. Neogy
Iran	3 years	
Lebanon	2 years	Dr. Charles Malik
Panama	2 years	Mr. R. J. Alfaro
Philippines	4 years	The Hon. C. P. Romulo
Ukraine	3 years	Mr. G. D. Stadnik
United Kingdom	2 years	Mr. Charles Dukes
U.S.A.	4 years	Mrs. Eleanor Roosevelt
U.S.S.R.	3 years	Mr. V. F. Tepliakov
Uruguay	2 years	Dr. Don Jose Mora Oteroo
Yugoslavia	4 years	Mr. M. Stilinovic

By Mr. Stewart:

Q. May I ask if Canada stood for election on this?—A. Canada was not nominated. Canada is a member of five other commissions of the Economic and Social Council but not of this commission. I might explain the procedure for nominating members of a commission of the Economic and Social Council. The Council elects nominating states. The states then nominate an individual who becomes the actual member of the commission. That nomination is subject later to comment by the Secretary General and approved by the Economic and Social Council itself.

By Mr. Irvine:

Q. What is the idea of the two year, three year and four year terms for the the various states?—A. The idea is that a part of the commission will be elected each year. At the first election, therefore, it was necessary to give various terms of office. One-third of the members will retire each year.

The Officers of the Commission are:—

Chairman, Mrs. Roosevelt
Vice-Chairman, Dr. Chang
Rapporteur, Dr. Malik
Secretary, Professor J. P. Humphrey

Representatives of the following organizations attended the meetings of the Commission: the I.L.O., UNESCO, the American Federation of Labor, the W.F.T.U., and International Cooperative Alliance.

By Mr. Hazen:

Q. May I ask where Byelorussia is located?—A. It is one of the constituent republics of the Union of Soviet Socialist Republics and is in the northwest of the Soviet Union. There follow all the documentary resolutions of the Economic and Social Council by which the Commission on Human Rights was established.

Q. May I ask another question? How is it that the U.S.S.R. and two states of the Soviet Union are members?—A. When the United Nations was established membership in the United Nations was granted to the U.S.S.R. itself and to two of its constituent republics, Byelorussia, or the White Russian Soviet Socialist Republic, and the Ukrainian Soviet Socialist Republic. Those two constituent republics of the Soviet Union enjoy full rights of membership in the United Nations.

By Mr. Beaudoin:

Q. They are two separate states?—A. Well, they enjoy full rights of membership as if they were two separate states. We have quoted here the resolution of the Economic and Social Council by which the Commission on Human Rights was established. You will notice this refers also to a subcommission on the status of women. At a subsequent meeting of the Economic and Social Council the subcommission on the status of women was made into a separate commission of the Economic and Social Council.

Resolution of the Economic and Social Council of February 16, 1946:—

Commission on Human Rights and Subcommission on the Status of Women—Resolution of the Economic and Social Council of 16th February, 1946 (document E/20 of 15th February, 1946) on the establishment of a commission on Human Rights and a subcommission on the Status of Women, supplemented by the action taken by the Council on 18th February, 1946, completing paragraphs 6 and 7 section A and paragraphs 4 and 5 of Section B concerning the initial composition of these bodies.

Section A

1. The Economic and Social Council, being charged under the Charter with the responsibility of promoting universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion, and requiring advice and assistance to enable it to discharge this responsibility,

Establishes a Commission on Human Rights.

2. The work of the Commission shall be directed towards submitting proposals, recommendations and reports to the Council regarding:

(*a*) an international bill of rights;

(*b*) international declarations or conventions on civil liberties, the status of women, freedom of information, and similar matters;

(*c*) the protection of minorities;
(*d*) the prevention of discrimination on grounds of race, sex, language or religion.

3. The Commission shall make studies and recommendations and provide information and other services at the request of the Economic and Social Council.

4. The Commission may propose to the Council any changes in its terms of reference.

5. The Commission may make recommendations to the Council concerning any subcommissions which it considers should be established.

6. Initially, the Commission shall consist of a nucleus of nine members appointed in their individual capacity for a term of office expiring on 31st March, 1947. They are eligible for re-appointment. In addition to exercising the functions enumerated in paragraphs 2, 3 and 4, the Commission thus constituted shall make recommendations on the definitive composition of the Commission to the second session of the Council.

7. The Council hereby appoints the following persons as initial members of the Commission.

Mr. Paal Berg (Norway). Professor Rene Cassin (France). Mr. Fernand Dehousse (Belgium). Mr. Victor Paul Haya de la Torre (Peru). Mr. K. C. Neogi (India). Mrs. Franklin D. Roosevelt (United States of America). Dr. John C. H. Wu[1] (China) and in addition, persons whose names will be transmitted to the Secretary-General not later than 31st March, 1946, by the members of the Council for the U.S.S.R. and Yugoslavia. ([2])

This initial or nuclear commission did some preliminary work prior to the second session of the Economic and Social Council, and subsequently the formal Commission on Human Rights was established so that this nuclear commission no longer exists. We turn now to section B on page 5. As I mentioned a moment ago the subcommission on the status of women has subsequently been made into an independent commission of the Economic and Social Council. I think perhaps for that reason we do not need to consider here the further clauses of this section although at some other time the committee may wish to consider the work of the commission on the status of women. Possibly they might go on the record.

Section b

1. The Economic and Social Council, considering that the Commission on Human Rights will require special advice on problems relating to the status of women,

Establishes a Subcommission on the Status of Women

2. The subcommission shall submit proposals, recommendations, and reports to the Commission on Human Rights regarding the status of women.

3. The subcommission may submit proposals to the council through the Commission on Human Rights, regarding its terms of reference.

4. Initially, the subcommission shall consist of a nucleus of nine members appointed in their individual capacity for a term of office expiring on 31st March, 1947. They are eligible for re-appointment. In addition to exercising the functions enumerated in paragraphs 2 and 3, the subcommission thus constituted shall make recommendation on the definitive composition of the subcommission to the second session of the Council through the Commission on Human Rights.

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[1] In accordance with the procedure laid down by the Economic and Social Council, Dr. C. L. Hsia has since been nominated in place of Dr. John C. H. Wu.

[2] Dr. Jerko Radmilovic has since been nominated by the Member of the Council for Yugoslavia.

5. The Council hereby appoints the following persons as initial members of this subcommission:

Mrs. Bodil Begtrup (Denmark). Miss Minerva Bernadino (Dominican Republic). Miss Angela Jurdak (Lebanon). Rani Amrit Kaur (India). Miss Mistral (Chile). Mrs. Vineot ([1]) (France). Miss Wu Yi-Fang[1] (China), and, in addition, the names of one national each from Poland and the U.S.S.R. to be transmitted to the Secretary-General, not later than 31 March, 1946, by the member of the Council for the Union of Soviet Socialist Republics, and three members appointed by the Commission on Human Rights to serve as ex-officio members of this subcommission.

Resolution of the Economic and Social Council of June 21, 1946:—

Commission on Human Rights—Resolution adopted 21st June, 1946 (documents E/56/Rev. 1 and document E/84, paragraph 4, both as amended by the Council)

THE ECONOMIC AND SOCIAL COUNCIL, having considered the report of the nuclear Commission on Human Rights of 21st May, 1946 (document E/38/Rev. 1)

Decides as follows:—

We now come to the section of the documentation which gives the terms of reference of the Commission on Human Rights.

1. *Functions*—The functions of the Commission on Human Rights shall be those set forth in the terms of reference of the Commission, approved by the Economic and Social Council in its resolution of 16th February, 1946, with the addition to paragraph 2 of that resolution of a new sub-paragraph (*e*) as follows:—

(*e*) any other matter concerning human rights not covered by items (*a*), (*b*), (*c*) and (*d*).

That is items A, B, C and D as they appear on page 4 of this document enumerating the functions of the Commission on Human Rights.

2. *Composition.*

(*a*) The Commission on Human Rights shall consist of the one representative from each of eighteen members of the United Nations selected by the council.

(*b*) With a view to securing a balanced representation in the various fields covered by the commission, the Secretary-General shall consult with the governments so selected before the representatives are finally nominated by these governments and confirmed by the Council.

(*c*) Except for the initial period, the term of office shall be for three years. For the initial period, one-third of the members shall serve for two years, one-third for three years, and one-third for four years, the term of each member to be determined by lot.

(*d*) Retiring members shall be eligible for re-election.

(*e*) In the event that a member of the Commission is unable to serve for the full three-year term, the vacancy thus arising shall be filled by a representative designated by the member government, subject to the provisions of paragraph (*b*) above.

[1] In accordance with the procedure laid down by the Economic and Social Council, Madame Lefaucheux has since been nominated in place of Madame Vienot. Similarly, Mrs. W. S. New has been nominated in place of Miss Wu Yi-Fang.

By the Chairman:

Q. The constitution seems to contemplate the continued existence of a Commission on Human Rights running far into the future. Is that correct?—A. No term has been given to the existence of the Commission on Human Rights. I think the expectation is that this commission would continue to interest itself in this field for an indeterminate period.

Q. What would be the force or effect of an international bill of rights, and what is the difference between an international bill of rights and these international declarations or conventions to which reference is made?—A. Mr. Hopkins, the Legal Adviser of the Department of External Affairs, is present. That is a legal question. I wonder if you would mind if I refer it to him.

Mr. HOPKINS: As I understand it, the Commission is not inhibited by its terms of reference. An international bill of rights may, is I understand it, take one of two forms. It may take the form of a declaration or a charter, if you like, of rights which would eventually be submitted to the General Assembly of the United Nations and approved by a Resolution of that body, in which case it would have only a quasi-juridical force, a moral force having the character of a strong recommendation. It would however be of a highly persuasive nature.

On the other hand, it might be expressed in the form of an international convention which would be submitted for signature or accession by the various members of the United Nations. It might take one of those two forms. If it took the form of a convention it would be the nearest approximation that exists at the present time to legislation or quasi-legislation in the international field.

The CHAIRMAN: It would be something like a treaty?

Mr. HOPKINS: Yes, if it were in the form of a convention.

The CHAIRMAN: From what you say, item B near the top of page 4, which is "international declarations or conventions on civil liberties, the status of women, freedom of information and similar matters," would have a greater binding effect than item A, "an international bill of rights" ?

Mr. HOPKINS: That would depend on the form which the proposed bill of rights will take. A bill of rights could conceivably be expressed in the form of a convention which would bind the signatory or acceding states.

The WITNESS: Shall I proceed?

The CHAIRMAN: Yes.

The WITNESS: We are on page 6 at the bottom of the page.

> 3. *Working Groups of Experts*—The commission is authorized to call in ad hoc working groups of non-governmental experts in specialized fields or individual experts, without further reference to the Council, but with the approval of the President of the Council and the Secretary-General.
>
> 4. *Documentation* — The Secretary-General is requested to make arrangements for:
>
> (*a*) the compilation and publication of a year-book on law and usage relating to human rights, the first edition of which should include all declarations and bills on human rights now in force in the various countries;

I think the object of that clause is obvious, Mr. Chairman. It is to provide at the headquarters of the United Nations complete documentation of the legal provisions in the various places in the world for the protection of human rights.

By Mr. Pinard:

Q. Has this been done?—A. It is in the process of being done. The work has not been completed yet.

By the Chairman:

Q. Is there a lot of work to that?—A. There is a great deal of research. I will try to report to a later meeting of the committee, Mr. Chairman, if you wish, as to the actual stage which has been reached in that work. If Mr. Humphrey comes he will know the actual stage which has been reached.

(*b*) the collection and publication of information on the activities concerning human rights of all organs of the United Nations:

By Mr. Benidickson:

Q. What might that be?—A. Resolutions of the Assembly and activities, for example, of the Trusteeship Council of the United Nations which would affect human rights of people in trust territories. It is conceivable that the activities of the International Refugee Organization, for example, might affect the rights of refugee peoples who are moving from one part of the world to another.

Q. The Labour Congress?—A. The activities of the International Labour Organization, yes.

(*c*) the collection and publication of information concerning human rights arising from trials of war criminals, quislings, and traitors, and in particular from the Nuremberg and Tokyo trials;

(*d*) the preparation and publication of a survey of the development of human rights;

By the Chairman:

Q. Consider clause (*c*), what does that mean?

The collection and publication of information concerning human rights arising from trials—

Those would be instances of the infringment of human rights, would they not?

Mr. HOPKINS: I should think so.

The CHAIRMAN: They would give examples?

Mr. HOPKINS: Yes.

Mr. WHITMAN: Would that be a copy of the evidence submitted at the trial or what these men were accused of?

Mr. HOPKINS: In some cases it seems to me that the work under this head might overlap to some extent with the work of the United Nations War Crimes Commission, but they would be particularly interested in the human rights aspect of it; instances of violations, if you like, and the manner in which the violations were, in fact, dealt with by the War Crimes Tribunal.

By Hon. Mr. Gouin:

Q. Do you know of any publication having already been issued by the Commission on Human Rights in respect to the trials under clause (*c*)?—A. I do not know of any. The Commission on Human Rights has held only one meeting. During that meeting it concerned itself principally with plans for drafting an international bill of human rights.

(*e*) the collection and publication of plans and declarations on human rights by specialized agencies and non-governmental national and international organizations.

5. *Information Groups*—Members of the United Nations are invited to consider the desirability of establishing information groups or local human rights committees within their respective countries to collaborate with them in furthering the work of the Commission on Human Rights.

Q. What is meant by, "to collaborate with them?" Is it to collaborate with the members of the United Nations? I wonder to what the pronoun is referring?—A. I think it refers to the United Nations, to collaborate with the Commission on Human Rights.

Mr. STEWART: Mr. Chairman, could Mr. Riddell tell us if any country has yet established local groups for the study of human rights?

Some Hon MEMBERS: Canada.

The WITNESS: I do not know of any development which has taken place in the direction. The Secretary General has been investigating the possibility of having groups of this nature established. It is not quite clear yet as to what character the groups should have, that is whether they should be in any sense official groups or whether they should be purely voluntary groups. This would depend to a certain extent on the nature of the government of the country in which they existed. Again, this is a subject upon which Mr. Humphrey can give you more recent information.

By Mr. Stewart:

Q. Do you think these groups are meant to be started at the instigation of such a group as a government or it it a group such as the United Nations Society?—A. I am not clear on that, Mr. Chairman. The wording says, "Members of the United Nations".

By Hon. Mr. Turgeon:

Q. Is not this body which is now sitting in this room one of the groups such as is contemplated in this particular item? It says,

> "Members of the United Nations—Canada is a member of the United Nations—Members of the United Nations are invited to consider the desirability of establishing information groups or local human rights committees within their respective countries to collaborate with them in furthering the work of the Commission on Human Rights."

Is not this parliamentary committee just such a group as is suggested in this clause?

Mr. LESAGE: According to our terms of reference, yes.

The WITNESS: I think, Mr. Chairman, it is necessary for each member country of the United Nations to decide in what manner it will meet this provision of the resolution of the Economic and Social Council. I should think it would be for the member government to decide whether any particular body constituted, for it, the group which it shall have to represent it in this capacity.

By Hon. Mr. Gouin:

Q. If we refer to the wording of that section 5, it seems to contemplate only the setting up of official committees. It does not seem to refer in any way to voluntary committees, though they may be highly desirable. The clause speaks of a member nation which could establish one of these committees?—A. I think, Mr. Chairman, it would be within the rights of a member of the United Nations to designate within its own country some voluntary group and say that, for the purpose of its association with this particular work it would regard this voluntary group as representing it. In this respect, I think the intention is that those voluntary groups should consider the state of human rights within their own country and be a channel for the communication of information to the Commission on Human Rights. I think the various countries would have different ideas about the way in which such a group might be set up. There was no effort to define precisely the way in which such a group might be established in any country.

Q. So then section 5 would mean, for instance, the Canadian government or the Canadian parliament could establish such groups or allow voluntary groups to constitute themselves and then they would be accepted as you said, as a representative of the type of group mentioned in section 5?—A. Yes. Of course, a government does not need to accept any such group, since the clause just says countries are invited to consider the desirability of establishing such groups. If, however, such a group were set up, the government would have to designate it as its representative for this purpose. I do not think any voluntary group could set itself up and claim to fulfil these functions.

By Mr. Benidickson:

Q. It is not limited to one group? I suppose there might be other associations interested in this question of human rights who could be designated as representatives throughout Canada?—A. I think there could be.

By Mr. Whitman:

Q. A group could not set itself up in business and say it was the group representing something without the sanction of the government? Would the government have to give it some authority before it could be allowed to sit?—A. The government would have to designate such a group before it could fulfil the functions in this clause. I might add, in that respect, Mr. Chairman, that in a free country groups of individuals can join together for the purpose of interesting themselves in this subject and making representations to the United Nations or to anybody else on that subject, but the government would have to designate them for the purpose of fulfilling these functions before they would be recognized by the Secretary General of the United Nations in that capacity.

Hon. Mr. CRERAR: Is not the position this: Canada is a member of the United Nations. Now, under this section 5 Canada, as a member of the United Nations, is invited to consider the desirability of establishing such a committee or such a group to study these questions. Supposing Canada, as a member, says, "So far as Canada is concerned it is not necessary. We do not think it is desirable or necessary to establish such a group." What status has such a voluntary group which may be organized in Quebec, Alberta or British Columbia so far as this general committee on human rights is concerned? It has no status at all.

Mr. BENIDICKSON: If it were set up by a provincial authority, it would have no authority with the United Nations, would it?

Hon. Mr. CRERAR: The first thing would be for the government or parliament to consider whether it is a desirable thing to have such committees set up in Canada. To me however, the thing looks rather confused, I must say.

The CHAIRMAN: I suppose it would be up to this committee to recommend to the government that the government establish such information groups or committees.

Hon. Mr. CRERAR: I do not know whether it is within the terms of our reference.

The CHAIRMAN: I think it is, but I hardly think it is necessary. We receive a lot of voluntary co-operation without establishing any groups.

The WITNESS: Shall I proceed, Mr. Chairman?

The CHAIRMAN: Yes.

The WITNESS: Item 6, Human rights in international treaties.

> 6. Pending the adoption of an international bill of rights, the general principle shall be accepted that international treaties involving basic human rights, including to the fullest extent practicable treaties of peace, shall conform to the fundamental standards relative to such rights set forth in the Charter.

Mr. CROLL: Just a minute, Mr. Riddell, you had better explain that, too. Do I understand from reading this that the international treaties will have, as part of them, clauses dealing with basic human rights?

The WITNESS: I think the intention here, Mr. Chairman, is that in any international treaties which involve statements concerning basic human rights, those statements should conform.

By Mr. Croll:

Q. In so far as human rights are concerned, they all involve human rights. Every international treaty will involve human rights. For instance, the treaties with Roumania or Italy or any of the other countries will involve human rights?

Mr. STEWART: They will not violate section (*a*) of this memorandum.

The WITNESS: General international treaties such as peace treaties would in very general terms involve basic human rights, and that the intention of this clause is that those general treaties shall conform to the clauses of the Charter which embody statements concerning human rights. It is a statement of intention.

Hon. Mr. CRERAR: Take, for example, the treaty with Hungary which presently we are going to be asked to ratify. Does the treaty with Hungary contain provisions that the rights of the individual shall be held inviolate? I do not think so. It seems to me that this is little more than simply a pious aspiration.

The WITNESS: It expresses also the hope that a treaty such as the treaty with Hungary would not contain clauses which restrict human rights or fundamental freedoms.

Hon. Mr. CRERAR: It is not a question of containing clauses which restrict human rights, it is a question of containing clauses which guarantee human rights.

By Mr. Croll:

Q. Do our present treaties conform with section 6? You know them better than we do.—A. Yes, Mr. Chairman.

Q. They do?—A. Yes.

Q. They conform with section 6?—A. Yes.

Q. Specifically?—A. Well, section 6 contains a very general statement.

Q. Do they deal with human rights specifically, as the Senator points out, or in a negative fashion?—A. Our treaty with Hungary does not contain a specific clause dealing with the problem of basic human rights. It does not, however, conflict with the clauses of the Charter which refer to human rights. It does contain certain clauses the intent of which is to guarantee to the Hungarian people, after the peace has been signed, certain political freedoms.

Mr. PINARD: Would you give an example of that?

By Mr. Hazen:

Q. Is not the weakness in this section the fact that you have no definition of human rights or fundamental freedoms?—A. The Commission on Human Rights is engaged on the task of drafting an international bill of human rights which, is it hoped, will contain such a definition.

Q. You say in section 6, "Shall conform to the fundamental standards relative to such rights set forth in the Charter". Those standards are rather vague. You are just using the words?—A. That is quite correct, the statements in the Charter are in very vague, general terms. An effort is being made now in the Commission on Human Rights to put them in more precise terms in the draft international bill.

By Hon. Mrs. Fallis:

Q. Would not the question of the interpretation of fundamental freedoms vary according to countries?—A. That is one of the difficulties they are encountering in the drafting group.

By Hon. Mr. Gouin:

Q. At the present time then it is almost a question of conscience for any member of the United Nations to consider certain things as being human rights and fundamental freedoms. Some other nation may adopt quite a different standard?—A. That is quite true, Mr. Chairman. The effort to secure international agreement on this subject is in its very initial stages at the moment and all this clause embodies is the hope that, pending agreement in the United Nations on a more precise definition, members will respect the general statement which has been given in the Charter.

By Mr. Pinard:

Q. You mean section 55?—A. Well, the various sections which are quoted on the first pages of this document. It is recognized that this field has not, in any sense, been defined and that international agreement on a definition is something which will have to take place in the course of discussion which may take some time.

By Hon. Mrs. Fallis:

Q. Mr. Chairman, if that is the case, I am not very clear on this, are we a little premature in discussing something which has not yet been defined?—A. The subject is under discussion in various places at the moment, Mr. Chairman, and particularly in New York where a drafting group composed of the representatives of eight states appointed by the Commission on Human Rights is, at the moment, engaged in an effort to put down on paper a draft international bill of human rights.

Hon. Mrs. FALLIS: Until we get that definition we are sort of working in the dark.

Hon. Mr. CRERAR: The point is can we, at this stage, make any contribution to the work of that committee? I do not think we can right now.

Mr. STEWART: I am inclined to differ with Senator Crerar. I think we can. I do not see how any international group can make up its mind in any field until the member states have made up their minds.

Mr. PINARD: We are not a member of the commission.

Mr. STEWART: We are a member of the UNO and we can do what other nations and other groups have done; that is, present unofficially to the commission our conception of what an international bill of rights should contain.

Mr. BENIDICKSON: Generally, the trend has been the other way, I think. They suggest things we should ratify.

Hon. Mr. CRERAR: I fancy the Canadian government would have a little difficulty in clarifying its position. As an illustration, I think there is a great deal of opinion in Canada that there has been some interference with fundamental human rights of some Canadians by the provinces who are acting, probably, within their constitutional powers. It we laid down some declaration which ran counter to some of the views of the Canadian provinces, what effect would it have? After all, I think we must proceed in a sort of reasonable and rational manner.

We are all desirous of having as wide a degree of recognition of basic liberties and human rights as possible established, but I really fail to see, at the moment, what effective contribution we can make to that desirable end. Heaven

knows that this committee representing the Commission on Human Rights is going to have a good many hurdles to get over before it arrives at any unanimous decision. This situation arises because our basic conception of human rights differs, for instance, from a country such as Byelorussia or Russia and many other countries of the United Nations.

It does seem to me, Mr. Chairman, if I may add another word, that the contribution we can make at the moment appears very shadowy and indefinite. Would it not be better to let this Commission on Human Rights wrestle with the problem? It has appointed a subcommittee to try and draft something which would be acceptable. I have not any doubt we may think it might not go far enough but, in so far as it does go, Canada would be quite willing to adhere to it.

Mr. HANSELL: Is it within our purview, Mr. Chairman, to attempt to arrive at definitions of human rights and fundamental freedoms? We are working in the dark if we do not know what they are. We have been living in a land of freedom and for us to think of anything different is very difficult.

The CHAIRMAN: In the terms of reference we are directed 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. The question which has been raised is whether it would be open to us to recommend that we make representations to this Commission on Human Rights to the effect that we think certain provisions should be incorporated in the international bill of rights. Mr. Stewart thinks that is what we ought to do.

Mr. HAZEN: Could we go that far? Any conclusions we come to after considering these matters, have they not to be put in the form of a report to be submitted to the government?

The CHAIRMAN: It would be a report to parliament.

Mr. HAZEN: We cannot deal directly with the United Nations.

The CHAIRMAN: Oh, no.

Mr. HANSELL: That would be almost tantamount to defining it. As a general illustration, supposing you recommend the freedom of the press. That has to be defined. What do we mean by that? It seems to me we are going to strike that situation every time we recommend anything of that nature.

Mr. HERRIDGE: Is not this discussion somewhat premature? Are we not here to get the information to complete the picture and then the discussion will arise after that?

The CHAIRMAN: I wholly agree. I think we had better have Mr. Riddell finish his evidence. If we look at what the United Kingdom government has done, it might be some indication of what it might be possible for us to do if we found it desirable.

Mr. HANSELL: It would serve as a guide, anyway.

The WITNESS: I might say, Mr. Chairman, in relation to this discussion which has just taken place, unless the Commission on Human Rights fails in its function completely there will be, at some stage, a draft international bill of human rights produced. The Canadian delegation to the Economic and Social Council and subsequently the Canadian delegation to the General Assembly will be under the necessity of formulating some opinion about this draft international bill of human rights which will eventually be presented to those bodies.

By Mr. Beaudoin:

Q. You are now referring to the last page, page 17?—A. This refers to the drafts which have been prepared and which are under consideration at the moment.

Q. Would Mr. Humphrey have those with him when he comes before us? —A. He should have the draft which is being prepared at the moment.

Q. This June 25th to which reference is made, is that June 25th of this year?—A. Yes, and we hope they will have the draft by that time.

The CHAIRMAN: Perhaps you had better proceed, Mr. Riddell.

The WITNESS: I will commence at page 7, paragraph 7.

7. *Provisions for Implementation*—Considering that the purpose of the United Nations with regard to the promotion and observance of human rights, as defined in the Charter of the United Nations, can only be fulfilled if provisions are made for the implementation of human rights and of an international bill of rights, the council requests the Commission on Human Rights to submit at an early date suggestions regarding the ways and means for the effective implementation of human rights and fundamental freedoms, with a view to assisting the Economic and Social Council in working out arrangements for such implementation with other appropriate organs of the United Nations.

8. *Sub-Commission on Freedom of Information and of the Press*—

(*a*) The Commission on Human Rights is empowered to establish a sub-commission on freedom of information and of the press.

(*b*) The function of the sub-commission shall be, in the first instance, to examine what rights, obligations, and practices should be included in the concept of freedom of information, and to report to the Commission on Human Rights on any issues that may arise from such examination.

(9) *Sub-Commission on Protection of Minorities*—

(*a*) The Commission on Human Rights is empowered to establish a sub-commission on the protection of minorities.

(*b*) Unless the commission otherwise decides, the function of the sub-commission shall be, in the first instance, to examine what provisions should be adopted in the definition of the principles which are to be applied in the field of protection of minorities, and to deal with the urgent problems in this field by making recommendations to the commission.

10. *Sub-Commission on the Prevention of Discrimination*—

(*a*) The Commission on Human Rights is empowered to establish a sub-commission on the prevention of discrimination on the grounds of race, sex, language, or religion.

(*b*) Unless the commission otherwise decides, the function of the sub-commission shall be, in the first instance, to examine what provisions should be adopted in the definition of the principles which are to be applied in the field of the prevention of discrimination, and to deal with the urgent problems in this field by making recommendations to the commission.

Further resolution of 21st June, 1946, of the Economic and Social Council.

This is the resolution of the council which changed the sub-commission on the status of women into a commission:

The Economic and Social Council, having considered the report of the nuclear Commission on Human Rights and of the nuclear sub-commission on the status of women of 21 May, 1946 (document E/38/Rev. 1),

DECIDES to confer upon the sub-commission the status of a full commission to be known as the Commission on the Status of Women.

1. *Functions*

The functions of the commission shall be to prepare recommendations and reports to the Economic and Social Council on promoting women's rights in political, economic, social, and educational fields.

The commission shall also make recommendations to the council on urgent problems requiring immediate attention in the field of women's rights.

The commission may submit proposals to the council regarding its terms of reference.

2. *Composition*

(*a*) The Commission on the Status of Women shall consist of one representative from each of fifteen members of the United Nations selected by the council.

(*b*) With a view to securing a balanced representation in the various fields covered by the commission the Secretary General shall consult with the governments so selected before the representatives are finally nominated by these governments and confirmed by the council.

By Mr. Pinard:

Q. Is this not the same as the Commission on Human Rights?—A. Virtually the same, yes.

By Hon. Mr. McDonald:

Q. Might I ask how the United Nations select those who are to be the representatives?—A. Elections are held in the Economic and Social Council in which states are selected as nominating states. Those states nominate individuals. Those nominations are later confirmed by the Economic and Social Council. For example, in the case of the Social Commission of which Canada is a member, Canada was elected as a nominating member of the Social Commission. We then nominated Dr. Davidson as the Canadian member of the Social Commission. He was then confirmed by the Economic and Social Council.

By Mr. Benidickson:

Q. Do you know the composition of the separate commission? I notice that the sub-commission, the original sub-commission the composition of which is given on page 50, is composed entirely of women. Is the new commission composed of women, too?—A. It is composed entirely of women, Mr. Chairman. Perhaps we could look up the names of nominating states and proceed with the evidence.

I might omit reading the other sections referring to the composition of the commission on the status of women unless there are some questions concerning it.

(The following taken as read.)

(*c*) Except for the initial period, the term of office shall be for three years. For the initial period, one-third of the members shall serve for two years, one-third for three years, and one-third for four years, the term of each member to be determined by lot.

(*d*) Retiring members shall be eligible for re-election.

(*e*) In the event that a member of the Commission is unable to serve for the full three-year term, the vacancy thus arising shall be filled by a representative designated by the Member Government, subject to the provisions of paragraph (*b*) above.

3. *Policy and Program*

Sections I and II of the report of the Sub-Commission, concerning policy and program, shall be referred for study to the Commission on the Status of Women.

4. *Documentation*

In order to assist the Commission on the Status of Women, the Secretary-General is requested to make arrangements for a complete and detailed study of the legislation concerning the status of women and the practical application of such legislation.

I then come to section (D) on page 9, sub-commissions of the Commission on Human Rights.

(D) *Sub-commissions of the Commission on Human Rights*

At its first session (27th January - 10th February, 1947), the Commission on Human Rights decided to establish two sub-commissions. This decision was subsequently confirmed by resolutions of the Economic and Social Council.

(*a*) Sub-commission on freedom of information and of the press.

The functions of this sub-committee are defined as follows in the resolution of the Economic and Social Council of March 27th.

(*a*) In the first instance, to examine what rights, obligations and practices should be included in the concept of freedoms of information, and to report to the Commission on Human Rights on any issues that may arise from such examination.

(*b*) To perform any other functions which may be entrusted to it by the Economic and Social Council or by the Commission on Human Rights.

The members of this sub-commission, selected by the Economic and Social Council at its fourth session, at the request of the Commission on Human Rights, were the following persons, nominated subject to the consent of their governments:—

Mr. Z. Chafee, (United States).
Mr. P. H. Chang, (China).
Chr. A. R. Christensen, (Norway).
Mr. R. J. Cruikshank, (United Kingdom).
Lic. Jose Isaac Fabrega, (Panama).
Mr. George V. Ferguson, (Canada).
Mr. Roberto Fontaina, (Uruguay).
Mr. Andre Geraud, (France).
Mr. G. D. van Heuven Goedhard, (Netherlands).
Mr. J. M. Lomakin, (U.S.S.R.).
Mr. Salvador Lopez, (Philippine Republic).
Mr. Lev Sychrava, (Czechoslovakia).

Now, in the case of sub-commissions, Mr. Chairman, a slightly different procedure is followed. Individuals and not states are named to these sub-commissions. They are named, theoretically, by reason of their special knowledge in the field of the sub-commission's activities, but it was provided that any particular nomination should be subject to the consent of the government of the individual concerned. You will notice on this sub-commission on the freedom of the press there is a member from Canada, Mr. George V. Ferguson, who is editor of the Montreal *Star*. Mr. Ferguson was nominated by the United States government.

By Mr. Pinard:

Q. Do you know if the others are also newspaper men?—A. Some of them are and some of them are not. Mr. Chafee, the United States member, for example, is a professor of journalism in an American university. The United Kingdom member, Mr. Cruikshank, is a member of their information service, I think.

Q. Do you know anything about the U.S.S.R. member?

Mr. STEWART: I think he is the consul general in New York.

The WITNESS: I think he was drawn from the U.S.S.R. government service for this purpose.

By Hon. Mr. Gouin:

Q. I understood you said Mr. Ferguson had been appointed by the United States government?—A. He was nominated by them. That is not quite correct, he was nominated by the United States member of the Commission on Human Rights.

By Mr. Croll:

Q. We probably nominated Mr. Chafee in return, did we not?—A. We were not in a position to nominate since we were not members of the commission.

(*b*) *Sub-commission on prevention of discrimination and protection of minorities*

The commission decided, with the subsequent approval of the Economic and Social Council, that the functions of this sub-commission would be:—

(*a*) In the first instance, to examine what provisions should be adopted in the definition of the principles which are to be applied in the field of the prevention of discrimination on grounds of race, sex, language or religion, and in the field of the protection of minorities, and to make recommendations to the commission on urgent problems in these fields.

(*b*) To perform any other functions which may be entrusted to it by the Economic and Social Council or the Commission on Human Rights.

(Text of resolution adopted by the Economic and Social Council on March 27, 1947).

The members of this sub-commission, selected by the Economic and Social Council at its fourth session at the request of the Commission on Human Rights, were the following persons, nominated subject to the consent of their governments:—

Mr. A. P. Borisov (U.S.S.R.)
Dr. C. F. Chang (China)
Mr. Jonathan Daniels (United States)
Mr. Erik Enar Ekstrand (Sweden)
Mr. William Morris Jutson McNamara (Australia)
Mr. M. R. Masani (India)
Miss Elizabeth Monroe (United Kingdom)
Mr. Joseph Nisot (Belgium)
Mr. Arturo Meneses Pallares (Ecuador)
Mr. Herard Roy (Haiti)
Mr. Rezazada Shafaq (Iran)
Mr. Samuel Spanien (France)

There is no Canadian member on that subcommission, as the members of the committee will notice.

Mr. PINARD: How many of these countries have minority problems?

Mr. LESAGE: India.

The WITNESS: I do not think the members were chosen from the point of view of the existence of minority problems within the countries. Theoretically the members were chosen because of their personal qualifications to deal with this problem.

(E) *Drafting Group of the Commission on Human Rights*

At its first session (27th January—10th February 1947) the Commission on Human Rights decided that the Chairman, together with the Vice-Chairman and the rapporteur, would undertake with the assistance of the Secretariat, the task of formulating a preliminary draft international bill of human rights. The bill was to be in the form of a draft resolution for presentation to and approval by the General Assembly. At its fourth session, however, the Economic and Social Council decided that this preparatory work should be performed by a drafting group of eight states. The text of the resolution adopted on March 27 by the Economic and Social Council is the following:—

This is the document which establishes the drafting group which is now engaged in New York in the preparation of an international draft bill of human rights.

By Mr. Benidickson:

Q. Is that a group separate from the commission itself?

A. It is really a committee of the commission.

The Economic and Social Council,

Taking Note of Chapter II, paragraph 10 of the report of the Commission on Human Rights,

Requests the Secretariat to prepare a documented outline concerning an International Bill of Human Rights.

That gives the secretariat the responsibility for doing the preliminary work of gathering together relevant information.

And having noted with approval the letter of the Chairman of the Commission on Human Rights to the President of the Economic and Social Council, under date of 24 March, 1947, including her statement of intention to appoint immediately a Drafting Committee of the Commission on Human Rights consisting of the members of the Commission on Human Rights for Australia, China, Chile, France, Lebanon, United States, United Kingdom, and the Union of Soviet Socialist Republics, which will be convened prior to the second session of the Commission on Human Rights and prepare, on the basis of documentation supplied by the Secretariat, a preliminary draft of an International Bill of Human Rights.

By Hon. Mr. Gouin:

Q. If you will allow me I should like to ask if the secretariat mentioned there is the secretariat of the Economic and Social Council?—A. It is the Secretariat of the United Nations. The Secretariat of the United Nations includes a Department of Social Affairs, and within that Department of Social Affairs there is a Division of Human Rights of which Mr. Humphrey is the chief. It is the responsibility of that Division to do the secretarial work for this commission. On page 12 we have a definition of the various steps which are anticipated in the preparation of this draft bill of human rights.

Decides

(*a*) that the draft prepared by the above-mentioned drafting committee be submitted to the second session of the Commission on Human Rights; and

(*b*) that the draft as developed by the Commission on Human Rights be submitted to all states, members of the United Nations, for their observations, suggestions and proposals; and

(*c*) that these observations, suggestions and proposals then be considered as a basis of a redraft, if necessary by the drafting committee; and

(*d*) that the resulting draft then be submitted to the Commission on Human Rights for final consideration; and

(*e*) that the Council consider the proposed International Bill of Human Rights as submitted by the Commission on Human Rights with a view to recommending an International Bill of Human Rights to the General Assembly in 1948.

In other words, the steps contemplated are the following. There is a drafting group of 8 states now meeting in New York. It will prepare a draft bill of human rights. This will be considered by the Commission on Human Rights within the next few weeks the commission meeting on August 25th. The commission having considered the draft will then refer it to all member states of the United Nations for their comments. When those comments have been received the drafting group will meet again and integrate the comments with the original document. The document will then go to the Commission on Human Rights, from there to the Economic and Social Council, and finally to the General Assembly at its meeting a year and six months from now.

Mr. HAZEN: This resolution uses the words "human rights." It does not use the words "fundamental freedoms." Are the words "fundamental freedoms" included in the words "human rights"?

Mr. CROLL: It is a commission on human rights, is it not? That is the short name?

The WITNESS: I think it is simply a short title. I am not quite sure how the term "fundamental freedoms" came to be dropped from the title. I think it is without significance but I will make some investigation in that connection.

The drafting group met on June 9th and has for examination, among other documents, the following:—

(*a*) A statement of essential rights drafted by a committee appointed by the American Law Institute and submitted to the General Assembly by the delegation of Panama. The Assembly, at its last session, decided to refer this statement to the Commission on Human Rights for consideration. The Text of this statement is appended hereto. (Department of External Affairs, Document 2. Appendix A).

(*b*) A draft international bill of human rights submitted by the United Kingdom. The text of this draft is also attached.

(Department of External Affairs, Document 4. Appendix B).

The drafting group is to circulate a preliminary draft international bill of human rights to the members of the Commission by June 25th, with a view to submission to the Commission on August 25th.

That is the document which is now being prepared in New York, and which we hope we will be able to place in your hands by the time Mr. Humphrey comes to Ottawa.

By the Chairman:

Q. That document will be given publicity before it is submitted to the commission?—A. Yes. The discussions in New York are public.

By Mr. Herridge:

Q. Does Mr. Riddell know how the draft international bill of human rights which was submitted by the United Kingdom was drafted, under what auspices? —A. My understanding is that it was prepared by the administration in the United Kingdom. It was sent forward as an official United Kingdom document. I am not familiar with the steps the United Kingdom took to have that document prepared.

By the Chairman:

Q. Do you propose to read those documents?—A. I was looking at the covering letter to see if those steps were indicated in it but apparently they are not. It might be possible to ascertain the methods which the United Kingdom government adopted.

Mr. HERRIDGE: I think it would be quite interesting.

The WITNESS: We will make those inquiries.

By the Chairman:

Q. Do you propose to read those documents now, the bill of rights drafted by the American Law Institute, and the United Kingdom draft?—A. Whatever you and the committee desire.

Mr. IRVINE: I think we might very well peruse those documents ourselves.

Mr. HANSELL: I think it might be as well, in the case of the perusal of any documents, that we should have some question period of them afterwards.

Hon. Mr. GOUIN: Right.

Mr. HANSELL: At one or two of the other committees which have met over the years we have taken the briefs, looked over them, and then had the witness appear to go over them the same as he has to-day, and questioned him. The way we have done it to-day is a little bit confusing for the reason that we question the witness as we go on with the brief not knowing what the brief may have in it later on. We are at a disadvantage in doing that. I think we lose some time in doing it that way.

The WITNESS: I may say we had hoped to be able to put these documents into the hands of members of the committee before the meeting but they came from the mimeographing machine five minutes before we came over here.

Mr. STEWART: I think you did very well with what you have produced.

By the Chairman:

Q. Apparently the situation is that the obligations that are referred to in the terms of reference are all set out in Article 55 of the charter of the United Nations, or substantially all, in very general terms. The other articles may add slightly to those obligations, but substantially they are set out in article 55. Is that correct, or am I wrong about that?—A. Yes, that is right.

The CHAIRMAN: On the other hand, later if the Dominion of Canada adheres to an international bill of rights there may be further and other obligations which arise at that time, but they are not before this committee at the present time. Doubtless an international bill of rights of some kind will be prepared, and doubtless it will contain some of the provisions of these documents that have been submitted by the United Kingdom government and the American Law

Institute. While those documents have not been accepted by anybody—they are merely suggestions—it probably would be well for us to run over those and try to understand what is afoot, what is being submitted to the Commission on Human Rights, because we know that some of the provisions of these documents will likely be incorporated into the international bill of human rights. It would occur to me that perhaps we should do that at the next meeting. After that we had better follow the course of procedure we outlined the other day. The Department of Justice will tell us how far the dominion parliament has power to go in carrying out suggestions of this kind. Does that course of procedure commend itself to the committee?

Hon. Mr. TURGEON: Is it the intention to have these two documents printed in the records of the committee? A great many people reading our proceedings might be glad to have those two documents printed, if that is not too big a task.

The CHAIRMAN: Is it the wish of the committee to do that?

Mr. MICHAUD: I so move.

The CHAIRMAN: It has been moved that these be printed with the proceedings of the committee to-day. Is there any discussion?

Mr. HANSELL: I have no objection. The only thing is we are having them put in the record without first reading them. I think that is rather unusual.

Hon. Mr. TURGEON: They exist as documents. I have not read them. I have no idea whether or not I approve of them, but they are official documents.

Mr. HANSELL: I expect they could be printed as an appendix and not regarded as evidence.

Hon. Mr. TURGEON: It is not our evidence.

The CHAIRMAN: Is the motion carried?

Mr. MAYHEW: Why not have them printed as read? We have taken one to-day.

Mr. HANSELL: You are establishing a principle if you do that.

Hon. Mr. TURGEON: As an apppendix.

Carried.

Mr. STEWART: There is another matter I should like to mention. There have been several other suggested bills of rights submitted to the Commission on Human Rights. I wonder if the Department of External Affairs has copies of those suggested drafts, and if so, would it be possible to have copies made for the information of members of the committee?

The WITNESS: There have been a great many proposals by various private organizations for a draft bill of human rights, but I am not sure how many of those we have. I will make inquiries, and any we have we will certainly be glad to make available to the committee.

Mr. HANSELL: There are countries which have passed bills of human rights for their own nations, are there not? Jugoslavia is one, I believe.

Mr. PINARD: France.

By Mr. Hansell:

Q. Would it not be possible to get some of those as a guide?—A. One of the functions which is given to the Commission on Human Rights is to gather information of that nature. We will inquire and see how far they have got in their compilation of information of that nature. It is possible they have something that can be made available to the committee.

Hon. Mr. GOUIN: I do not know if I am mistaken but I thought I had read about an Australian bill of rights.

The WITNESS: I am not sure whether they have ever passed one. I am not sure.

Hon. Mr. GOUIN: I do not know in what form it is, whether it has been passed or is a draft. I read something in the newspapers about it.

The WITNESS: We will find that out.

The CHAIRMAN: Eire has a bill of rights. That would be interesting. Are there any further questions?

Mr. STEWART: Will we have Mr. Riddell with us at our next meeting to discuss these other two documents?

The CHAIRMAN: Yes.

Mr. FULTON: Is the next meeting going to be devoted to a discussion of the other two documents?

The CHAIRMAN: Yes. That is my suggestion.

Mr. FULTON: I did not realize that had been decided.

The CHAIRMAN: I outlined a course of procedure. I asked if there were any objections to that course of procedure. I cannot think of any better. That is the only reason I suggested it. It was thought at the last meeting we would ask Mr. Humphrey to come here next, but he is not able to come here this week. He hopes to be able to come next week. According to our present plans we take up the Department of Justice before Mr. Humphrey comes, and bring him in at that stage.

Mr. CROLL: Would it not be well for us to hear from the Department of Justice before we hear from Mr. Humphrey so that we may understand better how far we can go, and what it involves?

The CHAIRMAN: The Department of Justice will have to have something to work on. I should think all they have to go on now are these two documents that are being printed as appendices.

Mr. CROLL: There would not be anything they could think of that was not included in those two documents, from a quick look at them.

The CHAIRMAN: No.

Mr. CROLL: They have got sufficient information to work on them.

The CHAIRMAN: Yes. Is there any further discussion, or has anyone any suggestions? If not, I think we might adjourn. What about the next meeting?

Hon. Mr. CRERAR: We had better have it on Friday if that would suit, because there are committee meetings to-morrow, Wednesday and Thursday.

The CHAIRMAN: We had better have a little discussion as to what time we will hold our next meeting.

Hon. Mr. CRERAR: I move we meet at 11 o'clock on Friday morning.

Mr. IRVINE: I second the motion.

Mr. PINARD: Why not Thursday?

Mr. STEWART: There are a great number of other committees that some of us are on. There was one this morning that I wanted to attend, Public Accounts, but this was of more interest to me. Friday will suit better because Public Accounts will meet again on Thursday.

Mr. FULTON: It would suit those who are on the Radio Committee better, too.

The CHAIRMAN: Friday seems to meet with general approval so it will be Friday morning at 11 o'clock.

—The committee adjourned at 12.30 p.m. to meet again on Friday, June 20, 1947, at 11 o'clock a.m.

APPENDIX "A"

DEPARTMENT OF EXTERNAL AFFAIRS—DOCUMENT 2

Statement of Essential Human Rights

(Drafted by a committee appointed by the American Law Institute and submitted to the General Assembly by the Delegation of Panama.)

Preamble

Upon the freedom of the individual depends the welfare of the people, the safety of the state and the peace of the world.

In society complete freedom cannot be attained; the liberties of the one are limited by the liberties of others, and the preservation of freedom requires the fulfilment by individuals of their duties as members of society.

The function of the state is to promote conditions under which the individual can be most free.

To express those freedoms to which every human being is entitled and to assure that all shall live under a government of the people, by the people, for the people, this declaration is made.

Article 1. Freedom of belief and of worship is the right of every one. The state has a duty to protect this freedom.

Article 2. Freedom to form and hold opinions and to receive opinions and information is the right of every one. The state has a duty to protect this freedom.

Article 3. Freedom of expression is the right of every one. The state has a duty to refrain from arbitrary limitation of this freedom and to prevent denial of reasonable access to channels of communication.

Article 4. Freedom to assemble peaceably with others is the right of every one. The state has a duty to protect this freedom.

Article 5. Freedom to form with others associations of a political, economic, religious, social, cultural, or any other character for purposes not inconsistent with these articles is the right of every one. The state has a duty to protect this freedom.

Article 6. Freedom from unreasonable interference with his person, home, reputation, privacy, activities, and property is the right of every one. The state has a duty to protect this freedom.

Article 7. Every one has the right to have his criminal and civil liabilities and his rights determined without undue delay by fair public trial by a competent tribunal before which he has had opportunity for a full hearing. The state has a duty to maintain adequate tribunals and procedures to make this right effective.

Article 8. Every one who is detained has the right to immediate judicial determination of the legality of his detention. The state has a duty to provide adequate procedures to make this right effective.

Article 9. No one shall be convicted of crime except for violation of a law in effect at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that applicable at the time of the commission of the offence.

Article 10. Every one has the right to own property under general law. The state shall not deprive any one of his property except for a public purpose and with just compensation.

Article 11. Every one has the right to education. The state has a duty to require that every child within its jurisdiction receive education of the primary standard; to maintain or insure that there are maintained facilities for such education which are adequate and free; and to promote the development of facilities for further education which are adequate and effectively available to all its residents.

Article 12. Everyone has the right to work. The state has a duty to take such measures as may be necessary to insure that all its residents have an opportunity for useful work.

Article 13. Every one has the right to reasonable conditions of work. The state has a duty to take such measures as may be necessary to insure reasonable wages, hours, and other conditions of work.

Article 14. Every one has the right to adequate food and housing. The state has a duty to take such measures as may be necessary to insure that all its residents have an opportunity to obtain these essentials.

Article 15. Every one has the right to social security. The state has a duty to maintain or insure that there are maintained comprehensive arrangements for the promotion of health, for the prevention of sickness and accident, and for the provision of medical care and of compensation for loss of livelihood.

Article 16. Everyone has the right to take part in the government of his state. The state has a duty to conform to the will of the people as manifested by democratic elections.

Article 17. Every one has the right to protection against arbitrary discrimination in the provisions and application of the law because of race, religion, sex or any other reason.

Article 18. In the exercise of his rights every one is limited by the rights of others and by the just requirements of the democratic state.

APPENDIX "B"

DEPARTMENT OF EXTERNAL AFFAIRS—DOCUMENT 3

WOODFIELD,
COPPERKINS LANE,
AMERSHAM,
BUCKINGHAMSHIRE.

2nd June, 1947.

Letter to the Secretary-General of the United Nations from Lord Dukeston:—

I have the pleasure of transmitting to you herewith, to be laid before the Drafting Committee of the Commission on Human Rights the following documents:—

(*a*) A draft International Bill of Human Rights.

(*b*) A draft resolution which might be passed by the General Assembly when adopting an International Bill of Rights.

2. It is suggested that the International Bill of Rights should be prepared in the form of an instrument which would be approved by the Assembly and submitted to Governments for accession by members of the United Nations, by states parties to the Statute of the International Court of Justice, and by any other state whom the General Assembly of the United Nations shall, by resolution, declare to be eligible. The draft Bill itself requires little explanation. It is intended to contain an enumeration of the human rights and fundamental freedoms, provisions as regards execution and enforcement, and certain formal provisions which necessarily accompany the bringing of the Bill into force. The Assembly Resolution deals with a number of secondary matters which will assist in the execution of the Bill, but which should be approved in a form which will allow for relatively simple amendment and adaptation. The proposals in the resolution regarding the furnishings of information by signatory States are of considerable importance in this respect.

3. It is understood that the purpose of the Drafting Committee is to produce texts for the consideration of the Human Rights Commission, and that the texts submitted by the Drafting Committee, being the result of the combined efforts of its members working for this purpose, will not bind any delegation which has taken part in the work of the Drafting Committee. In submitting the attached draft Bill and Assembly Resolution the United Kingdom Representative is making suggestions for the assistance of the Drafting Committee, and the draft must not be taken as representing the final views of His Majesty's Government in the United Kingdom either as regards the provisions which are contained in the United Kingdom drafts or as regards any matters which are not contained in those drafts.

Draft of Resolution of General Assembly when Adopting the International Bill of Rights

I

(1) Whereas it is a purpose of the United Nations to achieve international co-operation as a means of encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion; and

(2) Article 13 of the Charter provides that the General Assembly shall initiate studies and make recommendations for the purpose of assisting in the realization of the said human rights and fundamental freedoms;

II

(1) Whereas, in conformity with Article 68 of the Charter, the Economic and Social Council set up a Commission to study and recommend measures for the promotion of human rights; and

(2) The said Human Rights Commission has reported and recommended the acceptance by all members of an International Bill of Human Rights;

III

(1) Whereas it is also an aim of the United Nations as defined in its Charter to achieve international co-operation in solving international problems of an economic, social, cultural and humanitarian character and to achieve social progress and better standards of life in larger freedom; and

(2) It is through measures taken through the instrumentality of the Economic and Social Council and its organs and through specialized agencies in relationship with the United Nations that the United Nations is seeking to establish international co-operation for the achievement of this purpose; and

(3) It is through the International co-operation so established that the United Nations can most effectively assist the realization of the right of all persons to work, to education to social security and similar social and economic rights, which cannot by their nature be defined in the form of legal obligations for states in an instrument such as the International Bill of Rights;

IV

The General Assembly expresses the opinion that human rights and fundamental freedoms can only be completely assured by the application of the rule of law and by the maintenance in every land of a judiciary, full independent and safeguarded against all pressure, and that the provisions of an International Bill of Rights cannot be fulfilled unless the sanctity of the home and the privacy of correspondence are generally respected and unless at all trials the rights of the defence are scrupulously respected, including the principle that trials shall be held in public and that every man is presumed innocent until he is proved guilty.

V

Considering also that the promotion of human rights and fundamental freedoms will be assisted by full and accurate information on the position in every land with regard to these matters, and that such information should be published by the United Nations under conditions which will best guarantee its objectivity:

The General Assembly Entrusts this function to the Commission for Human Rights and requests the Economic and Social Council to reconsider the terms of reference of the said Commission, having regard to the principles and directives set forth in Annex 2.

VI

Considering further that it is by defining human rights and fundamental freedoms and placing them under the protection of international law and the guarantee of the United Nations that the dignity and worth of the human person will be best secured.

The General Assembly Approves the International Bill of Rights which forms Annex I to the present Resolution and recommends that all members should accept the obligations thereof.

ANNEX I

Bill of Human Rights

Preamble

1. Whereas the peoples of the United Nations have re-affirmed their faith in fundamental human rights and in the dignity and worth of the human person;

2. Whereas it is one of the purposes of the United Nations to achieve international co-operation in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion;

3. Whereas all men are members of communities and as such have the duty to respect the rights of their fellow men equally with their own;

4. Whereas the just claims of the state, which all men are under a duty to accept, must not prejudice the respect of man's right to freedom and equality before the law and the safeguard of human rights, which are primary and abiding conditions of all just government;

5. Whereas the denial of human rights and fundamental freedoms endangers the general welfare and friendly relations among nations and the enjoyment of such rights and freedoms by all persons must be secured by international law and protected by the organised community of states;

6. Whereas it is expedient to define more exactly the aforesaid human rights and fundamental freedoms and to make provision for their universal observance and protection:

Now therefore the States parties to this International Bill of Rights have accepted the following provisions:—

Part I

Article 1

The States parties hereto declare that they recognise the principles set forth in Part II of this Bill as human rights and fundamental freedoms founded on the general principles of law recognised by civilised nations.

Comment to Article 1, Part I.

The phrase at the end of this Article comes from Article 38 (1) (*c*) of the Statute of the International Court of Justice. This phrase in the Statute of the Court is with justification considered by many commentators to represent the same principle as the phrases "law of nature" or "jus gentium" which play so great a part in the early development of international law. The conceptions both of the "law of nature" and "jus gentium" have also played a considerable part in the conception of the fundamental rights of man.

Article 2

Every state is, by international law, under an obligation to ensure:—

(*a*) that its laws secure to all persons under its jurisdiction, whether citizens, persons of foreign nationality or stateless, the enjoyment of these human rights and fundamental freedoms;

(*b*) that any person whose rights or freedoms are violated should have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(*c*) that such remedies shall be enforceable by a judiciary whose independence is secured, and

(*d*) that its police and executive officers should act in support of the enjoyment of these rights and freedoms.

Comment to Article 2, Part I.

Proposals that the provisions of the Bill of Rights should be embodied in the constitutions of states parties to the Bill, or otherwise consecrated by special constitutional guarantees, are not practicable for all countries. Some countries like the United Kingdom have no rigid constitution and, as a matter of internal law, it is not possible to surround any provision with any special constitutional guarantee. No enactment can be given a greater authority than an Act of Parliament, and one Act of Parliament can repeal any other Act of Parliament. Therefore, the legal provisions which safeguard human rights can only have as their special safeguard the solemn international obligations undertaken in this Bill, together with the firm foundation which these principles have in the deepest convictions of Parliament and the people.

Article 3

On receipt of a request to this effect from the Secretary-General of the United Nations, made under the authority of a resolution of the General Assembly,* the government of any party to this Bill will supply an explanation, certified by the highest legal authorities of the state concerned, as to the manner in which the law of that state gives effect to any of the said provisions of this Bill of Rights.

Comment: Section V of the draft resolution to which this Bill is Annex I is intended to provide this authority.

Comment to Article 2(a) and Article 3.

The expression "law" is used in this draft as equivalent to the word "droit", that is, anything a court will enforce including statute law, regulations and common or customary law.

Article 4

(1) In time of war or other national emergency a state may take measures derogating from its obligations under Article 2 above to the extent strictly limited by the exigencies of the situation.

(2) Any state party hereto availing itself of this right of derogation shall inform the Secretary-General of the United Nations fully of the measures which it has thus enacted and the reasons therefor. It shall also inform him as and when the measures cease to operate and the provisions of Article 2 are being fully executed.

Article 5

A failure by any state party hereto to fulfil the obligations under Article 2 is an injury to the community of states and a matter of concern to the United Nations as the community of states organized under the rule of law.

Comment to Article 5.

This article is meant to apply to failures of a substantial character. It is not intended to apply to failures of a trivial or technical character.

Article 6

(1) While declaring their readiness to consider the adoption of further procedures designed to strengthen the international protection of fundamental human rights and freedoms, the states parties hereto accept the right of any of them, acting in the interests of the community of states, to bring to the attention of the General Assembly of the United Nations any violation by

any of them of the provisions of this Bill of Rights as constituting a situation likely to impair the general welfare or friendly relations amongst nations and as a violation of the purposes and principles of the United Nations within the meaning of Article 14 of the Charter.

(2) Any party hereto which is thus alleged to have violated the provisions of this Bill of Rights shall have the right to request the General Assembly to obtain the advisory opinion of the International Court of Justice thereon and to refrain from taking any further action on the matter until this opinion has been obtained, and if such a request is made the parties hereto agree that they are bound to support the request.

Comment to Article 6.

It would be possible to insert here an additional provision under which all parties to this Bill would agree that in the event of any alleged violation of the Bill being brought before the General Assembly they would support a proposal that the matter should first be considered by a committee composed only of members of the United Nations who are parties to the Bill.

Article 7

The parties hereto agree that any one of them which is found by a Resolution of the General Assembly adopted by a two-thirds majority persistently to have violated the provisions of this Bill of Rights should be deemed to have violated the principles of the Charter of the United Nations and therefore be liable to expulsion from the organization under Article 6 of the Charter.

Part II

DEFINITION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Article 8

It shall be unlawful to deprive any person of his life save in the execution of the sentence of a court following on his conviction of a crime for which this penalty is provided by law.

Article 9

(1) No form of slavery shall be permitted.

(2) [A text on the subject of compulsory labour will be inserted here later.]

Article 10

(1) No person shall be deprived of his liberty save by an arrest which is effected for the purpose of bringing him before a court on a reasonable suspicion of having committed a crime or which is reasonably considered to be immediately necessary to prevent his committing a crime or breach of the peace.

(2) Every person arrested and detained shall be brought without delay before a judge, who shall either try the case or decide, after hearing evidence, whether there is sufficient case to justify that person's trial and if so whether his liberty shall be restored to him on bail.

(3) The period of detention pending trial shall not be unreasonably prolonged.

(4) The preceding provisions of this Article do not apply to (i) the lawful detention of a person sentenced after conviction to deprivation of liberty or (ii) lawful detention of persons of unsound mind or (iii) the lawful custody of minors or (iv) the lawful arrest and detention of a person to prevent his effecting an unauthorized entry into the country.

(5) Every person who is deprived of his liberty shall have an effective remedy in the nature of "habeas corpus" by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not justified.

(6) Every person shall have an enforceable right to compensation in respect of any unlawful arrest or deprivation of liberty.

Article 11

Every person who is not subject to any lawful deprivation of liberty or to any outstanding obligations with regard to national service shall be free to leave any country including his own.

Comment to Article 11.

There may also be other outstanding obligations such as those relating to taxation or the maintenance of dependents, of which account should be taken here.

Article 12

No person shall be held guilty of any offence on account of acts or omissions which did not constitute such an offence at the time when they were committed.

Article 13

(1) Every person shall be free to hold any religious or other belief dictated by his conscience and to change his belief.

(2) Every person shall be free to practise, either alone or in community with other persons of like mind, any form of religious worship and observance, subject only to such restrictions, penalties or liabilities as are strictly necessary to prevent the commission of acts which offend laws passed in the interests of humanity and morals, to preserve public order and to ensure the rights and freedoms of other persons.

(3) Subject only to the same restrictions, every person of full age and sound mind shall be free to give and receive any form of religious teaching and to endeavour to persuade other persons of full age and sound mind of the truth of his beliefs, and in the case of a minor the parent or guardian shall be free to determine what religious teaching he shall receive.

Article 14

(1) Every person shall be free to express and publish his ideas orally, in writing, in the form of art, or otherwise.

(2) Every person shall be free to receive and disseminate information of all kinds, including both facts, critical comment and ideas by books, newspapers, or oral instruction, and by the medium of all lawfully operated devices.

(3) The freedoms of speech and information referred to in the preceding paragraphs of this Article may be subject only to necessary restrictions, penalties or liabilities with regard to: matters which must remain secret in the interests of national safety; publications intended or likely to incite persons to alter by violence the system of government, or to promote disorder or crime, obscene publications; (publications aimed at the suppression of human rights and fundamental freedoms); publications injurious to the independence of the judiciary or the fair conduct of legal proceedings; and expressions or publications which libel or slander the reputation of other persons.

Comment to Article 14.

The fundamental provisions of the Bill of Rights relating to freedom of speech and information will be completed by other agreements, resulting from the work of the subcommittee on Freedom of Information and the international conference on this subject.

Comments to Article 14(3).

(*a*) The provision in paragraph 3 above, recognizing the right of governments to impose the necessary restrictions, penalties or liabilities on publications likely or intended to incite persons to alter by violence the system of government, is to be interpreted as strictly confined to such publications as advocate the use of violence, and does not apply to publications advocating a change of government or of the system of government by constitutional means.

(*b*) Some doubt is felt as to the suitability of the words "publications aimed at the suppression of human rights and fundamental freedoms" from the point of view of drafting. It may be that these words afford a wider power for the limitation of freedom of publication than is necessary or desirable. On the other hand it may be said that it would be inconsistent for a Bill of Rights whose whole object is to establish human rights and fundamental freedoms to prevent any government, if it wished to do so, from taking steps against publications whose whole object was to destroy the rights and freedoms which it is the purpose of the Bill to establish. In the last analysis, perhaps the best definition of a Nazi or Fascist regime is that it is a regime which does not recognize the dignity and worth of the human person and permit individuals to enjoy human rights and fundamental freedoms.

(*c*) In any case it will be observed that no government is obliged by the Bill to make use of the powers of limitation which are provided in paragraph 3.

Article 15

All persons shall have the right to assemble peaceably for any lawful purpose including the discussion of any matter, on which under Article 14 any person has the right to express and publish his ideas. No restrictions shall be placed on the exercise of this right other than those necessary for the protection of life and property and to prevent disorders, the obstruction of traffic and of the free movements of others.

Article 16

All persons shall be free to constitute associations, in whatever form may be appropriate under the law of the state, for the promotion and protection of their legitimate interests and of any other lawful object, including the dissemination of all information of which under Article 14 the dissemination is unrestricted. The rights and freedoms set forth in Articles 13 and 14 shall be enjoyed by such association.

Comment to Article 16.

The word "associations" is here used as the widest possible term and is intended to include the creation of entities having juridical personality.

Comment to Part II.

This part of this Bill will be completed by provisions prohibiting distinctions based on race, sex, language and religion. No attempt is made to draft these provisions in advance of the reports of the subcommittee on Discrimination and Minorities and also of the Commission on the Status of Women. In any case, Part II as drafted above in fact provides for absence of discrimination seeing that it uses the words "all persons". (See also Article 2(*a*) "all persons under its jurisdiction, whether citizens, persons of foreign nationality or stateless".)

PART III

Article 1

(1) This Bill of Rights is submitted, for the purpose of accession thereto, to every member of the United Nations, to every state party to the Statute of the International Court of Justice and to every other state whom the General Assembly of the United Nations shall, by resolution, declare to be eligible.

(2) Accession shall be effected by the deposit of an instrument with the Secretary-General of the United Nations and the Bill of Rights shall come into force as soon as . . . . * states have deposited such instruments as regards those states and thereafter as regards each party on the date of the deposit of its instrument of accession.

(3) Every deposit of an instrument of accession shall be accompanied by a statement that this Bill had been approved in accordance with the constitutional processes of the state concerned for the acceptance of the obligations of a treaty and by a solemn declaration made by the government of the state concerned that full and complete effect to the provisions of Part II is given by the law of that state.

(4) The Secretary-General shall inform all members of the United Nations and the other states referred to in paragraph 1 above of the deposit of each instrument of accession.

Article 2

(17) Amendments to this Bill of Rights shall come into force when they have been adopted by a vote of two-thirds of the members of the General Assembly of the United Nations and ratified in accordance with their respective constitutional processes by two-thirds of the parties of this Bill.

(18) When such amendments come into force they shall be binding on those parties which have ratified them, leaving other parties still bound by the provisions of the Bill which they have accepted by accession including earlier amendments which they have ratified.

ANNEX II

(1) All information published by the United Nations relating to human rights should be approved by the Commission for Human Rights before publication. The Commission should be guided in this matter by the principle that accuracy and objectivity in information published is the first essential.

(2) Before any information relating to the position in any particular state is published, it should be transmitted to the Government of that state which should be given a reasonable time in which to make any comments thereon which it desires. If the government makes any comments and the Commission decides that publication of this information is nevertheless desirable, these comments should be published, together with the information to which they relate.

(3) By careful study and selection, the Commission should endeavour to reduce the frequency of the occasion when it transmits information to governments for comments and also the volume thereof.

(4) Any explanation transmitted to the Secretary-General under Article 3 of the Bill of Rights and information given to the Secretary-General under Article 4 (2) will be published automatically. Requests to governments for explanations under Article 3 shall be made on a decision of the Commission approved by the Economic and Social Council.

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* *Comment.*—This number should not be less than two-thirds of the members.

(5) The Commission should consider the desirability of appointing an expert committee to assist it in the performance of these functions.

Comment on Annex II.

As Section 5 in the draft Resolution shows, it is proposed to leave to the Economic and Social Council the task of reviewing the terms of reference of the Commission on Human Rights in the light of the provisions of the Bill. Since the first task of the Commission under its existing terms of reference was the preparation of the draft Bill, it is obvious that when the Bill comes into operation; the Commission must act under new terms of reference which will be drawn up having particular regard to the provisions of the Bill. All that the draft Assembly Resolution does is to lay down certain provisions which must in any case be included in the future terms of reference. The Economic and Social Council would have to consider the manner in which petitions on Human Rights questions received by the Secretary-General should be dealt with and whether, and if so under what conditions, they should be passed to the Commission. Experience of the minorities procedure of the League of Nations has shown that this is a question which requires very mature consideration and that inappropriate procedure may tend to damage rather than further the advancement of Human Rights. In any case, it is suggested that provisions on these matters should not be included in the Bill itself, as such provisions should be capable of easy adaptation and amendment.

SESSION 1947

SPECIAL JOINT COMMITTEE OF THE SENATE AND THE HOUSE OF COMMONS

ON

HUMAN RIGHTS

AND

FUNDAMENTAL FREEDOMS

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 3

FRIDAY, JUNE 20, 1947

WITNESS:

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
CONTROLLER OF STATIONERY
1947

91599—1

MINUTES OF PROCEEDINGS

THE SENATE,
FRIDAY, 20th June, 1947.

The Special Joint Committee on Human Rights and Fundamental Freedoms met at 11 o'clock a.m. The Joint Chairman, Honourable Senator L. M. Gouin, presided.

Also present:

The Senate: Honourable Senators Bouffard, Fallis, Leger, Turgeon, and Wilson.

The House of Commons: Mrs. Strum and Messrs. Beaudoin, Belzile, Benidickson, Croll, Hansell, Harkness, Hazen, Herridge, Irvine, Isnor, Lesage, Marier, Maybank, Michaud, Rinfret, Stewart (*Winnipeg-North*), and Whitman.

The Chairman informed the Committee of the unavoidable absence of Right Honourable J. L. Ilsley, Joint Chairman.

Mr. R. G. Riddell, Chief, First Political Division, Department of External Afiairs, Ottawa, was recalled and further examined. He filed the following:—

(1) Commission on the Status of Women; (Economic and Social Council, United Nations Organization).

(2) Draft Outline of International Bill of Rights; (Prepared by the Division on Human Rights, United Nations Organization).

Exhibits (1) and (2) printed as Appendices "C" and "D".

Discussion followed relative to procedure as recommended in the First Report of the Steering Committee.

Mr. Riddell retired subject to recall at the next meeting of the committee.

It was agreed to call at the next meeting: Mr. F. P. Varcoe, Deputy Minister of Justice, Ottawa, and Mr. E. R. Hopkins, Legal Adviser, Department of External Affairs, Ottawa.

The committee adjourned at 12.20 p.m. to meet again at 11 o'clock a.m., Thursday, 26th June.

J. G. DUBROY,
Clerk of the Committee.

91599—1½

MINUTES OF EVIDENCE

HOUSE OF COMMONS,
June 20, 1947.

The Special Joint Committee on Human Rights and Fundamental Freedoms met this day at 11.00 a.m. The Hon. Mr. Gouin (Joint Chairman) presided.

The CHAIRMAN: I think we are now in a position to proceed.

I regret to inform you that the Rt. Hon. Mr. Ilsley has been obliged to absent himself from Ottawa. He is in Toronto this morning.

The last time we met we had before us Mr. Riddell of the Department of External Affairs, who filed three documents. The first document, entitled document No. 1, gives us a general outline of the situation as far as the United Nations Organization is concerned and two other documents have been filed. Document No. 2 is a statement of essential human rights drafted by the Committee of the American Law Institute and submitted to the General Assembly by the Delegation of Panama. That second document was filed at the end of the testimony of Mr. Riddell and it has been suggested that we, the members of the committee, be given an opportunity to read it and to-day when Mr. Riddell appears again before us, questions may be put to him on either document No. 1 or document No. 2. The same remark would apply to document No. 3 which is what I would call the British Draft Bill of Human Rights, a draft for the international bill of human rights. This draft bill is prefaced, so to speak, by an accompanying letter addressed to the Secretary General of United Nations, from Lord Dukeston and the remarks which I have just made apply also to document No. 3. We wanted to have an opportunity to examine it before Mr. Riddell would be questioned to-day. Two other documents have been prepared by the Department of External Affairs and I think that they have just been supplied to all members of this committee. Document No. 4 is entitled "Commission on the Status of Women", and it gives the present composition of the Commission of the United Nations Organization which is entrusted with the care of studying the status of women and reporting on same. At the end of the document we have the names of the officers of that commission. Document No. 5 is entitled again "Commission on Human Rights", this means the Commission of the United Nations Organization, and it is the draft outline of the International Bill of Rights, which is dated June 4, 1947. I believe it would be in order now to have Mr. Riddell take the stand and complete his evidence.

R. G. Riddell, Chief, First Political Division, Department of External Affairs, called:

The WITNESS: Mr. Chairman, we had completed, at the end of the last meeting, examination of document No. 1. That left for consideration the other three documents which we have prepared, Nos. 2, 3, and 5, giving drafts of the International Bill of Human Rights which have been submitted from various sources. If the committee wishes now to examine these various draft bills I think it would be in order to do so, Mr. Chairman. I am not sure, however, that I can be of a great deal of help to the committee. It seems to me the questions which arise out of these draft bills are either questions of law or questions of policy. If they are questions of law they should be addressed to someone with legal training, possibly representatives of the Department of

Justice, and, if they are questions of policy, they are matters for discussion by the government and parliament and I am not sure that I should express an opinion on them. I would be very glad to be of any help to the committee that I can, Mr. Chairman.

The CHAIRMAN: Well, I believe, first of all, if any member has any questions to ask concerning document No. 1, this would be the proper time to ask them.

Hon. Mr. TURGEON: Have you any knowledge, Mr. Riddell, outside of what you have provided as documents, of action being taken or under way in any other nations other than the United States, Great Britain and Canada, to carry out the general regulations of the United Nations?

The WITNESS: A considerable number of draft international bills on human rights have been prepared by private organizations in various parts of the world. We are trying to make a collection of those for the information of the committee. I am not aware of any official action which has been taken by any other government to prepare for official submission a draft bill on human rights, although such action may be under way.

The CHAIRMAN: I have read somewhere, I do not know if the information was accurate Mr. Riddell, but I read in a review of the Interparliamentary Association that something like 1,000 draft bills have been submitted to the United Nations Organization.

The WITNESS: It is a very considerable number, I know.

The CHAIRMAN: It seems it would be impossible for us to examine all those draft bills, but I would say we would be very interested in any draft bill from a government, or a draft bill which came from some important private organization.

Hon. M. BOUFFARD: Maybe we could find out if there is any private organization in Canada that he made up a draft bill.

The CHAIRMAN: Has anything along these lines been done in Canada and communicated to the Department of External Affairs?

The WITNESS: I have not seen anything, Mr. Chairman. I do not think anything has been submitted to the United Nations.

Mr. HAZEN: Could you tell us anything about the American Law Institute, what kind of an organization is it? It submitted this document No. 2.

The WITNESS: That is correct, Mr. Chairman. I am not familiar with the American Law Institute itself. The committee which it established, for the purpose of drawing up this document, was composed of lawyers and political scientists, representing most of the principle cultures of the world. It includes the Chairman of the Panama Delegation to the United Nations Organization, Dr. Alfaro, and other members of the committee were Mr. Henri Laugier, who is now Assistant Secretary General of the United Nations in charge of the Department of Social Affairs, under which human rights fall.

Mr. HAZEN: It is not confined to residents of the United States?

The WITNESS: No, it included one Canadian who is now a resident of the United States. That was Dr. P. E. Corbett, formerly of McGill University and now of Yale University.

Mr. HAZEN: I think you mentioned some others.

The WITNESS: I can give you a list.

Mr. HAZEN: I do not want a list, I just wanted to find out if this was a United States organization or an organization that included people from other countries in this hemisphere.

Mr. IRVINE: Is it not the equivalent of the Canadian Law Society?

The WITNESS: I am sorry, I do not know what it is, Mr. Chairman.

Mr. HAZEN: I think it is the American Association. Well, how did you come to submit this particular document when other documents much have been submitted to the General Assembly? How is it that you submitted this particular one to us?

The WITNESS: This document has certain official status because of the fact the Panamanian Delegation submitted it officially to the Assembly of United Nations and it was referred by the General Assembly to the Economic and Social Council, and, subsequently, to the human rights division. It is a document which is officially filed.

Mr. STEWART: I think it would be rather interesting to have the names on the record if Mr. Riddell would read them.

The WITNESS: The committee consists of Dr. P. E. Corbett, formerly of McGill University and now of Yale University; Mr. C. Wilfred Jenks, legal adviser to the International Labour Organization; Dr. Rajchman of Poland, who is a member of the Polish Delegation in Washington; Dr. Hu Shih of China; Senor del Vayo, of Spain; Professor Quincy Wright, of the University of Chicago; and Mr. Henri Laugier, who is now Assistant Secretary General of the United Nations; and Senor Alfaro, who was Chairman of the Panama Delegation to the Assembly of the United Nations.

By Mr. Whitman:

Q. Mr. Chairman, I believe this is a committee of experts, or people who knew something about this set up by the American Law Institute, and that they have drawn this up for the American Law Institute to be approved and put forward.—A. That is correct.

Q. It is not just an American document?—A. No.

Q. It is more of an international document?—A. It is prepared by the committee which was established under the initiative of the American Law Institute.

Q. Approved by the American Law Institute, I expect?—A. I think so.

The CHAIRMAN: You are not quite positive about that?

The WITNESS: Whether it has ever been adopted by an official body of the American Law Institute I cannot say.

Hon. Mr. TURGEON: Could you tell me this, Mr. Riddell? This was presented to the General Assembly by the Delegation of Panama. Are you aware, officially, of any action taken by the United States government with respect to his proposal before the General Assembly?

The WITNESS: I know of no action.

Mr. HAZEN: Can you tell us what the Delegation of Panama was? I am travelling in the dark here.

The WITNESS: It was the official delegation representing the Republic of Panama at the General Assembly of the United Nations in 1946.

The CHAIRMAN: You stated, I think, that it was Mr. Alfaro.

The WITNESS: He was the chairman of that delegation and he was also a member of the committee, which explains the interest the Delegation of Panama had in this document.

Mr. HERRIDGE: Could Mr. Riddell find out if this was endorsed officially by American Law Institute?

Mr. STEWART: Mr. Chairman, referring to document No. 1 for a moment, Canada is not represented on the commission on human rights. We have one representative, Mr. George B. Ferguson on the subcommittee on freedom of the

press, but we have no representative on discrimination and no representative on the subcommittee on the status of women. It seems to me Canada has played a very subsidiary part in this very important business and I wonder if Mr. Riddell could tell us why this was.

The WITNESS: I am wondering how I can be of assistance to the committee in that regard. The selection of the members of the two subcommissions, to which Mr. Stewart has referred, is a selection of individuals rather than of states, and the states concerned, theoretically at least, did not take the initiative in seeking membership on those committees. For example, I might explain it was the United States delegates on the Commission of Human Rights that nominated Mr. Ferguson and it was not the Canadian government. The Canadian delegation tc the Economic and Social Council might have pressed for membership on the Human Rights Commission and might have made strenuous efforts to secure representation on the Human Rights Commission. The elections to those commissions are open elections. The Canadian government, or Canada, might have been elected to any one of them. As it happens Canada is a member of five of the commissions of the Economic and Social Council but it just happens the Human Rights Commission is not one of the five to which election was secured. The question of why membership was accepted on the Social Commission, but more strenuous effort was not made to assume membership on the Human Rights Commission, assuming it were possible, is really a question of policy which I do not feel competent to answer.

Mr. IRVINE: Mr. Chairman, I do not see that we can do very much with this document, document No. 2 which we are looking at. It seems to be eighteen declarations of human rights which we, at least theoretically, adhere to in Canada. It seems to me a summary of such rights should be included in this bill. I would say the largest weakness of the bill is that it makes no provision for seeing these rights are carried out effective amongst the United Nations. It is just a declaration of certain rights and I do not think we can do much more than look at it.

The CHAIRMAN: You are quite right. They seem to be almost general principles. At the end of each article or principle we have reference to the fact that the state has a duty to protect those freedoms, but of course it does not indicate, as was just stated, any ways and means. I may just perhaps remark here we would be faced with our constitutional problem when it comes to the question of applying or protecting any rights on which we could possibly agree.

Mr. IRVINE: Perhaps we would have a statement from our legal authorities later as to how the carrying out of these rights might affect our constitutional law and how the law might affect them.

Mr. WHITMAN: Mr. Irvine, would not that be merely in the interpretation of those rights? We have here a statement of eighteen articles with which I think we can all agree, but the difficulty will come, not in accepting or rejecting them, but in the interpretation of them. They may be intepreted differently in one country from another, and we may find we will run into all kinds of trouble. Who is going to interpret them?

Mr. HERRIDGE: Do you not think as this is the business of the committee, that we should go through this document, article by article, and see where the committee differs with it and perhaps accept the principles.

The CHAIRMAN: I would have been inclined to think, if it is the pleasure of the committee, that it would be preferable to have first of all, evidence from the Department of Justice giving at least a general outline of the respective spheres of jurisdiction of the dominion parliament and the provincial legislatures. I am afraid it would be, so to speak, only expressing the personal opinion of the individual members, if, at this stage of our proceedings, we were to enter some kind of a formal decision on these various articles. If Mr. Riddell is in a position,

to give any additional evidence on the statement filed by the Delegation of Panama, well, of course, then it would be quite interesting to examine that declaration and study it, article by article.

Mr. STEWART: Mr. Chairman, I do not know, I may be wrong, but I understand Mr. Herridge to mean there are eighteen declarations of principle and does this committee accept them in principle, or are there any that this committee rejects? Are there any that we do not approve of?

Mr. HERRIDGE: That is my idea, even before we view it from a constitutional angle.

The CHAIRMAN: Then have we any questions to ask Mr. Riddell? Later I will ask the opinion of the committee on the statement of the Delegation of Panama?

First of all, concerning document No. 1, are there any additional questions to be put to Mr. Riddell?

Mrs. STRUM: Mr. Chairman, before we proceed I would like to have a little difficulty cleared up.

The CHAIRMAN: I am sorry I did not hear that.

Mrs. STRUM: Before we proceed I would like to have cleared up a little difficulty which is in my mind. Is not the purpose of the United Nations to assist in the attaining of certain social and human objectives?

The CHAIRMAN: So far as I am concerned I am in agreement with that proposition.

Mrs. STRUM: Are we not trying to find a sort of common denominator of social objectives for all nations? Would you not have to consider first the desirable objectives, and then you would have to consider our constitution in the light of the changes we wish to make in it to attain those objectives. If each country examines its constitution first, in order to decide what it cannot do, and what is *ultra vires,* in order to preserve certain objectives, then it seems to me all the United Nations can do is preserve all the rigidities and all the contradictions that persist in each nation. Therefore, I would think the proper procedure for us is to consider what these fundamental freedoms would be and then consider our constitution and decide how to change it in the light of our decisions.

The CHAIRMAN: There are two ways to approach the problem if I may say so. Frst of all, what is desirable; and, theoretically, is the course of action logical? There is also the other way of approach. I was inclined to think we had already adopted what I would call the wisest scheme, that we would begin by having a general introduction, first of all concerning what I would call the international aspects of the situation. It seems to me we are almost through with the general introduction, but it does not mean that we must go much further with details of the words. Then I had in mind, concerning the constitutional aspects of the question, that we would have somebody from the Department of Justice and I am informed it will be Mr. Varcoe, the deputy minister, who will give us a general outline of the jurisdiction of the federal authorities and the provincial authorities. I would respectfully submit, from a practical point of view, we would be in a position to do more useful work in a shorter period of time if we had one sitting to examine the legal aspect of the question. That view may be because I am a lawyer and I have the legal definitions in mind. The subject is so vast that if we were to begin with everyone of us expressing an opinion, not having always before us a little of what I would call the possibilities, and the actual necessitous knowledge and where we are working under our present constitutional framework, I am afraid that there might be too many generalities in our discussions. It might be pretty difficult even for Canadians to agree on what I would call some immediate fundamental rights. The beginning

of the beginning, for me, would be to try and find out if we can agree on say four of the fundamental rights inocuous to the principle. Then our work becomes much more difficult, much more delicate, when we want to do something concrete to protect those general rights. If it is the pleasure of the committee I would suggest that we proceed that way. First of all could we dispose of Mr. Riddell?

Mr. IRVINE: May I ask this question? Will not the constitutional matter as far as Canada is concerned be applicable when we come to carry out, within our own borders, the principles of freedom which we decide are of interest to us. For instance, if we accept a bill of rights, which we think would be good for international application, it would be Canada's duty to carry that out within its own borders in its own way. Then your constitution will come into play. There is another feature as I see it. In the event of Canada, or any other country, violating rights which it has subscribed to in an international field, it becomes an international matter and not our constitutional matter, we have two questions here, have we not?

The CHAIRMAN: I admit the two questions are, so to speak, interdependent. I think we would know much better where we were going if we took an example. Take freedom of worship. I believe we are all more or less agreed on the general principle of freedom of worship and I do not want to express any other opinion, but even freedom of worship has certain limitations. In other words it cannot be under the pretense of freedom of worship when either myself, or anybody else, encourages practices which would be considered by any decent human being as constituting what I would consider gross immorality, or other things of that nature.

Mr. IRVINE: Yes, there are some limitations.

The CHAIRMAN: My own conscience would dictate those limitations, depending only upon federal limitation, but I think they depend partly on federal legislation and partly upon provincial legislation. For my own guidance, at least, if I always had what I would call some kind of a right to help me along my path, I would appreciate much better the situation of my country concerning even international obligations on that question of freedom of worship. For instance I could be satisfied that the federal authorities are in a position to protect the freedom of worship from sea to sea, as we say, but I know we already have some legislation in our provincial statutes designed expressly to protect freedom of worship. For instance in Quebec, it is chapter 307 of the Revised Statutes of 1941, and that legislation, by the way, being of a general character, would not really raise any constitutional issue. However, there may be some other legislation in the different provinces, including my own province, which might be open to discussion, rightly or wrongly. In such a case I submit the constitutional question appears, first in the powers of the dominion parliament to interfere and to try to over-ride a provincial statute, on account of our adherence to the Charter of the United Nations. I would not like to venture an opinion on that and I would say we should first hear, for instance, the deputy minister of justice.

Mr. IRVINE: Then it seems to me, following out the suggestion of Mrs. Strum, the first thing we have to decide is what we want to do, and secondly we must decide how we will go on to do it in Canada.

Hon. Mr. TURGEON: Mrs. Strum's suggestion, as I understand it, is exactly to the point. I think it is entirely in line with the recommendation made to this committee by the steering committee last week. In order to carry out the recommendation of the steering committee, which I think is along the line of Mrs. Strum's suggestion, we would have first to get what information we can and wish from the Department of External Affairs, and then additional information should be obtained from the Department of Justice. The steering committee should have another session for the purpose of considering the evidence

which has been given to us and it would make further recommendations to the main committee. The main committee would, in turn, consider the recommendations and possibly accept them and then carry on its business. I think we have to deal with the matter in the terms of reference given to us in the resolution which passed the House of Commons and the Senate. It is in the terms of that resolution that the steering committee made the recommendation which came before us and upon which we are now acting. I think we will be following the suggestion, or reaching the objectives of Mrs. Strum's suggestion, if we adhere to the recommendation of the steering committee.

Mr. MICHAUD: I agree with that point of view.

The CHAIRMAN: I want to understand exactly what are the wishes of the committee. If I refer to the first report of our steering committee I understand first of all that in paragraph 1 we were given a summary of the terms of reference on which we all agree. Then paragraph 2, we are still at that stage of our proceedings, we were to have before us officials of the Department of External Affairs and my own suggestion for the time being was to try first of all, and with that Mrs. Strum would agree, and I think also Senator Turgeon, that we try and dispose of the testimony of Mr. Riddell.

Hon. Mr. TURGEON: Yes, and then the Department of Justice would be heard and the steering committee would meet and make further recommendations. That is exactly what I am suggesting, or Mrs. Strum suggested, by setting out the objects, but not the ways and means to meet them.

Mrs. STRUM: This report to the steering committee starts by saying we are to consider the question of human rights and fundamental freedoms. Is not that our starting point? If we are to agree on what human rights and fundamental freedoms are, we must consider them clause by clause to come to a joint decision of what those rights and freedoms are. I do not know how we are going to arrive at a decision to carry them out.

Hon. Mr. TURGEON: The recommendation No. 1 of the steering committee is built upon the terms of reference which are our sole guide. Then the steering committee recommended, in order to carry out those terms of reference, officials of the External Affairs Department, and later, the Justice Department, should be examined by this committee and then the committee would have the information and the knowledge, whatever it may be, to give study to these questions. Then, the steering committee meets again and makes suggestions which the main committee accepts or rejects and the main committee goes on as it sees fit. I suggest we continue as we are with the External Affairs Department.

The CHAIRMAN: As a matter of fact the evidence is very short which can be given by Mr. Riddell, unless I am mistaken. Concerning document No. 1 any member of the committee is at perfect liberty to ask any question, even questions of a general nature, of Mr. Riddell.

Mr. STEWART: I find it hard to envisage any question not of policy or of law, both of which types would be unfair to Mr. Riddell.

The WITNESS: May I be permitted to make a remark about document No. 1 before it is disposed of? I would like to emphasize the very preliminary nature of the consideration which has been given to the question of human rights in the United Nations. I think that conclusion, the main one which is derived from document No. 1, arises particularly from the series of steps on page 12 by which the draft bill on international human rights is finally to be drawn up. They have not yet reached stage (*a*) of these series of steps as outlined on page 12 and, in fact, what is happening at the moment is preparatory to a committee on human rights, or preliminary consideration of human rights, the commission on which is beginning in August.

Mr. HAZEN: Pardon me, what page is that?

The WITNESS: Page 12. On that page there is given an outline of the procedure by which it is expected the draft bill on human rights will be prepared. Now, they are at the moment, preparing this preliminary text which will have to go through these various stages. While it is being considered a number of very fundamental questions of principle will have to be decided. Before it is put in the final form it will have to be decided, for example, whether a draft international bill of human rights shall refer only to political rights or whether it shall include social and economic rights as well. In some of these drafts which have been prepared only political rights have been considered, in others social and economic rights have been defined. A general decision will have to be made as to the form which the document will finally take if it is adopted by the United Nations. It might, on the one hand, take the form of a general statement embodied in the resolution of the General Assembly of the United Nations. Such a resolution of the United Nations would have only the force of a resolution of the General Assembly. It would impose on the members of the United Nations a solemn moral obligation to observe the provisions of the document, but it would not impose on them any specific contractual obligations. Alternatively, if it were decided to embody the draft bill of human rights in a convention or a multilateral treaty which members of the United Nations could sign, in that case members of the United Nations which did sign this treaty would accept specific contractual obligations to observe the provisions of the document. If that course were decided upon then further decisions would have to be taken with regard to the method by which we may enforce this document, the procedures which you would adopt for enforcement. I give this only for the purpose of emphasizing the very preliminary nature of the decisions taking place in the United Nations and to indicate the number of fundamental decisions which have yet to be taken in regard to the character of the document and the form which it will take when it is finally adopted.

By Hon. Mr. Bouffard:

Q. Mr. Riddell, if there were such a convention between nations this convention would have to be submitted to parliament here before it could be enforced, in so far as Canada is concerned?—A. It would have to be signed by the Canadian government after the acceptance of such procedures as is normally the case in the signature of an international document by the Canadian government. That embodies generally a resolution by parliament.

Q. Do I understand that usually these treaties are all submitted to parliament before they are finally adopted?—A. That has been the general practice.

Q. That has been the general practice; but would there be any necessity for submitting these conventions to provincial governments?—A. It would depend on the convention.

Q. On the draft?—A. The form in which it was taken. If I may, I would like to have that question referred—

Mr. BEAUDOIN: That is a question for legal experts. Ask Mr. Varcoe when he comes here.

Hon. Mr. BOUFFARD: That is why it is important to hear Mr. Varcoe as soon as possible on this matter.

Hon. Mr. TURGEON: The committee understands that the question raised by Senator Bouffard comes up in connection with treaty obligations concerning the International Labour Organization. That is the question you have in mind. It has been mentioned, and it has been met.

Mr. STEWART: I have the feeling that this committee is going around like a chicken without a head; that it has no objective. I am not blaming the chair; I am blaming the steering committee, and I am a member of that steering

committee. There is no leadership. We do not seem to know where we are going. We are going to bring Mr. Varcoe here to discuss something which we have not discussed amongst ourselves. I think Mrs. Strum's suggestion is good: let us consider what is desirable in the light of what is possible. When we have reached some unanimity among ourselves as to what is desirable let us consider it then from the legal point of view and make amendments accordingly. We have to have some direction if we are going to get anywhere in this committee.

Mr. BEAUDOIN: I disagree with Mr. Stewart. I think the steering committee has suggested the proper course. We are going to have an over-all picture if we question the officials of the Department of External Affairs and the legal experts from the Department of Justice; and after we have heard all the evidence which they can supply that would enlighten us as to the course to follow in studying what is desirable to study.

Mr. MARIER: What is possible.

Mr. BEAUDOIN: What is possible. I think the steps we are taking are absolutely necessary to meet the objective which Mr. Stewart has in mind. Now, Mr. Riddell has come before us with document No. 1 in which he tells us there are excerpts from the United Nations charter which have reference to fundamental freedoms and human rights and the Economic and Social Council. The Human Rights Commission was formed out of that council. And he tells us the steps taken so far by the Human Rights Commission. Then he gave us the documents which he has in his department and which can be submitted to this committee in some sort of official capacity. I think we want to find out more about these documents which he has filed, and then our task with him is almost over. And since the course which we are following is the questioning of Mr. Riddell, as you have suggested, there is one question I would like to ask, and it is this: I see on page 12 of document No. 1 that it is said that a drafting group is preparing a draft which is supposed to be submitted by June 25 with the view of making a submission to the commission on August 25. I notice this morning that Mr. Riddell has filed document No. 5 which is entitled, "Draft outline of International Bill of Rights (prepared by the Division on Human Rights)."

Now, is this document the one referred to on page 12 of document No. 1? In other words, is this document No. 5 the draft of an international bill of rights which is contemplated in the last paragraph on page 12 and which Professor Humphrey could deal with when we have that matter before us?

The CHAIRMAN: Is it not probably the draft mentioned in paragraph 8 on page 12?

The WITNESS: The answer to both these questions is no. When the drafting group met in New York about ten days ago it had before it this document which is marked No. 5 and a preliminary draft which was prepared by the secretariat of the United Nations for the consideration of the drafting group. They were under no obligation to accept this as the basis of their discussions, but the secretariat had been asked to prepare this document referred to in the documents that you have before you. At the bottom of page 11 there are the terms of reference of the drafting group which is now meeting in New York, and they say: "Requests the secretariat to prepare a documented outline concerning an International Bill of Rights." This is the documented outline which the secretariat has prepared in advance.

By Mr. Beaudoin:

Q. At the time the order of reference was issued were documents No. 2 and No. 3 submitted to a drafting group?—A. Document No. 2 was made available to them; document No. 3, the United Kingdom draft, was made public after the drafting group had met in New York. This letter is dated June 2.

Q. In other words, document No. 5 was not approved until consideration had been given to documents Nos. 2 and 3?—A. Document No. 2 was available, but not document No. 3.

Q. Did you study documents Nos. 2 and 3? Can you give us what are the main features in document No. 3 which are not in documents Nos. 2 or 5?—A. I would prefer to have that question answered by legal authority, Mr. Chairman, unless the committee are very anxious for me to discuss this.

The CHAIRMAN: I think it would be better to have all legal questions submitted to a law officer either of the Department of External Affairs or the Department of Justice.

Mr. IRVINE: Mr. Chairman, may I ask if you would give me your opinion, within the reference given to us, whether we are here now to study as students the whole question of fundamental freedoms; or, secondly, are we here to draft a bill of rights which we will submit for the consideration of the international body; or, third, are we here to give endorsation to a bill which may be drafted by the international body? Now, I think we may be here to do all three; but if we are, then we ought to make one step at a time in relation to these matters. As it is now we do not know where we are going.

Mr. RINFRET: We are studying.

Mr. IRVINE: All right.

The CHAIRMAN: Personally, I wish to apologize to this meeting. I was taken by surprise this morning when I was informed that our joint chairman, Hon. Mr. Ilsley, was away. I am doing my best under the circumstances which are, perhaps, somewhat difficult; and without any false modesty I ask for the indulgence of the committee. I think you are all satisfied, at least, with my good will. I am not in a position to go beyond the general terms of the reference; but we are really here to study the general question of human rights which is, as I said before and I repeat now, a very general and somewhat indefinite question. In a certain sense, it is almost a superhuman task for us to try to achieve what we would call some practical results, but I think we are all determined to do our best.

There is nothing mentioned expressly in the terms of reference concerning a bill of rights; but there is the general mention of the legal and constitutional situation in Canada concerning such rights. And then as to the steps which are advisable—that is just a general mention—to recommend for the purpose of preserving in Canada respect for and observance of human rights, this then becomes a question of ways and means; and I submit the question of a declaration of human rights which I say would rather be expected from this committee, or an alternative recommendation for a bill of rights, should be considered in due time. However, I do not want to take up too much of the committee's time with this discussion because I think from the opinions which have been expressed that this clause should be studied again by your steering committee so that it might come before you with a more definite program. But I do not think there will be any loss of time if we begin with the first two items indicated in a general way. Now, with regard to Mr. Riddell, are there any questions you wish to ask him?

Hon. Mrs. FALLIS: Mr. Chairman, it seems to me that one of the reasons why we are sort of groping in the dark is that we have introduced documents pertaining to human rights and fundamental freedoms for study which have been sent from the United Nations and yet the United Nations have never declared their definition of what they mean by human rights and fundamental freedoms. At our last meeting I understood Mr. Riddell to say that they are working on that now. One would think that the definition would have been the first thing to have been laid down, and then we could work on to that end.

We have all these documents but we have no definition. We have all this but we have no definition of what the United Nations Assembly means by human rights or fundamental freedoms.

Mr. MICHAUD: Mr. Chairman, as I understand it, these three documents, draft bills on human rights, really deal with these things and it is just because we cannot express these in definitions that we have these draft bills. It seems to me when you take one of these documents and read it over you should have some understanding of what is meant by those two terms. Now we have been here for an hour and in my opinion we have not gone very far. We have discussed this and that and we do not seem to be able to get going. As I understand it, our duty under the first part of the reference is to prepare, if we deem it advisable, a draft bill along the lines of the three we have before us. We should either accept some of them, or amend them, or blend them together. I agree the first thing we should consider is what is humanly desirable but I do not see that we need the opinion of advisers of the Department of Justice. Those are simple things.

Mr. LESAGE: They are not as simple as all that.

Mr. MICHAUD: These eighteen articles are within the grasp of every member of this committee. I have not read them all in detail but my understanding is that we should study these draft bills and see whether we can improve on them.

Hon. Mr. BOUFFARD: Why should we study things on which we have no jurisdiction at all?

Mr. LESAGE: Take article 17 of document No. 5.

Hon. Mr. BOUFFARD: Why should we study things on which we have no jurisdiction unless the legal advisers tell us we have the right to deal with them?

Mr. MICHAUD: Are we not asked to submit a draft bill to the United Nations?

Mr. STEWART: No, but it is within our power if we so desire.

Mr. MICHAUD: Are we still in time to do it?

Mr. STEWART: Yes, I am sure we are, because the United Nations discussions will go on for a year.

Mr. BEAUDOIN: May I ask, when Mr. Riddell says it should be referred to the Department of Justice legal representatives, whether Mr. Hopkins, who is the expert in your department, will come before us or are there questions we should reserve for Mr. Varcoe?

The WITNESS: Mr. Hopkins is the legal adviser for the Department of External Affairs and the committee might feel it desirable to call him to discuss some aspects of this. On the other hand, it seems to me the Department of Justice is the department which would be most competent to inform the committee on the extent to which these documents would be applicable in Canada, and questions of that nature. It might be the committee would want to hear both Mr. Hopkins and Mr. Varcoe. In regard to the question raised a moment ago, the procedure by which the United Nations goes about defining the very general terms in which human rights were defined in the charter is rather slow. It is expected within ten days that the first authoritive draft will be submitted by the drafting committee. It will be evenually submitted to the various governments and will go through many revisions before it is put in final form.

Hon. Mrs. FALLIS: Do you not think I am right in presupposing that the set-up of this committee is a little premature. It might be better if we had waited until the United Nations had these definitions prepared.

The CHAIRMAN: I think perhaps it would be proper for the committee to decide that.

Mr. HERRIDGE: I would like to support the point of view taken by Mrs. Strum, Mr. Stewart, and Mr. Michaud. If we could come to some agreement as to what this committee decides is the definition of fundamental freedoms, and then deal with each thing we have agreed upon and find out whether they are possible or not, then we have something concrete instead of something abstract.

Mr. MARIER: If we work many meetings trying to define human rights and all these problems, and then find the federal government has no power to enact any bill because the right is resting with the province, then we have worked for nothing.

Hon. Mr. TURGEON: I wish to say another word definitely supporting the action the committee took when it accepted the recommendation of the steering commitee the other day. Now we are studying here documents which, if we study them properly, will be of help. I notice two things in the document from the United Kingdom. One is the suggestion that the General Assembly entrust this function to the Commission for Human Rights and requests the Economic and Social Council to reconsider the terms of reference of the said commission, having regard to the principles and directives set forth in annex 2.

When you come to that you will find—

The CHAIRMAN: Where are you reading from?

Hon. Mr. TURGEON: Page 2, the second paragraph, section 5. This is just a suggestion by the United Kingdom.

Mr. HAZEN: What page is it and what document?

Hon. Mr. TURGEON: It is page 2 of document 3. Page 2, and then I am going to the second page 2 of the proposed bill of human rights, Comment to Article 2, Part 1. "Proposals that the provisions of the bill of rights should be embodied in the constitutions of states parties to the Bill, or otherwise consecrated by special constitutional guarantees—"

Mr. HANSELL: Where do we find that?

Hon. Mr. TURGEON: It is document 3, the British document.

I am quoting from the comment to article 2, part 1.

> Proposals that the provisions of the Bill of Rights should be embodied in the constitutions of states parties to the Bill, or otherwise consecrated by special constitutional guarantees, are not practicable for all countries. Some countries, like the United Kingdom, have no rigid constitution and, as a matter of internal law, it is not possible to surround any provision with any special constitutional guarantee. No enactment can be given a greater authority than an Act of Parliament, and one Act of Parliament can repeal any other Act of Parliament. Therefore, the legal provisions which safeguard human rights can only have as their special safeguard the solemn international obligations undertaken in this Bill, together with the firm foundation which these principles have in the deepest convictions of Parliament and the people.

I am reading that as coming from the government of the United Kingdom.

I am reading now the terms of reference on which we are working and which is our only authority. We have no other authority as a committee. The motion that was carried in the House was that a joint committee of both houses be appointed 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 considered from a constitutional standpoint in Canada with respect to such rights and what steps, if any, it would be desirable to take or to recommend for the purpose of preserving in Canada respect for and observance of human rights and fundamental freedoms.

Now I happen to be a member of the steering committee and the committee had these terms of reference before it when we made our recommendation. We

made our recommendation in order to help us give the proper consideration, which we were instructed to give by both Houses of parliament, that officials of External Affairs Department, and, if practical, the appropriate agency of the United Nations Organization, be called to advise the committee in regard to Canada's national and international participation and obligation in relation to heading (a). Also that officers of the Department of Justice be called in relation to heading (b).

Now if we are going to carry on without becoming muddled up, I suggest definitely, without losing much more time, that we carry out the decision made by the committee when it accepted the recommendation and examine the appropriate officials and that we bring before us representatives of the three groups, the Department of External Affairs, possibly a representative from the United Nations, and the Department of Justice.

When we are through with them the steering committee will meet and make further recommendations which this committee will consider, reject, or amend, but I think in the meantime we ought to carry out the decision we made last week after accepting the report of the steering committee. It may be that we are now through with everything that we can secure from Mr. Riddell or the other officials of the Department of External Affairs. It might be that the next step would be to get legal advice from the Department of Justice on other matters. Maybe the next step would be to get the United Nations, and I think Mr. Stewart recommended that we have Mr. Humphrey. I do, however, suggest instead of arguing as to what we should do, that we carry out the terms of reference in so far as we have decided to do it and proceed with the examination of the officials. Then we may reach a decision as to what we should do.

Mr. IRVINE: I would agree with that.

Mr. HANSELL: We have already decided that at the last meeting.

Mr. RINFRET: I think the first thing we have to decide is the basis for our discussion. We are either called on to prepare here a document to be submitted to the United Nations Council or else we must accept what they recommend as what they consider human rights. We have to know what the basis of the discussion is. If we have to prepare a document to be submitted to the United Nations, that is one course. If on the other hand, we have to wait until the United Nations have decided what human rights are, then the committee is premature. We have to follow one course or the other, we cannot follow both at the same time.

Mr. HANSELL: May I ask Mr. Riddell this question? There is already a drafting committee of the appropriate section of the United Nations, who are already at work on a draft. Would you be able to say, Mr. Riddell, whether this drafting committee started at scratch or have they submitted a request to the various nations of the United Nations to submit to them their proposals?

The WITNESS: There has been no general request for the submission of draft bills which might be considered by the committee. It would not be correct to say they started from scratch because there has already been so much preliminary work, both official and unofficial, done in this field. On the other hand, the only documents which they had before them officially when they met were the Panama draft, which had been referred to them by the joint assembly, and the preliminary draft prepared by the secretariat and they were under obligation to proceed with neither of those.

Mr. BEAUDOIN: Did you say at one time that they had received proposed bills?

The WITNESS: Yes, but they had no official status.

Mr. HANSELL: In other words, the procedure from the United Nations end is that they are preparing, through the drafting committee of the commission, a draft bill which will be submitted to the nations. If that is so, then they are doing it with the expectations that the nations will reasonably

accept their proposals, and, therefore, we are wasting time. I maintain we are wasting time to submit to them something that they will perhaps take no notice of under the circumstances. Now in respect to procedure, I think Senator Turgeon expressed my thoughts. It is true that we are gradually finding our way through the mist, but as we are hearing these representatives of the United Nations, the Department of Justice, and External Affairs, I think the mist will clear away.

The CHAIRMAN: Let us hope it will. Are there any other questions of Mr. Riddell?

Mr. HAZEN: I would like to ask a question. Your reference states "The committee is 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 be best implemented". I do not know whether Mr. Riddell is in a position to say or to give us any idea of how he thinks those obligations, when they are accepted, should be implemented?

The WITNESS: I think, Mr. Chairman, a very important question of policy has been raised here. As I suggested a few moments ago they are very fundamental decisions, to be taken, in that respect, once human rights have been defined in some document. I suggest this definition might be embodied merely in a resolution of the General Assembly, which would allow moral obligations on the members of the United Nations to be lived up to by their own methods, or interpretation, as best they can. Alternatively it could be embodied in a treaty, a multi-lateral treaty, which would lay specific obligations on the members, but which of those methods is preferable is a matter of policy of the very first importance.

Mr. HAZEN: Would you express your views about it?

The WITNESS: I would prefer not to express my views.

Mr. BEAUDOIN: It seems that every question we ask has always a certain legal bearing. Sometimes Mr. Riddell thinks that he may answer it, and, at times, he says that it would require a legal expert to answer. I think in all fairness to Mr. Riddell we should adjourn now and have Mr. Varcoe at our next meeting.

Mr. WHITMAN: Before we adjourn, is Mr. Riddell coming back at the next meeting? Could we have Mr. Riddell and Mr. Varcoe both here?

The CHAIRMAN: I am quite sure that could be arranged if it is the wish of the committee.

Mr. BEAUDOIN: I thought Mr. Hopkins would be here.

The WITNESS: I am sorry if the committee feel that I have been endeavouring to evade questions.

Hon. Mr. TURGEON: Oh, no, no.

Some Hon. MEMBERS: No, no.

Mr. BEAUDOIN: I hope you do not take that from my remarks.

The WITNESS: On the last point, whether you put it into the General Assembly as an international question is a matter of policy which the government would have to answer.

The CHAIRMAN: If I understand the wish of the committee, it is that we meet next week when Mr. Hopkins will be available, as well as Mr. Varcoe, and Mr. Riddell. Before we adjourn the clerk of the committee reports that efforts are being made to have Mr. Humphrey for Thursday or Friday of next week but as yet we have no definite answer.

We will adjourn until Thursday the 26th at 11 a.m.

The meeting adjourned at 12.20 p.m. to meet again next Thursday, June 26, 1947, at 11 a.m.

APPENDIX "C"

COMMISSION ON THE STATUS OF WOMEN

The Sub-Commission on the Status of Women was established by a resolution of February 16th, 1946, of the Economic and Social Council. By a further resolution adopted June 21st, 1946, the Economic and Social Council decided to confer upon this sub-commission the status of a full commission to be known as the Commission on the Status of Women.

The following are now members of this Commission:—

Mrs. Jessie Street, Member from Australia.
Mrs. E. Uralova, Member for Byelorussian Soviet Socialist Republic.
Mrs. W. S. New, Member for China.
Mrs. G. de Echeverria, Member from Costa Rica.
Mrs. B. Begtrup, Member from Denmark.
Mrs. M. Lefaucheux, Member from France.
Miss S. Basterrechea, Member from Guatemala.
Begum Hamid Ali, Member from India.
Mrs. A. de Castillo Ledon, Member from Mexico.
Mrs. A. Cosma, Member from Syria.
Mrs. Mihri Pektas, Member from Turkey.
Mrs. E. Popova, Member from the Union of Soviet Socialist Republics.
Miss M. Sutherland, Member from the United Kingdom.
Miss D. Kenyon, Member from the United States of America.
Mrs. I. Urdaneta, Member from Venezuela.

The Commission adopted the following members as its Officers:—

Mrs. Bodil Begtrup (Denmark), as Chairman;
Mrs. J. Street (Australia), as Vice-Chairman, and
Mrs. F. Uralova (Byelorussian SSR), as Rapporteur.

APPENDIX "D"

COMMISSION ON HUMAN RIGHTS

Drafting Committee

DRAFT OUTLINE OF INTERNATIONAL BILL OF RIGHTS
(PREPARED BY THE DIVISION ON HUMAN RIGHTS)

June 4, 1947.

The Preamble shall refer to the four freedoms and to the provisions of the Charter relating to human rights and shall enunciate the following principles:—

1. that there can be no peace unless human rights and freedoms are respected;
2. that man does not have rights only; he owes duties to the society of which he forms part;
3. that man is a citizen both of his State and of the world;
4. that there can be no human freedom or dignity unless war and the threat of war is abolished.

Article 1

Everyone owes a duty of loyalty to his State and to the (international society) United Nations. He must accept his just share of responsibility for the performance of such social duties and his share of such common sacrifices as may contribute to the common good.

ARTICLE 2

In the exercise of his rights every one is limited by the rights of others and by the just requirements of the State and of the United Nations.

ARTICLE 3

Every one has the right to life. This right can be denied only to persons who have been convicted under general law of some crime to which the death penalty is attached.

ARTICLE 4

No one shall be subjected to torture, or to any unusual punishment or indignity.

ARTICLE 5

Every one has the right to personal liberty.

ARTICLE 6

No one shall be deprived of his personal liberty save by a judgment of a court of law, in conformity with the law and after a fair public trial at which he has had an opportunity for a full hearing, or pending his trial which must take place within a reasonable time after his arrest. Detention by purely executive order shall be unlawful except in time of national emergency.

ARTICLE 7

Every one shall be protected against arbitrary and unauthorized arrest. He shall have the right to immediate judicial determination of the legality of any detention to which he may be subject.

ARTICLE 8

Slavery and compulsory labour are inconsistent with the dignity of man and therefore prohibited by this Bill of Rights. But a man may be required to perform his just share of any public service that is equally incumbent upon all, and his right to a livelihood is conditioned by his duty to work. Involuntary servitude may also be imposed as part of a punishment pronounced by a court of law.

ARTICLE 9

Subject to any general law adopted in the interest of national welfare or security, there shall be liberty of movement and free choice of residence within the borders of each State.

ARTICLE 10

The right of emigration and expatriation shall not be denied.

ARTICLE 11

No one shall be subjected to arbitrary searches or seizures, or to unreasonable interference with his person, home, family, relations, reputation, privacy, activities, or personal property. The secrecy of correspondence shall be respected.

ARTICLE 12

Every one has the right to a legal personality. No one shall be restricted in the exercise of his civil rights except for reasons based on age or mental condition or as a punishment for a criminal offence.

ARTICLE 13

Every one has the right to contract marriage in accordance with the laws of the State.

ARTICLE 14

There shall be freedom of conscience and belief and of private and public religious worship.

ARTICLE 15

Every one has the right to form, to hold, to receive and to impart opinions.

ARTICLE 16

There shall be free and equal access to all sources of information both within and beyond the borders of the State.

ARTICLE 17

Subject only to the laws governing slander and libel, there shall be freedom of speech and of expression by any means whatsoever, and there shall be reasonable access to all channels of communication. Censorship shall not be permitted.

ARTICLE 18

There exists a duty towards society to present information and news in a fair and impartial manner.

ARTICLE 19

There shall be freedom of peaceful assembly.

ARTICLE 20

There shall be freedom to form associations for purposes not inconsistent with this Bill of Rights.

ARTICLE 21

Every one has the right to establish educational institutions in conformity with conditions laid down by the law.

ARTICLE 22

Every one has a right to own personal property.

His right to share in the ownership of industrial, commercial and other profit-making enterprises is governed by the law of the State within which such enterprises are situated.

The State may regulate the acquisition and use of private property and determine those things that are susceptible of private appropriation.

No one shall be deprived of his property without just compensation.

ARTICLE 23

No one shall be required to pay any tax or be subjected to any public charge that has not been imposed by the law.

ARTICLE 24

There shall be equal opportunity of access to all vocations and professions not having a public character.

ARTICLE 25

Everything that is not prohibited by law is permitted.

ARTICLE 26

No one shall be convicted of crime except by judgment of a court of law, in conformity with the law, and after a fair trial at which he has had an opportunity for a full public hearing.

Nor shall anyone be convicted of crime unless he has violated some law in effect at the time of the act charged as an offence, nor be subjected to a penalty greater than that applicable at the time of the commission of the offence.

ARTICLE 27

There shall be access to independent and impartial tribunals for the determination of rights and duties under the law.

Every one has the right to consult with and to be represented by counsel.

ARTICLE 28

Every one has the right, either individually or in association with others, to petition the government of his State or the United Nations for redress of grievances.

ARTICLE 29

Every one has the right, either individually or with others, to resist oppression and tyranny.

ARTICLE 30

Every one has the right to take an effective part in the government of the State of which he is a citizen. The State has a duty to conform to the wishes of the people as manifested by democratic elections. Elections shall be periodic, free and fair.

ARTICLE 31

Every one shall have equal opportunity of access to all public functions in the State of which he is a citizen.

Appointments to the civil service shall be by competitive examination.

ARTICLE 32

Every one has the right to a nationality.

Every one is entitled to the nationality of the State where he is born unless and until on attaining majority he declares for the nationality open to him by virtue of descent.

No one shall be deprived of his nationality by way of punishment or be deemed to have lost his nationality in any other way unless he concurrently acquires a new nationality.

Every one has the right to renounce the nationality of his birth, or a previously acquired nationality, upon acquiring the nationality of another State.

ARTICLE 33

No alien who has been legally admitted to the territory of a State may be expelled therefrom except in pursuance of a judicial decision or recommendation as a punishment for offences laid down by law as warranting expulsion.

ARTICLE 34

Every State shall have the right to grant asylum to political refugees.

ARTICLE 35

Every one has the right to medical care. The State shall promote public health and safety.

ARTICLE 36

Every one has the right to education.

Each State has the duty to require that every child within its territory receive a primary education. The State shall maintain adequate and free facilities for such education. It shall also promote facilities for higher education without distinction as to the race, sex, language, religion, class or wealth of the persons entitled to benefit therefrom.

ARTICLE 37

Every one has the right and the duty to perform socially useful work.

ARTICLE 38

Every one has the right to good working conditions.

ARTICLE 39

Every one has the right to such equitable share of the national income as the need for his work and the increment it makes to the common welfare may justify.

ARTICLE 40

Every one has the right to such public help as may be necessary to make it possible for him to support his family.

ARTICLE 41

Every one has the right to social security. The State shall maintain effective arrangements for the prevention of unemployment and for insurance against the risks of unemployment, accident disability, sickness, old age and other involuntary or undeserved loss of livelihood.

ARTICLE 42

Every one has the right to good food and housing and to live in surroundings that are pleasant and healthy.

ARTICLE 43

Every one has the right to a fair share of rest and leisure.

ARTICLE 44

Every one has the right to participate in the cultural life of the community, to enjoy the arts and to share in the benefits of science.

ARTICLE 45

No one shall suffer any discrimination whatsoever because of race, sex, language, religion, or political creed. There shall be full equality before the law in the enjoyment of the rights enunciated in this Bill of Rights.

Article 46

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 to establish and maintain, out of an equitable proportion of any public funds available for the purpose, their schools and cultural and religious institutions, and to use their own language before the courts and other authorities and organs of the State and in the press and in public assembly.

Article 47

It is the duty of each member State to respect and protect the rights enunciated in this Bill of Rights. The State shall, when necessary, cooperate with other States to that end.

Article 48

The provisions of this International Bill of Rights shall be deemed fundamental principles of international law and of the national law of each of the member States of the United Nations. Their observance is therefore a matter of international concern and it shall be within the jurisdiction of the United Nations to discuss any violation thereof.

SESSION 1947

SPECIAL JOINT COMMITTEE OF THE SENATE AND THE HOUSE OF COMMONS

ON

HUMAN RIGHTS

AND

FUNDAMENTAL FREEDOMS

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 4

THURSDAY, JUNE 26, 1947

WITNESSES:

Mr. R. G. Riddell, Chief, First Political Division, Department of External Affairs, Ottawa;

Mr. F. P. Varcoe, Deputy Minister of Justice, Ottawa.

OTTAWA
EDMOND CLOUTIER, C.M.G., B.A., L.Ph.,
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY
1947

MINUTES OF PROCEEDINGS

MONDAY, 26th June, 1947.

The Special Joint Committee on Human Rights and Fundamental Freedoms met at 11 o'clock a.m. The Joint Chairman, Right Honourable J. L. Ilsley, presided.

Also present:

The Senate: Honourable Senators Crerar, Leger, McDonald (*Kings*), Roebuck, Turgeon.

The House of Commons: Messrs. Belzile, Benidickson, Croll, Diefenbaker, Hazen, Herridge, Macdonnell (*Muskoka-Ontario*), Pinard, Whitman.

Mr. R. G. Riddell, Chief, First Political Division, Department of External Affairs, Ottawa, was called. He made a brief statement in reply to questions asked at previous meetings and was examined thereon.

It was ordered that copies of the following documents be obtained and filed with the Committee:—

(*a*) Magna Carta.
(*b*) Petition of Right 1627.
(*c*) Bill of Rights 1689.
(*d*) United States Bill of Rights.
(*e*) Extracts from:—Constitution of Australia (The Commonwealth of Australia Constitution Act).
(*f*) Constitution of Ireland (1937).
(*g*) Saskatchewan Bill of Rights Act.
(*h*) Freedom of Worship Act (Quebec).
(*i*) Relevant statutes pertaining to rights of subject in other provinces.
(*j*) Preservation of the Rights of the Subject Bill (England).
(*k*) Declaration of the Rights of Man, accepted 27th August, 1789, by the French National Assembly.
(*l*) Draft Bill of Human Rights (Professor Lauterpacht).

The witness was retired.

Mr. F. P. Varcoe, Deputy Minister of Justice, Ottawa, was called. He made a statement on the legal and constitutional situation in Canada in respect of Human Rights and Freedoms and was questioned.

It was agreed that Mr. Varcoe be recalled at a later meeting for further questioning.

The Committee adjourned at 1.10 o'clock p.m., to meet at 11 o'clock a.m., Friday, 27th June.

J. G. DUBROY,
Clerk of the Committee.

MINUTES OF EVIDENCE

HOUSE OF COMMONS,

June 26, 1947.

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: Gentlemen, some questions were raised at a previous meeting which Mr. Riddell is now in a position to answer. The points are probably minor, but these questions were asked by certain members and perhaps he could give those answers now.

R. G. Riddell, Chief, First Political Division, Department of External Affairs, Ottawa, recalled:

The WITNESS: Mr. Chairman, at one of the meetings of the committee some of the members expressed an interest in the declarations and bills on human rights now in force in various countries and in declarations on human rights which had been prepared by private organizations or non-governmental organizations in various countries. We have since made enquiries and we have found out, in regard to declarations and bills on human rights now in force in various countries that a year book has been prepared by the United Nations and, at the present time, is in the hands of the publishers. It should be available some time in August. This contains the texts of documents which are now in force in the various countries.

In regard to the collection and publication of plans and declarations on human rights by specialized agencies or non-governmental national and international organizations, the Secretariat has, as yet, made no progress towards preparing a document giving the texts of such plans or an analyses of these plans.

By Hon. Mr. Roebuck:

Q. Will copies of the publication you mentioned be distributed to members of the committee?—A. That could be arranged, Mr. Chairman, when the document is published.

Mr. DIEFENBAKER: There is something else in that connection. Has the committee been given the various drafts which were submitted to the committee of the United Nations, in particular Professor Lauterpacht's draft? There are three drafts in one pamphlet. Professor Lauterpacht made the best draft bill on the rights of individuals to be accepted by all the nations. This was presented to that committee.

Then I should like to suggest, Mr. Chairman, in that connection while Mr. Riddell is here, we have given to the members of the committee the draft which was introduced to the House of Lords by the Marquis of Reading some six or seven weeks ago. This would afford a very good foundation as to the rights which deserve to be protected.

I should like to suggest too, if I might, Mr. Chairman, that the various bills of rights dealing with the rights of individuals in the various provinces be produced. In Nova Scotia you have a bill of rights. Manitoba has a partial bill of rights passed in 1940. The Quebec government, too, has a partial bill

of rights with respect to the free exercise of religion. This provision is contained in chapter 307, section 1 of the 1941 statutes. I believe those things would be very helpful to the committee. Mr. Hazen just reminds me that Ontario has such a bill as well.

The CHAIRMAN: And Alberta?

Mr. DIEFENBAKER: Yes, but that more or less touches the economic rather than the social and political.

Hon. Mr. ROEBUCK: I have not been in attendance so I do not know what distribution has already taken place, but has there been any investigation or distribution of the historic bills of right? There is the American bill of rights. There was the one adopted in France following the revolution. There is our own bill of rights in England, and I do not doubt but what there are many more. Those are the outstanding declarations in the world's history, but there are others.

The CHAIRMAN: Do you suggest, Senator Roebuck, that those be mimeographed and distributed?

Hon. Mr. ROEBUCK: I think so. I think they should make up part of our permanent record of the work of this committee.

The CHAIRMAN: Is it agreed that the ones mentioned be distributed to the members of the committee as well as any others which the secretary can find?

Mr. WHITMAN: In this document No. 1 which we have, the last paragraph—

Hon. Mr. ROEBUCK: Senator Crerar has suggested we might include Magna Carta and I think he is right. If you get the old Magna Carta it is almost unreadable; you have to get the modern version of it.

Mr. DIEFENBAKER: Trotter's book contains all those.

Hon. Mr. CRERAR: Magna Carta is really the basis of all the others.

The CHAIRMAN: The question in my mind is, how many of these historic documents should be mimeographed?

Hon. Mr. ROEBUCK: The ones we have mentioned.

Hon. Mr. CRERAR: They would be interesting from a historic point of view as well as from a practical point of view. My own judgment is that human rights really get down to a few principles such as the right of the individual to free expression; free criticism of his government; to worship as he desires to worship; to read what he wants to read and to have the privilege of exercising free thought without influences to prevent him doing so; to be secure in his person and property so long as he does not violate the law of the land. We have all those now pretty well.

Hon. Mr. ROEBUCK: The best proof of documents of that kind is that where you see a thought runs through many documents, you can assume that that principle is true. I am thinking of Herbert Spencer's theory, "The Soul of Truth and Things Erroneous." He took a lot of material of a kind and picked out the common thought which ran through it all. If we take a statement which we find in history and find it is now in force in our own country and elsewhere, when we trace that common thought we ascertain, perhaps, the thing that we should use.

Mr. PINARD: May I ask what purpose would be served by the filing of these documents?

Mr. BENIDICKSON: The last meeting we wasted a fair amount of time deciding on procedure and I thought we had decided we wanted to hear representations by the Justice Department as to what our scope might be. When we find that out, we might decide upon what background material might be presented to the committee.

The CHAIRMAN: Yes, but I do not think it would do any harm to have these documents if they are not too voluminous. I think we have to assume that the members of the committee will read some things themselves.

Mr. MACDONNELL: Could someone who knows more about it than I tell us just how voluminous these documents are? Would they cover five pages or fifty?

The CHAIRMAN: Is it agreed that the documents mentioned will be mimeographed and circulated amongst the members of the committee?

Mr. HAZEN: You referred to historic documents and Mr. Diefenbaker has referred to a number of other documents. Did you have those to which Mr. Diefenbaker referred in mind as well?

The CHAIRMAN: The bills of rights of the provinces were mentioned Mr. Diefenbaker and the others which were mentioned by Senator Roebuck. We could put in Magna Carta, too, if we could get a translation of it on which everyone will agree.

Mr. DIEFENBAKER: So far as Professor Lauterpacht's draft and the other drafts are concerned, we can get copies of those from the United Nations committee. They are fairly voluminous but they represent the viewpoint of practically all the nations of the earth as to what should be in a document concerning freedom.

The CHAIRMAN: Mr. Humphrey will be here to-morrow and he will tell the committee the present state of the proceedings before the United Nations Committee on Human Rights. He could tell us what documents are in existence. I do not know whether you have mentioned them all or not.

Mr. DIEFENBAKER: It is very easy for us to get these documents instead of having them printed or mimeographed here. We could simply ask for a number of copies from the United Nations. It is a very voluminous document. So far as our historic rights are concerned, Magna Carta, Bill of Rights and so on; all of those are to be found in Trotter's book. This book does not cost very much and it should be in the possession of everyone who desires to know what our freedoms are. Magna Carta is very lengthy.

Mr. PINARD: Does that book include documents of the USSR?

Mr. DIEFENBAKER: No, I was talking about our own.

The WITNESS: If I may refer to the first part of Mr. Diefenbaker's question, the three draft bills which are now before the committee in New York have been mimeographed and presented to the committee. One is the United Kingdom draft to which he referred; the second is a draft prepared by the committee set up by the American Law Institute. The third draft is a draft prepared by the Secretariat. This also has been before the committee in New York. I do not think we have the paper prepared by Professor Lauterpacht before the committee yet, but we will endeavour to do that.

Mr. DIEFENBAKER: So far as Lauterpacht is concerned, his draft was accepted by the people of the United Kingdom as the one which would be acceptable to the British people everywhere. It has joined with it four other draft bills by the South American Republics, the Law Society of South America and soforth.

The WITNESS: In the preparation of the United Kingdom draft, the United Kingdom authorities used Professor Lauterpacht's draft quite freely and it is now before the committee.

Mr. WHITMAN: There is a statement at the end of document No. 1, the last paragraph.

> The drafting group is to circulate a preliminary draft international bill of human rights to the members of the commission by June 25, with a view to submission to the commission on August 25.

Has that drafting group done anything about that?

The WITNESS: I was speaking to Mr. Humphrey on Monday and he said they expected to finish on Tuesday.

By Mr. Whitman:

Q. Would that be available?—A. He hoped to bring it with him when he comes to-morrow.

The CHAIRMAN: Will the secretary circulate these or will you, Mr. Riddell, get them together and come here and give a list of the documents which you are presenting to the committee stating briefly what they are? Then, we could have those circulated and we would be a little more definite about what we are circulating than we are now.

The WITNESS: We would be very glad to co-operate with the secretary in presenting and indexing all the documents which are before the committee.

The CHAIRMAN: I think it can be agreed that that will be done. You have a further question to answer?

The WITNESS: The members of the committee at one of the previous meetings enquired concerning the status of the American Law Institute which had appointed a committee to draft one of the draft bills which is now in mimeographed form before this committee. We made enquiries through the Canadian Embassy in Washington in this connection and we have been informed that the American Law Institute was organized in 1923 by Justice Charles Evan Hughes and other eminent justices and lawyers. The present president is William Draper Lewis, an outstanding lawyer from Philadelphia. Membership in the institute is very much restricted with the result that it is considered to be an honour to be asked to join. The members pay no membership fees. The institute operates on funds supplied by the Carnegie Institute and private endowments. The institute employs a small skilled staff who have been working on special projects concerned primarily with domestic law. It has been responsible for the publication of a suggested codification of the law of evidence, torts and contracts. This is the body which is responsible for the appointing of a special committee which prepared the draft bill on human rights, document No. 2 in the series before this committee. It was submitted to the General Assembly by the delegation for Panama.

A question was also asked as to whether or not the American Law Institute had endorsed this draft. We have not been able to secure that information, but we have asked for it.

The committee also asked, Mr. Chairman, whether or not we knew the procedure which had been followed by the United Kingdom government in preparing its draft bill of human rights. The draft which was submitted to the drafting committee which has been meeting in New York, we have learned was largely the work of officials of the United Kingdom government. The draft is now open to public discussion in the United Kingdom and it may be subject to certain further revisions as the result of contributions and comments by unofficial groups.

By Mr. Whitman:

Q. Has it been submitted to the United Nations by the British government?—A. Yes, it has been placed before the drafting committee which has been meeting in New York.

Q. As a government sponsored document?—A. As a government document.

By Mr. Diefenbaker:

Q. You are referring to the international bill?—A. Yes.

Q. The one submitted to the House of Lords is a national bill and it is in the House of Lords now. There were two committees. One was for the purpose of making recommendations regarding an international bill of rights and that is

the one to which you referred. Then, on the other hand, the Marquis of Reading introduced a bill in the House of Lords concerning national freedoms. This bill is now before a committee of the House of Lords and it will be very helpful if that draft is before this committee.

The CHAIRMAN: We will get that document and see that it is circulated.

Mr. Varcoe was to come here and give evidence on this part of the terms of reference,

> What is the legal and constitutional situation in Canada with respect to such rights.

Perhaps we can hear from Mr. Varcoe now.

F. P. Varcoe, Deputy Minister, Department of Justice, called:

The WITNESS: Mr. Chairman, I am sure the members of the committee will appreciate the great difficulty which arises in discussing any problem concerning the constitution of Canada without having a concrete project in front of you. Even when you have a concrete or draft bill you may have difficulties in reaching any certain conclusions as to whether it is a matter which falls within the legislative powers of parliament or the provincial legislatures.

Perhaps I might just briefly state one or two of the reasons why this difficulty arises. We have, under the constitutional distribution of powers, no exact division or well recognized fields of law as between the two powers but a distribution on matters which, in some aspects, may be in the federal field and in other aspects in the provincial field. This, perhaps, constitutes the greatest difficulty in speaking with any degree of certainty about matters which are what I shall call "marginal" in their legal aspects. The result, I am afraid, may be that anything I am able to say will wind up in mere generalities.

Looking at this matter of the terms of reference, first of all. You will observe that sections 55 and 56 of the Charter impose on the nations, each of them I assume—

> All members pledge themselves to take joint and separate action for the achievement of the purposes set forth in article 55.

One of those purposes is to promote the observance of human rights and fundamental freedoms. There is no list of those given, of course.

At the present date one might say our obligations in Canada have been fully implemented already so far as this particular obligation is concerned. I should think it is hardly debatable that a country with a democratic form of government and operating according to the rule of law has promoted the observance of human rights and fundamental freedoms. The question does arise whether any further obligation at this moment rests upon Canada.

Now, that involves some discussion on the meaning of the words, "promote the observance of human rights and fundamental freedoms". I should think that means, taken by itself, simply the establishment within the nation of what we call the rule of law; that is, that no person shall be, as the United States constitution says, deprived of life, liberty or property except by due process of law. This is a rather epitomized statement of the rule of law. It cannot be the intention of the United Nations to impose any set of precise laws upon the various nations. It is not the intention of the United Nations as I understand it to legislate for the various nations or even to establish a code which the various nations shall apply.

Each nation must be left free to determine, for example, what is freedom of speech, freedom of assembly or the liberty of the subject. Those are matters that concern, for example, the content of the criminal code. One nation would

determine that a certain act constituted a criminal offence and provide for the imprisonment of the offender. Another nation might not regard that act as a criminal offence. So it does seem to me that that means, at this stage at any rate, that the rule of law shall be applied to the inhabitant. Since that is the state of affairs in this country, I am not quite clear what further obligations exist.

By Mr. Diefenbaker:

Q. Would you allow a question at this point? You say the rule of law is now applied in this country?—A. Yes.

Q. You have mentioned the freedoms of speech, religion, the press and assembly. You mentioned the fact that the rule of law applied in the United States. Every citizen has the right to appeal to the Supreme Court of the United States against a contravention of his basic rights or freedoms, that is right?—A. Yes.

Q. In Canada, is it not true that the Supreme Court of Canada has not the power to hear appeals on the part of individuals who claim their freedom of speech or religion has been contravened unless there is a monetary consideration attached to the contravention of that freedom?—A. Well, no, I would not say that. There are provisions for going to the Supreme Court of Canada in criminal cases where there is not monetary consideration.

Q. Oh yes, but in the case of an interference with a basic right or freedom such as the freedom of religion. In Canada, there would be no right of appeal for an individual, say in the province of Saskatchewan, who said there had been some interference with his freedom of religion. He would have no right of appeal to the Supreme Court of Canada?—A. That is true in certain cases. For example, the Supreme Court of Canada has no jurisdiction to hear appeals, as I understand it, in habeas corpus cases where a criminal offence is charged. On the other hand, there is a right where the habeas corpus is a civil matter.

The CHAIRMAN: I think at this point we should settle the matter of procedure. If we are going to have questions from the beginning, it will effect Mr. Varcoe's presentation. I would suggest Mr. Varcoe be allowed to give his evidence and the members of the committee could take notes of the points upon which they wish to question him. Then, they can question him for a week if they so desire after his statement is finished.

Mr. DIEFENBAKER: That may be, but when a general statement is made that Mr. Varcoe would certainly modify if he were asked to do so at the moment, it should be modified instead of the general information going out.

The WITNESS: I was making a statement and I am afraid I must stick to it, that the rule of law does exist in our country. When you have the lack of the right of appeal in a certain direction, it does not mean the rule of law does not apply.

By Mr. Diefenbaker:

Q. It means there is not uniformity in the application of law in so far as freedoms are concerned?—A. It may mean that the jurisdiction of the Supreme Court, in some respects, should be enlarged.

The CHAIRMAN: Could we have it agreed that Mr. Varcoe proceed without interruption until he has finished his presentation. Then, he might be questioned at length by any individual?

Agreed.

The WITNESS: My first general proposition, at any rate, is that what is wanted in the first place is an application of the rule of law. It may be that that needs some extension in this country, but that is a matter of policy.

Now, the second point is this—these remarks are more or less preliminary since I have not a very good plan of action. I am proceeding along a somewhat

circuitous route to the point where there will be some relevancy to the remarks I am making about the constitution.

Modern writers on jurisprudence, I am sure the legal members of the committee will know what I mean distinguish between what are called on the one hand, rights, and on the other hand, freedoms. The distinction which is given in these two matters may be stated as follows:

> A right, according to this view, connotes a corresponding duty in some other person or the state towards the person holding the right.

If, for example, a person has the right to education, there is a corresponding duty upon the state to provide it.

Now, freedom on the other hand, or liberty, is a benefit or advantage which a person derives from the absence of legal duties imposed upon him. They are the things which a person may do without being prevented by law. You will note that in the charter the words are, "Human Rights and Fundamental Freedoms". I take it that the draftsmen of the charter had in mind this distinction between, on the one hand, rights, and on the other hand, freedoms. I give you a list of some of the so-called rights on the one hand and freedoms on the other. There is the right to own property; the right to education; the right to reasonable conditions of work and the right to social security. There are many others, but those are just examples. On the other hand, you have freedom of the person; freedom of speech; freedom of the press; freedom of assembly and freedom of religion. Those are examples of the freedoms.

I mention those distinctions here because there is a radical difference between those two groups when you come to look at them from a legal or constitutional point of view. Human rights, as I say, are those things which connote an obligation on some person or the state to implement a corresponding duty towards the person holding the right. When you decide what rights you want to have, then you have to proceed to create them by legislative action. You will observe in the list I have given you, the right to own property, to education, to reasonable conditions of work and social security; from that list it is plain at once that some of these fall in the provincial legislative field and some in the federal field. For example, the right to own property is regulated in part by parliament and part by the provinces. The right to education is purely a provincial matter.

If an obligation is undertaken to guarantee education on a certain standard, then that must be a matter with which the provinces must deal. The same thing, to a large extent, applies to reasonable conditions of work. Minimum wages and so on are provincial matters except in a limited field of employment regulated by parliament. In the case of social security, you have some federal aspects and some provincial aspects. The Unemployment Insurance Act, for example, is a Dominion statute passed under section 91; whereas, generally speaking, health services and the like would be regarded, I suppose, as provincial matters.

When you come to look at the other side of the coin, the freedoms which a person is entitled to enjoy, you might say that instead of requiring the enactment of legislation these require the repeal of legislation. If you had no statutory law or any regulations at all to control a person, you would have, theoretically at any rate, a state of absolute freedom. It might not last very long.

By Hon. Mr. Roebuck:

Q. The individual's freedom would be curtailed and ruined by his neighbours?—A. I would say it would not last very long but from a legal point of view I am saying if there are no legal restrictions, then you have freedom. You must think of it in terms of the definition, it seems to me, which Salmond drafts. "Freedom, on the other hand, is a benefit or advantage which a person derives from the absence of legal duties imposed upon him."

Now, from a legal point of view, if there is no statute law applicable to him to regulate his conduct he is in a state of absolute freedom. As you say, he may lose it from the point of view of enjoyment of it by reason of the fact there is no criminal law to restrain his neighbour from taking his property from him or whatever it might be.

Now, that is important because, as I say, if there is certain positive action some of it would be undertaken by the province and some by the dominion; that is, if we had a complete list of those human rights which the United Nations intend to adopt. On the other hand, in the case of the freedoms, we have to consider the matter from a somewhat different point of view. I do not think there is any point in discussing human rights any further from a legal or constitutional point of view because I say it is almost elementary to every member of this committee that some of them will be implemented by the province and some by the dominion. You can almost tell with certainty what they are. I feel that nothing is to be gained by my discussing any further that side of the problem. I will confine myself, therefore, to these other freedoms.

For our purpose the list may be substantially reduced to three; namely, personal freedom; freedom of communication which would include free speech and a free press; and freedom of assembly. Then, thirdly, there would be freedom of religion.

By Hon. Mr. Turgeon:

Q. Would you repeat the first one?—A. Liberty of the person, personal freedom; freedom of communication and freedom of religion.

We have not had very much jurisprudence in this country on these subjects and consequently it is with a good deal of hesitation that I attempt to discuss them. Perhaps the most important statement which has been made by any court on the subject is contained in the judgment of Sir Lyman Duff and Mr. Justice Cannon in the reference of Alberta's Accurate News Bill to the Supreme Court.

By Hon. Mr. Leger:

Q. Would you give the citation from the Supreme Court reports?—A. The case is the Alberta Accurate News Reference, 1938 Supreme Court Reports at page 100. Now, that report contains some very interesting observations particularly by Sir Lyman Duff, then chief justice. If the committee would not think it a waste of time, I should like to read some of the passages from that judgment.

First of all, I should say that this statute was connected up with the Social Credit scheme of legislation. This legislation places in the hands of the Social Credit Board, I think it was called, certain powers in relation to the press. These powers were, mainly, two in number. The first was that the newspaper was obliged, under penalty, to disclose the source of news and, secondly, the newspaper was to be compelled to publish statements made to it by the government or the chairman of the commission by way of correction of news stories which had been published in the press. That, in brief outline, was the nature of the legislation. This legislation came before the Supreme Court on a reference along with two other statutes, one of which had to do with the taxation of banks and the other had to do with the consolidation of the credit of Alberta. These three statutes were considered by the court at one and the same time and they were all held by the court to be *ultra vires*.

With that introduction, I may quote what Sir Lyman Duff said.

"Under the constitution established by the British North America Act——"

By Mr. Diefenbaker:

Q. What page is that?—A. I am sorry I have not the report here, but it is towards the end of the judgment; the last two pages of Sir Lyman's judgment.

Under the constitution established by the British North America Act, legislative power for Canada is vested in one parliament consisting of the Sovereign, an upper house styled the Senate, and the House of Commons. Without entering in detail upon an examination of the enactments of the Act relating to the House of Commons, it can be said that these provisions manifestly contemplate a House of Commons which is to be, as the name itself implies, a representative body; constituted, that is to say, by members elected by such of the population of the united provinces as may be qualified to vote. The preamble of the statute moreover, shows plainly enough that the constitution of the Dominion is to be similar in principle to that of the United Kingdom. The statute contemplates a parliament working under the influence of public opinion and public discussion. There can be no controversy that such institutions derive their efficacy from the free public discussion of affairs, from criticism and answer and counter-criticism, from attack upon policy and administration and defence and counter-attack; from the freest and fullest analysis and examination from every point of view of political proposals. This is signally true in respect of the discharge by Ministers of the Crown of their responsibility to parliament, by members of parliament of their duty to the electors, and by the electors themselves of their responsibilities in the election of their representatives.

The right of public discussion is, of course, subject to legal restrictions; those based upon considerations of decency and public order, and others conceived for the protection of various private and public interests with which, for example, the laws of defamation and sedition are concerned. In a word, freedom of discussion means, to quote the words of Lord Wright in *James* v. *Commonwealth* (1936 A.C. at p. 627), "freedom governed by law".

Even within its legal limits, it is liable to abuse and grave abuse, and such abuse is constantly exemplified before our eyes; but it is axiomatic that the practice of this right of free public discussion of public affairs, notwithstanding its incidental mischiefs, is the breath of life for parliamentary institutions.

We do not doubt that (in addition to the power of disallowance vested in the Governor General) the Parliament of Canada possesses authority to legislate for the protection of this right. That authority rests upon the principle that the powers requisite for the protection of the constitution itself arise by necessary implication from the British North America Act as a whole (*Fort Frances Pulp & Power Co. Ltd.* v. *Manitoba Free Press Co. Ltd.*, 1923 A.C. 695); and since the subject matter in relation to which the power is exercised is not exclusively a provincial matter, it is necessarily vested in Parliament.

But this by no means exhausts the matter. Any attempt to abrogate this right of public debate or to suppress the traditional forms of the exercise of the right (in public meeting and through the press) would, in our opinion, be incompetent to the legislatures of the provinces, or to the legislature of any one of the provinces, as repugnant to the provisions of the British North America Act, by which the Parliament of Canada is established as the legislative organ of the people of Canada under the Crown, and Dominion legislation enacted pursuant to the legislative authority given by those provisions. The subject matter of such legislation could not be described as a provincial matter purely; as in substance exclusively a matter of property and civil rights within the province, or a matter private or local within the province. It would not be, to quote the words of the judgment of the Judicial Committee in *Great West Saddlery Co.* v. *The King* (1921, 2 A.C. at p. 122), "legislation directed

solely to the purposes specified in section 92"; and it would be invalid on the principles enunciated in that pudgment and adopted in *Caron* v. *The King* (1924 A.C. 999, at pp. 1005 and 1006).

The question, discussed in argument, of the validity of the legislation before us, considered as a wholly independent enactment having no relation to the Alberta Social Credit Act, presents no little difficulty. Some degree of regulation of newspapers everybody would concede to the provinces. Indeed, there is a very wide field in which the provinces undoubtedly are invested with legislative authority over newspapers; but the limit, in our opinion, is reached when the legislation effects such a curtailment of the exercise of the right of public discussion as substantially to interfere with the working of the parliamentary institutions of Canada as contemplated by the provisions of the British North America Act and the statutes of the Dominion of Canada. Such a limitation is necessary, in our opinion, "in order", to adapt the words quoted above from the judgment in *Bank of Toronto* v. *Lambe*, "to afford scope" for the working of such parliamentary institutions. In this region of constitutional practice, it is not permitted to a provincial legislature to do indirectly what cannot be done directly (*Great West Saddlery Co.* v. *The King*, 1921, 2 A.C. at p. 100).

I think I have read enough of that to indicate the nature of Sir Lyman Duff's criticism of that provincial statute; and on the basis of that criticism he held that the provincial statute was ultra vires.

Hon. Mr. ROEBUCK: They did not go to England, did they?

The WITNESS: No, sir. There was some change made in the law, and while they appealed the judgments on the other two statutes the Privy Council was not asked to pass on this question, and it never did.

Now, I should like to point out to the committee that these liberties I have mentioned—personal liberty, religious liberty, and liberty of speech—are meaningless until you come to take some action by way of enjoying the liberties. Under our constitution you cannot talk about liberty as an abstract thing; you have to think of it in terms of some action you may or may not be permitted to take.

Let us consider liberty of speech. Now, liberty of speech may be exercised in 100 different overt acts. It may be by the spoken word between persons in a court-room or at a public meeting or in the home. It may be exercised by sending of a telegram, by the use of radio, by the use of the postal services, by the distribution of pamphlets, or by the holding of public meetings in a hall where speeches are made.

Now, this great number of overt acts have to be considered because legislative power relates to overt acts. The legislatures do not—although sometimes they do—say that every person shall enjoy this or that freedom; but it is almost meaningless to say that every person shall enjoy the right to freedom of speech without more, because you have got to think about the particular overt act that a person is going to be entitled to perform; and some of these acts, you will realize at once, fall to be regulated by the provinces and some by the dominion. Radio, for example, is in the dominion field and so is the postal service. So are the telegraphs, to a large extent. However, the regulation of town halls where meetings might be held is in the provincial field. And so, I do not think you can possibly say that liberty is a provincial matter or a dominion matter.

Mr. DIEFENBAKER: Sedition and blasphemy are federal matters?

The WITNESS: Yes, in some aspects. Even when you come to an overt act, that act may be in the provincial field or in the dominion field, or it may be affected by either provincial or dominion legislation.

There is, as Mr. Diefenbaker points out, the question of libel. If it is criminal libel it is punishable under federal law; yet the same act might be actionable under the provincial law relating to the civil law of libel. So, it seems to be quite impossible to say that these liberties can be legislated about by parliament in that abstract sense, that they fall within the field of parliament or, on the other hand, within the field of the provinces.

Then, of course, as Mr. Diefenbaker points out, in any case these liberties are comparative only; they are not absolute, whether it is speech or personal liberty; and we know, of course, that hedging about speech, for example, by criminal laws—and which are proper laws—is not, strictly speaking, an invasion of what we people who are accustomed to parliamentary government might consider freedom of speech. That is a freedom that we understand, although we might be hard to put to it to attempt a definition.

Hon. Mr. ROEBUCK: I think there is a confusion there between our right to say what we please and the prohibition against injuring reputation or offending against religion, by blasphemy and so forth.

The WITNESS: There are other restrictions on the freedom of speech. There is the question of relevancy on the occasion when the speech is made. A person may be prevented from saying what he pleases in parliament by the rules of parliament. He cannot undertake addresses, as I think a gentleman tried to do, on a bus. He tried to give a political speech on a bus and he was stopped, and rightly so; but that was not truly an invasion of his right to free speech. There are all kinds of restrictions on free speech relating to relevancy to the occasion and the effect as regards the criminal law.

The CHAIRMAN: In court, for instance.

The WITNESS: He must tell the truth in court. That is a restriction on his freedom of speech. Now, I wrote out something here about the possibility of defining it.

Mr. DIEFENBAKER: You were going to refer to Mr. Justice Cannon's judgment.

The WITNESS: I was not going to take up the time to read it.

Mr. DIEFENBAKER: I think it is something that should go on the record.

The WITNESS: I am obliged to you, Mr. Diefenbaker. I read the judgment only this morning, and I thought it was worth reading to the committee, and I shall do so. I shall read that part of it that has to do with the press case.

Hon. Mr. ROEBUCK: The same case?

The WITNESS: Yes, the same case.

> It appears that in England, at first, criticism of any government policy was regarded as a crime involving severe penalties and punishable as such; but since the passing of Fox's Libel Act in 1792, the considerations now found in the above article of our criminal code that it is not criminal to point out errors in the Government of the country and to urge their removal by lawful means have been admitted as a valid defence in a trial for libel.
>
> Now, it seems to me that the Alberta legislature by this retrograde Bill is attempting to revive the old theory of the crime of seditious libel by enacting penalties, confiscation of space in newspapers and prohibitions for actions which after due consideration by the Dominion Parliament, have been declared innocuous and which, therefore, every citizen of Canada can do lawfully and without hindrance or fear of punishment. It is an attempt by the Legislature to amend the Criminal Code in this respect and to deny the advantage of section 133 (*a*) to the Alberta newspaper publishers.

Under the British system, which is ours, no political party can erect a prohibitory barrier to prevent the electors from getting information concerning the policy of the government. Freedom of discussion is essential to enlighten public opinion in a democratic State; it cannot be curtailed without affecting the right of the people to be informed through sources independent of the government concerning matters of public interest. There must be an untrammelled publication of the news and political opinions of the political parties contending for ascendancy. As stated in the preamble of the British North America Act, our constitution is and will remain, unless radically changed, similar in principle to that of the United Kingdom. At the time of Confederation, the United Kingdom was a democracy. Democracy cannot be maintained without its foundation: free public opinion and free discussion throughout the nation of all matters affecting the State within the limits set by the criminal code and the common law. Every inhabitant in Alberta is also a citizen of the Dominion. The province may deal with his property and civil rights of a local and private nature within the province; but the province cannot interfere with his status as a Canadian citizen and his fundamental right to express freely his untrammelled opinion about government policies and discuss matters of public concern. The mandatory and prohibitory provisions of the Press Bill are, in my opinion, ultra vires of the provincial legislature. They interfere with the free working of the political organization of the Dominion. They have a tendency to nullify the political rights of the inhabitants of Alberta, as citizens of Canada, and cannot be considered as dealing with matters purely private and local in that province. The federal parliament is the sole authority to curtail, if deemed expedient and in the public interest, the freedom of the press and the equal rights in that respect of all citizens throughout the Dominion. These subjects were matters of criminal law before Confederation, have been recognized by Parliament as criminal matters and have been expressly dealt with by the criminal code. No province has the power to reduce in that province the political rights of its citizens as compared with those enjoyed by the citizens of other provinces of Canada. Moreover, citizens outside the province of Alberta have a vital interest in having full information and comment, favourable and unfavourable, regarding the policy of the Alberta government and concerning events in that province which would, in the ordinary course, be the subject of Alberta newspapers' news items and articles.

Mr. DIEFENBAKER: That case was a reference to the Supreme Court to ascertain the legality of that legislation?

The WITNESS: Yes, as I understand it petitions were made to the government to disallow the legislation along with the other social credit provisions, and the government declined to disallow, but agreed to refer the Acts to the Supreme Court to determine their validity. The other two went to the Privy Council and were also held to be ultra vires.

Hon. Mr. ROEBUCK: Did the provisions apply with respect to the dominion parliament and government as well as to the provincial?

The WITNESS: It did not say. And that is a very interesting point, because you might think that provinces had power to legislate about provincial politics but not about dominion. But that is not the case: the legislation had no such limitations; it was not confined to provincial affairs, but it certainly was intended to apply in the case of provincial affairs because they were thinking about their social security scheme.

Mr. DIEFENBAKER: It would also apply to the federal because as I remember that case it was that anyone who told a true story or thought it was a true

story of social credit which was antagonistic to social credit could not have that story or his viewpoint published in Alberta papers. That actually covers the invasion of both.

The WITNESS: In any case the reasoning of Sir Lyman Duff goes to the whole situation, not merely to the dominion side of the situation. That is to say, we have freely elected legislatures and parliament. That is the breath of life as the Chief Justice has said of the institutions of public discussion and free speech, and that the situation now in other words imposes a restriction upon the invasion of that right, because it is elementary in the constitution that there must be freedom of speech and, therefore, the provinces cannot take it away and, presumably, the dominion cannot take it away.

Mr. DIEFENBAKER: Take this example: suppose a city passes a by-law that any newspaper being distributed in that city must have no criticism of the federal or provincial governments, what would be the course of a person who was prevented from distributing or selling that newspaper, if prosecuted under that by-law, to get his case to the Supreme Court of Canada?

The WITNESS: I suppose the first course for him to take would be—now, I am speaking just offhand, because I have not thought of that—

Hon. Mr. ROEBUCK: He would move to quash the by-law, would he not?

The WITNESS: He may be able to do that.

Hon. Mr. ROEBUCK: Suppose he loses in the province, how can he get into the Supreme Court?

The WITNESS: I have not the statute here. I will have to look at that. There are provisions there for appeals where no sum of money is involved. I do not happen to recall whether that will come within it or not. He might have himself arrested for breaking the by-law and then apply to the Supreme Court of Canada for a writ of habeas corpus.

By Hon. Mr. Turgeon:

Q. Could I ask a legal question, although I am not a lawyer? What is the position of a person who has appealed against the law and the provincial judicial authority has granted his appeal and the province has appealed from the provincial authority to the Supreme Court? Is he free to act in the meantime, or is he restrained by that provincial legislation?—A. Well, the court has exonerated him. He would be free.

Q. While awaiting the Supreme Court appeal he would be free, would he? —A. I think so.

Now, the same lines of reasoning might, it seems to me, be extended to the question of personal freedom. There are constitutional restrictions, constitutional impediments to the restriction of the individual as a free agent.

By Hon. Mr. Roebuck:

Q. Is your opinion, summarizing what you have told us and the purpose for which you have told us, that we have the right to declare freedom of speech with regard to political discussion and make it stick both in the dominion and the provincial jurisdictions?—A. I cannot imagine what Sir Lyman Duff meant if that is not the case. He says the power is in parliament to protect that right. Whether you do it in the form of a mere declaration or otherwise, that is a question.

Q. I did not mean to raise that question. I was taking it as a conclusion, from your remarks, that you felt we have that right?—A. I feel that the power is in parliament to protect the constitution, including the constitutional right of free speech.

Q. With regard to political affairs?—A. Yes, of course.

By Mr. Diefenbaker:

Q. Would you go this far, except subject to the provincial limitation such as the law of libel to which you referred?—A. Yes, of course, to all proper provincial regulations. Those are civil matters. Whether or not you can hire a hall, that is a civil matter for the province. Whether the hall has proper fire escapes and so on; all those things are provincial. It may be that the chief of police might say you cannot hold a meeting here because this hall is unsafe.

By Mr. Roebuck:

Q. Or you are blocking traffic?—A. Yes, but as Mr. Justice Holmes said, no person has the right to shout fire in a theatre. There are obvious restrictions on the power.

I was going on to say that that reasoning applied by Sir Lyman Duff in that case might, I think, be well extended. I hesitate to express any definite opinion on this, but it might well be extended to the enjoyment and exericse of political rights and freedoms. For example, a law which provided for the incarceration of all persons of a certain political party would be bad.

By Mr. Diefenbaker:

Q. Does it also extend to freedom of religion?—A. There we come to what is a very difficult problem because I cannot find, so far, any basis for saying the freedom of religion is preserved in any sense by the constitution.

Q. The United States Supreme Court has decided that no person shall have his religious faith interfered with even by a municipality preventing the distribution of tracts, and that sort of thing. It even extends to that?—A. That is as the result of one of their provisions in the bill of rights.

Q. It declares simply that there is freedom of religion. Have we that here?

The CHAIRMAN: Is it the wish of the committee that we go in for examination at this time, or will Mr. Varcoe finish his statement?

The WITNESS: My statement is really, more or less, just this sort of thing about which we have been talking.

By Mr. Diefenbaker:

Q. After all, it is theoretical and you want to bring it down to the practical?

The CHAIRMAN: There will be plenty of opportunity to question the witness. I am wondering whether this is the time for it.

The WITNESS: The first amendment to the constitution, that is the first provision of the so-called bill of rights in the United States says,

> Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.

That was limited to Congress. It was subsequently extended by the fourteenth amendment to the states. As Mr. Diefenbaker has pointed out, that has been a safeguard to the religious liberty of the people of the United States.

One must remember that it has led to a great deal of litigation and to such situations as this; the Supreme Court has ruled that a local by-law requiring the pupils in schools to salute the flag was good, notwithstanding that persons of a certain faith, Jehovah's Witnesses, contended that was contrary to their religious beliefs. Then, a few years ago, in 1942, in the Barnette case, the Supreme Court reversed that decision.

There is an interesting passage from the judgment of Mr. Justice Jackson which I have here. This is what he said:

> If there is any fixed star in our constitutional constellation it is that no official, high or petty can prescribe what shall be orthodox in politics, nationalism, religion or other matters of opinion or force citizens to confess by word or act their faith therein.

That was a dictum based on the constitution which I have read. I am unable to say there is any such protection under our constitution.

By Mr. Diefenbaker:

Q. Have you concluded as to whether the dominion would have the power to declare freedom of religion shall be preserved everywhere in this dominion without regard to any consideration, territorital or otherwise?—A. I feel reasonably sure of this; if that provision were enacted in the form and with the precision that would be necessary to make good criminal law out of it, it would be a good enactment. Parliament could prohibit any person from interfering with the religious liberty of any other person as a matter of criminal law.

Then, you come to what is one of the great problems of this whole reference. When you talk about a bill of rights, against whom are you directing that? If you enact a bill of rights, it must be against either individuals, the provincial governments and legislatures or against the Dominion government.

Q Or on behalf of individuals?—A. Yes, but it must be directed against individuals who infringe on the rights of other individuals. A bill of rights is restrictive by its very nature. It restricts either individuals, provincial governments and legislatures or the dominion government or legislature. It seems to me that is correct.

By Hon. Mr. Roebuck:

Q. It is elementary. It is on behalf of some and against others?—A. Yes, if you are directing this against individuals, I should say that has already been completely done. You have the criminal law which prevents the interference by one person with the rights of another. You also have the provincial aspects of that. There are remedies which are provincial such as actions for damages for interference with one's personal liberty, one's property and so on. Therefore, there is a provincial field and a dominion field, as I indicated earlier. It seems to me that has been quite well taken care of. No constitutional problem will arise. There is no question but that some power does exist in Canada by which you can protect those rights of the individual against his neighbour.

By Mr. Diefenbaker:

Q. That is just exactly the point that was raised. Mr. Chairman rather objects to questioning at this time, but I think it clarifies the situation. What right has the individual whose right to practice his religion or to speak as he will, subject to the limitations you have mentioned such as sedition and blasphemy or the laws of libel and slander, what right has that individual to go to the Supreme Court of Canada and say there has to be unanimity of these freedoms everywhere in the dominion, as the Supreme Court Act now is? —A. As I say, I have not covered that question at all in this connection. I should like to have a look at the Supreme Court Act. Let us consider one possible remedy. He finds himself in collusion with the law which prevents him from doing what he thinks he has a right to do. He does that act, even though it is unconstitutional. He commits the act and he is imprisoned.

Q. Under a by-law, let us take that as an example?—A. Under a by-law. As I said before this is an off-hand opinion because I have not examined into it, but the Supreme Court of Canada has got certain original jurisdiction in respect of habeas corpus. The famous case, for example, of Edwin Gray who challenged the constitutional validity of the regulations which suspended his right under the Military Service Act in 1917. He applied directly to the Supreme Court of Canada for a writ of habeas corpus and had the question decided there. At the moment, I cannot think of any reason why this hypothetical individual should not be able to do that, provided he is in prison. If, on the other hand, he has merely been sentenced to pay a fine that might not be an available remedy.

By Hon. Mr. Roebuck:

Q. Are we not in confusion here between the rule of law and the machinery provided for the enforcement of it? It is not a fundamental freedom that we can appeal everything we like to the Supreme Court of Canada?—A. No, sir. As I mentioned earlier, there are certain remedies. It may be that the law does not go far enough. For example, one rule which parliament has laid down is that there shall be no appeal to the Privy Council in criminal cases, but that could hardly be said to limit fundamental freedoms.

Q. That is administration?—A. Yes.

By Hon. Mr. Turgeon:

Q. My mind is not clear because of a question asked by Mr. Diefenbaker about the bill of rights and the results of it in the United States as compared with Canada. You mentioned a while ago this case which was decided in the court as the result of the United States bill of rights. Then, I thought you said it was effective because of the 14th amendment?—A. Yes.

Q. Am I right, then, in assuming from what you say that the original bill of rights in the United States constitution would not have given the freedom unless the 14th amendment had been passed?—A. I think that is correct.

Q. What I am getting at is this, that meant the concurrence of the states in bringing about that condition?—A. The concurrence of a certain number of them. It should be borne in mind that the first ten amendments which constitute the so-called bill of rights were enacted very shortly after the constitution was adopted, about 1790. At that time, the fear of the public was a fear of Congress. These ten amendments largely resulted in restrictions being imposed upon Congress.

By Mr. Diefenbaker:

Q. They feared the central authority, the executive?—A. It is Congress that is mentioned, not the executive. It says,

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

It was Congress the people feared at that time. They later came to discover that the states were the villains in connection with such matters as religious liberty in practically every case. One writer says there have been only two cases where these rights have been restrained by Congress which have reached the Supreme Court and all the other cases are cases under state laws.

Q. One is the Mormon case from Utah, where they claimed a right under state authority?—A. They stated polygamy was part of their religion. That was a state law. The state had the power to define the criminal law and did so, making polygamy an offence. The Mormons said that was part of their religion which was protected by this clause. The Supreme Court said no to that.

I had reached the point of saying I did not see why parliament could not make such a declaration with reference to religion because I cannot come to believe that religion is a provincial matter. It may have provincial aspects. Take the case of a church, as an example. Churches are not merely national, they are international. They are world wide. Could you say that the regulation of a church, in the sense of regulating the creed or the worship is a legal matter within the jurisdiction of a province? I do not think it has ever been so held. I do not think there has been any decision on it. I have some doubts in my mind that that would be regarded as a legal matter for the province.

Q. What you say, tentatively, is this; the right to practice one's religion according to his conscience would be preserved to the same extent as that case

in 1938 in the Supreme Court of Canada that indicates that freedom of speech would be preserved as a federal matter?—A. But not on the same ground.

Q. No, but that is the conclusion to which you come?—A. That is the somewhat hesitant conclusion to which I come because the matter has not been before the court so far as I know. There have been cases before the court, of course, where the question arose as to what constituted religion.

In the province of Ontario, for example, you have a statute which says no pupil shall be deprived of education or the right to attend school because of his declining to take part in a religious service in the school. The question arose as to what religion meant there, whether it included the saluting of the flag and the singing of the anthem. One group of persons refused to comply with these matters and said they were religious matters. They said they were protected by this section of the Act and the Court of Appeal of Ontario agreed with them.

By Mr. Belzile:

Q. Is there not a distinction to be made between religious beliefs and practices? I can believe that God exists or I can believe that God does not exist. Nobody can interfere with that; it is my own mind. However, if I start some practice a person can interfere with that, or if I start a special rite?—A. That is what I said when I started out. These rights do not exist now or they only have a meaning when you come to do some overt act. I suppose there have been times when governments have attempted to regulate the conscience of the individual in that respect, but I do not know that it was ever very successful.

By Mr. Diefenbaker:

Q. Is not the only limitation on the freedom of religion the uttering of blasphemy? Is that not the only restriction we have?—A. At the present time, I think that is the only one.

Q. You have a particular provision in the criminal code, section 198, concerning blasphemy?

The CHAIRMAN: When you say, "the only limitation", Mr. Diefenbaker, are you speaking about the only limitation in dominion statutes?

Mr. DIEFENBAKER: Yes, and of course we mentioned the provincial limitations.

The CHAIRMAN: There are alleged interferences with freedom by provincial statutes?

Mr. DIEFENBAKER: I am saying, so far as the dominion is concerned, the only interference with one's practice of religion is the section concerning blasphemy in the criminal code.

The CHAIRMAN: There are provincial statutes of that kind which have been challenged.

Mr. DIEFENBAKER: I am speaking of the federal government.

The WITNESS: In the federal field, so far as I know, the only provision which could be said to amount to any restriction, if it is a restriction of religion, is the blasphemy provision of the criminal code.

Well now I had started along this line, that a bill of rights is restrictive. It purports to restrict some persons or institutions from interfering with fundamental freedoms. I have dealt with the question of persons and I have indicated that if any legislation in that field was to be enacted, it must be by the Dominion or by the provincial governments, depending upon the nature of the freedom which is to be protected.

Then, if it is to be directed against provincial legislatures or governments, this point arises. The dominion law to be a good law must be enacted under section 91. If that protective statute is enacted under section 91, it must relate

to matters about which the province could not legislate anyhow because provincial powers are limited to section 92. If, on the other hand, it is the intent to pass a law which proposes to restrict provincial legislatures and any matters under section 92 are touched upon, then our legislation is bad. Those are points which the committee should bear in mind in considering what should be done.

By Mr. Diefenbaker:

Q. Has the province the power to pass a provincial law banning communism in that province?—A. Not if you just say, "communism" meaning the political party.

Q. But as a philosophy?—A. I thought you meant the political party and therefore I would think that the reasoning of Sir Lyman Duff would apply, that a political party is part of our constitutional system. The banning of the party, merely as a political party would be bad.

Q. You might have misunderstood me, but I was thinking of the philosophy. Has the province the right to declare that a person believing in the philosophy of communism shall not operate within the territorial limitations of that province?

Mr. WHITMAN: Suppose the philosophy was blasphemous or contained something blasphemous.

By Mr. Diefenbaker:

Q. I am asking a legal opinion of Mr. Varcoe.—A. That is quite a question; to say that a person might not hold property, for example, because he believes in the philosophy of communism would not, I should think, be legislation in relation to property and civil rights. I do not know what it would be.

By Hon. Mr. Roebuck:

Q. Criminal law?—A. It would seem to be closer to criminal law. I should like to repeat that. If your declaration or if your legislation is enacted by parliament, it must be in section 91. If it is under section 91 it must relate, of course, to the matters which are contained in section 91. Therefore, those are matters upon which the province could not legislate in any event. I am talking about the possibility of directing a declaration against the provincial legislatures or governments.

On the other hand, if you attempt to make a declaration which relates to section 92, then you have invaded the provincial field. If you are directing your statute against the federal government—

The CHAIRMAN: And parliament.

The WITNESS: I was going to deal with them separately. If you direct it against the government, you are doing something which is nothing because the government only has such power as parliament gives it to interfere with those rights.

By Hon. Mr. Roebuck:

Q. But you might interpret the powers given to the executive in such a way that they must not do certain things?—A. If you are passing a statute which is merely an interpretation act that is all right, but that is not what I understood to be a bill of rights.

By Mr. Diefenbaker:

Q. How do you mean an Interpretation Act, Mr. Varcoe?—A. Say you pass a declaration respecting those rights. Now, what is that? I think that is another question and I intend to cover it. What is that? It seems that it may be treated as a resolution of parliament, a mere declaration of the policy parliament would like everybody to adopt. It would be the equivalent, you might say, of a resolution of the two Houses. I am talking of a bill of rights containing

no penalty provisions and no sanctions but which is something like the Alberta bill of rights, a mere declaration that individuals shall have those rights. No. 1, it may be treated merely as a resolution; No. 2, it may be said to be no statute at all because it does not produce any legal consequences. Not producing any legal consequences, you cannot tell whether it is under dominion legislation or not.

Where you have a division of legislative powers, you look at an Act and you say, is it good or is it bad? It is good, depending upon the purpose and effect of the statute. If it has no effect and no legal purpose, then there is no way of testing out the question of whether it is good or bad.

Q. Would it be possible for the government of the country today to submit to the Supreme Court a series of questions asking the Supreme Court of this country whether or not parliament has the power to pass a bill of rights, specifying the particular freedoms it would be desirable to secure?—A. It seems to me you would have to go farther than that and indicate what they are, define them. Secondly, you would have to indicate what sort of sanctions were to be imposed to secure them.

Q. That would clear the matter up once and for all.

By Hon. Mr. Roebuck:

Q. You would have to draw a bill?—A. You would have to draw a bill. Then you would ask the question, is this bill within the powers of parliament.

Q. Continuing to deal with the matter about which you were talking, a bill to establish personal rights as against the dominion itself, would it not be possible for parliament to pass a bill saying in any powers granted to the executive heretofor or in the future, it shall be deemed that the right to interfere with an individual in these ways, I mean his personal freedoms, his fundamental freedoms, is not included?—A. That would be all right providing you could, wherever that was found in a later statute and there was some ambiguity, avoid saying that parliament had changed its mind and now decided that the freedom should be ineffective. Parliament cannot bind any future parliament. Of course that is axiomatic. Therefore, any such provision as that would apply only until it was repealed by implication or action on the part of a subsequent parliament.

There is one other aspect of such a declaration. It might be said in making such a declaration or in such a declaration it might be suggested that parliament is thereby adopting an interpretation of the constitution. Suppose, for example, parliament brought the dictum Sir Lyman Duff had created, which is only the dictum of one judge, but supposing parliament decided that would be the interpretation of the constitution it would adopt. It might be that the declaration or bill would be interpreted simply as an effort to construe the constitution. This is a claim which was made by Congress in the early days in the United States. Some members will remember that there was a struggle, finally concluded by Chief Justice Marshall in favour of the court, as to whether the legislature or the court should interpret the constitution. This sort of declaration might be treated in that light. It was argued that parliament had the power to construe the constitution.

Just as recently as last year, a very learned writer in the United States said that that issue was not dead yet in the United States. There are strong reasons for going back to the first view that Congress should construe the constitution.

By the Chairman:

Q. I thought Jefferson claimed that the state legislature had the power to construe the constitution?—A. He may have done so.

Q. I thought those were the Kentucky resolutions, but I may be wrong?—A. I only mention it as indicating another possibility of what such a declaration would amount to. I do not know that I have much more to say to the committee. It is rather an inconclusive kind of submission.

Perhaps I should mention that in Australia now, (nobody seems to have mentioned this fact) there is a constitutional limitation directed against the Commonwealth.

> The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religion tests shall be required as a qualification for any office or public trust under the Commonwealth.

This provision was the subject of litigation which went to the final court in the Commonwealth in connection with the defence regulations. The court held that this clause did not prevent parliament from making laws prohibiting the advocacy of doctrines advocated as religious convictions prejudicial to the prosecution of the war.

By Hon Mr. Roebuck:

Q. Is that a constitutional provision?—A. Yes, it is in the constitution.

Q. What sort of constitution have they got? Have they an Act like our own? —A. They have, but this is rather a peculiar exception to the general scheme.

By Mr. Croll:

Q. Was that held to be only applicable to that particular instance? Was it limited to the matter of war?—A. Yes.

Q. They limited it only to that?—A. I do not say they would not go further than that in another case, but that was the issue. I will give the committee the reference to the case. It is the Adelaide Company of Jehovah's Witnesses versus the Commonwealth, 1943, 67 Commonwealth Law Reports, page 116. Chief Justice Latham has a very interesting discussion about what religion is and describing the limitations which must be placed upon religion in connection with the safety of the state.

By Mr. Benidickson:

Q. Has Australia got an Act similar to our British North America Act? Is it a British Act?—A. Yes.

Q. And this is part of that Act?—A. Yes. I have not examined such legislation in Australia, so I do not know whether similar restrictions exist or not.

Now, the Irish constitution contains very elaborate provisions in respect to these liberties. I cannot find that in any other constitution in the British Empire.

By the Chairman:

Q. You had better add the Irish bill of rights to the list of documents to be circulated, I think?—A. Perhaps you would not need to circulate all of it, because the provisions in question are all contained in one part which is entitled "Fundamental rights." There is a part of the Irish constitutions entitled, "Fundamental Rights" and containing three or four sections, quite lengthy. They deal with all these rights. I think it would be desirable for the committee to look at them. I do not think I have anything more to add.

By Hon. Mr. Roebuck:

Q. Have you given any thought as to what procedure we should adopt? Should we have a declaration, an Act of parliament, or what, if we come to the conclusion that there are certain fundamental liberties which we should endeavour to protect? If we come to that conclusion, how should we proceed? —A. I have given this much thought, sir. I have asked myself what such a declaration in some such form as you have in the western provinces, for example, what the effect of that would be? As I have tried to indicate it does seem to me that such a declaration as that, relating to this conglomeration of rights as

I call them—you have the liberty of the person exercisable by the doing of hundreds of separate overt acts. The so-called freedom of the person is a sort of conglomeration of a large number of rights some of which are in the provincial field and some in the Dominion field. Such a general declaration as that might be regarded as unconstitutional.

By Mr. Croll:

Q. Did you say the declaration would be unconstitutional?—A. I say such a declaration might be held to be unconstitutional as relating to matters which are purely provincial.

By the Chairman:

Q. You mean the statutes, do you not?—A. I did not understand your point. The declaration would be, I suppose, in the form of a statute. It would be passed through both Houses and receive Royal Assent. It would be a statute in that respect.

By Hon. Mr. Roebuck:

Q. It would read that the parliament of Canada hereby declares that the law with respect to certain things is so and so?—A. Yes. If you could define those matters without impinging on the provincial field then, of course, that would be a very good thing. However, it would bind no future parliament.

Q. Another parliament might repeal it totally or partly?—A. That is true.

By the Chairman:

Q. Another parliament might pass an act in disregard of it later and the Act would be good, being a later Act. That might very well happen under the stress of a particular situation?

Mr. CROLL: Give us some example of what you are thinking about.

The CHAIRMAN: I am not thinking of anything in particular but take this case: let us say there is a declaration in the province, say the province of Alberta, that there is religious freedom in some general terms. Let us then say that problems arise with regard to the settlement of land by a particular sect of persons. Public sentiment becomes aroused. The great majority of people near the spot where these persons are decide that severe limitations should be placed upon the operations of this sect. The legislature might very well pass an Act then and I should say that that Act, being a later Act, takes precedence over the preceding Act. Such situations as that may happen from time to time when public opinion gets heavily behind a particular measure. Then, legislation may be passed by a parliament differing from that of the previous parliament.

Mr. BENIDICKSON: Without specifically attacking the Act or being in peril from publicity attacking that Act. The first Act might be theoretically good.

The CHAIRMAN: Yes, the people would say it was all right as a general Act. We believe in freedom of worship, but we do not believe in allowing these people to do this particular thing now.

The WITNESS: There is just one more observation and that concerns the expression "Bill of Rights". It is a very general sort of expression. In English law, as you know, it has been applied to a very specific set of provisions. You may ask whether a bill of rights should be enacted in Canada or could be enacted by parliament. If you have in mind a document such as the Bill of Rights of 1688, in which you have a series of specific provisions many of which unquestionably could be enacted by parliament, that is one thing. They are, according to writers, in force in Canada. According to Mr. Lefroy, for example, they are part of our constitutional law at the present time. The same is true of the provisions of the Petition of Rights of 1627. These are specific provisions

which you might find in the criminal code. Many of them are there now. That is one kind of a bill of rights.

Then you have other bills of rights such as the American which was copied from the British in many respects. It was copied from the British bill of rights and the petition of rights, even to the language which was copied, in part, from those statutes. On the other hand, it has some general declarations such as the one concerning religious freedom and freedom of speech. If you are going to get anywhere with that sort of thing, you have to put it into a constitution. It seems to me that, to some extent, it is unnecessary at the present time if Sir Lyman Duff's reasoning so far as political rights are concerned is sound because the constitution, as it stands now, protects those rights.

By Mr. Hazen:

Q. Our constitution is partly written and partly unwritten?—A. Yes.

Q. Do you think there is any advantage in putting the unwritten part of the constittuion in written form or are we going to get into a legal straight-jacket?—A. One or two interesting points come up when you start talking about amending the constitution. Let us say you want to amend it so as to prevent parliament from dealing with certain matters. Let us take that case.

You go to the United Kingdom parliament and you pass a provision that is comparable to this clause in the American constitution. You ask the United Kingdom parliament to pass a provision like this,

> Parliament shall make no law respecting the establishment of religion or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press; or of the right of the people peacably to assemble.

Now, what you have done is to take away from parliament a sovereign power and you have returned it to the source from which it came first, namely, the United Kingdom parliament. It is a retrograde step in that respect. You are handing back to the United Kingdom parliament something you already had. Consequently, you have what is really a new kind of set-up; namely, one in which the same power or powers in question reside nowhere. This may be, perhaps, too theoretical a discussion.

In the United States, the power rests in the people and Congress is simply the delegate of the people as the lawyers in the committee will know. Congress is not a sovereign legislature at all, it is a delegated legislature exercising such power as the people, from time to time by amendment of the constitution give to it or, on the other hand, take away from the Congress or from the states. However, the power is there; the full sovereign power is there. If you take that power from parliament, then it does not reside in the people and, in a legal sense, it does not reside anywhere. You have a new kind of state it seems to me.

By Hon. Mr. Roebuck:

Q. It resides in England?—A. It resides in England, but it resides nowhere in this country; that is, in part, true now because we have the limitation I have indicated. There are these two points; that you are handing back to the United Kingdom parliament something you have and you are taking out of this country a sovereign power which will no longer reside within this country.

Q. That would not apply at all to the limitation of the executive?—A. No, sir, applied by parliament. I was thinking of the question of amending the constitution.

By Hon. Mr. Crerar:

Q. Mr. Varcoe, in part of your very interesting remarks you drew a distinction between freedoms and rights?—A. Yes.

Q. You instanced under the heading of rights, the right of an individual to an education?—A. Yes.

Q. To social security or perhaps employment?—A. Yes.

Q. And you felt that he had a right to impose a corresponding obligation upon the state to furnish him with those rights?—A. Yes.

Q. I was not clear just as to what you meant?—A. I meant that if he has that right, I was talking about the kind of thing it is. When you speak about the right to education, for example, you mean if a person has it at all, if it exists, it exists because some other person or state is under a duty to furnish the education.

Q. Now, there is just one point I want to clarify in my own mind. Is that right which he has from the state, that the state must provide schools and books and so forth or is it a right he has that the state shall not prevent him from having an education?—A. No, sir, I think the right to education as I understand it under this charter means that there is an obligation upon the state to furnish a certain standard of education to all the people.

Q. Very good; then I want to follow that up. Would you say that he had the same right in regard to social security?—A. Well, of course, we are talking about something in the future.

Q. Well, we hear a good deal of talk today about the fact it is the duty of the state to provide employment for everyone. What about that?—A. I do not know whether I have some notes on that or not.

Mr. HERRIDGE: Mr. Chairman, I think this session should adjourn now. I know a number of members wish to question Mr. Varcoe and we could continue for some time.

The CHAIRMAN: I suggest we adjourn. Mr. Humphrey is going to be here to-morrow to give the committee information about the Commission on Human Rights in the United Nations. Now, I do not know how long he will take. After his evidence is finished, we can proceed with Mr. Varcoe if there is any time left or we can proceed with Mr. Varcoe next week, just as the committee wishes.

Mr. CROLL: I think it would be well for us to have the stenographic report before we question Mr. Varcoe. Otherwise, it is a bit difficult.

The CHAIRMAN: Let us deal with Mr. Humphrey then to-morrow at eleven o'clock.

The committee adjourned at 1.10 o'clock p.m. to meet again at 11.00 a.m. on Friday, June 27, 1947.

SESSION 1947

SPECIAL JOINT COMMITTEE OF THE SENATE AND THE HOUSE OF COMMONS

ON

HUMAN RIGHTS

AND

FUNDAMENTAL FREEDOMS

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 5

FRIDAY, JUNE 27, 1947

WITNESSES:

Mr. J. P. Humphrey, Director of the Division of Human Rights, United Nations Organization, Lake Success, N.Y.

Mr. E. R. Hopkins, Chief, Legal Division, Department of External Affairs, Ottawa.

Mr. D. H. W. Henry, Law Branch, Department of Justice, Ottawa.

OTTAWA
EDMOND CLOUTIER, C.M.G., B.A., L.Ph.,
KING'S PRINTER AND CONTROLLER OF STATIONERY
1947

MINUTES OF PROCEEDINGS

FRIDAY, 27th June, 1947.

The Special Joint Committee on Human Rights and Fundamental Freedoms met at 11.00 o'clock a.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 Crerar, Leger, McDonald (*Kings*), Roebuck, Turgeon, Wilson.

The House of Commons: Messrs. Croll, Harkness, Hazen, Herridge, Marier, Mayhew, Whitman.

Mr. J. P. Humphrey, Director of the Division of Human Rights, Department of Social Affairs, United Nations Organization, Lake Success, U.S.A., was called. He made a statement on the preparatory work of the United Nations Organization in the field of Human Rights and Freedoms.

Mr. E. R. Hopkins, Chief, Legal Division, Department of External Affairs, Ottawa, and Mr. D. H. W. Henry, Law Branch, Department of Justice, Ottawa, were also questioned.

The Chairman directed that copies of a number of documents referred to in the evidence of Mr. Humphrey be obtained and filed with the Committee.

The Chairman thanked the witness for his informative statement.

It was agreed that the steering committee would consider future procedure and report its recommendations at the next meeting.

The Committee adjourned at 12.50 p.m., to meet again at 11.00 o'clock a.m., Thursday, 3rd July.

J. G. DUBROY,
Clerk of the Committee.

MINUTES OF EVIDENCE

HOUSE OF COMMONS,

June 27, 1947.

The Special Joint Committee on Human Rights and Fundamental Freedoms met this day at 11.00 a.m. The Right Hon J. L. Ilsley (Joint Chairman) presided.

The CHAIRMAN: Gentlemen, the meeting will please come to order.

Professor J. P. Humphrey, Chief, Human Rights Division of the Social Department, United Nations, called:

By the Chairman:

Q. Mr. Humphrey, you are the chief of the Human Rights Division of the Social Department of the United Nations; is that correct?—A. That is right.

Q. Will you tell the committee something about the Human Rights Division?—A. Mr. Chairman, first of all I want to thank you, both on behalf of the United Nations and on my own behalf, for having invited me to come here today to give evidence. I may say that this establishes a precedent in the United Nations history. So far as I know, no member of the United Nations staff has ever before been invited to address or give evidence before a committee of a national parliament. Speaking on my behalf, and as a Canadian, I must say I consider this a great privilege to be able to appear before a committee of parliament. I must warn you however that I am not here today as a Canadian. I am here as an international official, as a servant of 55 nations. Therefore, there may be some questions to which I will not be able to give an answer.

I have not prepared a speech, Mr. Chairman. I do not think you want me to make a speech. I thought, however, that I should begin with a few introductory remarks and try to draw a picture of what has been done up to this date. After that, I will invite questions from the members of the committee. Also, I might say I would invite interruptions during the course of my remarks. I would be very glad to elaborate on any points, Mr. Chairman.

I understand that the committee has already studied the pertinent provisions of the charter and that you are familiar with the various resolutions of the Economic and Social Council and so on.

By Mr. Roebuck:

Q. Do not assume too much, now?—A. Well, Mr. Chairman, as you know there are many provisions in the charter which refer to human rights and fundamental freedoms. I suppose the thing which most distinguishes the charter of the United Nations from the covenant of the League is the preoccupation of the charter with the questions concerning human rights. I do not have to go into the reasons for this preoccupation with such a committee as this. It was apparent after the war to all people that one of the reasons for the war had been precisely the violation of human rights by certain countries, in regard not only to the citizens of those countries but in regard to the citizens of other countries. The peoples of the world were determined that, if possible, this cause of war would be avoided in the future.

Not only are there many provisions in the charter relating to human rights but rather elaborate machinery has been set up since San Francisco concerning human rights. A great deal of the activities of the United Nations have related to human rights. I need only refer you to the debates in the General Assembly last winter. You are familiar, of course, with the debate which arose between South Africa and India which, in some respects, concerned the question of human rights. You are familiar with the resolution which was adopted on racial and religious persecution. You are familiar with the resolution of the General Assembly calling upon the Economic and Social Council to call a world conference on the freedom of information. These are only a few of the questions concerning human rights which were debated at the last session of the General Assembly.

I refer to the rather elaborate machinery. Not only has the General Assembly certain functions to perform in connection with human rights, but the Economic and Social Council also; and the Economic and Social Council has set up a commission on human rights. At the beginning that commission had a subcommission on the status of women, but that subcommission on the status of women has since been made into a full commission. So you have, side by side, a commission on human rights and a commission on the status of women.

By the Chairman:

Q. Excuse me just a moment, but in what way did the violation of human rights domestically contribute to the war?—A. This is entering into the political question, Mr. Chairman, but I think it is one I can safely discuss. I think the measures taken against certain groups within Germany were undoubtedly related to the building up of the whole German war machine, not only in regard to propaganda but in regard to other material aspects. However, I think the violations of human rights in respect to citizens of other countries is a much more obvious example of the importance of respect for human rights in any plan for the preservation of peace. I am, of course, referring to the German interference with the rights of citizens in certain other countries.

By Hon. Mr. Crerar:

Q. Mr. Humphrey, from 1933 onward in Germany there were, within that country, outrageous violations of human rights. There is no question of that. Now, if Germany had not invaded and had not taken over Czechoslovakia; had not invaded Poland, if she had remained within her own frontier, do you think there would have been a war?—A. Well, Mr. Chairman, I would have thought the violations of the rights of Germans was part of the plan to build up a Nazi totalitarian state which did become a menace to peace.

Q. It worked out that way, but I think it is a little too much to say that it was the violation of human rights within Germany which led to the war?—A. I said it was one of the contributing factors.

Q. If it is, are we not in a very dangerous position to-day because we have those violations in at least a half dozen countries to-day. These countries blatantly, almost openly, violate the freedom of the individual. He is put in concentration camps or lined up and shot. He is put in prison if he voices certain political opinions. All those things are certainly violations of human rights as we understand them, but there is no one who wants to go to war at the moment over that?

Mr. WHITMAN: But we cannot foretell the result of that yet can we? It may yet lead to something we cannot foresee.

By Hon. Mr. Crerar:

Q. However, Mr. Humphrey, I am sorry for the interruption.—A. No, I invite interruptions. I want to be very careful, as an international servant, in the remarks I make before this committee. I do not want to try to interpret

what the representatives of states have in mind, but I would have thought that one of the purposes of the proposed International Bill of Rights was precisely to prevent such violations of human rights as they exist to-day.

By Hon. Mr. Roebuck:

Q. Could you not say, Mr. Humphrey, that a nation which respects human rights within its own borders is more likely to respect them outside of its borders?—A. I think that is true as well.

Mr. MAYHEW: Mr. Chairman, with all due respect, and very much appreciating the witness, request to be interrupted during his remarks, do you not think we would really get more information if the witness could develop his own trend of thought? After we get his statement then we could go back and take up these various matters.

The CHAIRMAN: I think we should be careful to see that the interruptions are not protracted. I tried yesterday to keep the evidence continuous, but I was unable to do so. I do not think we will be able to do so to-day. I do not think it is desirable to aim at complete continuity on the part of the witness. So long as we keep the interruptions down to a reasonable compass of time I think that is the best we can do. I interrupted you as you were telling us about the subcommission on the status of women.

The WITNESS: Yes, I was beginning to describe the machinery which has been set up within the United Nations to deal with this problem. I pointed out that not only has the General Assembly certain functions to perform but the Economic and Social Council has certain functions as well.

Under the Economic and Social Council there are two main commissions, the Commission on Human Rights and the Commission on the Status of Women. I will be glad to discuss matters relating to the Commission on the Status of Women later if any members desire me to do so. I will, however, return now to the Commission on Human Rights.

Hon. Mr. GOUIN: I should like to make one short remark. I think it would be important to make sure we have all the necessary documentation here concerning what is being done by the UNO. I would suggest that Mr. Humphrey examine, with our secretary, the documents which have been handed to us to be sure, for instance, that something which might have been done by that Commission on the Status of Women is before us.

The WITNESS: The Commission on Human Rights, itself, has set up two subcommissions; a subcommission on the freedom of information and of the press and a subcommission on the prevention of discrimination and the protection of minorities. In addition to that the commission has set up a drafting committee which yesterday completed its first session.

In order to make the picture complete, I should refer to the fact that some time next spring there will be a world conference on the freedom of information. That is tied in very closely with this whole machinery. Perhaps the committee, Mr. Chairman, would like to hear something about the progress in the actual drafting of the International Bill of Rights. It has been assumed, since San Francisco, that there would be an International Bill of Rights. Indeed some governments represented at San Francisco wanted to have that Bill of Rights written in as part of the charter. It was decided, however, it would be better to leave this matter over until the General Assembly had been completely organized and the preparatory commission had met in London to advise on the steps to be taken in order, as quickly as possible, to set up the machinery for the writing of a Bill of Rights.

I should perhaps say here that the Commission on Human Rights to which I have already referred is the only commission of the United Nations to which reference is made in the charter. That commission was set up in the early

part of 1946 at the first meeting of the Economic and Social Council in London. It met as a so-called nuclear commission in Hunter College in the early summer. It was called a nuclear commission because there were only eight members and because those eight members were acting in an individual capacity.

The members of the nuclear commission considered that they had the right to prepare a draft International Bill of Rights but they decide it would be preferable to leave this over to the full commission when constituted. The full commission was constituted by the Economic and Social Council in the late fall of 1946 and that commission consists of eighteen members representing eighteen states. It met for the first time in the latter part of January, 1947. There was considerable discussion regarding the form and content of the proposed International Bill, but it was decided that the commission itself could not very well proceed with the drafting job until it had something concrete before it. Therefore, the commission set up a small drafting group consisting of three officers of the commission, Mrs. Roosevelt, the chairman of the commission; Dr. P. C. Chang of China, the vice-president; and Dr. Charles Malik of Lebanon, the rapporteur.

At the following meeting of the Economic and Social Council, however, it was decided that this drafting group was not sufficiently representative. It was decided to set up a new drafting committee of eight members, including representatives of the five great powers plus Australia, Labanon and Chile. That drafting committee has just been in session. It had before it draft bills prepared by the Secretariat. You have the document before you.

The CHAIRMAN: Is that document No. 5?

The WITNESS: That is document No. E/CN4/AC1/3. I am sorry to say that you do not have before you another document which carries more information with it. It carries the same number with a 1 added to it, that is E/CN4/AC1/3/1. This is a very thick document. It contains the Secretariat draft as in the document before you, but in addition to that you have after each article, reproduced the corresponding article taken from the constitution of the various states dealing with that particular right. You have also the articles taken from the various drafts which have been submitted to the United Nations, for example, by Panama and by certain organizations such as the American Federation of Labour. The only reason you have not this document before you, sir, is that it was a very thick document and there has been some difficulty in getting it mimeographed. It will be distributed to all member states in time.

Mr. HAZEN: What is the number of the document to which the witness is referring? Is it one of the documents which has been distributed to us?

Mr. WHITMAN: It is referred to here as document No. 5.

The WITNESS: This document is apparently based on our document but our document has an English text on the one side and a French text on the other side. This document is in English only but I presume it is a correct reproduction of the document to which I have referred.

By Mr. Hazen:

Q. I understand that document No. 5 is a preliminary draft prepared by the Secretariat of the United Nations?—A. That is right, that is the document to which I am referring. We also have this document with an elaborate documentation.

By the Chairman:

Q. When could we get that document?—A. You should have it in a matter of days. If your committee secretary were to write to Lake Success and make a special request for copies, I am sure they would be sent out more quickly.

The CHAIRMAN: The secretary had better do that.

The WITNESS: This document was before the drafting committee. The day before the drafting committee met we received a document from the representative of the United Kingdom, Lord Dukeston. You also have that document before you.

Hon. Mr. GOUIN: That is document No. 3.

The WITNESS: Yes, document No. 3. It differs from the Secretariat document in that it proposes the drafting of a convention which would be signed and ratified by the states. In the Secretariat draft there is no indication of whether it is to be a convention or a declaration because the commission itself had not decided this question. We tried to prepare a document that could be used for either purpose. During the meeting of the drafting committee, the issue came up as to whether the final bill should take the form of a declaration, that is a resolution of the General Assembly, or whether it should take the form of a convention or a treaty. The drafting committee decided to submit two proposals. They decided to sumbit the United Kingdom proposal for a convention with certain modifications and to submit their own draft of a declaration which was, in turn, based on the Secretariat draft.

Professor Cassin, the member of the drafting committee for France, had been asked to take the Secretariat document and try to make it shorter and put it in the form of a draft resolution. I might say in parentheses here, that the Secretariat draft, having been prepared by the Secretariat, of course included all the rights. The Secretariat could not take the initiative and decide, well, this matter is appropriate for an International Bill of Rights and this matter is not; so it tried to cover all the rights to be found in the various national constitutions. It is, to some extent, a compromise between different ideologies.

The drafting committee, of course, did not have the right to take any final decisions and that was made quite clear. It was made clear that anything that was said by the members would in no way bind their governments, so the whole question is still open and will be considered at the meeting of the full commission which takes place on August 25 in Geneva.

After that the project as it is reported, whether it takes the form of a convention or a declaration or whether it should be decided to do both because one does not necessarily exclude the other, will be submitted to the various member states for their comments. It will then go back to the drafting committee and will go before the full commission again. It will then go before the Economic and Social Council and finally will be transmitted to the meeting of the General Assembly in the fall of 1948. In any event, that is the time table. Whether we are going to be able to get a draft bill before the Assembly in 1948 is, of course, a matter that is still within the lap of the gods.

The drafting committee also surveyed the whole question of implementation. I have here before me—I do not know whether you have the same document before you—a memorandum which was prepared last week very quickly, I may say, by the Secretariat at the request of the drafting committee. It deals with the whole problem of implementation.

Hon. Mr. GOUIN: I do not think we have that.

The WITNESS: It is document E/CN4/AC1/12. This document reproduces the suggestions that have been made by governments and also by the Secretariat in regard to implementation.

Hon. Mr. TURGEON: Have we that document before us?

Hon. Mr. GOUIN: No, I do not think we have. I think it would be important to obtain it.

The WITNESS: Yes, this is a useful document in spite of the fact that it was, as I said, hurriedly prepared. I am going to refer to a few things in that document, and I am going to refer to the resolution of the Economic and Social Council, June 21, 1946. This is the resolution:—

> Considering that the purpose of the United Nations with regard to the promotion and observance of human rights, as defined in the charter of the United Nations, can only be fulfilled if provisions are made for the implementation of human rights and of an International Bill of Rights, the Council requests the Commission on Human Rights, to submit at an early date suggestions regarding the ways and means to be effective implementation of human rights and fundamental freedoms with a view to assisting the Economic and Social Council in working out arrangements for such implementation with other appropriate organs of the United Nations.

So, the Commission on Human Rights has a definite mandate from the Council to survey this problem and to report. It was only at this drafting committee, however, that serious consideration was given to the problem of implementation, notwithstanding the fact that at the last meeting of the full commission the Australian member presented a proposal for the establishment of an International Court on Human Rights. You are probably already familiar with this proposal because it has been discussed at some length in the press. The Australian delegation made the same suggestion at the Paris Peace Conference. That is the conference which drew up the peace treaties with the satellite powers in Europe.

By Hon. Mr. Crerar:

Q. Is Russia represented on the Economic and Social Council?—A. Oh yes, Russia is represented not only on the Economic and Social Council, but it is represented on the Commission on Human Rights and was represented at this drafting committee.

If I had the time, Mr. Chairman, I should like to elaborate on this question of implementation because it is quite important. There is a lot of material in this document.

The CHAIRMAN: I think you had better take a little time to elaborate on it.

By Hon. Mr. Turgeon:

Q. May I ask one question? You say the member nations are going to be advised after the preparation of the document, is that after the Geneva meeting next August?—A. Yes. Now, the Secretariat prepared an elaborate documentation for the first meeting of the full commission which was held in the latter part of January. You have, I am sure, a copy of the motion before it. It is a paper dated January 13th, called "Working paper on International Bill of Rights, Item 8 of the Provisional Agenda."

Hon. Mr. GOUIN: I am not sure we have that.

This latter paper to which I have just referred, refers to the first paper. We have reproduced here certain information dealing with the problem of implementation. May I draw your attention to a book to which we refer here which is one of the best things which has been done on this problem, but it was written before San Francisco. It is a book written by Professor Lauterpacht of Cambridge, called "International Bill of Rights of Man". I refer to this book because there is an excellent discussion of the problem of implementation contained in it.

In that Secretariat memorandum, we raise these questions for the consideration of the commission:—

> First, whether or not the bill should contain a provision to the effect that it cannot be unilaterally advocated or modified;
>
> Secondly, whether or not the bill should include an express statement to the effect that the matters dealt with in it are of international concern.

That is rather important because, of course, under article 2, paragraph 7 of the charter it is expressly stated that the United Nations shall not have jurisdiction in any domestic matter and the purpose of this question is to raise the problem of whether or not the protection of human rights should not be precisely made a matter of international concern.

By the Chairman:

Q. The question of implementation arises if there is merely a resolution of the United Nations Assembly, or does it only arise if there is an international convention?—A. That is a difficult question, Mr. Chairman. A quick answer would be that a resolution of the General Assembly has no binding effect on international law.

Q. Even though it is declared to be of international concern?—A. Even though it is declared to be of international concern. I think, however, that answer is too easy because I think it would be an element in the building up of international jurisprudence. You cannot take it for granted that it would have no legal significance at all.

Q. Does this document which you have prepared on implementation to which you are now referring and to which you are going to refer further, assume that there will be a convention?—A. No, it does not. It raises that question later on.

By Hon. Mr. Turgeon:

Q. Would the implementation have to be, first, by each member nation separately?—A. I am discussing now the problem of implementation on an international level. There is, of course, also the problem of implementation within particular states. Indeed, that was the third question raised:

> Whether or not the bill should become part of the fundamental law of states accepting it.

The fourth point was,

> Whether or not the provisions of the bill should be declared to be directly applicable in the various countries without further implementation by national legislation or transformation into national law.

By Mr. Croll:

Q. Would you repeat that please?—A.—

> Whether or not the provisions of the bill should be declared to be directly applicable in the various countries without further implementation by national legislation or transformation into national law.

Now, that is a very difficult problem. It is not at all certain whether the United Nations have jurisdiction to make international law directly applicable within particular states. We simply wanted to raise the problem for discussion.

By Hon. Mr. Roebuck:

Q. You have to remember that some governments depend on the consent of the individual governed?—A. Now, the Secretariat in that paper suggested that the problem of implementation might be dealt with in the following manner.

> The establishment of the right of the General Assembly and other organs of the United Nations, including possibly the Commission on Human Rights, to discuss and make recommendations in regard to violations of the bill.

That right does not, I think, exist at the moment although I would not want to be categoric in any statement here. I am thinking, of course, again of article 2, subparagraph (7) of the charter which perhaps Mr. Chairman I had better read for the information of the members of this committee. It says,

> Nothing contained in the present charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the members to submit such matters to settlement under the present charter; but this principle shall not prejudice the application of enforcement measures under chapter VII.

That chapter deals with the functions of the Security Council in the preservation and maintenance of peace. So, it is a very difficult question now whether or not the United Nations has the right to discuss violations of human rights even within particular countries. The Secretariat was proposing that, perhaps, the first stage might be the establishment of that right. Then, this is a corollary really: the establishment of the right of individuals and groups to petition the United Nations as a means of initiating procedure for the enforcement of human rights.

Three: it was suggested that a special organ of the United Nations might be established with jurisdiction and the duty to supervise and enforce human rights *motu proprio*.

Four: it was suggested that this organ might at some date be given jurisdiction to consider cases of suspension of the Bill of Rights either in whole or in part; that is particularly if that Bill of Rights became part of the national law of the various member states. You might conceive of a case where the International Bill of Rights might have to be suspended.

Five: establishment of local agencies of the United Nations in various countries with jurisdiction to supervise and enforce human rights therein. We suggested that the commission might find it useful in this connection to study the precedent established, for example, by the convention between Germany and Poland on Upper Silesia of May 15, 1922.

Then we raised the question of the role of the Security Council in the protection of human rights. Referring again to article 2, paragraph 7, of the charter, the acception of domestic jurisdiction cannot be invoked in cases where enforcement measures are being taken by the Security Council under chapter VII. We raised the question whether the Security Council should not be given more extended jurisdiction in the matter.

These are the pertinent suggestions made by the secretariat in regard to the problem of implementation.

Then, certain suggestions were made by members of the commission. We have referred to the fact that the Australian representative, Colonel W. R. Hodgson, proposed the creation of an international court of human rights.

Now, the characteristic thing about this court would be that individuals or groups would have access to it. There does, of course, exist an international court of justice, but that court was created to hear disputes between states. The characteristic thing about the Australian plan is that there should be an international court to which individuals would have access.

Mr. HAZEN: What became of that suggestion?

The WITNESS: That was again discussed in the drafting committee and is going forward to the second session of the full committee in August as part of the documentation. I have here the whole draft resolution which was submitted by the Australian member. I do not think I shall have time to read it. It is a draft in the form of a resolution that would be adopted setting up such a court. This is the United Nations No. E/CN.4/15.

The CHAIRMAN: We will get the whole memorandum on implementation?

The WITNESS: Yes. In this memorandum you will find reproduced certain statements made by Colonel Hodgson in that connection.

Now, the question of implementation was also raised in the draft resolution which was submitted by India at the first meeting of the full commission. That is E/CN.4/11 referred to in this memorandum.

Now, I want to direct your attention particularly to three articles concerning implementation that will be found in the secretariat draft outline of the Bill of Rights that you have before you. I think you said it was document 5 in your numbers, and I wish to direct particular attention to articles 28, 47 and 48. Article 28: "Every one has the right, either individually or in association with others, to petition the government of his State or the United Nations for redress of grievances."

Hon Mr. GOUIN: That is at page 4.

The WITNESS: Article 47: "It is the duty of each member State to respect and protect the rights enunciated in this Bill of Rights. The State shall, when necessary, co-operate with other States to that end."

Hon. Mr. GOUIN: That is page 6 of document 5.

The WITNESS: Article 48: "The provisions of this International Bill of Rights shall be deemed fundamental principles of international law and of the national law of each of the member States of the United Nations. Their observance is therefore a matter of international concern and it shall be within the jurisdiction of the United Nations to discuss any violation thereof."

I want to make this observation right away, that no particular approval has been given by the drafting committee to the secretariat draft, but I am trying to give you a full picture of everything that has come to the attention either of the commission or the drafting committee dealing with the problem.

By far the most important document I should judge that has come before the drafting committee in regard to implementation is, of course, the United Kingdom draft of a convention on human rights. That, of course, contains many references to the problem of implementation. You have this draft before you.

Hon Mr. GOUIN: Document No. 3.

The WITNESS: Now, that document raises a number of problems which it would take a long time to read out.

The CHAIRMAN: Briefly, how is the International Bill of Rights to be enforced if the provisions of this document are eventually adopted? That is the point, is it not?

The WITNESS: The United Kingdom is, of course, suggesting the adoption of a convention on human rights. That convention would bind all states to adhere to it; the rules enunciated in the convention would become part of international conventional law. The United Kingdom is proposing that various means be set up for the actual enforcement of the convention.

Hon. Mr. ROEBUCK: What are they?

The WITNESS: I will have to be very careful about this, Mr. Chairman, because I do not want to misinterpret the document. I think I shall let the document read for itself. I shall refer to the various parts of it. I should also enter this reservation that the document expressly says that this draft must not be taken as representing the final views of His Majesty's government in the United Kingdom either as regards the provisions which are contained in the United Kingdom drafts or as regards any matters which are not contained in those drafts.

You will note that on page 2 there is a draft of a resolution to be adopted by the General Assembly. That is followed by an annex, annex I, which is the International Bill of Rights which enunciates the various rights.

And then there is annex II to which I will refer in more detail in a moment.

Now, the draft resolution has a long preamble referring to the pertinent provisions of the charter and so on. I shall not read this. It goes on to say:—

> The General Assembly expresses the opinion that human rights and fundamental freedoms can only be completely assured by the application of the rule of law and by the maintenance in every land of a judiciary, full independent and safeguarded against all pressure, and that the provisions of an International Bill of Rights cannot be fulfilled unless the sanctity of the home and the privacy of correspondence are generally respected...

Hon. Mr. TURGEON: What article is that?

The WITNESS: That actually appears in IV.

Hon. Mr. GOUIN: That is the first page immediately after the letter from Lord Dukeston; it is our document No. 3.

The WITNESS:

> ...and unless at all trials the rights of the defence are scrupulously respected, including the principle that trials shall be held in public and that every man is presumed innocent until he is proved guilty.
>
> Considering also that the promotion of human rights...

Hon. Mr. GOUIN: That is article V.

The WITNESS:

> V. Considering also that the promotion of human rights and fundamental freedoms will be assisted by full and accurate information on the position in every land with regard to these matters, and that such information should be published by the United Nations under conditions which will best guarantee its objectivity:—
>
> The General Assembly entrusts this function to the Commission for Human Rights and requests the Economic and Social Council to reconsider the terms of reference of the said commission, having regard to the principles and directives set forth in annex 2.

May I make a comment here? The Commission on Human Rights, as it is presently constituted, does not, of course, have this power. It is a consultative body. It is in no sense a court; it has no powers of any kind. The United Kingdom is, in effect, proposing a change in the terms of reference to the commission.

> VI. Considering further that it is by defining human rights and fundamental freedoms and placing them under the protection of international law and the guarantee of the United Nations that the dignity and worth of the human person will be best secured.
>
> The General Assembly approves the International Bill of Rights which forms annex I to the present resolution and recommends that all members should accept the obligations thereof.

Then you have a catalogue of rights which does not correspond with the catalogue of rights which are in the secretariat draft or in the final project which has been elaborated by Professor Cassin for the drafting committee which will go before the meeting of the commission in August.

Hon. Mr. GOUIN (*Joint Chairman*): It is not before us; we have not got that.

The WITNESS: I am sorry you have not. The drafting committee only terminated its session yesterday and we are still dotting i's and crossing t's, and it will not be ready for distribution, I do not think, before ten days.

Hon. Mr. GOUIN: It would be a very interesting document.

The WITNESS: Yes. I have here before me notes of the document as it looked the day before yesterday, but in adopting the report of the reporteur a number of changes were made, so I think it would be better if I did not read the document into the record.

The CHAIRMAN: Did it follow the outline of the draft of the International Bill of Rights prepared by the Division on Human Rights?

The WITNESS: More or less. Professor Cassin used the secretariat documents as the basis of this draft, in that some of the sections are textually the same. The United Kingdom document contains the catalogue of rights.

Hon. Mr. GOUIN: It is different from document 5.

The WITNESS: No. It is annex I to document No. 3.

Hon. Mr. GOUIN: You said that the enumeration was somewhat different from the document prepared by the secretariat.

The WITNESS: Yes, it has no relation with the secretariat; it was authorized independently of the secretariat draft.

Now there are some interesting articles dealing with the implementation here. In annex I you have what the United Kingdom delegation refers to as the Bill of Rights. That is an annex to the resolution that will be adopted by the General Assembly, and this takes the form of a convention. You have here the preamble. I might read the preamble:—

> Part I. Article 1. The states parties hereto declare that they recognize the principles set forth in part II of this bill as human rights and fundamental freedoms founded on the general principles of law recognized by civilized nations.

Hon. Mr. MCDONALD: You have dropped "fundamental freedoms" from your heading; it is just "Bill of Human Rights".

The WITNESS: Yes, this is an International Bill of Human Rights. The bill is referred to in a number of different ways: Declaration of Human Rights; International Bill of Rights; International Bill of Human Rights; International Bill of Human Rights and Fundamental Freedoms; and so on. There is no fixed practice in this regard.

Then we come to article 2:—

> Every state is, by international law, under an obligation to ensure...

This takes the form of a convention and means to set up an international obligation.

> (*a*) that its laws secure to all persons under its jurisdiction, whether citizens, persons of foreign nationality or stateless, the enjoyment of these human rights and fundamental freedoms:
> (*b*) that any person whose rights or freedoms are violated should have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
> (*c*) that such remedies shall be enforceable by a judiciary whose independence is secured; and
> (*d*) that its police and executive officers should act in support of the enjoyment of these rights and freedoms.

And there is a commentary.

> Article 3: On receipt of a request to this effect from the Secretary-General of the United Nations, made under the authority of a resolution of the General Assembly, the government of any party to this bill will supply an explanation, certified by the highest legal authorities of the state concerned, as to the manner in which the law of that state gives effect to any of the said provisions of this Bill of Rights.

Of course, that is a provision that touches very closely the question of implementation, because it provides some machinery for international implementation and protection of human rights.

> Article 4: (1) In time of war or other national emergency, a state may take measures derogating from its obligations under article 2 above to the extent strictly limited by the exigencies of the situation.
>
> (2) Any state party hereto availing itself of this right of derogation shall inform the Secretary-General of the United Nations fully of the measures which it has thus enacted and the reasons therefore. It shall also inform him as and when the measures cease to operate and the provisions of article 2 are being fully executed.

Hon. Mr. GOUIN: It seems to be the case of the suspension of human rights to which you were referring before.

The WITNESS: Yes, exactly, and it relates again to the problem of implementation, because it gives certain functions to the secretary-general and so forth.

Hon. Mr. ROEBUCK: It might be better to state how they could be derogated rather than throwing the whole thing out of the window. That is how fussy you have grown of the situation; how scared you are.

The WITNESS: That is a question that really should be referred to the government of the United Kingdom.

Now, we come to article 5:—

> A failure by any state party hereto to fulfil the obligations under article 2 is an injury to the community of states and a matter of concern to the United Nations as the community of states organized under the rule of law.

That again relates to implementation.

> Article 6: (1) While declaring their readiness to consider the adoption of further procedures designed to strengthen the international protection of fundamental human rights and freedoms, the states parties hereto accept the right of any of them, acting in the interests of the community of states, to bring to the attention of the General Assembly of the United Nations any violation by any of them of the provisions of this Bill of Rights as constituting a situation likely to impair the general welfare or friendly relations amongst nations and as a violation of the purposes and principles of the United Nations within the meaning of article 14 of the charter.
>
> (2) Any party hereto which is thus alleged to have violated the provisions of this Bill of Rights shall have the right to request the General Assembly to obtain the advisory opinion of the International Court of Justice thereon and to refrain from taking any further action on the matter until this opinion has been obtained, and if such a request is made the parties hereto agree that they are bound to support the request.

Article 7—and this is very important:

> The parties hereto agree that any one of them which is found by a resolution of the General Assembly adopted by a two-thirds majority persistently to have violated the provisions of this Bill of Rights should be deemed to have violated the principles of the charter of the United Nations and therefore be liable to expulsion from the organization under article 6 of the charter.

Now, you see there are some extremely important suggestions that have been made in this part of the United Kingdom's suggestions. These have been considered in the drafting committee and will be sent forward to the full commission. Now, you know that no state has taken a final position on the matter. Even the United Kingdom delegation itself reserves its rights; but it is being sent before the full commission as part of the documentation. I am not going to read to you part II; it is simply a catalogue of rights.

Hon. Mr. LEGER: It does not seem to differ much from the rights we have under our own criminal code.

The WITNESS: There are three.

The CHAIRMAN: It may go farther, I do not know.

Hon. Mr. LEGER: I just glanced at it.

By the Chairman:

Q. Has any attention been given to the difference between rights and freedoms, or is that regarded as an academic matter?—A. I think so, Mr. Chairman. They are used as synonomous terms.

Part III is rather important because it drafts the machinery for bringing the convention into force. The convention would not necessarily be binding on members of the United Nations only. Those states which adhered to the convention would be bound under international law.

Q. Am I right in saying that if this draft were adopted, all that could happen to a nation which violated the International Bill of Rights is expulsion from the United Nations?—A. That is the only thing stated in the document. I should not like to be taken as saying that other provisions of the charter might not be called into operation. I suggest that if the violation of human rights constituted a menace to the peace, then the whole provisions of chapter 7 of the charter would come into effect.

Hon. Mr. GOUIN: I might say it would be my own interpretation that the general provisions concerning sanctions and so on would apply.

By the Chairman:

Q. Not under the Bill of Rights, but under other provisions, naturally. The only sanction provided by the United Kingdom draft Bill of Rights is expulsion; is that right?—A. That is the ultimate sanction. You will notice there is a request for explanations which, in itself, is a sanction before public opinion.

Q. If you call it a sanction, I do not know?—A. You may say that the establishment of the right of discussion within the United Nations, in itself, is a kind of sanction. Perhaps it is not a very strong one, but the threat of international discussion of human rights might be enough to prevent certain states from violating human rights.

By Mr. Croll:

Q. It did not prevent South Africa? If you will permit me, I am going to read part III of the bill and annex 2 because it completes this picture. Part III reads as follows:

> This Bill of Rights is submitted, for the purpose of accession thereto, to every member of the United Nations, to every state party to the statute of the International Court of Justice and to every other state whom the General Assembly of the United Nations shall, by resolution, declare to be eligible.
>
> Accession shall be effected by the deposit of an instrument with the Secretary-General of the United Nations.

Well, I do not need to refer to these articles because they concern the coming into force of the bill.

By Mr. Hazen:

Q. What does the word "accession" mean there?—A. It has various meanings in international law. This is a convention which is being initiated by the General Assembly. It is not being intiated in the ordinary way. In the ordinary way a convention would be drafted, signed and ratified. I take it that there is no necessity for signature before accession. It is more like a draft of the International Labour Organization.

Mr. HOPKINS: I believe the immediate precedence for it is the convention on privileges and immunities which comes into force by the depositing of an instrument of accession. It has the effect of indicating agreement of the countries concerned and thereby creates an international agreement or obligation.

The WITNESS: Then, there is a section dealing with amendments and so on. Annex 2 is important because it adds to the machinery for implementation. The question of information is discussed. This is a type of sanction because obviously the publishing of information concerning respect for human rights in various countries, the threat of that publication might be a considerable incentive to the protection of human rights.

By Hon. Mr. Turgeon:

Q. Are the comments on the various articles as they appear in this document, made by the British government or by the United Nations Commission on Human Rights?—A. That is comment made by the United Kingdom.

Q. By the United Kingdom itself?—A. Yes.

Now, annex 2 says,

> All information published by the United Nations relating to human rights should be approved by the Commission on Human Rights before publication. The Commission should be guided in this matter by the principle that accuracy and objectivity in information published is the first essential.
>
> Before any information relating to the position in any particular state is published, it should be transmitted to the government of that state which should be given a reasonable time in which to make any comments thereon which it desires. If the government makes any comments and the Commission decides that publication of this information is nevertheless desirable, these comments should be published, together with the information to which they relate.
>
> By careful study and selection, the commission should endeavour to reduce the frequency of the occasions when it transmits information to governments for comments and also the volume thereof.
>
> Any explanations transmitted to the Secretary-General under part I, article 3 of the Bill of Rights and information given to the Secretary-General under article 4 (2) will be published automatically. Requests to governments for explanations under article 3 of part I shall be made on decision of the commission approved by the Economic and Social Council.
>
> The commission should consider the desirability of appointing an expert committee to assist it in the performance of these functions.

So, you see there is a whole gamut of sanctions and provisions on implementation contemplated by the United Kingdom draft.

By Hon. Mr. McDonald:

Q. The practicability of enforcement is very important for a man looking to the future. I wonder if there is anything you can say, after the great deal of study you have given to it, whether such a thing is practical of enforcement? —A. I am afraid that is the type of question which would be difficult for me to answer.

Q. I realize it is.

By Hon. Mr. Roebuck:

Q. Nothing is 100 per cent, in any case. It would depend upon the extent to which it could be enforced as even our criminal code is enforced.

Hon. Mr. McDonald: How far are you going to be able to force nations to live up to something like that?

The Witness: There is, perhaps, one other thing to which I should refer which deals with information. It is the fact that the point was made during the meeting of the drafting committee that the commission should seek to establish machinery not only for the punishment of states which violate human rights, but should seek to encourage in other ways, through education and so on, a respect for human rights.

Now, Mr. Chairman, I think that is about all I can say about the problem of implementation. There are a few things to which I can still refer if the committee desires me to do so. I could give some more detailed information regarding the functions of the subcommission on freedom of information and the proposed world conference on the freedom of information. I could refer to the work of the subcommission on the prevention of discrimination and the protection of minorities which, incidentally, has not yet met. It has been set up. I could refer to the functions of the Commisison on the Status of Women. I could refer to the work which has been done towards the drafting of an international convention concerning the crime of genocide which also comes within my division officially. If the committee wishes me to do so I could describe the organization of the division of human rights which is responsible for the work under the Secretariat, in regard to all matters dealing with human rights in the United Nations. I am at the disposal of the committee, Mr. Chairman.

By the Chairman:

Q. Is the drafting committee making any suggestions about implementation? Perhaps you spoke of that?—A. It considered the question of implementation. It requested the Secretariat to produce this memorandum which I read and it has forwarded that memorandum. It has forwarded the United Kingdom proposal, the Indian proposal and the Australian proposal for an International Court of Human Rights to the full commission, but it has not taken any decision. Indeed, it has not the power to make decisions.

By Hon. Mr. Turgeon:

Q. At any rate, it has not any recommendation of its own?—A. The term "recommendation" was studiously avoided. However, in connection with the question of implementation, it is important to draw your attention to the fact that the Economic and Social Council has put itself on record on this matter as long ago as June 21, 1946. At that time it adopted the resolution which I read out underlining the importance of setting up the machinery for the international implementation of human rights.

By the Chairman:

Q. Can you give us any idea as to what nations have bills of rights in their constitutions?—A. I cannot give you at the moment precise information but I can provide you with a few general ideas. I also refer you to that document which you have not yet before you, the documentation of the Secretariat draft which has all the extracts from the various national constitutions. I should also refer you to the fact that the division of human rights has published a year book on human rights which will be out in the latter part of the summer. It includes extracts from all the constitutions of the world dealing with human rights and contains chapters on those countries, such as Canada, which do not have written bills of rights.

By and large most countries have written bills of rights except Great Britain and the British Dominions. When we were preparing this year book, we found we had to get statements from constitutional experts in the United Kingdom and the British Dominions.

Q. Are those bills of rights harder to change than the provisions of British statutes, generally speaking?—A. Oh, yes, because they are part of the fundamental written constitution of the country.

Q. But there must be provision for amending them?—A. There is provision for amending the constitution together with the bill of rights, as in the United States, but the formulae are so different in different countries.

Q. Then, is the situation this under what I will call the British system; no parliament can bind future parliaments? Parliament might repeal Magna Carta, might repeal the Bill of Rights of 1688 and so on, but in these other constitutions which incorporate bills of rights, it is more difficult to get rid of them?—A. That is correct, Mr. Chairman. An example in modern British law is the statute of Westminster which, theoretically, could be modified or abrogated by the British parliament to-morrow.

Q. Suppose we are addressing ourselves to the question of whether there might be a bill of rights for Canada which will be part of the constitution of Canada, is not the question this; how difficult should we make it for future generations of Canadians to change those provisions? At the present time parliament or the legislatures, as the case may be, may change any provision in the law. In the guarantee of human rights, they may do that. Is not the question whether we should try and tie up future parliaments a little more tightly than they are tied up now? Is not that essentially the question for the Canadian people to decide?—A. I think it is the essential question for Canadians to decide but I do not think I should take part in that discussion. As an international official, I can provide any technical advice you might ask me in regard to it, but I should certainly not make any recommendation one way or the other. On the purely technical level I might suggest that your B.N.A. Act probably does protect certain human rights in Canada. Now, that cannot be changed by ordinary legislative process within Canada.

Q. What are they?—A. I am thinking of the right of education with regard to denominational groups.

Q. There is one other, is there not?—A. There is the language provision.

Q. Yes, in certain legislatures there is the language provision and those are the only two of which I can think. Otherwise, either parliament or the legislatures have the right to make changes. I do not know of any others, but that is something to ask our own officials I suppose. We are precluded by the British North America Act from taking those rights away. Those rights are guaranteed to certain minorities. We are also precluded from taking away the right to speak in certain languages in certain legislatures; namely, the Parliament of Canada and the legislature of Quebec. Apart from that, I do not think there are any fundamental rights or fundamental freedoms which are entirely guaranteed under our constitution. That is something which is left to the judgment of future parliaments.

Hon. Mr. Roebuck: Much more important, in the British North America Act is the guarantee which is given the individual politically, that he shall be governed by a parliament. I think that is the main feature of the British North America Act. It is the greatest guarantee of fundamental freedom which we have.

The Chairman: Yes, exactly.

Hon. Mr. Gouin: But it is subject to amendment.

Hon. Mr. Roebuck: Yes.

Mr. Marier: Those rights are not defined in the Act as they would be defined according to this present idea for a bill.

Hon. Mr. ROEBUCK: Most of our fundamental law with regard to human freedom and civil rights is the common law and the whole body of the common law.

The CHAIRMAN: Can we safely assume that this parliament is more competent than future parliaments to define what are human rights and fundamental freedoms?

Hon. Mr. ROEBUCK: I would say not.

The CHAIRMAN: Do not we have to make that assumption in order to say it is our duty to draft a bill of rights for Canada?

Hon. Mr. ROEBUCK: I do not suppose anybody who had given thought to history would endeavour to tie up future generations and say you shall not do such and such things. What we might do is express in some dramatic way, what we believe to be fundamental and elementary in the matter of human rights and to warn future generations not to depart from these principles lightly.

Mr. CROLL: We cannot assume can we, that all parliaments in the future will be less wise than we are?

The CHAIRMAN: I was not suggesting we make any such assumption, but I am wondering whether that assumption is not involved in the assertion of a duty on the part of ourselves to try to put a bill of rights into the constitution.

Mr. HERRIDGE: While we have Mr. Humphrey here, could we have some information on the freedom of information. There are one or two points upon which he can report and we have not had any information on that so far.

The WITNESS: Well, Mr. Chairman, at the session of the General Assembly last winter, a resolution was adopted instructing the Economic and Social Council to convoke a world conference on the freedom of information before the end of 1947. Before that resolution was adopted, however, certain decisions relating to the freedom of information had already been taken within the United Nations. I have referred to the creation of a subcommission on the freedom of information and the press which was created by the Commission on Human Rights.

Now, the terms of reference of that subcommission are rather general.

> The function of the subcommission shall be, in the first instance, to examine what rights, obligations and practices should be included in the concept of freedoms of information and to report to the Commission on Human Rights on any issues which may arise from such examination.

Hon. Mr. GOUIN: That is document No. 1, page 10.

The WITNESS: After the adoption of the Assembly resolution calling for the convocation of a world conference, it was decided the proper organ to prepare this world conference would be the subcommission on freedom of information I may say in parenthesis here, that a Canadian was a member of that subcommission. I am referring to Mr. George Ferguson. At the first session, the subcommission devoted practically all of its time to trying to work out an elaborated agenda for the proposed world conference and left over the consideration of the definition of what is meant by freedom of information and so on until its next meeting.

The report of that subcommission will come before the Economic and Social Council on the 19th of July. At the same time, the Economical and Social Council will be asked to recommend to the General Assembly a change in the date of the proposed world conference for purely material reasons. It will not be possible to hold this world conference within 1947 as the Assembly resolution stipulates. That conference will be held, therefore, in 1948. It will probably be at the beginning or early part of 1948. The subcommission has recommended that the conference be held in Europe although no city has been fixed.

Now the agenda which is not final because it has to be approved by the Economic and Social Council is, as I have said, rather elaborate. I think it would take up too much of your time, Mr. Chairman, if I were to read it to you but I can refer you to the document. The document is dated June 5, and bears the United Nations number E/441. It is entitled, "Report of the subcommittee on Freedom of Information and of the Press to the Economic and Social Council and to the Commission on Human Rights." It deals with such matters as the participation of non-member states in the conference; participation of specialized agencies, non-governmental organizations and so on. Then, in chapter 3, it recommends a provisional agenda which, as I have said, is rather elaborate and I think would take too much of the time of the committee to read it.

This whole picture will crystalize, I think and become much clearer after the meeting of the Economic and Social Council. The thing to retain is that the United Nations is taking definite steps in the field of freedom of information. I should say that the expression "freedom of information" does not only include freedom of the press because it relates to other media of mass communication such as radio, cinema and so on. Mr. Chairman, on very general lines there is the picture. I should be glad to fill it in with any details.

By Mr. Hazen:

Q. You stated or I understood you to say, there is a great difference between, I think you used the words, "catalogues of rights", under document No. 3 which is the one submitted by Lord Dukeston and the rights as contained in the draft which has been made?—A. Yes, there are three documents.

Q. Are you in a position to tell us what the differences are?—A. I could, in very general terms.

By Mr. Whitman:

Q. Before you answer that question, could we say there is a drafting group circulating a preliminary draft of human rights to the members of the Commission up to June 25 with a view to submission to the commission on August 25. You said that had been prepared but was not finally finished. Is that confidential or could we have that before the committee?—A. It is not confidential. It will come out as an official document. It takes the form of a report of the drafting committee to the full, Commission on Human Rights.

Q. When will it be available?—A. That is a material question because it depends on how long it takes us to translate and mimeograph the document. We have been having considerable difficulty with some of these problems.

Q. I have here two reports or statements on human rights, one by this American Law Institute and the other by the Department of External Affairs in the British government. This one, I suppose will embody the points which are in these two and perhaps some more.—A. I would say—

By Mr. Hazen:

Q. I wonder if I could have my question answered?

Mr. WHITMAN: I am sorry.

By Mr. Hazen:

Q. If you are in a position to do so, could you tell us the differences between what I will call this British submission and the submission which has been prepared but is not ready to be circulated?—A. Yes, may I refer to the three drafts. I think it will make the situation clearer. I will refer to the Secretariat draft, the United Kingdom draft and to the draft which is being forwarded by the drafting committee. They are all being forwarded, but it is being forwarded more as the drafting committee's own document. I have to

be very careful not to create a false impression. There was not any final agreement even on the third draft.

The Secretariat draft having, of course, been drawn up by international officials reflects the concepts of human rights in different countries; countries with different political philosophies. I would not say it was a compromise, but it tries to be absolutely objective on an international level. Its purpose was to bring before the commission and the drafting committee for the purpose of discussion, all questions so that the drafting committee and the commission could reject those articles which it did not think suitable or appropriate in an International Bill of Rights. Therefore, it is much more all-inclusive.

Now, the United Kingdom draft naturally reflects, and I think the point was made here in the committee earlier, the law and practice of the United Kingdom and was drawn up with the definite idea it should take the form of a convention. The Secretariat draft was drawn up with the idea it might take the form of a convention or it might take the form of a declaration. A more elaborate draft was drawn up which, as I said, it was thought might take the form of a convention or it might take the form of a declaration. Now, when you come to the third draft, I think this committee will find that it goes a step further.

By Mr. Hazen:

Q. Pardon me, you refer to the third draft; am I right in assuming that that is the draft which was to have been ready for distribution to the committee on the 26th of this of this month?—A. No. There is some misunderstanding there. There is no date fixed.

Q. I mean, there was a draft to be circulated to members of the commission on June 25.—A. But that is out of the picture altogether. Let me explain. I think I referred to the fact that when the first draft was drawn it was referred to the Commission on Human Rights, and then there was a subcommission set up to draft a further copy. This subcommission met and it reported back to the Economic and Social Council that their decision was to set aside the first draft as not suited because the first commission as set up was not properly constituted. It was a commission of three. They recommended that a new drafting committee of eight should be established, and this drafting committee which has just met has the matter in hand. There is no instruction now to have something ready by June 25.

Q. I understood you to say there was something ready?—A. Yes, there is.

Q. Would that be the third draft?—A. That is the one. I will identify that now. The main documents which the drafting committee had before it were the secretariat's draft of the United Nations project. Now, when the committee began to discuss the form that the bill would take there was some thought that it should take the form of a convention, and some thought that it should take the form of a declaration, and some people thought there should be both a declaration and a convention; so they used the secretariat draft as the basis for drawing up the third draft which could be a declaration or a resolution of the general assembly. That is the draft which we have not got before us. It is considerably shorter than the secretariat draft and it does not include all of those things which it was felt were more proper for inclusion in a convention or in a declaration.

By Hon. Mr. McDonald:

Q. Was it torn up?—A. Exactly what happened was that Professor Cassin, who is president of the commission, and who was familiar with the French position and the French member of the commission on human rights was asked to take the secretariat draft and rewrite it with the idea of presenting something that could be put forward in the form of a declaration. The first draft

was discussed, modified and changed, and it will finally go forward, not as the first draft but as the report of this drafting committee. But again I must repeat that it has not got the approval of the committee; it is not even coming specially as a recommendation.

Q. How is this committee composed?—A. That question of the composition of the draft committee came before the Economic and Social Council. Mrs. Roosevelt, the chairman of the full commission, wrote to the president of the congress and said in view of the discussion she would be glad to appoint a draft committee of eight taken from the membership of the full commission; and she suggested that the five great powers and three other states namely, Chile, Lebanon and Australia be included in that. They are all members of the commission.

Q. Did you say Lebanon or Netherlands?—A. Lebanon.

Mr. WHITMAN: Mr. Chairman, is it possible for this committee to have a copy of that statement, or convention?

The CHAIRMAN: I would think so. I understand we are going to get it within the next few days.

Mr. WHITMAN: And it will be available to all the individual members of this committee?

The CHAIRMAN: We have already been promised that it will be made available to us.

The WITNESS: That is part of the report of the drafting committee. It is one of the annexes to the report which will be circulated in due course. I haven't even got a copy of it myself.

By Hon. Mr. McDonald:

Q. Am I correct in the impression I got from you? Did you say that all countries had bills of rights? I think you said all the countries except the British empire.—A. I do not want to be quite that definite. I said my impression is that most countries, apart from the United Kingdom and the British dominions, have some form of bill of rights. Let us put it this way: there are provisions within their constitutions dealing with civil rights; in some cases very elaborate provisions. I would not like to put myself on record as having said that the only countries which did not have written bills of rights were the United Kingdom and the British dominions.

The CHAIRMAN: There has been some reference in the evidence before this committee to such proposals to have something called a bill of rights or a declaration of rights in the United Kingdom; I mean, domestically. Do you know anything about that?

The WITNESS: No, Mr. Chairman; I must say that I do not. At the meeting of the drafting committee the British member made quite a point of the fact that there was, of course, no written constitution in the United Kingdom.

The CHAIRMAN: Oh, yes, I think that is quite fundamental myself.

Hon. Mr. GOUIN: There may have been some confusion with the draft of the international bill.

The CHAIRMAN: I find myself in some confusion too. Mr. Henry, of the Justice department, I think knows something about it.

Mr. HENRY: There was introduced into the British House last fall a bill called the "preservation of the rights of the subject". It is not very much like a bill of rights; but in effect it deals—I can't give you the exact details—but it deals with orders in council and limitations of actions which are part of those orders in council. I am sorry that I do not know more about it than that, but it was in no sense a bill of rights.

The CHAIRMAN: It was supposed to be an Act of Parliament in restraint of the executive, was it not?

Mr. HENRY: That is right, sir.

Hon. Mr. GOUIN: We have before us some three or four documents. No. 2, which has already been mentioned, is a draft prepared by the American Law Institute and submitted to the general assembly by the delegate from Panama. Have you any remarks you would like to make with respect to that document?

The WITNESS: Yes, Mr. Chairman. This is one of a number of drafts which have been submitted to the committee of the United Nations and which were taken into consideration, in particular by the secretariat, in the preparation of its draft outline. I do not think I would like to make any comment regarding the contents of this. I can simply say that was used extensively in the preparation of the secretariat document.

The CHAIRMAN: You had a list of subjects there which you meant to discuss.

The WITNESS: I have discussed the freedom of nations, the subcommission on the prevention of discrimination and the protection of minorities. The commission on genocide was authorized to set up three subcommissions; one on the freedom of nations, one on the prevention of discrimination, and a third on the protection of minorities. At the last meeting of the commission, however, it was decided that the two proposed subcommissions on the prevention of discrimination and the protection of minorities would be merged and that only one would be created. This is on page 10 of document No. 1. We have the reference. The amended terms of reference of the subcommission are as follows:

> In the first instance, to examine what provision should be made to give effect to the principles which are to be applied in full prevention of discrimination on account of race, sex, language or religion; and to deal with urgent problems in this field by making recommendations to the commission.

The members of this subcommission have been named, but the subcommission has not yet met. It will meet on December first next. I may say that during the meeting of the recent drafting committee a good many questions came up and it was suggested that a good many of these questions be referred to the subcommission on the prevention of discrimination. You know, of course, that in 1919 a rather elaborate procedure was set up for international protection of minorities. within certain European countries. That, if not in practice, in law has all disappeared; and there is, in effect, no juridical basis whatever at the moment for the work of the subcommission on the prevention of discrimination. It is simply asked to define certain fundamentals.

The CHAIRMAN: It will not necessarily be written into the new International Bill of Rights. It will make recommendations, but it will not be implicated in any way.

The WITNESS: That will be quite possible, Mr. Chairman; but I would draw your attention to the fact that practically every member on the commission on the International Bill of Rights has raised new proposals for the prevention of discrimination. Now, this is one of the things which is clearly set out in the charter. The charter established the principle that there shall be no discrimination on the grounds of race, sex, language or religion.

The CHAIRMAN: I suppose that in the drafting committee and in the other meetings of these commissions and subcommissions you have had considerable discussion about what this phrase means?

The WITNESS: Yes, we have.

Hon. Mr. GOUIN: We are not surprised at that.

The WITNESS: Then, there is the commission on the status of women. There is also a draft convention on genocide; and, finally, if you want, I can say something about the organization of the Commission on Human Rights.

Mr. HAZEN: What about this committee or these committees and commissions, making so many drafts of an International Bill of Human Rights? What distinction do you make between the term "Human Rights" and "Fundamental Freedoms"? Are they not considered as being more or less synonymous?

The WITNESS: More or less, Mr. Chairman. I think you could say that they have different meanings, but it would be largely academic.

Hon. Mr. GOUIN: With reference to the subcommission on the status of women, did you say that it had already made some reports which could be submitted to us?

The WITNESS: Yes. The commission on the status of women had its first session in February of this year. It has presented its report which was considered at the last meeting to the Economic and Social Council. The commission will meet again in 1948.

Hon. Mr. GOUIN: If there is anything in addition to what you have given us in our first document, document No. 1, we would be very glad to have it. We have just a synopsis, you see, of the resolutions adopted at the meetings which you have just mentioned; but there is no full report concerning the commission on the status of women.

The WITNESS: Well, you should have the report of the commission to the Economic and Social Council. You should also have a copy of the resolutions taken by the Economic and Social Council on that report. These documents, incidentally, have all been distributed to member states and must be available somewhere here in Ottawa.

The CHAIRMAN: Are there other questions which members of the committee would like to put to Mr. Humphrey?

Hon. Mr. GOUIN: I suggest that it might be well for us to have the report of the subcommission on genocide.

The CHAIRMAN: Yes.

The WITNESS: Well now, the general assembly adopted the resolution on genocide. Genocide can be defined very briefly as mass homicide; that is to attempt to liquidate whole groups of people, religious groups, political groups, cultural groups or linguistic groups. The General Assembly, as I said, adopted a resolution saying this was a crime under the law of nations and requested the Economic and Social Council to take further action in the matter. The Economic and Social Council, at its last session, instructed the secretary general to prepare a draft convention, a study, on the crime of genocide and that matter was referred to my division. We have prepared a draft convention, a study, which was submitted to the committee of the General Assembly on the progressive codification of international law. That committee however, did not think its terms of reference allowed it to take any action in the matter, so nothing was done at that stage. Very shortly, a draft is to be prepared by the secretariat. I forgot to say that we were instructed to, and did consult experts. The draft which has resulted will very shortly be distributed to all member states for their comment on the matter and will probably come up again at the next meeting of the Economic and Social Council.

Hon. Mr. TURGEON: When is that?

The WITNESS: July 19.

The CHAIRMAN: Are there any other questions?

If there are no questions I want to thank Mr. Humphrey, and I express the thanks of the committee to you, for giving us exactly the information we wanted and for giving it so fully and clearly. It has been very helpful to us.

I may say to the committee that, following the plan of procedure agreed upon by the committee, the next step will be for the chairmen to call a meeting of the steering committee to make a report at the beginning of the next meeting, or to make recommendations at the beginning of the next meeting, as to the procedure to be followed from now on.

Hon. Mr. TURGEON: Are we having a meeting first for the purpose of asking questions of Mr. Varcoe?

The CHAIRMAN: That will be for the steering committee to consider, but I should think it would be the first thing to do, myself. Now with regard to the next meeting of the committee, have the members any suggestions? Should it be Tuesday or Wednesday or Thursday of next week?

Hon. Mr. McDONALD: I should think it should be the latter part of the week.

Hon. Mr. CRERAR: Either Tuesday or Friday.

Hon. Mr. ROEBUCK: A good many of us are going away on Tuesday.

Hon. Mr. CRERAR: The House is sitting on the 1st is it not?

The CHAIRMAN: Yes.

Hon. Mr. McDONALD: Are you going to be here Mr. Chairman the week after next?

The CHAIRMAN: I will be away for two or three days during the week after next, but I should think we might aim at Thursday of next week, if that is not too long an adjournment, and if the steering committee has no views as to whether it should be Wednesday or Friday.

Hon. Mr. CRERAR: There are other committees that are usually sitting on Wednesday and Thursday but they have to overlap anyway.

The CHAIRMAN: Well, shall we leave it that the next meeting will be Thursday at 11 a.m., unless the members of the committee are informed to the contrary.

The meeting adjourned at 12.50 p.m. to meet again on Thursday next, July 3, 1947, at 11 a.m.

SESSION 1947

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, JULY 4, 1947

WITNESS:

Mr. F. P. Varcoe, Deputy Minister of Justice, Ottawa.

OTTAWA
EDMOND CLOUTIER, C.M.G., B.A., L.Ph.,
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY
1947

MINUTES OF PROCEEDINGS

The SENATE,

FRIDAY, 4th July, 1947.

The Special Joint Committee on Human Rights and Fundamental Freedoms met at 11.00 o'clock a.m. Right Honourable J. L. Ilsley, the Joint Chairman, presided.

Also present:

The Senate: Honourable Senators, Crerar, Fallis, Horner, Leger, and Turgeon.

The House of Commons: Mrs. Strum and Messrs. Beaudoin, Croll, Diefenbaker, Hackett, Harkness, Hazen, Herridge, Marier, and Michaud.

The Chairman read the second report of the steering committee. Debate followed.

Mr. Herridge suggested that organizations or groups submitting written representation be requested to provide sufficient copies for distribution to all members of the Committee. This was concurred in and the Chairman accepted it as a direction.

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

On motion of Mr. Diefenbaker,

Ordered,—That copies of the following be obtained and distributed to members of the committee:

(*a*) *Judgments of the Supreme Court of the United States.*
- (i) Jones vs City of Opelika;
- (ii) Jobin vs State of Arizona;
- (iii) Douglas vs City of Jeannette;
- (iv) Martin vs City of Struthers;

(*b*) *Judgment in trial division of the Supreme Court of Ontario.*
- (i) Drummond Wren Case.

(*c*) In defence of Democracy, an article written by Frank Murphy, by the Carnegie Endowment for International Peace, "International Conciliation", May 1940, No. 360.

Mr. Diefenbaker moved that the clerk of the Committee communicate with law schools and attorney-general of provinces requesting,—

(1) Opinion on the question of the power of Parliament to enact a comprehensive bill of rights applicable to all of Canada;

(2) Suggested terms of a bill of rights for Canada.

Debate followed, in the course of which several amendments were proposed and adopted.

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The question being put on the motion as amended, it was unanimously

Resolved,—That the clerk of the Committee write to the attorneys-general of the provinces and to heads of law schools requesting views and opinions on the question of the power of the Parliament of Canada to enact a comprehensive bill of rights applicable to all of Canada and that such written views be forwarded to the Minister of Justice.

By leave, Mr. Pouliot, M.P., was permitted to address the Committee on a matter of the protection of his fundamental freedom of speech.

The Chairman, with the concurrence of the Committee, informed Mr. Pouliot that his presentation was not within the terms of reference of the Committee.

Mr. Pouliot retired.

On motion of Mr. Croll, it was directed that the steering committee prepare a draft final report for submission to the Committee.

The Committee considered Bill No. 133, An Act to amend the Criminal Code. (Illegal Organizations).

The Chairman read a letter from the sponsor of the Bill, Mr. LaCroix, M.P.

Debate followed in which members pointed out difficulties likely to be encountered if the Bill were to be considered at this time.

The Chairman undertook to convey in writing the views expressed by members and to solicit the concurrence of the sponsor in a suggestion that proceedings during this session be terminated.

The Chairman tabled the following:

(i) Preservation of the Rights of the Subject Bill, introduced in the Parliament of Great Britain by the Marquess of Reading. (*See Appendix "E"*).

(ii) Declaration of the Rights of Men (Adopted on August 27, 1789, by the French National Assembly). (*See Appendix "F"*).

Mr. F. P. Varcoe, Deputy Minister of Justice, Ottawa was called. He read a prepared paper summarizing his presentation of Thursday, 26th June, to the Committee.

It was agreed that a final report to both Houses be considered at the next meeting.

The Committee adjourned at 12.50 o'clock p.m. to meet again at the call of the Chair.

J. G. DUBROY,
Clerk of the Committee.

MINUTES OF EVIDENCE

THE SENATE,

July 4, 1947.

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: The steering committee met the day before yesterday and the clerk has prepared a report of the proceedings of the steering committee which I shall read. I think members have copies of it but perhaps I had better read it anyway.

SECOND REPORT OF STEERING COMMITTEE

Pursuant to paragraph 4 of the first report of your steering committee presented on Friday, 13th June, your committee met Wednesday, 2nd July, 1947, to consider further procedure.

It was agreed that the committee should proceed as planned with the questioning of Mr. F. P. Varcoe, Deputy Minister of Justice, on his presentation to the committee on Friday, 20th June.

The following applications to appear and make representations to the committee were reviewed:

(i) Jehovah's Witnesses, filed by Mr. W. Glen How, Barrister, Toronto, General Counsel for the Association;

(ii) Mr. Irving Himel, Barrister, Toronto, Counsel for the following organizations:

Chinese Community Centre of Ontario, Toronto;
Kuo Ming Pan, Ottawa;
Chinese Benevolent Association, Windsor;
Chinese Community Centre of Kingston;
Chinese Community Centre of Hamilton;
Chinese Association, Fort William;
Chinese Community Centre of London;
Chinese Community Centre, Timmins;
Chinese Benevolent Society, Montreal;
Chinese Association of Quebec, Quebec;
Chinese Association of Moose Jaw, Moose Jaw;
Chinese Association Manitoba, Winnipeg;
Chinese Community Centre of Halifax, Halifax;
Chinese Consolidated Benevolent Association, Victoria;
Chinese Benevolent Association of Edmonton, Edmonton;
Vancouver Committee on Chinese Immigration, Vancouver.

(iii) Canadian Daily Newspapers Association, Toronto.

I think those are the only three applications to be heard that have been received by the committee.

Written representations from the following organizations were also considered:

(i) A Resolution passed by the National Council of Women of Canada at its annual meeting held 6th June, 1947, in Regina;

(ii) A letter dated 9th June, 1947, signed by the Secretary of the Alberta Conference of the United Church of Canada, covering portions of the Report of the Evangelism and Social Service accepted by the Alberta Conference of the United Church of Canada at its recent meeting;

(iii) A letter dated 23rd June, 1947, from the Secretary of the Civil Liberties Association of Manitoba, enclosing a statement signed by Mr. David Owens, together with a printed form headed "A National Bill of Rights".

It is recommended that these papers be not printed in the records of the committee but that they be made available to members, on request.

Your committee also noted correspondence of a general nature received. It is recommended that such letters be acknowledged, reviewed by the steering committee and filed. They will be available to any member desiring to see them.

It was agreed that the chairmen would confer with the sponsor in regard to procedure on the subject-matter of Bill No. 133.

Your steering committee is of the opinion that a prolonged and complex study will be necessary before the committee will be in a position to act on its terms of reference. In view of the advanced stage of proceedings of parliament, it is considered that such a study is not practicable during the present session.

Accordingly, it is recommended that the committee consider:

(*a*) The advisability of terminating its activities for this session;

(*b*) Presenting an interim report to both Houses outlining proceedings to date and pointing out in general terms the extensive study and research necessary to complete this work;

(*c*) Recommending to the government the posibility of appointing a similar committee with similar terms of reference to resume consideration of this question at the next session of parliament.

In line with the above suggested procedure, it is recommended that a letter conveying the decision of the committee be sent to persons who have made applications to appear.

All of which is submitted.

Perhaps the best manner to bring this before the committee for discussion is for someone to make a motion for concurrence, if they will.

Hon. Mr. TURGEON: I so move.

The CHAIRMAN: It has been moved that the report be concurred in. Is there any discussion?

Mr. DIEFENBAKER: Unfortunately yesterday I could not attend the meeting of the steering committee because of the pressure of work on another committee. While I am very disappointed at the progress that has been made this session by reason of the lateness of the appointment of the committee I agree that it would be impossible to cover comprehensively all that has to be looked into under the terms of the reference. While I would have liked to have seen a great deal of progress made at this time there is nothing one can do but accept the recommendations of the steering committee because of the fact that the session is so near termination.

I should like to suggest, however, that a communication be sent by the clerk of the committee to the various law schools in the dominion with a view to securing from them the benefit of their ideas and suggestions. It is a tremendous field to cover the question of a bill of rights for Canada. I know I have read for two years on the subject, and one merely touches the fringe however carefully one reads.

I think, too, it would be well to have the committee supplied with the various judgments of the Supreme Court of the United States, some of which were mentioned the other day by Mr. Varcoe, and also the records of the Carnegie Committee on International Conciliation. There are at least six volumes of that monthly work that have dealt at length with the question of a bill of rights and with fundamental freedoms. One of the best summaries is in an issue published in 1941. It is an article by Frank Murphy who at that time was Mayor of Detroit, now a judge of the Supreme Court of the United States, and one of the most outstanding Catholic jurists in the history of the United States. In that article he has dealt at length with the subject of fundamental freedoms, and in particular the preservation of the freedom of religion. When the judgments of the United States Supreme Court in recent years are read in the light of Mr. Justice Murphy's opinions in 1941 new light is shed on the whole doctrine of freedom of religion. I should like to suggest that copies of the following judgments of the United States Supreme Court be delivered to the members of the committee, if I may at this time.

The CHAIRMAN: Yes.

Mr. DIEFENBAKER: The first is Jones vs Opelika. That is in 1941 United States Supreme Court. Then there is Jobin vs Arizona, Douglas vs the city of Jeannette, and Martin vs the city of Struthers in Ohio. Those are the four outstanding judgments in which the questions of freedom of the press, of speech and of religion are discussed and decisions given on them.

The reason I suggest a study by the committee is that practically all the arguments that were advanced the other day by Mr. Varcoe were argued in the United States Supreme Court, and are referred to in the judgments. A study of those judgments is most helpful in gaining a knowledge of the subject.

The CHAIRMAN: Would the proper procedure not be to adopt this report, if it meets with the approval of the committee? Then Mr. Diefenbaker can make a motion that the clerk obtain and distribute certain documents, and also that he communicate with the law schools. I think that is what Mr. Diefenbaker suggested. Is there any further discussion on the steering committee's report?

Mr. HANSELL: As to the matter of bill 133 have there been any developments?

The CHAIRMAN: I will mention that after I get through. I should say that the subject matter of that bill has been referred to this committee, and I think this committee must pay some attention to that reference. That is a specific reference of the subject matter of a bill by the House of Commons to this committee.

Mr. POULIOT: I do not want to interrupt you, but when you are through may I ask if I will be permitted to say something to you?

The CHAIRMAN: Yes, just as soon as we dispose of these two motions if you wish to say something it will be quite all right.

Mr. POULIOT: Thank you.

The CHAIRMAN: With regard to Mr. LaCroix' bill I spoke to Mr. LaCroix and asked him if he wanted his bill considered. He has written me a letter which I have sent for. When that letter comes later to-day I should like to discuss with the committee the appropriate reply to make to that letter. Is there any further discussion on the steering committee's report?

Hon. Mrs. FALLIS: On the second page of the report at the top of the page it says that it is recommended that certain papers be not printed but made available to members on request. Should we not just take it that all members really request those because we would need to have those? Then we would not have to make a special request for them. Could copies of those be distributed to members without each member having to write in? They would have to be mimeographed anyway.

Mr. MICHAUD: I think we all want them.

Hon. Mrs. FALLIS: We all really need them.

The CHAIRMAN: You are referring only to the resolution and the two letters at the bottom of the first page of the report?

Hon. Mrs. FALLIS: Yes. They would have to be mimeographed for those who requested them. I think we all should have them.

The CHAIRMAN: The only thing is this is a precedent. As time goes on we will get a large number of communications. It is going to take a lot of work to circulate those to all members of the committee. Could they not be made available to any member of the committee?

Hon. Mrs. FALLIS: I was referring specifically to the ones at the bottom of the first page, not as to what is mentioned about correspondence, and so on.

Mr. CROLL: Would you consider putting them as an appendix to the record? Do you think there would be too many?

The CHAIRMAN: Yes, I think so.

Mr. CROLL: Not enough interest in them?

The CHAIRMAN: I do not think so.

Mr. MICHAUD: We have already received the one from Mr. How. We all got that one. It is quite a pamphlet.

Mr. CROLL: As a matter of fact, we have received all these.

The CHAIRMAN: I think most of the members have received them. Have you not received these?

Hon. Mrs. FALLIS: I have received No. 1, of course, the resolution passed by the National Council of Women, but I have not received 2 and 3.

Hon. Mr. TURGEON: I have received No. 3 which came ordinarily in the mail to me as a member of the Senate.

Hon. Mrs. FALLIS: I have not received it.

Hon. Mr. TURGEON: I remember No. 3 but I do not remember the others.

The CHAIRMAN: I think in view of the fact we will be receiving a large number of these communications, many of them duplicating others, that we should note them and file them, and any members of the committee will have access to them. They can go to the clerk and look at them, and if any member of the committee thinks they are of sufficient interest and might be circulated he can make a motion that that be done at any time. That is what I think should be done about it, but I am in the hands of the committee.

Mr. HERRIDGE: In order to save unnecessary work would it not be advisable for the committee to suggest to these persons wishing to send in documents of this kind that they send a copy directly to each member of the committee? That would cover the same thing.

The CHAIRMAN: You mean when a communication is received by the chairman or secretary that the chairman or secretary reply and say, "Please send that to all members of the committee"?

Mr. HERRIDGE: I think that would save time.

Mr. MICHAUD: That is a good idea.

Hon. Mrs. FALLIS: That would cover it.

Hon. Mr. TURGEON: I think we have likely had all these. I know I have had one of them.

Mr. HANSELL: The second one, the letter from the United Church, I do not think has been received by us, but that is just a very short letter, is it not?

Hon. Mr. CRERAR: The suggestion to the authors of these things that they might send one to each member on direct request is a good one.

The CHAIRMAN: That will not require any amendment to this report. I will simply take that as a direction from the committee and the clerk will take note of that. Is there any further discussion on the report?

Carried.

The report is adopted. Now, we have Mr. Diefenbaker's motion.

Mr. DIEFENBAKER: I will not repeat the various judgments that I mentioned. I move that a copy of the judgments to which I have referred be delivered to the committee as well as the judgment in the trial division of the Supreme Court of Ontario delivered some two years ago by Mr. Justice Keiller MacKay in a case known as the Drummond Wren case wherein the question of the right of an owner of land to incorporate in an agreement at the time he sold it that it should not be at any time in the future sold to one of the Jewish faith was dealt with. That judgment declared such an addendum to the agreement as beyond the competence of the contracting party as contrary to public policy. Mr. Justice MacKay in arriving at a judgment went into considerable detail in regard to fundamental freedoms and their basis in this country, not only in so far as bills of rights are concerned but also on our international obligations under the United Nations pact and the Atlantic Charter. It is a particularly fine judgment, and it clarifies one's thinking to have it before us.

The CHAIRMAN: Your motion is that certain documents be mimeographed and distributed to members of this committee. Is the list sufficiently definite?

Mr. DIEFENBAKER: I gave the list earlier.

Hon. Mr. HORNER: And also the law schools.

The CHAIRMAN: That will be a separate motion. First with regard to this have you, Mr. Clerk, a sufficiently definite list?

The CLERK: Yes.

The CHAIRMAN: It has been moved by Mr. Diefenbaker that these documents be mimeographed and distributed among members of the committee. Is there any discussion?

Mr. HANSELL: In addition to that I notice in the minutes of proceedings No. 4, there is a list of documents that were ordered to be filed with the committee. I do not know how voluminous they are, but just reading the titles of them they look very interesting to me. I should like to have some of those. I feel that we are going to close the sittings soon. We may not all be members of the committee next year but some of us may. It does not matter, but during the recess would be a nice time for us to set aside to digest some of these things. Would it be too much work to have these documents included with Mr. Diefenbaker's?

The CHAIRMAN: Already arrangements have been made to have photostatic copies made of these documents and to have them distributed to the members of the committee. That will be done early next week.

Now then, your next motion is with reference to communicating with law schools. Could you put that?

Mr. DIEFENBAKER: Yes, I would move that, Mr. Chairman. I think we would benefit very greatly from suggestions from the various law schools on this subject. I know these schools have shown a great deal of interest in the matter. When I first introduced the subject a year ago in the House, practically

every professor of law in the dominion, unsolicited, wrote me and endeavoured to place his interpretation of the law and the authorities before me. Most of them went into very great detail and were most helpful.

The CHAIRMAN: When we invite communications we must be specific as to the nature of the communications we invite.

Mr. DIEFENBAKER: First, I would suggest the terms for a bill of rights and secondly, the question of the power of parliament to enact a comprehensive bill of rights applicable to the dominion.

The CHAIRMAN: That is a question of law, is it not? The question then arises whether the attorneys-general of the provinces should not be asked for their views?

Mr. DIEFENBAKER: I agree with that. I would incorporate that in the motion. I had forgotten to mention it when I made this motion. When the matter was before the House, I suggested that the provinces be consulted. I am glad that you brought that to my attention. I so move because we need the cooperation of the attorneys-general, and certainly an exchange of views with this committee or any representations the various provincial attorneys-general might like to make would be helpful.

The CHAIRMAN: I am just suggesting this matter for consideration. If this committee had decided to recommend the enactment of a bill of rights or the adoption of a bill of rights throughout Canada, then it would be proper for the committee to get all the assistance it could as to its terms. However, the committee may recommend against that. Is it or is it not premature to invite suggestions for a bill of rights before you decide on the main question?

Mr. DIEFENBAKER: I regard this as a committee that can do a great work for our country. To do that work, it has to be seized of the facts as well as the law. Mr. Varcoe has outlined his views quite frankly, stating there is not authority other than the Alberta Press case in 1938 from which he can deduce the conclusions at which he has arrived.

I would point out, sir, there is a very large body of opinion in this country that is asking this committee to give most serious consideration to this problem. I realize that on occasion petitions are signed by people thoughtlessly. In this case, a group took a petition around, a very small group who are very generally disliked, and yet were able to secure half a million signers. If this committee or the committee which follows it is to discharge its responsibility, we must have the benefit of the best opinion we can get. It is for that reason I not only suggest that the various law schools be communicated with, but primarily, of course, that the attorneys-general be communicated with, with a view to ascertaining the opinions of the provinces of our country.

Hon. Mr. CRERAR: That is a very important point, Mr. Chairman, and I think before we get very far it has to be settled or, at any rate, clarified. How far is it within the competence of the federal parliament to incorporate a bill of rights of the nature indicated by Mr. Diefenbaker? That is still open to question.

For instance, provinces have certain rights under our constitution. We do not need to detail those to Canadian citizens. However, Canadian citizens in certain provinces who happen to be of a certain racial extraction are denied a franchise. In other provinces citizens of Canada are denied the right to own property except under certain conditions. That, normally is an interference with fundamental freedoms and humain rights. In still another province a curious religious sect for which I have utterly no use has been criticized and controlled.

Now, quite obviously there must be a point where the federal power ceases and the provincial rights begin. Mr. Diefenbaker's idea is to consult the provinces with a view to getting their opinion on this, and it may be very

useful. Supposing a province says, "That is very true but we are not going to give certain people the franchise in our province even if they are Canadian citizens." Another province may say, "That is very nice but we are not going to allow them to own land except under certain conditions which differ from others." Have not these questions to be resolved? I think for these reasons the task before this committee of writing a bill of rights is a very formidable task. There is no use having this parliament frame a bill of rights and try to get it into the constitution if it is going to arouse animosities all over the country.

The CHAIRMAN: Should not this invitation be deferred until the next session when the next committee is sitting? This committee is going to be out of existence within the next two weeks and we are not inviting submissions to be made within that time. Should not the new committee to be set up next year be the one which decides on whether they must want to hear from the law schools and the attorneys-general?

Mr. DIEFENBAKER: I am trying to look at this dispassionately. The promise of this committee was made in the speech from the Throne in January. The introduction of the committee was delayed for months and months. Now, we are either playing with this problem or we are facing up to it. I suggest that all we are doing is playing with it unless we do something to be of assistance in arriving at a conclusion on matters such as those referred to by Senator Crerar and such as were posed in the representations made by Mr. Varcoe.

I must say that the delay until next year is serious. The House opens in January, nothing has been done; no consideration has been given to the matter. No invitations have been sent to the attorneys-general. The committee is not set up then for three or four months again. We do not even know whether it is going to be set up next year. We are just postponing consideration to a point where many will interpret it as an endeavour to get away from serious consideration of this problem. As you have pointed out on one occasion and Mr. Mackenzie pointed out in his address in the House, the question of the divided responsibility of the legislative powers as between the dominion and the provinces is one of the subjects which has to be faced. We should know what the attitude of the attorneys-general of the provinces is going to be or, at least, an opportunity should be given to them to make their representations and to express their views.

The CHAIRMAN: That would be to the committee or to the government?

Mr. DIEFENBAKER: I wanted to alter the numbering on that motion. The question regarding legality should be first and the question regarding terminology should be second. I will alter that motion. Because of the fact you are the custodian of the freedom of this country as Minister of Justice, I will ask that the attorneys-general make their representations to you. You will be continuing and the committee will cease to exist.

Hon. Mr. CRERAR: Mr. Diefenbaker, you invite the attorneys-general to make representations. I presume you have in mind written representations. Just exploring the question, if this committee was set up again next year would it not be better, for instance, to invite the attorney-general of British Columbia or of each of the provinces to appear before the committee and discuss with the committee the restrictive features of the legislation as it appears to a good many Canadian people.

Now, you get a written statement from the Attorney-General of British Columbia. We receive it and we agree with it or disagree with it. If we disagree with it, could we throw it out the window and say we are going to proceed quite irrespective of the opinion of British Columbia? I do not think we can. I may be wrong.

Mr. DIEFENBAKER: You are coming to a stile before we have come to that stile. We are trying to find out our powers, whether or not the dominion

parliament has the power. Mr. Varcoe has expressed an opinion which is clothed in that degree of uncertainty which all good lawyers adopt towards matters which have never been before the courts. I can say this, that I have the opinion of three outstanding professors of law in this dominion, whose opinion is that parliament has the power to pass a bill of rights of a similar nature to that covered by the legislation as at present on the order paper in my name.

There has been so much said about the attitude of the provinces that we should find out what the attitude of the provinces is.

Hon. Mr. CRERAR: Let us get down to cases, Mr. Diefenbaker. A province passes a law regarding the owning of property, where property shall be owned. This conflicts with a law or declaration made by this parliament. How do you proceed from there?

Mr. DIEFENBAKER: Mr. Chairman, there was an editorial the other day in the Ottawa *Citizen*. It was a very thoughtful one and it referred to the differences of opinion as to the power of the dominion to assure fundamental freedoms. A suggestion was made in the last paragraph of the editorial that, if parliament did not have the power to pass a bill of rights then it could, at least, pass a declaration of rights and fundamental freedoms.

The question as to whether parliament has the power to pass a bill of rights is being given first importance by this committee. We are in the dark until we know the attitude of the provinces.

Senator Crerar asked me about the question of one province passing a law saying that any person of a certain religious faith shall only hold property in certain areas or subject to a limitation of his freedom in that direction. Well, Mr. Chairman, we have had the opinion of Mr. Varcoe on that question by inference. However, that does not touch the fundamental freedoms of our country. The fundamental freedoms as declared under the international bill of rights are, speech, religion and association. The freedom to hold property is not one of the fundamental freedoms because you could well imagine that we in this country might set up a form of government whereby it was decided that the holding of private property should not be permitted. That would be no interference with fundamental freedoms.

Mr. HAZEN: Mr. Varcoe called that a right.

Mr. DIEFENBAKER: I appreciate that and I said it was pointed out by Mr. Varcoe. The answer to Senator Crerar is that that is not a fundamental freedom that is, as Mr. Hazen says, a right.

Hon. Mr. CRERAR: Then, take a concrete illustration, Mr. Diefenbaker, the famous padlock law passed in the province of Quebec several years ago. That was an interference with fundamental freedom and fundamental right. Was it within the competence of the province to pass such a law?

Mr. DIEFENBAKER: I do not want to enter into an argument about the padlock law because the government of Canada had invariably followed a course of disallowing all laws interfering with freedoms across this country but when the padlock law was passed, the government forgot or the then Minister of Justice if he did not forget to deal with it, at least, did not deal with the question.

Mr. HAZEN: I think we are getting away from the point. Mr. Diefenbaker suggested—I do not know whether he made a resolution or not—that this committee obtain the benefit of the opinion of heads of law schools and the attorneys-general of the different provinces, and I think he suggested that these opinions be in the form of written references. Well, I think that this committee should have the people here to give evidence instead of having written references. Those people should come here. We should ask the heads of these different law schools, or a number of them who are interested in this matter, to come here and give evidence before this committee so that we shall have an opportunity

to examine and cross-examine them. If someone files a brief on a matter of this kind it places the members of this committee in an awkward position. It is a matter of interpretation. You have to ask questions of the persons who draw up these documents to get more information, but if you take exception to some of the things they say, and they are not here in person, you have not an opportunity to re-examine them. I think the same thing applies to a considerable extent to the provinces if they see fit to come here and give evidence. They can submit written briefs, but my suggestion would be, not that we have written briefs or written representations, but that an effort be made to call these people before the committee and allow them to give us the benefit of their opinion and of their knowledge of the subject.

The CHAIRMAN: Yes.

Mr. HACKETT: Mr. Chairman, would it be possible for this committee before dissolving to express the hope which might be forwarded to the people we would like to hear that they be summoned by the committee which is going to be named next session we hope, and go further and express the hope that these people to whom we are sending the notice, come prepared to discuss this question?

The CHAIRMAN: Yes.

Mr. HERRIDGE: Mr. Chairman, I strongly support Mr. Diefenbaker's viewpoint. Most of the members of this committee are laymen and are not acquainted with the legal aspects of the situation and if we had the briefs of the attorneys general and of the various law schools we would have something concrete in front of us to consider and to inform ourselves upon. After that these genelemen could be called before the committee and a discussion could take place. We would then hear the different provincial viewpoints and approaches. I do believe that if we accept a resolution from Mr. Diefenbaker we would have something concrete to work on and the committee next year would start in on a very sound foundation.

Hon. Mrs. FALLIS: As a layman I would like to support that view, because to me these things are confusing, and I hope we have the briefs first in time to consider them and then the witnesses. This matter may be plain to brilliant lawyers but it is not so plain to some of the rest of us, and we need a little time to look over these briefs before we can ask intelligent questions on them.

Mr. MICHAUD: I agree with Mr. Hazen as to representations being made by the provinces; I think we should have the provinces represented here personally if we are going to hear them.

Now, with the material which should be filed with us, according to what we learned at our last hearing, I think we shall have plenty of reading matter for the recess. I dare say that very few of us will struggle through all the material that will be available for us to read. The suggestion has been made that we have not done very much yet, but we have made a start. It has been insinuated that the committee may not meet next year, but if this committee is not to meet next year we are discussing these things for nothing. I am hopeful that the committee will be reconvened, or a similar committee, and then if it does reconvene I think we should hear representatives of the universities and provinces. They could file their briefs and then come before us. After all, we have to deal with the constitutional aspect of the question which has already been dealt with by Mr. Varcoe. There will, perhaps, be different opinions expressed, and for that reason it seems to me that the briefs that will be filed and the evidence which will be given by these people—the attorneys general—could be much more advantageously used by study at the time of the presentation. I feel that it is too early to ask them to make any representations, because we might meet next year and decide on something different.

Hon. Mr. HORNER: Mr. Diefenbaker's later suggestion was that the attorneys general send their briefs to the Minister of Justice. Surely that would be helpful to us for next session if the committee is appointed. I am inclined to agree with Mr. Diefenbaker's suggestion.

Mr. CROLL: Mr. Chairman, it is surely clear that we can never hope to recommend a bill without hearing from the attorneys general; sooner or later we must hear from them and get their views. We might as well ask for their views and know what they are and have them before the committee sits, because the committee will have to have that information.

As far as the law societies are concerned, that is another matter entirely and will be something for our guidance, but the other matter will be something that will be a directive. We shall have to take that into serious consideration before we decide what to do, but we must have that information sooner or later, and we might as well go on and ask for it.

Hon. Mr. CRERAR: I have no objection to getting briefs from the attorneys general or the law societies or the universities or anyone else, provided that after we have these briefs we have an opportunity to ask questions of those people. As I understood Mr. Diefenbaker's suggestion it did not extend to the point of inviting those people to come here and discuss this matter across the table with us.

Mr. DIEFENBAKER: I wanted to get their views. Other matters could be decided later. The Minister of Justice would have the views and the representations.

The CHAIRMAN: This committee will be out of existence within a week or two; then, with whom will they communicate? It seems to me that for the resolution to be practicable there would have to be a recommendation in the report that the government give consideration to inviting views of attorneys general and law societies, because there would be no committee, there would be no chairman of this committee and there would be no clerk, and there would be nobody else to whom these people could write in the recess.

Mr. HANSELL: That is procticable.

Mr. MICHAUD: If this suggestion goes through you would invite the provinces—the attorneys general of the different provinces—and the different law schools to express their views. Would that be on the constitutional aspect of a bill of rights—views somewhat in opposition to those expressed by Mr. Varcoe—or would they submit what they think should be a bill of rights?

The CHAIRMAN: Both. I do not think the resolution is particularly well drafted. As I understand it, we would ask them to express their views as to the powers of the dominion to enact a bill of rights; then if they have the opinion that we have powers, what the bill of rights should contain. I do not think this committee should start in on a course of correspondence with attorneys general and heads of law schools if the committee itself is out of existence; I think it is a matter for recommendation to the government.

Mr. CROLL: All right. Can we go this far? Write and tell them that this matter was discussed and that in all probability they will be called upon to give their views early in the next session so that they could give the matter some thought and not take up a couple of months answering by letter. It is a matter of some consequence both to the law schools and the various attorneys general. We advise them now that the committee will be going out of existence, but that a new committee will probably ask them for that information.

The CHAIRMAN: That would be all right.

Hon. Mr. TURGEON: I am assuming that any steps we take now in regard to the matter under discussion for finding out legal viewpoints will be based on that part of our terms of reference which comes near the end. I am reading now from *Hansard* of May 16th.

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 and observance of human rights and fundamental freedoms.

That would be the part of our instructions that this would be based on. I suggested in the steering committee the other day—it was not accepted—that in part of the report which this committee makes, after it has recommended that a similar committee be set up at the next session of parliament, we should urge the government to make all necessary and possible inquiries with respect to that portion of our terms of reference which I have just read; if we move that recommendation then I think it would be incumbent upon the government, not to do, but to consider doing, what we recommend, through the ministry of justice. The Minister of Justice would procure all the enlightenment which he could possibly secure; the views of various bodies, including the attorneys general of the different provinces, and the law schools; and the committee which we expect will be set up next session would have that information before it, whether the committee has this same membership or a different one. I am inclined to think, based to some extent on the discussion that has taken place this morning, that that would be the best way for this committee to deal with the matter; that the government—since this committee is dying—make this inquiry through the ministry of justice and give that enlightenment to the committee when it meets next session.

The CHAIRMAN: If I start this correspondence—

Hon. Mr. TURGEON: Not as chairman of the committee, but as Minister of Justice.

The CHAIRMAN: Yes, as Minister of Justice. If I start this correspondence the answer I will probably get back will be: What do you mean by bill of rights? Elaborate, explain what you are talking about?

Hon. Mr. TURGEON: I am not suggesting that our report order or recommend correspondence; I am suggesting that our report recommend that during the recess of parliament, when there is no committee in existence, that the government itself—I take it that it will be through the Minister of Justice—give all possible study and consideration to that part of our terms of reference which I have just read. That is a proper subject of consideration for the Department of Justice. It is faced with that all the time. This committee puts itself on record that step should be made in such a manner as to have something available for the committee next session. I am not saying that you should do it through massive correspondence. It is a matter of our making a recommendation that a study be made.

The CHAIRMAN: That would be perfectly practical as far as that is concerned. What about coupling with that Mr. Croll's suggestion that this committee, which is functioning now, would like to have these attorneys-general and heads of law schools communicated with now with an intimation that they probably will be called upon or invited to submit views when the committee is set up next year, and that they are being advised of that now so that they can give thought to it?

Hon. Mr. TURGEON: If the committee wants it I have no objection. I think the better way to proceed is to issue a report of this committee in the terms that I suggested urging the government to make the study contemplated in the terms of reference because this committee is a committee of parliament and will not be in session. It must be some living body that is making the study.

If the committee wants it the other way I do not care, but I do think the best way, having in mind the objective of this committee, to reach that objective, which is more or less common among us, is through a part of our report to parliament containing a recommendation that the government in the meantime make that study contemplated in the terms of reference.

The CHAIRMAN: Could we defer this motion until we draft the report and bring it before the committee?

Hon. Mr. TURGEON: So far as I am concerned, yes.

Mr. DIEFENBAKER: I want this motion put to this committee. Let us decide this question once and for all because we are either shadow boxing with this matter or we are facing it. There is nothing to be gained by postponing and procrastinating. A motion such as this, if carried, will lay the foundation for the determination of the question once and for all. I ask that the motion be put.

The CHAIRMAN: Mr. Diefenbaker, you have suggested that we are playing with it and shadow boxing and procrastinating, and so on. I do not think any of those words are justified at all. There is much I might say as well regarding the course of the work of the session, and so on, but dealing with the matter dispassionately in the various aspects of it, I do not want to get into that kind of debate in this committee. I want to repudiate any idea that the matter is being played with, or that there has been any procrastination or any shadow boxing.

Hon. Mr. TURGEON: I do not think Mr. Diefenbaker meant that because if he did I would personally, after having spoken, take absolute objection to it. I do not think he meant it in that way.

Mr. DIEFENBAKER: I said if the matter is not faced up to that is the conclusion that will be come to.

Mr. HACKETT: What are the words of the motion?

Mr. HANSELL: What is the motion?

The CHAIRMAN: Mr. Diefenbaker moves that the clerk of the committee communicate with law schools and attorneys-general of provinces requesting (1) opinion on the question of the power of parliament to enact a comprehensive bill of rights applicable to all Canada; (2) suggested terms of a bill of rights for Canada. Is that right?

Mr. DIEFENBAKER: Yes, that is sufficient.

Mr. CROLL: I am afraid we are putting ourselves in the position where they are telling us.

Mr. DIEFENBAKER: Delete the second one and then we will face the situation.

The CHAIRMAN: The motion is that the clerk of the committee communicate with law schools and attorneys-general of provinces requesting an opinion on the question of the power of parliament to enact a comprehensive bill of rights applicable to all Canada.

Mr. HAZEN: Are these people going to be called as witnesses or are we going to have a lot of opinions here and quote them in argument some time?

Mr. CROLL: Call them as witnesses.

Mr. MARIER: There is no use calling these people when the committee is dead.

Mr. CROLL: They are not deader than this bill of rights is at the moment.

Mr. MARIER: They will not appear next week because it will take time to prepare their briefs. There is no use of the committee calling these people to appear before a committee which may not exist at that time.

The CHAIRMAN: Perhaps it should be amended to make the meaning clear, "requesting that the law schools and the attorneys-general give their opinion to the government"—is that right?

Mr. DIEFENBAKER: I said to the Minister of Justice.

The CHAIRMAN: On the question of the power of parliament to enact a comprehensive bill of rights.

Mr. HACKETT: If Mr. Diefenbaker is willing I think you should incorporate there some intimation that it is the hope of this committee that the committee which convenes next year will have the benefit of hearing these people in explanation of their opinions.

Mr. DIEFENBAKER: I will gladly do that.

Mr. CROLL: Would it not be wise to change the word "opinion" to "views"? I am looking at it from their point of view. Do you not think it should be "views" rather than "opinion"?

Mr. DIEFENBAKER: I do not care what the word is.

Mr. CROLL: All you want is an opinion. You do not care what they call it.

Mr. DIEFENBAKER: Their views then, views and opinions.

Hon. Mr. CRERAR: I anticipate if the Minister of Justice sends a communication of this kind to the law societies and the attorneys-general he will immediately be asked, "what is meant by 'a comprehensive bill of rights'?" What does the word "comprehensive" mean as applied to this? Would it not be better to find something concrete and submit it to them. I have in mind, for instance, that you might submit to them the United States bill of rights and say, "Would you be favourable to the enactment in Canada of a similar bill of rights"? If you write to the attorneys-general I would not be surprised if the reply was, "Well, what do you mean by this thing"?

Mr. DIEFENBAKER: We will come to that when they do. They know very well what a comprehensive bill of rights is if they have followed what is going on in the world today in connection with the one in the United Nations alone aside from any other bill of rights.

The CHAIRMAN: I know what will happen. Under this motion the clerk of the committee is to communicate with them and ask them to send them their views to the Minister of Justice. If they write at all they will write asking what is meant.

Mr. DIEFENBAKER: Let them do that.

The CHAIRMAN: Then what authority have I?

Mr. DIEFENBAKER: Your authority is ended then, I presume, but at least they have had the opportunity.

Mr. HACKETT: I do not think you can do much more.

Mr. MICHAUD: You can refer them to the printed report of the committee.

Mr. HAZEN: Are there not other views we want besides their opinions on the powers of parliament to do this? The first part of our reference says 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. In some of these law schools there must be men who have a knowledge of international law and who would be interested in this phase of the matter. Would it not be advisable to enlarge the resolution to include obtaining their opinions on paragraph 1 (a) as contained in the first report of the steering committee? I am making that suggestion.

Hon. Mrs. FALLIS: You mean to substitute that for the term "bill of rights"?

Mr. HAZEN: No, these are different things. The resolution we have before us is asking for an opinion on the power of the dominion parliament to pass a comprehensive bill of rights.

Hon. Mrs. FALLIS: Then you would include that?

Mr. HAZEN: Paragraph 1 (a) of the steering committee's report deals with a much broader subject than that, and that is an international bill of rights. There must be some students of international law in these law schools who might be able to throw quite a lot of light on that.

Hon. Mrs. FALLIS: Do you include that in the resolution?

Mr. HAZEN: I suggest that some consideration might be given to including it in the resolution.

Hon. Mr. TURGEON: That is one reason why I am suggesting that this matter which we are trying to investigate by securing views be dealt with by the committee urging that the government through the appropriate department take all possible and necessary steps to acquaint the committee when it meets next year as to the legal situation of Canada with respect to the whole subject matter of the reference. That is not an effort to evade. That is an effort to to have an inquiry made in the best possible manner that is going to secure views without necessitating any anger or anything else. We recommend that the government do that so that the committee will have the opinions of various groups. Each member of this committee to-day likely has some hope that he will be a member of the next committee, and I imagine everyone of us in the meantime will take all possible steps to inform ourselves of the situation so that we will be able to understand what is given to us next session. I am not trying to get away from anything but I do think that is the proper way for a committee of this nature to proceed, meeting under the circumstances that confront us now when parliament is closing.

If we write letters when the recipients of those letters get them this body will no longer exist. We may be closed down. A lawyer getting that will say, "This body is dead. We will see what they do next year", and perhaps they pay no attention to it. I really think the best way in which this committee can accomplish the task given to it by the terms of reference is to make as strong a recommendation as we can in our report that during the recess the government take whatever steps they think necessary and possible to put themselves in a position to inform the committee formed at the next session immediately on its formation. I hope it will be formed early in the session so that proper time will be available. In the meantime we can make whatever studies we want.

Mr. HANSELL: I rather agree with that. I am not opposed to Mr. Diefenbaker's motion provided it is practical. Here is another matter. The clerk of the committee writes and the committee is dead. The clerk of the committee is a handsome gentleman and all that, but he is just the secretary of the committee and it does not carry the weight that a letter from the Miniser of Justice would carry. I am suggesting that we embody something of this kind in our report to parliament and that a motion for concurrence in the report be made so that it is more or less obligatory for the government to take action.

Mr. CROLL: May I raise this objection to what both Mr. Turgeon and Mr. Hansell have said. I think that puts the government in an impossible position. The chairman of the committee has to carry out the functions of the chairman and carry out whatever resolutions we pass here. On the other hand, in dealing with this problem to ask a government official to ask the provincial governments for their view on something that we are going to deal with puts you, Mr. Chairman, in my opinion, in an impossible position. I should not want that position under those circumstances. I should feel very uncomfortable if I were in your shoes. Under those circumstances I do not know how you will feel.

The CHAIRMAN: I feel uncomfortable about it. I am inclined to think Mr. Diefenbaker's motion is all right. It will come from this committee of parliament. They will have passed a resolution inviting these attorneys-general and these law societies to communicate with the Minister of Justice giving their views as to the power of the parliament of Canada to enact a comprehensive bill of rights applicable to all Canada.

Mr. HANSELL: I am not tremendously opposed to the motion.

Mr. BEAUDOIN: Is it wise for us to pass a resolution of this sort asking the attorneys-general to make a study of this order of reference, and whatever may be involved in it, knowing in advance that this committee as now constituted is not going to deal with that?

The CHAIRMAN: There will be a recommendation.

Mr. BEAUDOIN: There may be no committee next year, or the committee next year may not be composed of the same men. It may not be the opinion of the members of the committee at the next session that they should ask for the view of the provinces. They may not decide to follow the procedure that we are now. I am only expressing doubts as to whether we have the right or whether we should not have the courtesy of waiting until the next committee meets and let them decide themselves. We are asking the attorneys-general now to study a matter with which we will not deal. We know they will not have time to present it to us this year. As far as the committee next session that committee may not be composed of the same men. I may not be a member and everyone else here may not be members. The committee next year may say, "Well, we are sorry. The committee last year asked you for that but you have worked for nothing because we do not wish to do it that way."

Mr. HACKETT: That is true but that is not practical. We are merely stating that we hope that next year's committee will use the information for which we are asking.

Mr. BEAUDOIN: That is in the report?

Mr. HACKETT: He will tell them that when he writes.

Mr. HARKNESS: Many other committees have done much the same sort of thing. The Veterans Affairs Committee which met in 1945 asked the department and the Legion and various other people to have material ready for the committee which was going to succeed it in 1946. Other committees have done the same thing. I do not see anything out of the way in our committee asking that certain information be ready for the next committee.

Mr. HACKETT: If they ask for it.

Mr. CROLL: Committees do not change much generally.

The CHAIRMAN: Any attorney-genreal may very well say, "We will wait and see." They may very well take that position. We cannot compel attorneys-general to even answer this letter or to submit their views, but it is the wish of this committee that they do that, that they express their views as soon as possible to the attorney-general of Canada.

Mrs. STRUM: Would we not be correct in assuming that they would be anxious to have the chance to do that?

The CHAIRMAN: I do not know.

Mrs. STRUM: Do you not think that the provinces would be anxious to do that? Judging from Mr. Diefenbaker's statement as to the number of people who have shown interest and concern and have written to him I think the provinces, which are even more vitally concerned, should welcome this opportunity of being able to do this.

The CHAIRMAN: I would anticipate that if we receive replies the views expressed by some attorneys-general, or many, would be to stress the powers of the provinces.

Mr. MICHAUD: Absolutely.

The CHAIRMAN: And the lack of power of the dominion.

Mr. HACKETT: That is the problem.

The CHAIRMAN: I think it is well we have that. Is there any further discussion? Let me read the resolution again, because this is what the clerk is going to say in his letter, and when they write me I am going to write back and just simply refer them again to the terms of the resolution here. The resolution is that the clerk of the committee write to the attorneys-general of the provinces and to heads of law schools requesting views and opinions on the question of the power of the parliament of Canada to enact a comprehensive bill of rights applicable to all of Canada, and that such written views be forwarded to the Minister of Justice.

Mr. HACKETT: Is it understood there will be wording in the letter to the effect that it is quite likely that the gentlemen who receive these letters will be invited to come here to discuss their opinions?

The CHAIRMAN: I doubt whether we can go that far.

Mr. HACKETT: We have not got the power, but we are going to express the hope.

Mr. CROLL: If we do that some of them who will be reluctant to express an opinion will wait until they are called. I think we had better wait until later and invite them nicely. They will come.

The CHAIRMAN: The clerk suggests that in the letter the clerk include a copy of the evidence of the committee to date so they will know what we are talking about.

Mr. MICHAUD: I agree with that.

Mr. HANSELL: I think you could add a suggestion that the committee is reporting that a similar committee should be formed next session so that we would be hoping to have their replies in some detail in order that the committee next session can work on it.

The CHAIRMAN: We have not made that report yet.

Mr. HANSELL: No, but we anticipate we will.

The CHAIRMAN: Should we not send that to them when it is passed?

Mr. CROLL: If we are going to send them the record of this meeting let us pass a resolution today recommending that another committee be set up. Then that will be a part of the record. That is the general opinion, anyway.

The CHAIRMAN: That would be a part of the report.

Mr. CROLL: One of our recommendations in the report will be that we recommend that the committee be set up again. That is the general opinion.

The CHAIRMAN: The report of the steering committee has been adopted and that was a part of the proceedings which will be forwarded.

Mr. CROLL: You say that has been adopted?

The CHAIRMAN: Yes.

Mr. CROLL: All right, I thought it was a recommendation to be considered but it is all right.

The CHAIRMAN: Those in favour of the resolution will say "yea". Contraminded, "nay". Motion carried. It is understood then that the clerk will send them a copy of the proceedings to date.

Mr. HANSELL: All proceedings?

The CHAIRMAN: Yes, that is right.

Mr. HANSELL: I thought you said a copy of our final report to parliament.

The CHAIRMAN: No, a copy of the proceedings to date including the adoption of the steering committee's report. That will tell them everything. Mr. Pouliot has asked to appear before the committee and I will now call on him.

Mr. POULIOT: Mr. Chairman, ladies and gentlemen: May I be permitted to come before you for the protection of my fundamental freedom of speech. The other day my colleague, Mr. Church, and myself expressed our personal and honest views about U.N.O. The Montreal *Star* has this sentence in an editorial which was published on Wednesday, June 25th, last week.

> Were the characters involved in this episode other than they were, this debate would assume national importance. It would be rightly interpreted as a resurgence of old style isolationism—the kind of doctrine which above all else brought on what Mr. Churchill has called "the unnecessary war". It will be so interpreted in Moscow and elsewhere, for the students of public opinion in those parts can hardly be expected to know very much about the irresponsibility of Mr. Church, Mr. Pouliot, and their strange allies from Alberta.

My point is that this committee is studying human rights and is trying to find a remedy for their protection. I am working under the same roof as the committee does, my colleagues who sit on the committee and hon. members of the Senate. Before looking after the human rights of people outside this house, I should like to have the fundamental rights of those inside the house protected by the committee.

If you ask me for a suggestion I will give it to you right away. It is that as to these mercenary journalists of the Montreal *Star* who call some members of parliament irresponsible there should be a sanction, and the only sanction would be to deprive the correspondents of that paper of the right to sit in the press gallery and report the debates of the house.

The time has come when human rights and fundamental freedoms must mean something. When there are mercenary journalists who are the slaves of plutocrats and are public exploiters it is time to stop them and teach them a lesson. Otherwise this committee will serve no purpose whatever.

I come here as the member of parliament for Temiscouata. I want to be respected by those gangsters, the owners of the paper and its chief editor. If there is no sanction I will seek for other means.

I hope that the committee has not been scandalized, but my speech has been along the lines of the reference that has been made to the committee. If human rights are to be protected then you must start by protecting them here or otherwise this committee will be the laughing stock of the country if it does not protect those who are under the same roof and who are insulted by these gangsters of the press.

The CHAIRMAN: Mr. Pouliot asked for the privilege of appearing before this committee. I thought as a member of parliament he was entitled to that privilege. My difficulty about the request he has just made is that I doubt very much if it is within the terms of reference of the committee. I believe it is not. Is there any discussion?

Mr. HAZEN: I might refer Mr. Pouliot to page 71 of the minutes of proceedings, volume 4, in which the judgment of Sir Lyman Duff on the reference of Alberta's accurate news bill to the Supreme Court is quoted at some length. In the course of that judgment he says:

> Even within its legal limits, it is liable to abuse, and grave abuse, and such abuse is constantly exemplified before our eyes; but it is axiomatic that the practice of this right of free public discussion of public affairs, notwithstanding its incidental mischief, is the breath of life for parliamentary institutions.

The CHAIRMAN: Is it the view of the committee that the committee has any power under its terms of reference to deal with Mr. Pouliot's request? I am afraid, Mr. Pouliot, I will have to inform you it is not within the terms of reference.

Mr. POULIOT: I thank you for you courtesy. I will bring it up in the House on a question of privilege. I thank you, Mr. Chairman, and I thank you ladies and gentlemen.

The CHAIRMAN: Should there not now be a motion directing the steering committee to draft a final report to place before this committee?

Mr. CROLL: I so move.

The CHAIRMAN: It has been moved that the steering committee be directed to draft the final report for submission to this committee. Those in favour say yea. Contra-minded? The motion is carried.

The next question we have to consider is what action to take in reference to the procedure on bill 133. The subject matter of that bill was referred to this committee by the House of Commons. I have a letter from the sponsor of the bill which I should like to read to the committee.

OTTAWA, July 1, 1947.

The Right Honourable J. L. ILSLEY, P.C., M.P.,
Chairman, Parliamentary Committee on
Human Rights and Civil Liberties,
Ottawa.

DEAR MR. ILSLEY: As you are aware, the subject matter of bill 133, requesting the abolition of the Communist and Labour-Progressive parties, has been referred to your committee for consideration and report to the House of Commons.

As I am not a member of the committee, I would be very grateful to you if you would be so kind as to let me know the date, time and place when I may be called before the committee of which you are president jointly with the Honourable Senator Gouin, so that I may expound my point of view, and also, afford the same opportunity to be heard to those who share it with me; because, I wish to emphasize to you my intention that, should the committee not take action this session, I will again submit my bill to the House of Commons next year.

Awaiting your reply as soon as possible,

I remain,

Yours very truly,

WILFRID LACROIX,
Member for Quebec-Montmorency.

The question is what reply to make to that letter. My suggestion is that I write to Mr. LaCroix and point out to him that he has the right, if he wishes, to come before this committee at its next meeting and present his arguments in support of his bill. If he does so, at the end of the committee's sittings it will probably be the view taken by the committee or the majority of the committee that those representing opposing interests should be asked to come and state their point of view and that that will involve us in considerable discussion at a period when there is not very much time and that, perhaps, under those circumstances he would prefer not to make any presentation. If he wishes simply to come and present a summary of his bill so that no matter of argument will be opened up, it would be quite in order for him to do so.

Mr. CROLL: Mr. Chairman, members of parliament have an opportunity of discussing matters on the floor of the House. They can take advantage of that

opportunity or leave it. From your experience and from the experience of the committee, you know exactly what will happen. The sponsor of a bill will present his views, aside entirely from the legal aspects, and will have a complete holiday. Those views go out. They may even be misinterpreted to be the views of other members of parliament. I hold a contrary view entirely and I think there are many others here who are opposed to this bill. If we open the question up to the point where other people will want to come here to make representations, they ought to do it at the same time or as nearly the same time as is possible. This would mean that we would not do any other business at all this year. I do not think the bill is urgent at all. I think we should face up to it and tell him to take the bill back to the floor of the House. He can fight it there and everybody can stand up and be counted if necessary.

We cannot be diverted from the task at hand. We have a very large order before us. As Mr. Diefenbaker has said, some people already feel we are not making much headway. To divert ourselves at this late stage from all the important business we have is unwise, and you cannot do it any other way. I think the bill ought to go right back from where it came. We do not need to report it this year. I do not think we have time or that it is of such moment of importance at this time.

The CHAIRMAN: What are the views of the other members of the committee?

Mr. HANSELL: Did Mr. LaCroix appear to be disappointed at all that there would, perhaps, not be time this year?

The CHAIRMAN: I think Mr. LaCroix would prefer not to begin on this matter at all unless he is permitted to argue the bill completely. If that is done it would appear to me that the opposing interests should have an opportunity to appear immediately afterwards rather than at some possible future date.

Mr. CROLL: Mr. Hansell's question is rather an important one. Many members had resolutions on the order paper which were never reached. There was a resolution on the order paper dealing with this specific matter. Then, along came the bill. We might all have had private bills, but we took the other procedure. He cannot be any more disappointed than the rest of us. The resolution on the order paper probably preceded his bill by some time, so his disappointment cannot be too keen. These people he is trying to get rid of will still be here next year.

Hon. Mr. TURGEON: I agree with Mr. Croll in his opposition to the principles enunciated by the wording of this bill. If it comes to the committee, as I see it now, I intend to oppose it. If I understand correctly, this bill was sent to this committee. We have an instruction or you, as Chairman of this committee, have an instruction from the House of Commons to consider this bill. Am I right in that? I am talking purely about procedure. If it comes before us, do we have to report for or against it?

Mr. CROLL: We need not report on it at all.

Hon. Mr. TURGEON: I am asking about that.

The CHAIRMAN: The subject was referred to this committee and so was the subject matter of the Bill of Rights.

Hon. Mr. TURGEON: You think we have a right to pass it by?

The CHAIRMAN: I think we have the right to say we have not had an opportunity of considering it.

Mr. HANSELL: I do not think, from what Mr. LaCroix has said, he will be tremendously disappointed. He has said he will present it next year. I think we could reasonably, perhaps, be of service to Mr. LaCroix in asking him to forgo the presentation of the bill at this time as it would give him a better opportunity to consider the matter next year.

The CHAIRMAN: He wants to press his bill on, but if he is going to get into a situation where it cannot be dealt with this session, which will certainly be the case if argument is started on it, I think possibly he would prefer not to begin the matter at all.

Mr. HERRIDGE: Mr. Chairman, I agree wholeheartedly with the remarks made by Mr. Croll. In writing the letter to Mr. LaCroix, could that aspect of the situation be presented in the letter?

The CHAIRMAN: Will the committee leave it to me to reply to Mr. LaCroix in the light of this discussion?

Agreed.

There are two documents to be filed, one headed "The Preservation of the Rights of the Subject", a bill which was introduced by the Marquis of Reading in the House of Lords. The second one is the declaration of the rights of man adpoted in 1789 by the French Assembly. Those two documents are to be filed.

It was agreed the other day that we would proceed with the examination of Mr. Varcoe. I think Mr. Varcoe wishes to make a short statement.

Mr. CROLL: Mr. Chairman, I did not pay much attention, but this declaration seems to be dated August 27, 1789. My recollection is that France has one which is a little later than that. There is a constitution of most recent date and a full constitution, which was passed about a year ago. I am afraid this one is a bit outmoded.

The CHAIRMAN: It is not particularly recent, I admit that. The clerk will look into the matter and if there is a recent document, it will be filed.

Now, shall we let Mr. Varcoe proceed with his evidence?

F. P. Varcoe, Deputy Minister of Justice, recalled:

The WITNESS: I prepared a very short summary of what I said the other day. What I said the other day was rather scrambled I thought afterwards when I came to read it. Therefore, I prepared this short statement and if it is the desire of the committee I will read this statement.

I. Implementing the U.N. Charter and providing a Canadian Bill of Rights are two separate and distinct legal or constitutional projects. The terms of reference relate primarily to the first.

II. I distinguish rights from freedoms as follows:

A right connotes a corresponding duty in some other person or the state toward the person holding the right; for example, if a person has a right to education, there is a corresponding duty on the state to provide it.

A freedom, on the other hand, is a benefit or advantage which a person derives from the absence of legal duties imposed upon him.

The distinction between rights and freedoms here made is of real significance in connection with the constitutional problem in Canada, as I will endeavour to show.

III. Examples of rights, so-called, are the right to own property, the right to education, the right to reasonable conditions of work, the right to social security, and so forth. Concerning these rights so-called, two things may be said. First, each of them is created by positive action by parliament or a legislature depending on the subject matter. There is no constitutional question involved since legislation in relation to each of these rights is at once recognizable as falling in the federal or provincial field. Second, the Charter calls merely for the promotion of observance of human rights, no list of these so far being included. One may safely say that at present Canada has implemented this obligation to the full and is in good standing.

IV. As regards the freedoms, they are principally three in number, namely, personal liberty, freedom of communication (speech, press, assembly) and freedom of worship. As regards these, it may be said that the Charter simply proposes that the rule of law be adopted by the nations, namely, that no person shall be prevented from exercising these rights except as prescribed by law. This rule is fully established in Canada, although of course it may be expanded by increasing the protective legal remedies enjoyed by the public.

V. A Bill of Rights as distinguished from the Charter purports to guarantee freedom in some particular or generally to the inhabitants, particularly against infringement by any legislature, government or official. A Bill of Rights is either a declaration of fundamental and permanent principles to be found in some written constitutions, as, for example, that in the French Constitution of 1791 providing that every citizen had the right to speak, write, print and publish freely his thoughts subject to legal protection against abuse. Or, it may take the form, as in the case of the English Bill of Rights of 1689, of a series of express statutory prohibitions. You might call the first a general declaration of rights, the second a special Bill of Rights and different considerations arise depending on which type is under consideration. In some cases you may find a mixture of general declarations and specific prohibitions.

VI. Each of these freedoms is exercised by the doing of a great variety of separate and distinct overt acts. Some of these acts would be regulated or prohibited by parliament, some by the legislatures and some again would be regulated in different aspects by both parliament and the legislatures. The legislature which may so restrict or infringe may also to the extent of such possible infringement protect. The legislature which can infringe can refrain from doing so and can prevent others from doing so. As examples of what I mean, parliament might prohibit the broadcasting of political speeches altogether and the province might ban the use of school houses for political meetings. Both of these would be restrictions on freedom of communication.

It cannot, therefore, be said that these freedoms fall exclusively in the legislative field of parliament or of the provinces. Each of these so-called freedoms might be described as an agglomeration or cluster of legal rights.

VII. Freedoms are comparative and not absolute. They are hedged about by necessary restrictions on the individual to protect other individuals against licence or abuse. If provincial legislation restricts or abolishes civil rights in the case of any class of citizen to the point where the union of the provinces is threatened, parliament might conceivably intervene.

VIII. The opinions of Sir Lyman Duff and Mr. Justice Cannon in the Alberta Press case, however, indicate that to a certain extent freedom of communication is protected by the constitution as it now stands. A free press is the breath of life of parliament and cannot be abolished. The same might be held to be true of personal liberty in some aspects and freedom of assembly. Parliament could probably find means to maintain these freedoms, it being within the power of parliament to protect the constitution. Such legislative act by parliament would, however, leave the legislatures free to enact restrictions which are not in pith and substance intended to limit political freedom.

IX. As regards religion there would seem to be no constitutional safeguard.

X. It is necessary to observe that the legal effect of a declaration guaranteeing any of these rights is uncertain since no legal consequences would seem to flow therefrom. So far as the provinces are concerned, such a declaration would not restrict their powers and of course such a declaration would not limit the exercise by parliament of its powers.

XI. In considering the amendment of the constitution certain matters should be kept in mind:

(*a*) We have a constitution similar in principle to that of the United Kingdom in that parliament is sovereign. Depriving parliament of sovereignty would deprive our constitution of this principle.

(*b*) It would be a retrograde step in that we would be returning to Westminster a power now enjoyed here. Perhaps we should first consider means to amend the constitution.

That is the end of that statement which, as I say, is an attempt at summarizing what I said the other day.

The CHAIRMAN: Now, are there any questions?

Mr. HANSELL: Mr. Chairman, I do not know whether the desire of the committee is to go back over all Mr. Varcoe's evidence, but I can see that we have a tremendous job on our hands if we are going to delineate and describe what the fundamental freedoms are. For instance, there are two points this morning in what Mr. Varcoe has read. One concerns the freedom of the press. I do not know that I would want to ask Mr. Varcoe this question, but I would suggest it to the committee. Is the press free to publish that which is wrong? Is the press free to publish that which is false?

Now, there is one thing. So far as the Alberta Press Act is concerned, so far as I can see it did not curtail the press. The only thing it did was to insist that the press make corrections when it was wrong.

There is another small point which requires some considerable thought. One phrase Mr. Varcoe used this morning was the legal right of an individual to work. Now, that could apply to the slave labour which is taking place in Europe to-day; that is the legal right to work. Even the phraseology must be watched very carefully. Instead of saying the legal right to work, why not say the legal right to income. After all work—I am segregating that point—work is only a method of achieving something else. It is the something else you want. The work is only a method of achieving freedom. Work is only a method of achieving a right. It may be achieved in some other way. Why not say the legal right to an income because that is the objective of work. Why not say, the legal right to leisure instead of work.

Taking a very long range view of that clause—I may be jumping off the deep end now—but taking a long range view of that clause, you could build up a slave state and call it a free state. I am only making these observations to indicate the tremendously intricate and careful study which would have to be made.

Mr. MICHAUD: Mr. Chairman, following the remarks of Mr. Hansell, I agree with most of what he says. I should like to have him clear up this point. I agree that there should be a right to an income, but should that be unqualified? For instance, you have an able-bodied man who is quite able to work. Is your conception to be interpreted as the right of this man to come to the government or a government agent and claim, as a matter of right without any conditions attached to it, the right to an income, to a livelihood, if the man is able to work and is unwilling to work?

Mr. HANSELL: Of course, Mr. Chairman, we might get into a quite complicated discussion and which might, at this time, be very much misunderstood. I do not think a person has a right to come to the government and say, "I have a right to a livelihood unconditionally". I would not say that. But supposing I should answer this way: there are certain fundamental citizenship inheritances which cannot be measured in dollars and cents which are the right of every citizen by birth and, therefore, those inheritances could not be measured in terms of dollars and cents.

Mr. MICHAUD: I know what you mean and I agree with most of it. You would advance this right of a person to an income. My view is it should be qualified so that every citizen has a right to a livelihood under reasonable circumstances.

Mr. HANSELL: That is all right.

The CHAIRMAN: Now, it is nearly one o'clock and if there are any further questions of Mr. Varcoe we will proceed, but if there are none I suggest that we adjourn.

Hon. Mr. LEGER: I move we adjourn.

The CHAIRMAN: Shall we fix the date of the next meeting as next Friday? I think we can reasonably expect there will be one more meeting for the consideration of the report. It may require more than one meeting, I do not know.

Mr. HERRIDGE: The date of the meeting could be left to the discretion of the chair.

The CHAIRMAN: All right, the meeting is adjourned to the call of the chair.

The committee adjourned at 12.50 p.m. to meet again at the call of the chair.

APPENDIX "E"

PRESERVATION OF THE RIGHTS OF THE SUBJECT BILL

A Bill entitled

An Act for the better securing of the liberty of the subject.

THE MARQUIS OF READING

Explanatory Memorandum

This Bill is designed to strengthen the safeguards which protect the liberty of the subject against the misuse of statutory and other powers and to repeal or amend various legislative provisions whereby these safeguards have been weakened or undermined.

Clause 1 provides that any Statutory Instrument (by which is meant Order in Council, Statutory Order, Regulation or Rule) which is required to be laid before Parliament, may be amended in either House. At the present time such instruments have to be approved or rejected as a whole without amendment. The purpose of this Section is therefore, to establish more effective Parliamentary control over delegated legislation.

The object of Clauses 2, 3, 4, and 5 is to carry out the unanimous recommendations contained in the Report of the Committee on Ministers' Powers, 1932 (Cmd. 4060).

In the absence of any legislative provisions to the contrary, it is always open to a person aggrieved by an Order or Regulation made in pursuance of a Statute to challenge the validity of such Order or Regulation in the Courts, on the ground that it is outside the powers which the Statute conferred, and is therefore ultra vires. This is the only effective safeguard against Ministers and Departments exceeding the powers conferred upon them by Statute. There have, however, been certain exceptional Acts which prevent the validity of Orders or Regulations being challenged in the Courts, or which limit the period of challenge to a stated time after the passing of the Act. In accordance with the recommendation of the Committee on Ministers' Powers, this Bill provides that the period of challenge shall in no case be less than three months.

Clause 3 deals with the so-called "Henry VIII Clause". Under various Statutes Ministers are empowered to alter or modify by Order or Regulation the provisions either of the Statute itself or even, in certain cases, of other Statutes as well. The Committee on Ministers' Powers recommended that such Ministerial amendments should not be made except within a period of twelve months after the passing of the Act in question. This Clause seeks to implement the Committee's recommendations by recommending that all such powers shall cease to be exercisable twelve months after the passing of this Bill into law.

The Committee on Ministers' Powers further recommended that where a Minister or Ministerial Tribunal (i.e. a special tribunal other than a Court of Law) is empowered by Statute to arrive at any judicial, as distinct from quasi-judicial or administrative decision, there should always be a right of appeal on points of the law to the High Court of Justice. Clause 4 seeks to carry out this recommendation by providing for such appeal, except in cases where the determination of the issue depends upon the discretion of the Minister or Tribunal.

Under a considerable number of Statutes Ministers are empowered to decide various matters affecting the rights of individuals after holding a public inquiry. Such enquiries are in fact held by Inspectors of the Departments concerned, who report to the Minister. Under existing practice, however, there is no assurance that the Minister will be guided by the report, or that his decision will not be based upon some other consideration with regard to which the parties concerned have had no opportunity to call evidence or make representations. Clause 5, again following the recommendation of the Committee on Ministers' Powers, provides that the report of the person holding the enquiry shall be published and that the Minister shall in every case give reasons for his decision.

Under the Supplies and Services Act 1945 (9 Geo. 6. c. 101) and certain Defence Regulations made or continued thereunder extensive powers are given to various persons in the employ of Government Departments to enter and search private premises. Clause 6 limits the exercise of these powers.

Clause 7 provides that nothing in the Supplies and Services Act aforesaid or in any Defence Regulation shall be held to authorize the suppression or suspension of any publication whatsoever.

Under the Agricultural Marketing Acts 1931 and 1935 and the Sea Fisheries Act, 1936, Producers' Boards are empowered to determine whether individual producers have contravened the provisions of the marketing schemes and to impose monetary penalties. The proceedings are held in London, thus frequently involving the persons concerned in heavy expenses, and the Boards are bound by no rules of evidence. Clause 8 provides that such offences shall be tried, like other offences, in the local Courts of Summary Jurisdiction.

Under the existing law actions may be brought against private persons within six years of the cause of action having arisen. Public authorities, however, are placed in a privileged position. They cannot be made liable unless the action is commenced in England within twelve months. Moreover, under existing law a person who unsuccessfuly sues a public authority may be condemned in a substantially higher scale of costs than if the defendant were a private person. Clause 9 seeks to remove this anomaly by placing public authorities in the same position as other litigants.

The Assistance Board is the organization charged with the administration of Unemployment Assistance and Supplementary Old Age Pensions. Although the Board must observe regulations which are approved by Parliament and must also submit to Parliament an annual report, it is not at present directly responsible to any Minister, and is therefore not subject to constant Parliamentary supervision and control. Clause 10 seeks to establish such supervision and control by providing that the Board shall comply with such directions as may from time to time be given it by the appropriate Ministers.

Under the law now in force Courts of Referees decide whether unemployed persons are, or are not entitled to unemployment benefit. From their decision an appeal may lie to the Umpire. Where the Court is unanimous and refuses leave to appeal, the claimant himself has no right of appeal. But if he is a member of an association of employed persons, such association may appeal on his behalf.

In effect, therefore, a right of appeal is given to an unemployed person who is a member of a Trade Union but denied to one who is not, although every claimant is obliged by law to subscribe to the Unemployment Funds in precisely the same way. Clause 11 is designed to alter this situation, not by taking away any existing right of appeal, but by providing that any claimant may apply in writing to the Umpire for leave to appeal and that the Umpire himself may give leave.

Clause 12 seeks to protect persons employed by public authorities from being dismissed from their employment or otherwise penalized on the ground that they are, or are not members of any Trade Union or other organization or association representing employees. It also prohibits public authorities from making it a condition of any person's employment that he shall or shall not be a member of any such Trade Union, organization or association as aforesaid.

Until 1933 any person, whatever his nationality, who was within the jurisdiction of the English Courts and who believed himself to be unlawfully confined or imprisoned, might seek his freedom by means of the Writ of Habeas Corpus. In that year, however, the first permanent exception to this general rule was made by the Visiting Forces (British Commonwealth) Act 1933, 23 and 24 Geo. V, c. 6. The Act deals with the discipline of Dominion forces stationed in this country and the effect of Section (3) is that, if a Dominion Soldier is in custody in this country under what purports to be a sentence or order of a Service Court of that part of the Commonwealth to which he belongs, the Writ of Habeas Corpus will not avail him. Clause 13 provides, that for the purpose of proceedings instituted by Writ of Habeas Corpus, the law shall be the same as before the passing of the Act of 1933.

PRESERVATION OF THE RIGHTS OF THE SUBJECT BILL

Arrangement of clauses

Clause

1. Provision for amendment of Statutory Instruments.
2. Validity of Statutory Instruments.
3. Power of Minister to amend or modify Acts.
4. Appeals.
5. Public local inquiries.
6. Authority for entry into buildings.
7. Suppression of publications.
8. Marketing Schemes.
9. Application of Limitation Act, 1939, to public authorities and provision as to costs of actions.
10. Assistance Board.
11. Amendment of s. 43 of National Insurance Act, 1946.
12. Trade Unions.
13. Amendment of s. I of Visiting Forces (British Commonwealth) Act, 1932.
14. Interpretation.
15. Short title.

A BILL

Intituled

An Act for the better securing for the liberty of the subject.

A.D. 1947

Whereas it is essential for the maintenance and development of free institutions and democratic government that the rights of the subject shall be strictly preserved, and whereas certain encroachments upon and violations of such rights have taken and are taking place, and whereas it is just and expedient that measures shall be taken by Parliament for the prevention of the perpetuation or recurrence of any such encroachment or violation and for the better safeguarding of such rights.

Now therefore be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lord's Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Provision for amendment of Statutory Instruments

1. Where by any Act any Statutory Instrument is required to be laid before Parliament, either House of Parliament may, within the time specified by the said Act for the approval or annulment of the said Instrument, amend the said Instrument and, if the other House agrees with the amendment, the Instrument shall come into force or shall continue in force subject to such amendment but without prejudice to the validity of anything previously done thereunder.

Validity of Statutory Instruments

2. (1) Notwithstanding anything in any former Act, the validity of any Statutory Instrument made in pursuance of any such Act may be called in question in proceedings duly begun during the period of three months from the day on which notice of the making of the order, rule, regulation or other instrument is first published.

(2) The court before whom any proceedings are duly taken for the purpose of questioning the validity of such a Statutory Instrument as aforesaid may upon application made by any party before the expiration of the said period of three months make an interim order directing that the order in question shall not come into operation before the final determination of the proceedings.

(3) Nothing in this section shall be held to limit or restrict or curtail any right to call in question by legal proceedings the validity of any Statutory Instrument made in pursuance of any Act of Parliament.

Power of Minister to amend or modify Acts

3. Where by any Act any Minister or Department is empowered to amend or modify the provisions of the said Act or of any other Act of Acts, such power shall cease to be exercisable one year from the commencement of this Act.

Appeals

4. (1) Where by any Act any Minister, tribunal or other body or person is authorized to adjudicate and finally to decide upon any claim, dispute or other issue, any question of law arising in connection with the determination of any such claim, dispute or issue as aforesaid may, if the Minister, tribunal, or other body or person thinks fit, be referred for a decision to the High Court of Justice and any person aggrieved by the decision of the Minister, tribunal or other body or person on any such question of law, may appeal therefrom from that decision to the High Court:

Provided that this section shall not apply to any claim, dispute or other issue, the determination of which depends upon the discretion of the Minister, tribunal or other body or person.

(2) Provision shall be made by rules of court for regulating references and appeals to the High Court under this section, and these rules may provide for limiting the time within which appeals may be brought.

(3) Notwithstanding anything in any Act, the decision of the High Court on a reference or appeal under this section shall be final and on any such reference or appeal to which a Minister is a party the Court may order the Minister to pay the costs of any other person, whether or not the decision is in his favour, and whether or not the Minister appears on the reference or appeal.

Public local inquiries

5. Where by an Act a Minister is authorized to hold or cause to be held a public inquiry before arriving at a decision—

(*a*) the report made by the person who holds the inquiry shall be published either before or at the same time as the Minister's decision is made known;

(*b*) the Minister shall publish a statement of the reasons for his decision and in particular in any respect in which he differs from the recommendation or findings contained in such report, shall set out the reasons for such difference;

(*c*) a copy of the report and of the Minister's statement and decision shall be furnished, in each case as soon as may be after the publication thereof, to every objector who has appeared at the inquiry.

Authority for entry into buildings. 9 Geo. 6. c. 10

6. (1) Notwithstanding anything in the Supplies and Services (Transitional Powers) Act, 1945, or in any Order in Council or Regulation made or continued in pursuance thereof, no person acting or purporting to act under the powers conferred by any such Regulation shall demand as of right admission to any building or part of a building unless—

(*a*) he has in his possession and produces if so required a duly authenticated document showing his authority and specifying the particular building or part of a building to which the holder of the document is to be admitted;

(*b*) such document has been issued not more than one month before the date on which admission is sought to the building or part of a building specified therein;

(*c*) the person who issued the said document had at the time of such issue reasonable grounds for believing that it was necessary for the purpose of the aforesaid Act or of any Order in Council or Regulation as aforesaid that the said building or part of a building should be entered and inspected.

(2) If in any legal proceedings the question arises as to whether the person who issued such a document had such reasonable grounds as aforesaid, the burden of proving the existence of such reasonable ground shall lie upon the party alleging it.

Suppression of Publications

7. Nothing in the Supplies and Services (Transitional Powers) Act, 1945, or in any Order in Council or Regulation made or continued in force in pursuance thereof shall be held to authorize the suppression or suspension of any publication whatsoever.

Marketing Schemes. 21 and 2 Geo. 5. c. 42. 23 and 24 Geo. 5. c. 31. 1 and 2 Geo. 6. c. 30.

8. (1) Notwithstanding anything in the Agricultural Marketing Acts, 1931 and 1933 and the Sea Fish Industry Act, 1938 no marketing board set up in pursuance of any of the aforesaid Acts shall have power to impose any penalty.

(2) If any registered producer wilfully fails to comply with any provision of a marketing scheme under any of the aforesaid Acts he shall be liable on summary conviction to a fine not exceeding fifty pounds, and in addition such amount as will, in the opinion of the Court, secure that the offender derives no benefit from the offence.

Application of Limitation Act, 1939, to public authorities and provision as to costs of actions. 2 and 3 Geo. 6. c. 21. Assistance Board.

9. (1) Notwithstanding anything in the Limitation Act, 1939 any public authority may be sued in respect of any cause of action arising after the commencement of this Act in the same manner and within the same period of limitation as any private defendant.

(2) In any successful action against a public authority begun or continued after the commencement of this Act costs shall be awarded on the same scale and according to the same principles as in action against a private defendant.

10. In the exercise of its powers in relation to (*a*) unemployment assistance (*b*) supplementary pensions in England and Wales (*c*) supplementary pensions in Scotland the Assistance Board shall comply with any directions given to it by the Minister of Labour, the Minister of Health and the Secretary of State for Scotland, respectively.

Amendment of s. 43 of National Insurance Act, 1946.

11. Section 43 of the National Insurance Act, 1946, shall have effect as if after subsection (3) thereof the following subsection was inserted:—

> In any case in which leave to appeal from a local tribunal is not granted by the tribunal or chairman the claimant may, within two months after receiving notice of the tribunal's decision make application in writing to the National Insurance Commissioner for leave to appeal and the National Insurance Commissioner after considering the claimant's application and the record of the proceedings in the local tribunal, may give such leave.

Trade Unions

12. No person employed by a public authority shall be dismissed from his employment or otherwise penalized by reason of his being or not being a member of any Trade Union or other organization or association representing employees and no public authority shall make it a condition of any person's employment that he shall be or not be a member of any such Trade Union organization or association as aforesaid.

Amendment of s. 1. of Visiting Forces (British Commonwealth) Act, 1932, 23 and 24 Geo. 5. c. 6. Interpretation

13. Section 1 (3) of the Visiting Forces (British Commonwealth) Act, 1932, shall have effect as if after the words "legal proceedings within the United Kingdom" there were inserted the words "other than proceedings instituted by writ of habeas corpus".

14. In this Act, unless the context otherwise requires the following expressions have the meanings duly assigned to them:—

"Private defendant" means a defendant other than a public authority.

"Statutory Instrument" means any Order in Council, order, rule, regulation or other instrument made in pursuance of a statute.

"Minister" means Minister of the Crown.

"Tribunal" means any tribunal other than a court of law.

Short Title

15. This Act shall be cited as the Preservation of the Rights of the Subject Act, 1947.

APPENDIX "F"

DECLARATION OF THE RIGHTS OF MEN

(This declaration was adopted on August 27, 1789, by the French National Assembly)

"The representatives of the French people, organized as a National Assembly, believing that the ignorance, neglect, or contempt of the rights of man are the sole causes of public calamities, and of the corruption of governments, have determined to set forth in a solemn declaration, the natural, inalienable, and sacred rights of man, in order that this declaration, being constantly before all the members of the social body, shall remind them continually of their rights and duties; in order that the acts of the legislative power, as well as those of the executive power, may be compared at any moment with the ends of all political institutions and may thus be more respected; and, lastly, in order that the grievances of the citizens, based hereafter upon simple and incontestable principles, shall tend to the maintenance of the constitution and redound to the happiness of all. Therefore, the National Assembly recognizes and proclaims in the presence and under the auspices of the Supreme Being the following rights of man and of the citizen:

Article 1. Men are born and remain free and equal in rights. Social distinctions may only be founded upon the general good.

2. The aim of all political association is the preservation of the natural and imprescriptible rights of man. These rights are liberty, property, security, and resistance to oppression.

3. The essence of all sovereignty resides essentially in the nation. No body nor individual may exercise any authority which does not proceed directly from the nation.

4. Liberty consists in the freedom to do everything which injures no one else; hence the exercise of the natural rights of each man has no limits except those which assure to the other members of society the enjoyment of the same rights. These limits can only be determined by law.

5. Law can only prohibit such actions as are hurtful to society. Nothing may be prevented which is not forbidden by law, and no one may be forced to do anything not provided for by law.

6. Law is the expression of the general will. Every citizen has a right to participate personally, or through his representative, in its enactment. It must be the same for all, whether it protects or punishes. All citizens,

being equal in the eyes of the law, are equally eligible to all dignities and to all public positions and occupations, according to their abilities and without distinction, except that of their virtues and talents.

7. No person shall be accused, arrested, or imprisoned except in the cases and according to the forms prescribed by law. Any one soliciting, transmitting, executing, or causing to be executed any arbitrary order shall be punished. But any citizen summoned or arrested in virtue of the law shall submit without delay, as resistance constitutes an offence.

8. The law shall provide for such punishments only as are strictly and obviously necessary, and no one shall suffer punishment except it be legally inflicted in virtue of a law, passed and promulgated before the commission of the offence.

9. As all persons are held innocent until they shall have been declared guilty, if arrest shall be deemed indispensable, all severity not essential to the securing of the prisoner's person shall be severely repressed by law.

10. No one shall be disquieted on account of his opinions, including his religious views, provided their manifestation does not disturb the public order established by law.

11. The free communication of ideas and opinions is one of the most precious of the rights of man. Every citizen may, accordingly, speak, write, and print with freedom, but shall be responsible for such abuses of this freedom as shall be defined by law.

12. The security of the rights of man and of the citizen requires public military force. These forces, are, therefore, established for the good of all, and not for the personal advantage of those to whom they shall be entrusted.

13. A common contribution is essential for the maintenance of the public forces and for the cost of administration. This should be equitably distributed among all the citizens in proportion to their means.

14. All citizens have a right to decide, either personally or through their representative, as to the necessity of the public contribution; to grant this freely; to know to what uses it is put; and to fix the amount the mode of assessment and of collection, and the duration of the taxes.

15. Society has the right to require of every public agent an account of his administration.

16. A society in which the observance of the law is not assured, nor the separation of powers defined, has no constitution at all.

17. Since property is an inviolable and sacred right, no one shall be deprived thereof except in cases where public necessity, legally determined, shall clearly require it, and then only on condition that the owner shall have been previously and equitably indemnified."

SESSION 1947

SPECIAL JOINT COMMITTEE OF THE SENATE AND THE HOUSE OF COMMONS

ON

HUMAN RIGHTS

AND

FUNDAMENTAL FREEDOMS

MINUTES OF PROCEEDINGS INCLUDING THIRD AND THE FOURTH AND FINAL REPORTS

No. 7

FRIDAY, JULY 11, 1947

OTTAWA
EDMOND CLOUTIER, C.M.G., B.A., L.Ph.,
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY
1947

REPORTS TO THE SENATE

MONDAY, 14th July, 1947.

The Joint Committee on Human Rights and Fundamental Freedoms beg leave to make their third Report, as follows:—

To obtain a clearer concept of its duties, your Committee, as a preliminary step in its inquiry, resolved its Order of Reference of May 26 into three divisions, namely:—

(1) 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;

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

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

The Deputy Minister of Justice was heard in regard to the legal and constitutional position in Canada in so far as human rights are concerned, while an officer of the Department of External Affairs gave evidence respecting the obligations assumed by Canada as a member of the United Nations.

The Director of the Division of Human Rights, Department of Social Affairs, United Nations, appeared and supplied information relative to the activities of the United Nations in the matter of human rights.

Contained in your Committee's minutes of proceedings and evidence are copies of documents relative to the subject-matter of the Order of Reference.

At the outset, it was apparent that at the present session only preparations could be made for a subsequent detailed study of human rights and fundamental freedoms. Consequently, your Committee has invited the attorneys-general of the provinces and the heads of Canadian law schools to furnish views and opinions on the question of the power of the Parliament of Canada to enact a comprehensive Bill of Rights applicable to all Canada.

It is recommended that early next session a joint committee be appointed to resume consideration of the task assigned to your Committee.

A printed copy of the minutes of proceedings and evidence is appended.

All of which is respectfully submitted.

L. M. GOUIN,
Chairman.

MONDAY, 14th July, 1947.

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

The subject-matter of Bill No. 133, An Act to amend the Criminal Code (Illegal Organizations), came before your Committee for consideration. Much of the attention of your Committee having been devoted to other matters referred

to it in a prior Order of Reference, it became apparent that, at this late stage of the session, proper consideration could not be given to the subject-matter of Bill No. 133.

In view, however, of the fact that your Committee, in its Third Report, recommended the appointment early next session of a similar Committee, it is anticipated that it would be possible at that time to give consideration to the subject-matter of such a bill.

A copy of the relevant printed minutes of proceedings and evidence of the Committee—Nos. 1, 6 and 7—is appended.

All of which is respectfully submitted.

L. M. GOUIN,
Chairman.

REPORTS TO THE HOUSE OF COMMONS

SATURDAY, July 12, 1947.

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

THIRD REPORT

To obtain a clearer concept of its duties, your Committee, as a preliminary step in its inquiry, resolved its Order of Reference of May 26 into three divisions, namely,—

(1) 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;

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

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

The Deputy Minister of Justice was heard in regard to the legal and constitutional position in Canada insofar as human rights are concerned, while an officer of the Department of External Affairs gave evidence respecting the obligations assumed by Canada as a member of the United Nations.

The Director of the Division of Human Rights, Department of Social Affairs, United Nations, appeared and supplied information relative to the activities of the United Nations in the matter of human rights.

Contained in your Committee's minutes of proceedings and evidence are copies of documents relative to the subject-matter of the Order of Reference.

At the outset, it was apparent that at the present session only preparations could be made for a subsequent detailed study of human rights and fundamental freedoms. Consequently, your Committee has invited the attorneys-general of the provinces and the heads of Canadian law schools to furnish views and opinions on the question of the power of the Parliament of Canada to enact a comprehensive Bill of Rights applicable to all Canada.

It is recommended that early next session a joint committee be appointed to resume consideration of the task assigned to your Committee.

A printed copy of the minutes of proceedings and evidence is appended.

All of which is respectfully submitted.

J. L. ILSLEY,
Chairman.

MONDAY, July 14, 1947.

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

FOURTH AND FINAL REPORT

The subject-matter of Bill No. 133, An Act to amend the Criminal Code (Illegal Organizations), came before your Committee for consideration. Much of the attention of your Committee having been devoted to other matters referred to it in a prior Order of Reference, it became apparent that, at this late stage of the session, proper consideration could not be given to the subject-matter of Bill No. 133.

In view, however, of the fact that your Committee, in its Third Report, recommended the appointment early next session of a similar committee, it is anticipated that it would be possible at that time to give consideration to the subject-matter of such a bill.

A copy of the relevant printed minutes of proceedings and evidence of the Committee—Nos. 1, 6 and 7—is appended.

All of which is respectfully submitted.

J. L. ILSLEY,
Chairman.

MINUTES OF PROCEEDINGS

THE SENATE,

11th July, 1947.

The Special Joint Committee on Human Rights and Fundamental Freedoms met at 12.00 o'clock noon. 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 Burchill, Crerar, Fallis, Horner, Roebuck, Turgeon.

The House of Commons: Mrs. Strum and Messrs. Beaudoin, Belzile, Benidickson, Croll, Hansell, Herridge, Irvine, Marier, Rinfret, Stewart (*Winnipeg North*).

The Chairman read the following letter relating to proceedings on the subject-matter of Bill No. 133, An Act to amend the Criminal Code (Illegal Organizations):

OTTAWA, 7th July, 1947.

Dear Mr. LACROIX,—Your letter of July 1st was read to the Parliamentary Committee on Human Rights and Fundamental Freedoms when it met last Friday. Your letter was carefully considered and there was considerable discussion of its contents.

The Committee will meet again on Friday of this week and it is anticipated that this will be its final meeting. The Committee was of opinion that if you were to make your presentation next Friday it would be impossible for them to give the full consideration to your bill which it deserves in time to permit the matter to be dealt with in their final report. It was felt that in a matter of this kind it would be necessary not only to hear your representations but those of others who might be interested in the subject matter of the bill.

I was directed to write you advising you of the Committee's views in the premises. The Committee is fully aware of your desire to have the subject matter of your bill considered, but in the circumstances it would appear preferable to contemplate this consideration at the next session, when, as you state in your letter, you will be introducing your bill again. I may say that the Committee decided to recommend in its final report that the Government give consideration to the setting up of a Committee next year having terms of reference similar to those of the present Committee.

Yours very truly,

J. L. ILSLEY.

Wilfred LaCroix, Esq., M.P.,
The House of Commons,
Ottawa.

The Chairman informed the Committee that an application to appear and make representations had been received from the Secretary, Civil Rights Union, Toronto, and that an acknowledgment had been sent outlining the decision of the Committee in accordance with the second report of the steering committee.

The following were tabled by the Chairman and it was ordered that copies be distributed to all members:

(i) Draft of a resolution for the General Assembly, United Nations, submitted by the representative of India. (External Affairs document No. 8).

(ii) Draft resolution for an international court of human rights, submitted by the representative from Australia to the United Nations. (External Affairs document No. 9).

(iii) Constitutional Documents, a booklet prepared by the Department of Justice.

(iv) Documented Outline June 2, Drafting Committee, Commission on Human Rights, United Nations.

The Committee considered draft reports to both Houses.

On motion of Honourable Senator Turgeon, a draft Third Report, as amended, was adopted.

On motion of Mr. Irvine, a draft Fourth Report, as amended was adopted.

On motion of Mr. Herridge,

Ordered,—That the Joint Chairman present the said reports.

The Committee adjourned *sine die.*

J. G. DUBROY,
Clerk of the Committee.