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COMMISSION ON HUMAN RIGHTS

Eighth Session

SUMMARY RECORD OF THE TWO HUNDRED AND NINETY-FIRST MEETING

Held at Headquarters, New York,  
on Tuesday, 13 May 1952, at 10.40 a.m.

CONTENTS:

Draft international covenants on human rights and measures of implementation (E/1992, E/CN.4/655/Add.4, E/CN.4/667, E/CN.4/L.51/Corr.1, E/CN.4/L.61/Rev.1, E/CN.4/L.80/Rev.2, E/CN.4/L.85/Rev.1, E/CN.4/L.88, E/CN.4/L.89, E/CN.4/L.95, E/CN.4/L.96/Rev.1, E/CN.4/L.97, E/CN.4/L.99, E/CN.4/L.100, E/CN.4/L.101, E/CN.4/L.102, E/CN.4/L.103) (continued)

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

Members (continued):

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

Also present: Miss MANAS Commission on the Status of Women

Representatives of specialized agencies:

Mr. MORELLET )	International Labour Organisation
Mr. PICKFORD )	(ILO)
Mr. SABA	United Nations Educational, Scientific and Cultural Organization (UNESCO)

Representatives of non-governmental organizations:

Category A:

Mr. THORNMANN	International Confederation of Free Trade Unions (ICFTU)
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Category B and Register:

Mrs. AIETA	Catholic International Union for Social Service
Mr. NOLDE	Commission of the Churches on International Affairs
Mrs. SOUDAN	International Federation of Business and Professional Women
Miss ROBB	International Federation of University Women
Mrs. PHILLIPS	Liaison Committee of Women's International Organizations
Mr. JACOBY	World Jewish Congress
Mr. FENCE	World's Alliance of Young Men's Christian Associations

/Secretariat:

Secretariat:

Mr. LIN

Representative of the  
Secretary-General

Mr. DAS  
Miss KITCHEN

Secretaries of the Commission

DRAFT INTERNATIONAL COVENANTS ON HUMAN RIGHTS AND MEASURES OF IMPLEMENTATION  
(E/1992, E/CN.4/655/Add.4, E/CN.4/667, E/CN.4/L.51/Corr.1, E/CN.4/L.61/Rev.1,  
E/CN.4/L.80/Rev.2, E/CN.4/L.85/Rev.1, E/CN.4/L.88, E/CN.4/L.89, E/CN.4/L.95,  
E/CN.4/L.96/Rev.1, E/CN.4/L.97, E/CN.4/L.99, E/CN.4/L.100, E/CN.4/L.101,  
E/CN.4/L.102, E/CN.4/L.103)(continued)

Mr. WHITLAM (Australia) said that he had abstained in the final vote on article 28 because his delegation preferred the text proposed by the Lebanese delegation (E/CN.4/L.96/Rev.1) to that which had been adopted. In particular, he regretted that paragraph 2 of the adopted text contained the words "it is understood" which seemed to be of doubtful legal force, and that under paragraph 3 legal guardians had the same right as parents to ensure the religious education of the children in conformity with their own convictions. It was to be hoped that those points could subsequently be modified.

Mr. JEVREMOVIC (Yugoslavia) explained that his delegation had voted in favour of the text adopted by the Commission because in spite of some shortcomings it was very similar to article 28.

Mr. JUVIGNY (France) stated that his delegation had been in favour of the Lebanese amendment, but that when the majority of the Commission had decided against it, he had voted for the text that had been adopted, which did not differ substantially from the original article, except for the inclusion of the non-discrimination clause. That clause was not essential, since it was included in article 1 and applied to all the articles. In the event that article 1 was revised the French delegation would associate itself with the view expressed by the United Kingdom representative at the 290th meeting. He agreed with the Australian representative that the words "it is understood" did not have much legal force, and needed to be revised.

/Mrs. RUSSEL

Mrs. RUSSEL (Sweden) explained that her delegation had voted against the inclusion of the non-discrimination clause in article 28 because it was already contained in article 1 of the covenant. Unlike the Chilean delegation, she thought that segregation was also covered by that clause.

On the other hand, she had voted against the clause on the suppression of racial hatred because she felt that the point was adequately covered by the provisions on the promotion of "understanding, tolerance and friendship among all nations, all racial, ethnic or religious groups and all classes of society on the basis of justice" which had the advantage of being constructive. She had voted against the text as a whole, because she preferred the text proposed by Lebanon.

Mr. HOARE (United Kingdom) explained that he had voted against the clause on suppression of racial hatred, not only for the reasons given by the Swedish representative, but also because of the danger of that clause being misused by a ruling race. He had voted against all the paragraphs of the Polish sub-amendment (E/CN.4/L.99) because their text was unsatisfactory and also because they were preceded by the words "it is understood" which did not have sufficient force. He regretted that the Committee had not adopted the Lebanese amendment as it would have linked article 28 to article 1 adopted earlier, and he has therefore abstained in the final vote as the new text had even more faults than the old one.

Mrs. MEHTA (India) said that she had voted against the Polish sub-amendment (E/CN.4/L.99) to paragraph 3 which reproduced paragraph 7 of article 28 and which included the words "incitement to racial and other hatred" for the same reasons as stated by the Swedish representative. The phrase in paragraph 1 of the United States amendment (E/CN.4/L.80/Rev.2) "promote understanding, tolerance and friendship among all nations, racial, ethnic or religious groups" explained the aim of education in a positive way, whereas the Polish text put it negatively. She preferred the former.

She had also voted against the inclusion of paragraph 2 of the old text of article 28 because its provision was already contained in article 1. She had abstained on the provisions of the Polish sub-amendment (E/CN.4/L.99) calling for the establishment of an educational system because any provisions dealing with the implementation of the principle were out of place in the article in question. Lastly, she had voted against the text as a whole because it was

/weaker than

weaker than the old one; she thought that the form of the Lebanese amendment (E/CN.4/L.96/Rev.1) to article 28 was more logical, and she wished that the adopted text would be revised.

Mr. CHENG PAONAN (China) explained that he had abstained because he preferred the original text of the Lebanese amendment (E/CN.4/L.96/Rev.1) and he hoped that that text would eventually be adopted.

Mr. NISOT (Belgium) stated that while he had voted in favour of the text adopted by the Commission, he hoped that it would subsequently be improved; it was in the hope of future revision that he had cast his vote.

The CHAIRMAN announced that the discussion on article 28 was closed.

Mr. BRACCO (Uruguay), speaking on a point of order, said that he had thought during the vote that paragraph 3 of his delegation's amendment (E/CN.4/L.61/Rev.1) would be put to the vote because it constituted an addition to the old text of article 28. He asked the President to consult the Commission on whether or not it should have voted on that paragraph.

The CHAIRMAN declared that since article 28 was no longer before it the Commission must decide either to re-open the debate on article 28 or to vote on the amendment of Uruguay (E/CN.4/L.61/Rev.1) or on that of any other delegation.

Mrs. ROOSEVELT (United States of America) felt that if the Commission agreed to examine the Uruguayan amendment it should also agree to consider paragraph 4 of the United States amendment (E/CN.4/L.80/Rev.2).

Mr. BRACCO (Uruguay) stated that he would not press his point, and that he did not propose the re-opening of the debate on article 28.

Mr. NISOT (Belgium) indicated that he had thought that his delegation's amendment, too, (E/CN.4/L.95) would be voted on by the Commission. He hoped that that amendment could be considered at a later time.

/Mr. VALENZUELA

Mr. VALENZUELA (Chile), speaking on a point of order, requested the Chairman to tell the Commission the work remaining to be done at the present session in order that representatives might agree on the procedure to be followed so as to expedite the work.

The CHAIRMAN thought the Commission should expedite its consideration of part III of the draft covenant during the week ending 16 May, that it should examine parts II and III of that draft during the week ending 23 May, take up the other questions relating to the two covenants during the week ending 30 May and, lastly, examine the seventeen remaining items on its agenda during the week ending 6 June.

Mr. NISOT (Belgium) asked at what point in that programme the Commission would deal with the federal clause.

The CHAIRMAN indicated that that question would be taken up during the week ending 30 May.

Mrs. ROOSEVELT (United States of America) thought that in the event the schedule proposed by the Chairman could not be carried out, there was nothing to prevent the Commission from asking the Economic and Social Council to extend its session until it had finished its work.

The CHAIRMAN said that while that was not impossible, it would be better if the Commission were to proceed on the assumption that it must end its work by 6 June.

Mr. MOROZOV (Union of Soviet Socialist Republics) thought that the schedule proposed by the Chairman could be met if all members of the Commission exercised restraint. He doubted, however, that the Commission could deal with the seventeen remaining items on its agenda in one week, and wondered whether all the items were equally important and must necessarily be taken up at the present session.

AZMI Bey (Egypt) hoped that the work schedule proposed by the Chairman could be successfully carried out. If the Commission had to work beyond the time limit, he would like to be notified as soon as possible.

/Mr. VALENZUELA

Mr. VALENZUELA (Chile) asked the Chairman to circulate the work plan he had just proposed as a Secretariat document to members of the Commission.

The CHAIRMAN replied that the plan would presently be circulated to the Commission.

Mrs. MEHTA (India) proposed that the Commission should set a time limit for the presentation of amendments to the articles of the covenant.

Mrs. ROOSEVELT (United States of America) asked that a different time limit should be set for the measures for implementation since many of them were the same for both covenants.

Mr. KOVALENKO (Ukrainian Soviet Socialist Republic) supported the Indian representative's proposal.

The CHAIRMAN proposed that Monday, 19 May at 10.30 a.m. should be fixed as the time limit for the submission of amendments to the covenants, except for those relating to measures for implementation, with the understanding that the time limit did not apply to sub-amendments.

It was so decided.

The CHAIRMAN invited the Commission to examine article 29 of the draft covenant.

Mr. SABA (United Nations Educational, Scientific and Cultural Organization) said that article 29 followed logically on article 28 which the Commission had just adopted. The adopted text did not differ much in substance from the original text of article 28. Nevertheless, the former paragraph 2 on non-discrimination had been deleted, but, as many representatives had pointed out, the general aim was to integrate article 28 more fully into the covenant, and paragraph 2 of article 1 applied to all the articles. He had been glad to learn, from the statements made during the debate, that the Commission would re-introduce the non-discrimination clause in article 28

/if article 1

if article 1 was modified. On the other hand, the fear had been voiced that, in view of the provisions of article 1, article 28 might be interpreted as not placing States under a definite obligation in respect of education at all levels. In his opinion such an interpretation could not stand, since the adopted text provided in particular that education should be universal and free of charge at all levels. He recalled in that connexion that when UNESCO had proposed a supplementary clause for article 28 containing a formal undertaking by States to achieve the purposes set forth in the article, the Commission had stated that such a clause would not be necessary in view of the fact that the obligation of States applied to the whole content of the right and to the purposes set out in the article.

Article 29 was designed to hasten the universal application of the principle of free and compulsory primary education for all, without imposing the adoption of a world-wide programme which many States would be unable to carry out. Owing to the differences in the economic development of countries, it would be difficult to provide for uniform obligations. Article 29 called for a first step in implementation; each State undertook to work out, within a given time, a detailed plan of action for the progressive implementation of the principle of compulsory primary education free of charge for all. Hence, each State would be required to work out and carry out a policy of primary education which would be accepted by the competent constitutional organs and public opinion. As a result of the reports which would be submitted to the United Nations and the specialized agencies concerned, a collective impetus would be created and the necessary technical assistance would be provided to countries requiring it.

UNESCO was prepared to co-operate as effectively as possible in that field. It had arranged for two regional conferences to be held in 1952 in South-East Asia and the Middle East so as to enable countries faced with similar problems to exchange views and determine their respective needs. UNESCO had also made provision for a special study on training of teachers, as well as for the dispatch of experts to countries desiring assistance in the preparation of the proposed programmes.

/It should



It should be noted that article 29 was the only article in the covenant on economic, social and cultural rights to provide for a positive obligation accompanied by a precise time limit for implementation. The Fourteenth International Conference on Public Education had adopted a recommendation in that connexion which was reproduced in document E/CN.4/667.

UNESCO had requested Member States to submit comments on the articles of the draft covenant relating to cultural rights. It had received a considerable number of replies, most of them favouring the plan provided for in article 29. The replies did not come solely from countries which had not yet ensured free and compulsory primary education and which therefore were called upon to prepare a plan; they came also from countries which were more advanced in that respect. During the International Conference on Public Education, the representatives of Australia, Lebanon, the United Kingdom and the United States, in particular, had stressed the practical value of preparing such a plan.

Objections had been raised on the ground that an article prescribing the elaboration of plans was inappropriate in the covenant. The Executive Board of UNESCO said that such objections reflected concern with form rather than criticism of substance.

The deletion of article 29 would have unfortunate consequences. Above all it would remove from the covenant on economic, social and cultural rights the only obligation to take action within a given time limit, and that would have a regrettable effect on public opinion.

Moreover, no special instrument could have the same authority as the covenant on human rights or achieve, as would the covenant, uniform results for all States whether or not they had secured free and compulsory primary education.

Mr. HOARE (United Kingdom) explained the reasons which led his delegation to propose the deletion of article 29 (E/CN.4/L.88).

In the first place, general considerations were involved. A degree of balance must be maintained between the various articles of the covenant. Article 28 was already too long and too detailed in comparison with the other articles of the covenant on economic, social and cultural rights; by making one aspect of the right to education more explicit, article 29 accentuated

/that lack

that lack of balance. It was essential to work out plans so that education would become compulsory and free in all countries. He fully approved the recommendation of the International Conference on Public Education; the point at issue was whether a special provision to that effect should be included in the covenant. Emphasis on planning in this specific instance had the effect by contrast of minimizing the necessity of planning on the field covered by other articles, such as social security or full employment.

The recommendation of the International Conference on Public Education contained a series of instructions which States should follow in preparing the proposed plan. UNESCO, too, was organizing two regional conferences which would be held before the covenant could come into force. All went to show that the matter was one for UNESCO to deal with; it could take steps that would prove much more effective than a mere provision of the covenant. Besides the Commission had recognized that when the questions dealt with in the various articles were within the competence of a specialized agency, that agency should implement the principles set forth therein whether through individual conventions or by other means.

Finally, article 29 provided, in effect, for special measures of implementation relating to one aspect of a particular right and many members of the Commission thought that implementation should be dealt with in a general article.

He also had practical objections to the retention of article 29. The recommendation of the International Conference on Public Education provided that the proposed plans should be prepared without delay while article 29 set a time limit of two years. Moreover it was required that each plan should specify how many years would be necessary to achieve full implementation of the principle of free and compulsory primary education for all. In the case of under-developed countries it would be extremely difficult to make such a determination. It was clear from the terms of the recommendation of the International Conference that the plans would require consideration of many economic, financial, social, geographic, political and even linguistic factors. The Commission should be realistic and recognize that States would be obliged either to set themselves a very long period of time or to indicate a period without any degree of assurance. It was admitted in the report of the Committee appointed by UNESCO that it would be impossible to bind States to implement the plans within the time limit specified in them. Consideration must be given to the possible effects of economic and demographic developments on the implementation of the plan in each country.

/From all

From all points of view, it was therefore inadvisable to maintain article 29.

Mrs. ROOSEVELT (United States of America) noted that, as the representative of UNESCO had said, the United States delegation and other delegations at the Fourteenth International Conference on Public Education had recognized the value of plans for making free and compulsory education generally available. It did not necessarily follow that the United States delegation was in favour of including an article in the covenant imposing on States the obligation of preparing such plans. The responsibility for preparing detailed plans in the field of education belonged to UNESCO. Such plans were essential but there was no reason to provide for them in the covenant which should merely set forth the general objectives that States should seek to attain. She did not see why the covenant should ~~impose the obligation~~ to prepare plans in the field of education rather than in the field of economic or social rights.

Accordingly the United States delegation was in favour of the United Kingdom amendment (E/CN.4/L.88) for the deletion of article 29.

AZMI Bey (Egypt) was opposed to the United Kingdom amendment. The obligation of preparing a detailed plan, contemplated in article 29, was toned down by so many reservations that it was reduced to a strict minimum. The plan in question related only to primary education; a period of two years from the date of a State's adherence to the covenant was provided for the preparation of the plan which could be implemented only progressively and within a reasonable number of years. The obligation to prepare plans in the field of education should be specified because the right to education, as the very basis of the development of the human personality, was the most important right enunciated in the covenant.

In 1922, Egypt had initiated a general plan to make primary education compulsory and free. About thirty years had been required to implement that plan and, in recent years, attempts had been made to extend the plan to secondary and higher education. All countries with a sincere desire to implement the right to education could do what Egypt had done, both in their own territory and in the Non-Self-Governing Territories which they administered.

/He therefore

He therefore called upon the Commission to reject the United Kingdom amendment (E/CN.4/L.88).

Mrs. MEHTA (India) noted that, at the seventh session of the Commission, her delegation had favoured the inclusion of article 29 in the covenant. She wondered, however, whether, because of its content, that article was not more closely linked to measures of implementation and whether it should be retained in the covenant at all. She would abstain in the vote on the United Kingdom amendment.

Mr. WHITLAM (Australia) said that his delegation's position on article 29 had been clearly presented by the United Kingdom representative, all of whose arguments he accepted.

He questioned the accuracy of the statement of the representative of UNESCO that opposition to article 29 was based solely on considerations of symmetry and balance among the various articles of the covenant. Inclusion of article 29 in the covenant might create confusion between the economic, social and cultural rights to be proclaimed and defined in the covenant and the same rights in so far as they came within the competence of specialized agencies, particularly UNESCO, as regards cultural rights.

The action of the Australian delegation in voting for the deletion of the article should not be interpreted to mean Australian opposition to the work of UNESCO. Australia was a member of UNESCO, participated fully in all its activities and would continue to do so. If the United Kingdom amendment was rejected, he would ask the Commission to reconsider the words "within two years" in article 29. The progress achieved by UNESCO in drawing up plans to make compulsory education generally available radically altered that aspect of the question. He would therefore request a separate vote on those words.

Mr. JEVREMOVIC (Yugoslavia) concurred in the position of the Egyptian representative and opposed the deletion of article 29. The Commission must not necessarily seek to ensure systematic balance among the various articles of the covenant. If that was its wish, it could make the articles on economic and social rights as full as the articles on cultural rights.

/Yugoslavia,

Yugoslavia, like Australia, was in favour of UNESCO's work but considered that that article should be retained in accordance with the recommendations of that specialized agency.

He expressed a reservation regarding the expression "territories under its jurisdiction" which was a departure from the wording adopted in the article on the right of peoples to self-determination and the General Assembly resolution (545 (VI)) which referred to States "having responsibility for the administration of Non-Self-Governing Territories". It would be preferable to retain that formula and he would be prepared to support any proposal to that effect.

Mr. AZKOUL (Lebanon) was opposed to the United Kingdom amendment. In his opinion the right to education was different from other rights and by its very nature its implementation should not be in the form of a vague progressive development. Some States, such as Uruguay, had already fully implemented the principle of free education at all levels. Probably no single State had fully implemented all of the other rights set forth in the covenant and it was therefore appropriate in the case of those rights to provide for progressive implementation which was, as a matter of fact, fully consistent with their nature.

Primary education was also distinct in character from the other levels of education. The original draft of article 28 and the draft adopted by the Commission took that into consideration and did not provide for progressive implementation of free compulsory education at that level. In the case of primary education, it was therefore justifiable to put an end to progressive implementation of the principle of compulsory and free education. That was done in article 29, due regard being paid to the position of each State. Accordingly the Lebanese delegation continued to favour the retention of article 29.

Mr. ERACCO (Uruguay) shared the views of the delegations of Egypt, Lebanon and Yugoslavia. Nevertheless it was his opinion that the present text of article 29 was not sufficiently obligatory in character.

/Mr. JUVIGNY

Mr. JUVIGNY (France) admitted that the arguments of the United Kingdom delegation had great legal merit but said that they had not convinced him of the need to delete article 29.

In principle, the French delegation was opposed to the inclusion in the covenant of technical matter and detailed provisions on method which were not universally useful and could only detract from the general nature of the covenant and prejudice the number of its ratifications and its effective implementation. It could not, however, be said that the methods enunciated in article 29 lacked universality. By virtue of the reservations it contained, that article gave States complete freedom of action in the implementation of the plans they were called upon to prepare.

It was natural for the covenant to be brief and concise in its treatment of rights which were within the competence of the older specialized agencies such as ILO, and of rights on which considerable legislation had been enacted. In the case of rights dealt with by more recently established specialized agencies such as UNESCO which did not have the long legal and technical experience of the ILO, the formulas in the covenant might be more flexible and more detailed. In requesting retention of article 29, UNESCO wanted the covenant, as an eminently authoritative legal instrument, to approve its activities in the field of cultural rights. That organization realized the impossibility of preparing and implementing an international educational plan and knew that each State must be asked to draw up and implement a plan for the territories under its jurisdiction: the covenant provided an adequate legal framework.

Article 29 did not set a rigid and generally applicable time limit for implementation of the plan. It merely represented in concrete form the will of States to implement the first part of article 28 by working out a plan within a given time limit.

In the light of the special nature of the right to education and the dynamic and realistic character of article 29, the French delegation would not vote for deletion of that text. It wished, however, to stress that its position applied only to primary education and should not be considered as a precedent in the case of other rights.

The meeting rose at 1.5 p.m.

27/5 p.m.