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COMMISSION ON HUMAN RIGHTS

Eighth Session

SUMMARY RECORD OF THE TWO HUNDRED AND SEVENTY-FIFTH MEETING

Held at Headquarters, New York,  
on Wednesday, 30 April 1952, at 3 p.m.

CONTENTS:

Draft international ~~covenants~~ on human rights and measures of implementation: part III of the draft covenant drawn up by the Commission at its seventh session (basic documentation as in E/CN.4/SR.268; also E/CN.4/L.54/Rev.2, E/CN.4/L.73, E/CN.4/L.45, E/CN.4/L.53, E/CN.4/L.58) (continued)

Chairman:	Mrs. MEHTA	(India)
Reporteur:	Mr. WHITLAM	Australia
<u>Members:</u>	Mr. NISOT	Belgium
	Mr. SANTA CRUZ	Chile
	Mr. CHENG PAONAN	China
	AZMI Bey	Egypt
	Mr. CASSIN	France
	Mr. KYROU	Greece
	Mr. AZKOUL	Lebanon

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Members (continued):

Mr. WAHEED	Pakistan
Mr. BORATYNSKI	Poland
Mrs. ROSSSEL	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
<u>Also present:</u> Miss MAÑAS	Commission on the Status of Women

Representatives of specialized agencies:

Mr. PICKFORD	International Labour Organisation (ILO)
Dr. INGALLS	World Health Organization (WHO)
Mr. ARNALDO	United Nations Educational, Scientific and Cultural Organization (UNESCO)

Representatives of non-governmental organizations:

<u>Category A:</u>	Miss SENDER )	International Confederation of Free
	Mr. LEARY )	Trade Unions (ICFTU)
	Miss KAIN	World Federation of Trade Unions (WFTU)
<u>Category B:</u>	Mr. LEWIN	Agudas Israel World Organization
	Miss FREEMAN	International Council of Women
	Mrs. SOUDAN	International Federation of Business and Professional Women
	Mr. BEER	International League for the Rights of Man
	Miss GARTLAN	International Union of Catholic Women's Leagues
	Miss BOBB	Liaison Committee of Women's International Organizations
	Mr. JACORY	World Jewish Congress
	Mr. RONALDS )	World Union for Progressive Judaism
	Mrs. POLSTEIN )	

Secretariat:

Mr. HUMPHREY	Director, Division of Human Rights
Mr. DAS )	Secretaries of the Commission
Miss KITCHEN )	

DRAFT INTERNATIONAL COVENANTS ON HUMAN RIGHTS AND MEASURES OF IMPLEMENTATION:  
PART III OF THE DRAFT COVENANT DRAWN UP BY THE COMMISSION AT ITS SEVENTH  
SESSION. (basic documentation as in E/CN.4/SR.268; also E/CN.4/L.54/Rev.2,  
E/CN.4/L.73, E/CN.4/L.45, E/CN.4/L.53, E/CN.4/L.58) (continued)

General clause (article 1) (continued)

The CHAIRMAN called on representatives who wished to explain their votes.

Mr. WHITLAM (Australia) said that his delegation would have been prepared to cast an affirmative vote for the United States text (E/CN.4/L.54/Rev.1) for reasons already stated, but had felt obliged to vote against the provision on non-discrimination which had originally been a Lebanese amendment (E/CN.4/L.73) and had been taken over by the Polish representative. That vote had been cast in good faith. Australia subscribed fully to the principle of non-discrimination as affirmed in the Universal Declaration of Human Rights and would continue to work for the universal and effective recognition and observance of non-discrimination as well as of all the other rights and freedoms proclaimed in the Declaration.

The Australian delegation was in favour of an article on non-discrimination, in the right place and in the right terms, as shown by its support for the first paragraph of article 1 of the covenant as drawn up at the Commission's sixth session. Its opposition to the proposed clause as an introduction to the economic, social and cultural rights rested on its conception of the nature and attributes of a legal commitment and on its opinion that the provision in question had not conformed to that conception. It was plain, however, that the Australian delegation's view was not shared by the majority of the Commission, and it was unfortunate that that fact had caused a division on the provision which was at variance with the unanimity that prevailed on the principle itself.

It was the conviction of the Australian delegation that in the long run the principle of non-discrimination would become more firmly established as an active principle of public and private conduct if all could subscribe to the conception which the Australian delegation had constantly sought to

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express both in the Commission and in other organs of the United Nations. In the circumstances, the Australian delegation had had no option but to vote against the Polish amendment.

Mrs. ROOSEVELT (United States of America) said that she had voted against the Polish amendment (E/CN.4/L.73) because she had felt that the word "guarantee" could not be used in such a context by States parties to a legal instrument. Although that amendment had been adopted, she would vote for article 1 as a whole, but wished to reserve the right, after all the other articles in the covenant on economic, social and cultural rights had been adopted, to attempt to bring about a reconsideration of the word "guarantee".

Mr. CASSIN (France) remarked that, in spite of its firm intention to fight against discrimination in all its forms, his Government was unable to give immediate application to the guarantee contained in the Polish amendment. Nevertheless, he would vote for article 1 as a whole, reserving the right to propose a reconsideration of that text when articles 20 to 32 had been completed.

Mrs. ROSSEL (Sweden) said that she would vote for the first paragraph which was derived from the United States amendment (E/CN.4/L.54/Rev.2) and, like other representatives, she would vote for the article as a whole, although the clause on non-discrimination was not worded in the best way possible. Her delegation objected to the word "guarantee" for reasons explained by previous speakers, but had thought it so important to include some clause on non-discrimination that it would not by an abstention or negative vote risk contributing to its defeat.

She associated herself with the United States and French representative remarks with regard to the procedure followed in voting on the Polish amendment.

Mr. NISOT (Belgium) explained that he had the same objections to the non-discrimination clause in article 1 as the United States, French and Swedish representatives, but whereas they were prepared to vote for the article as a whole, he would abstain.

/Mr. HOARE

Mr. HOARE (United Kingdom) was not entirely satisfied with the words "by legislative as well as by other means" in the first paragraph of the proposed article. He had not wished to interrupt the debate on that point but he wished to record his view that from the use of the phrase "by legislative as well as by other means" two considerations were clear: firstly, both of those methods would have to be adopted; and, secondly, the "other means" were regarded as having first place, while "legislative" means were added on. That was not an entirely appropriate formulation. He had already expressed his objections to the form of the clause on non-discrimination. Nevertheless, he would vote for the article as a whole, since he thought the first paragraph was essential and he was in favour of a non-discrimination clause, though not of the terms of the clause which the Commission had adopted. He hoped that there would be another opportunity to review the wording of that clause.

Mr. AZKOUL (Lebanon) drew attention to the fact that the first words of the non-discrimination clause should be in the singular and should accordingly be replaced by "Each State Party hereto undertakes" in order to conform with paragraph 1, which it followed.

While he regretted that the word "progressively" had been retained in the United States text, he would vote for that text, on the understanding that "progressively" as used therein meant "more and more fully" and did not, as some had said, constitute an excuse for indefinite postponement. He would also vote for the clause on non-discrimination -- which had been his own text until he had agreed to accept a compromise wording -- and for the article as a whole.

If the non-discrimination clause was later reconsidered the Lebanese delegation would be once more prepared to replace the word "guarantee" by "take the necessary measures".

Mr. SANTA CRUZ (Chile) said that he would vote against paragraph 1 of the proposed article, because that text imposed no concrete or immediate obligations upon States and would make the articles which followed it ineffective. He was in favour of adjourning the vote on article 1 until the remaining articles to which it was to apply had been formulated. If a vote should be taken he would nevertheless vote for the article as a whole, in the hope that the Commission would impose specific obligations on States in the

/various articles,

various articles, thereby correcting the shortcomings of article 1, and because the clear and precise wording of the non-discrimination clause adopted by the Commission, represented a victory he would do nothing to jeopardize. He hoped that during any reconsideration of that clause the Commission would maintain its present stand and that the Lebanese representative -- the original author of the clause -- would support it as it stood.

Mr. KYROU (Greece) stated that he had voted against the Chilean representative's procedural proposal to adjourn the vote on article 1 because he regarded that article as the foundation of the covenant. He had voted against the Polish amendment both for procedural reasons and for a reason of substance which was that, while his own Government was ready to accept the word "guarantee", the covenant must be so drafted that the greatest possible number of States should be able to accede to it. He would vote for article 1 as a whole.

The CHAIRMAN reminded the Commission that, as a result of the adoption of the Polish amendment, which had become paragraph 2 of the proposed article 1, that article read as follows:

"1. Each State Party hereto undertakes to take steps, individually and through international co-operation, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in this Covenant by legislative as well as by other means.

"2. The States Parties hereto undertake to guarantee that the rights enunciated in this Covenant will be exercised without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

Article 1, paragraph 1, was adopted by 12 votes to 3, with 3 abstentions.

Article 1 as a whole was adopted by 16 votes to none, with 2 abstentions.

/Mr. MOROZOV

Mr. MOROZOV (Union of Soviet Socialist Republics) in explanation of his vote on article 1 as a whole felt that the adoption of paragraph 2, which obligates States to guarantee non-discrimination in the exercise of the rights enunciated in the covenant, was an achievement on the part of the Commission. His delegation did not agree with paragraph 1, which did not impose adequate obligations upon States to ensure the realization of those rights and would at a later stage fight to improve that text.

Mr. KOVALENKO (Ukrainian Soviet Socialist Republic) had been unable to agree to paragraph 1 and regarded it as unsatisfactory, since it imposed no definite obligations on States and contained a number of loopholes. He had nevertheless voted for the article as a whole, feeling that paragraph 2, with its firm guarantee, represented a definite achievement.

Mr. BORATYNSKI (Poland) observed that paragraph 1 represented a victory for those delegations who sought to render the covenant on economic, social and cultural rights ineffective by filling it with empty phrases like the expression "progressively" which was meaningless. His delegation would endeavour to improve that text when it came up before other organs of the United Nations. He had, however, voted for the article as a whole because it contained the Polish amendment, which, unlike paragraph 1, did impose a definite legal obligation.

Mr. JEVREMOVIC (Yugoslavia) had voted for paragraph 2 since he agreed that the covenant should contain a full and immediate guarantee against discrimination. He had voted against paragraph 1 for reasons explained earlier, the chief reason being that its wording was in direct disregard of the General Assembly's instructions as laid down in resolution 544 (VI). He had therefore been unable to accept the article as a whole, and had abstained from voting in order to express his strong reservation to the wording of paragraph 1.

/Mr. NISCT

Mr. NISOT (Belgium), speaking on a point of order, said that the provisions of the covenant were interrelated and that, therefore, the vote on an article could not be considered final when it was cast at a time when the contents of articles which had not yet been studied were unknown. He therefore proposed that the Commission should immediately decide that a vote would be taken on the covenant as a whole after the various articles had been adopted.

The CHAIRMAN said that the Commission had not voted on the draft declaration of human rights as a whole, nor on the draft covenant at its previous sessions, but that did not necessarily mean that it should not vote on the draft covenants as a whole. It would, however, be wiser to take the decision after the articles had been discussed.

Mrs. ROOSEVELT (United States of America) thought that it was more usual not to vote on such instruments as a whole but to adopt them when the Commission adopted its Rapporteur's report.

The CHAIRMAN objected that such action was merely the approval of the report and could not be regarded as implying the adoption of the instrument as such.

Mr. SANTA CRUZ (Chile), supported by Mr. KYROU (Greece), said that there was every reason to vote on the covenant as a whole; such a vote was always taken in all United Nations organs. It was only logical that the Commission should vote on the whole, as many articles were inter-related and all of them had to be related to the general clauses and to the preamble. The Commission must of course take the responsibility for the draft covenant as a whole by voting on it.

Mr. CASSIN (France) agreed with the Belgian and Chilean representatives. He pointed out that the Commission regularly voted on articles as a whole even though individual paragraphs had been adopted. In addition, there would almost certainly have to be a second reading, particularly of the provisions relating to implementation.

Mr. AZKOUL (Lebanon) could not see why that matter should be decided immediately or, indeed, how it could be, as many members' votes would depend on how the articles were drafted. He noted that there were precedents for not taking a vote on a covenant or convention as a whole and cited the example of the draft convention on freedom of information prepared by the Special Committee on Freedom of Information.

/In reply



In reply to Mr. HOARE (United Kingdom), the CHAIRMAN said that the Belgian representative's proposal was in order; the question was whether a decision should be taken at once.

Mr. WAHEED (Pakistan), supported by Mr. AZKOUL (Lebanon), proposed that the discussion of the Belgian representative's proposal should be adjourned until the Commission had completed its work on the articles.

The proposal was adopted by 5 votes to 3, with 9 abstentions.

Mr. NISOT (Belgium) said that the decision which had just been taken would oblige the members of the Commission to be very cautious as their votes, though cast in uncertain circumstances, might in the final analysis prove definitive.

AZMI Bey (Egypt) said that the discussion of the general clause had elicited very many explanations, interpretations and definitions. As the Commission was engaged in work analogous to the preparatory work for legislation, the Secretariat should bear in mind the importance of seeing that the explanations, interpretations and definitions were all fully reflected in the Commission's records.

Article 20 (E/CN.4/L.45, E/CN.4/L.53, E/CN.4/L.58) (continued)

Mr. BORATYNSKI (Poland) said that the majority of the Members of the United Nations had stressed the importance of the economic, social and cultural rights and would welcome the Commission's work, provided that it bore that fact firmly in mind when it drafted the covenant dealing with those rights. That view had been clearly expressed by many delegations during the fifth and sixth sessions of the General Assembly, particularly at the 297th, 298th and 299th meetings of the Third Committee at the fifth session. The Commission must always be conscious that it was no longer merely making recommendations but was drafting the provisions of a multilateral treaty to be binding on governments, which would make themselves responsible for enforcement. Thus, any attempt to persuade the Commission that the States themselves should not be made responsible for enforcement was an attempt to undermine the rights themselves. All attempts to prescribe implementation with the most careful regard for all the implications should be welcomed; the USSR

/proposal

proposal (E/CN.4/L.45) was a proposal of that type. The existing text of article 20 recognized the right to work but made no provision for the creation of conditions precluding any danger of death from hunger or inanition, a provision essential for the full enforcement of the right. The USSR proposal was based upon undeniable facts. United States newspapers and official and semi-official publications abounded with evidence of increasing unemployment in the United States, France, Belgium, Netherlands, United Kingdom, Italy, and Western Germany. Other official publications described inhumanly low wages in such areas as the Rhodesias, Kenya, the Belgian Congo and the French possessions in Africa. To quote such facts was not an attack on any government which might be deemed responsible for such horrible conditions, but an explanation of the reason why it was essential that States should guarantee to take action against those conditions; it was one of the best ways in which delegations could help the Commission to draft the articles most wisely.

Something undoubtedly could be done. Articles 14, 58 and 59 of the draft Polish Constitution published on 23 January 1952 showed that. Furthermore, the Polish Government had shown its goodwill in that connexion by offering at the recent international economic conference at Moscow to increase its trade with all countries, thereby helping to secure economic rights for all the world's peoples. Political rights could be ensured only if the recognition of the right to work was linked with the guarantee by the State of conditions in which the workers were not subjected to the threat of starvation. The Commission should therefore adopt the USSR proposal (E/CN.4/L.1

Mr. MOROZOV (Union of Soviet Socialist Republics) said that it seemed unnecessary at the present stage to submit further arguments in favour of the USSR amendment to article 20, especially after the statement of the Polish representative.

The Chilean amendment to that article was not in contradiction or in competition with the USSR proposal. The Chilean emphasis on the need for the State to adopt measures guaranteeing implementation of the right to work should commend itself to all members who were genuinely concerned with ensuring the most fundamental of all rights by having the State assume specific obligations to eliminate or at least curtail the misery of unemployment. In his opinion both the Chilean and the USSR amendments to article 20 should be adopted.

/Mrs. ROOSEVELT

Mrs. ROOSEVELT (United States of America) noted that the United States Delegation had not submitted any amendment to article 20 in view of the lengthy discussion which had preceded the adoption of the present text at the seventh session of the Commission. The preceding year the USSR delegation had submitted precisely the same amendment to article 20 putting the responsibility for implementation on the State alone. The United States delegation maintained its previous position that the USSR text was objectionable because it produced a limiting article which was unsuitable in the covenant. Moreover it precluded many desirable elements other than those mentioned therein.

The Chilean amendment, though slightly different in wording from the USSR amendment, was practically the same in its effect. While the obligation of the State to try to guarantee as full employment as possible was generally recognized, it was difficult to see how democratic States could guarantee absolutely and by their own action alone the right to work to all persons without becoming totalitarian States. It was, of course, to be hoped that States would take all possible steps to make work accessible to any person seeking employment. The United States delegation would therefore be unable to vote in favour of the Chilean or the USSR amendment to article 20.

Mr. SANTA CRUZ (Chile) agreed that previous discussion of the article in the Commission should be taken into consideration. He recalled that at the preceding session a similar amendment to article 20 by the Chilean delegation had been presented but had not been put to the vote because at that time it was thought that the general clause when adopted would cover the points contained in his present proposal. Now, however, the contents of the general clause were known. Moreover, it was significant that article 24 and the subsequent articles of the covenant contained specific rather than general provisions.

He could not agree with the representative of the United States that the obligation of States to guarantee the right to work could be fulfilled only by totalitarian States. Democratic States could adopt legislation regulating economic rights and imposing sanctions for violations. In the case of most of the Members of the United Nations, the majority of the population would live in even worse economic conditions than at present unless the State adopted legislative

/and other

and other measures in the economic field. Article 20 in its present form merely recognized the right to work without imposing any obligation on the State. Under the Chilean amendment the State would be committed to encourage concrete enjoyment of that right but would not be expected immediately to guarantee work for all. The basic principle of the Chilean proposal was not new; it was reflected in Article 55 of the Charter and in many resolutions of the Economic and Social Council and the General Assembly recommending full employment on a national and international scale.

It was noteworthy that the United States Government had, in times of economic crisis, taken legislative and other action seeking to ensure employment for all. Such action was therefore not restricted to totalitarian States. Mere recognition of the right to work was inadequate. The Chilean amendment was essential if article 20 was to be effective.

Mr. CASSIN (France) stated that the present text of article 20 had been adopted at the seventh session by a vote of 16 to none. The article as drafted reflected the general position that the covenant contained a broad programme of work legally defined and accepted as the obligation of all signatory States. The article on the right to work must be considered in the light of the work of ILO, the Economic and Social Council and its subordinate bodies. If the concept of the covenant as a broad programme of work were maintained, the article should be drafted in general terms and should not enumerate all the steps considered appropriate.

He pointed out in connexion with the USSR amendment that it was unwise in the article on the right to work to concentrate on the struggle against hunger and inanition. That provision appropriately belonged in the preamble where it would apply to all articles. In addition it was impossible for the State to guarantee immediate elimination of all unemployment. Moreover, article 20 recognizing the right to work should not be regarded as standing alone but in the light of the general clause applicable to all articles. He would therefore be unable to accept the USSR proposal.

He felt that the Chilean amendment introduced a valuable element in referring to full employment, but he thought it should be regarded as defining a duty of the State rather than a human right.

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Moreover, full employment required collective international action as well as action by individual States.

Although the Chilean proposal had a valuable reference to efforts for full employment, it was unacceptable in its present form.

In his opinion the Yugoslav amendment (E/CN.4/L.58) to article 20 was satisfied by the United Kingdom amendment which had been presented recently.

Although the French text contained in document E/1992 did not correspond exactly with the English formulation of article 20, he considered that that draft was actually the strongest possible French counterpart of the ideas expressed and that any other formula in French would weaken the thought.

Replying to Mr. NISOT (Belgium), the CHAIRMAN said that the original French text of article 20 as drafted by the Commission at its seventh session appeared as article 49 in document E/CN.4/635/Add.5.

Mr. SANTA CRUZ (Chile) said, in reply to the representative of France, that with two or three exceptions, most articles in the covenant were so drafted as to include specific obligations on States. That was the form adopted throughout the covenant and should be followed. He considered it appropriate to include in the individual articles all points which were considered essential.

He agreed that responsibility for full employment was international as well as national and was prepared to accept a reference to international action for full employment in his amendment.

Mr. BRACCO (Uruguay) pointed out that in several organs of the United Nations it had been decided not to meet on religious or national holidays. He stated that 1 May was a holiday in his country where it was celebrated as Labour Day. Accordingly he asked the Commission to follow previous practice and suspend its meeting for that day.

Mrs. ROCSEVELT (United States of America) thought that the Commission should rather celebrate 1 May by continuing its work, particularly as a great deal remained to be done.

/After

After a discussion in which it was pointed out that 1 May was celebrated as a holiday in many countries and that it also had significance for the international workers' movement, the CHAIRMAN put the Uruguayan representative's proposal to the vote.

It was decided, by 15 votes to none, with 3 abstentions, not to work on 1 May.

Mr. AZKOUL (Lebanon) asked whether, in view of that decision, the time limit for the submission of amendments to articles 23 to 31 of part III of the draft covenant drawn up by the Commission at its seventh session and proposals for new articles could be extended from 1 May to 10.30 a.m. on 2 May.

After a brief discussion, the CHAIRMAN said that that request would be granted.

The meeting rose at 5.40 p.m.