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COMMISSION ON HUMAN RIGHTS

Eighth Session

SUMMARY RECORD OF THE TWO HUNDRED AND SEVENTY-FOURTH MEETING

Held at Headquarters, New York,
on Wednesday, 3 April 1952, at 10.30 a.m.

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Chairman: Mr. MALIK Lebanon

Rapporteur: Mr. WHITLAM Australia

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Members:	Mr. NISOT	Belgium
	Mrs. FIGUEROA) Mr. SANTA CRUZ)	Chile
	Mr. CHENG PAONAN	China
	AZMI Bey	Egypt
	Mr. CASSIN	France
	Mr. KYROU	Greece
	Mrs. MEHTA	India
	Mr. AZKOUL	Lebanon
	Mr. WAHEED	Pakistan
	Mr. BORATYNSKI	Poland
	Mrs. RÖSSEL	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) Mr. PICKFORD)	International Labour Organisation (ILO)
Mr. ARNALDO	United Nations Educational, Scientific and Cultural Organization (UNESCO)

Representatives of non-governmental organizations:

Category A:

Mr. LEARY	International Confederation of Free Trade Unions (ICFTU)
Miss KAHN	World Federation of Trade Unions (WFTU)

/Category B

Category B and Register:

Mrs. AIETA	Catholic International Union for Social Service
Mr. MOSKOWITZ	Consultative Council of Jewish Organizations
Mrs. ROBB	International Federation of University Women
Mrs. GARTIAN	International Union of Catholic Women's Leagues
Mrs. HYMER	International Federation of Business and Professional Women
Mrs. FREEMAN	Liaison Committee of Women's International Organizations
Mrs. WALSER	Women's International League for Peace and Freedom (WILPF)
Mr. JACOBY	World Jewish Congress
Mr. RONALDS) Mrs. POLSTEIN)	World Organization for Progressive Judaism
Mr. PENCE	World Alliance of Young Men's Christian Associations

Secretariat:

Mr. HUMPHREY	Representative of the Secretary-General
Mr. DAS) Miss KITCHEN)	Secretaries of the Commission

/DRAFT

DRAFT INTERNATIONAL COVENANTS ON HUMAN RIGHTS: PART III OF THE COVENANT DRAFTED BY THE COMMISSION AT ITS SEVENTH SESSION (basic documentation as in E/CN.4/SR.268; E/CN.4/L.45, E/CN.4/L.46, E/CN.4/L.47, E/CN.4/L.48, E/CN.4/L.49, E/CN.4/L.50 E/CN.4/L.51, E/CN.4/L.52, E/CN.4/L.53, E/CN.4/L.53/Corr.1, E/CN.4/L.54/Rev.2, E/CN.4/L.56, E/CN.4/L.57, E/CN.4/L.58, E/CN.4/L.59, E/CN.4/L.60, E/CN.4/L.61, E/CN.4/L.62, E/CN.4/L.63, E/CN.4/L.65/Rev.1, E/CN.4/L.66, E/CN.4/L.67, E/CN.4/L.68, E/CN.4/L.70, E/CN.4/L.71, E/CN.4/L.72, E/CN.4/L.73, E/CN.4/L.74, E/CN.4/L.75, E/CN.4/L.76) (continued)

The CHAIRMAN asked the Commission to continue the general discussion on the revised United States draft amendment (E/CN.4/L.54/Rev.2).

Mr. HOARE (United Kingdom) agreed with the French delegation that the Chilean amendment (E/CN.4/L.71) should be examined later, as it sought to define the relation between article 1 of the covenant on economic, social and cultural rights and provisions imposing special obligations in respect of particular rights, and the Commission had not yet decided whether it would adopt such provisions.

With regard to draft article 1 in the United States proposal, he observed that, whereas some delegations criticized it because its stipulations about non-discrimination were inadequate, the Lebanese amendment (E/CN.4/L.73), on the other hand seemed to him to go too far, since it laid an obligation on States to guarantee immediately that the rights set forth in the draft Covenant would be secured without any discrimination whatsoever. Such a text if adopted, might create considerable difficulties for some States which could not guarantee the immediate abolition of all dsicrimination in respect of certain rights. In the United Kingdom, for example, the principle of equal pay for equal work for men and women which was implicit in the provisions of article 21 and was given further emphasis in article 31 of the draft covenant had been accepted, so far as state employees were concerned, by the Government which had at the same time announced that it could not be applied at present because of the country's economic situation. Other countries might be similarly situated and be unable to accept immediately so absolute an obligation with regard to the principle of non-discrimination on account of sex.

/On the

On the other hand, the United Kingdom delegation could accept the obligation suggested in the Lebanese amendment with regard to the right to social security set forth in article 22 of the draft covenant. In the United Kingdom social security legislation applied equally to nationals and aliens, which was not the case in some countries, where aliens shared in social security benefits only if there was a reciprocity agreement with the countries to which those foreigners belonged. Accordingly, such States could not undertake to guarantee unreservedly that they would make no discrimination on grounds of national origin. The same might be true of several other economic, social and cultural rights.

He agreed with the representative of India that the form of article 1 proposed by the United States delegation brought non-discrimination into the category of ultimate aims towards which States should strive, and he had some sympathy with the view of those who thought that formulation insufficient. The United Kingdom delegation believed that the question should be examined more thoroughly and was anxious to have a satisfactory form of words.

The Yugoslav delegation wished to have an exception made for under-developed States rather than provide for general progressive implementation. Such a distinction in a general article would not be appropriate. It would also be superfluous, since the limitation expressed in the phrase "to the maximum of its available resources" actually implied a heavier obligation for the fully developed and a lighter one for the under-developed countries.

The CHAIRMAN said the list of speakers was closed.

Mr. MOROZOV (Union of Soviet Socialist Republics) reminded the Commission that at the 272nd meeting he had stated that the text for article 1 proposed by the United States delegation was inadequate. The French delegation, which had asked the Commission to keep in mind the provisions of article 18 and 32 of the draft Covenant when considering article 1, had proposed a new article (E/CN.4/L.67) for inclusion in the draft Covenant emphasizing limitations to economic, social and cultural rights; its draft amendment to article 32 (E/CN.4/L.76) was similar in tenor.

/This whole

This whole series of proposals showed a deliberate intention to oppose the recognition and enforcement of economic, social and cultural rights. It was, however, the Commission's duty to make the obligations attaching to those rights as strictly enforceable as possible. It was essential that they should be fully exercised and the restrictions proposed were not acceptable. A glance at the text of the French proposal was enough to show that all kinds of limitations were contemplated, such as respect for the rights and freedoms of others, public order and general welfare, the laws of the contracting States and the conventions to which a State was a party. There was an obvious desire to limit the field of enforcement of the provisions already adopted by the Commission, in particular, the principle of national self-determination, and of the articles to be subsequently adopted for insertion in the draft Covenant. Any State which did not wish to enforce the provisions of the Covenant would always find justification in the limitations set forth in article 32 of the draft Covenant as amended by the French delegation (E/CN.4/L.76). For instance, if Tunisia were to be allowed to exercise its right to national self-determination, France could plead that existing conventions were incompatible with the Covenant and so the Covenant would be sacrificed and the Protectorate maintained.

Delegations which really wished to comply with the General Assembly's instructions to the Commission should try to improve the articles of the draft Covenant dealing with the obligation to ensure respect for economic, social and cultural rights and should reject any limitation which would void that obligation.

AZMI Bey (Egypt) reminded the United Kingdom delegation that there was an item on the Commission's agenda dealing with reservations and it would always be open to States signatories to the Covenant to make reservations. There was no need for the Covenant itself to make allowance for the special difficulties of certain States.

/Mr. CHENG PAONAN

Mr. CHENG PAONAN (China) said he would support the United States proposal(E/CN.4/L.54/Rev.2), though it did not meet all of his delegation's expectations. As it was inadmissible that the covenant should be used by one State to impose its views on other States, the United States proposal had the advantage of being flexible and of leaving it to each country to find the best way of enforcing the provisions of the covenant.

His country attached great importance to the inclusion of the words "to the maximum of its available resources" in the text to be adopted by the Commission. He cited facts and figures to prove that the health services in China still had only very limited resources, despite all the progress already made, in comparison with the ideal situation envisaged in the draft covenant, and the same was true of primary education. His Government could undertake the obligations laid down in the covenant only progressively, as the United States proposal demanded.

Mr. CASSIN (France) disclaimed any intention of stultifying the covenant as the representative of the USSR had claimed. He would reply to Mr. Morozov regarding the French proposals on article 18 (E/CN.4/L.67) and article 32 (E/CN.4/L.76) when the Commission discussed those articles.

Contrary to what the United Kingdom representative had said, he had not submitted an amendment to the Lebanese amendment (E/CN.4/L.73) to article 1 but he had at the previous meeting asked the Lebanese representative whether he would agree to replace in his amendment the word "guarantee" by the words "to take the necessary steps". If the reply was affirmative, the French delegation would support the Lebanese amendment.

Mr. AZKOUL (Lebanon) thanked the representative of France for trying to accept the idea expressed in the Lebanese amendment (E/CN.4/L.73), namely that States should assume a specific obligation in connexion with the non-discrimination clause, independently of the provisions of international conventions or domestic legislation, or the economic conditions in a country. In order to facilitate adoption of the Lebanese amendment by the greatest possible number of States, he would accept the change suggested by the French representative.

/With regard

With regard to the word "progressively" used in the United States proposal (E/CN.4/L.54/Rev.2), he was becoming increasingly convinced of the danger of its use. Its deletion would not mean that enforcement of the rights enunciated in the covenant should be achieved in other than a gradual fashion because the words "to the maximum of its available resources" implied that the economic, social and cultural conditions in a country might delay implementation of those rights. On the contrary, to include the word "progressively" might be interpreted as weakening the undertaking assumed by States. He therefore asked for a separate vote on that word. The Lebanese delegation would vote against its inclusion.

The CHAIRMAN asked the Lebanese representative whether, to meet the French representative's suggestion he would agree to replace the word "guarantee" by "to take the necessary steps".

Mr. AZKOUL (Lebanon) accepted the suggestion.

Mr. KOVALENKO (Ukrainian Soviet Socialist Republic) said that some members of the Commission were waging a regular crusade to eliminate economic, social and cultural rights from the covenant. That was clear from the United States proposal (E/CN.4/L.54/Rev.2), the numerous statements seeking to link article 1 and article 32 of the draft covenant, the French amendment to article 18 (E/CN.4/L.76) and the fact that some members were trying to limit the provision for immediate enforcement of the rights enunciated in the covenant and to destroy the non-discrimination clauses.

In his opinion, the United States proposal(E/CN.4/L.54/Rev.2) would nullify the draft adopted by the Commission at its seventh session. He noted that if some delegations had their way, economic, social and cultural rights would be limited on all sides, by article 1, by article 32, by the non-discrimination clauses and by several amendments to the various rights. Fine phrases about human rights did not alter the hard facts.

The Commission had made a serious mistake in voting to reverse its original decision to examine the articles thoroughly before taking up the general clause and if, as the representative of Egypt had suggested, a proposal were made that the Commission reconsider that decision, the Ukrainian SSR delegation would vote in its favour.

/Mr. SANTA CRUZ

Mr. SANTA CRUZ (Chile), with reference to the United Kingdom representative's claim that a general clause on non-discrimination would obviate the need for special provisions on the subject in articles 22 et seq. of the draft covenant, hoped that, even though the Commission had decided to consider the general clause first, it would be possible subsequently to consider the bearing of that clause on the special clauses.

With reference to the word "progressively" used in the United States proposal (E/CN.4/L.54/Rev.2), he pointed out that in non-self-governing territories where living and working conditions were worse than in under-developed but independent countries, some of the rights enunciated in the draft covenant were at the moment non-existent. If the word "progressively" were used, the Powers administering those territories would be able to delay implementation of those rights indefinitely. Moreover, that word seriously limited the principle of self-determination of peoples on which the Commission had already taken a decision. He therefore hoped that the Commission would reject the word "progressively" as it might make a fiction of the rights recognized in the covenant.

He supported the Egyptian representative's suggestion that the vote on the general clause should be deferred until the various rights had been discussed because, obviously, only then could that clause be definitively drafted. He formally moved that the Commission should begin discussion of the various articles and vote on the general clause only after that discussion was closed.

Mr. BORATYNSKI (Poland) seconded the Chilean representative's motion as it would save the Commission from building a roof before laying the foundations. He was surprised to find the representative of France advocating the drafting of a general clause before the details had been discussed.

/The CHAIRMAN

The CHAIRMAN said that in accordance with rule 45 of the rules of procedure, he would put to the vote the Chilean motion for adjournment. If that motion was accepted, the Commission would proceed to consider article 20 and the following articles of the covenant; if it was rejected, the Commission would vote on the proposal and amendments concerning article 1, in the following order: Polish amendment (E/CN.4/L.65/Rev.1), Chilean amendment (E/CN.4/L.71), Lebanese amendment (E/CN.4/L.73), United States proposal (E/CN.4/L.54/Rev.2).

Mr. AZKOUL (Lebanon) said that his delegation would oppose the Chilean motion for adjournment, as such a reversal of the previous decision would lead to confusion; besides, it would always be possible to alter the text of the first article at a later date.

Mr. NISOT (Belgium) said that his delegation would support the Chilean motion because it considered it essential to know the text of article 32 in order to take a final position on the first article.

The CHAIRMAN put to the vote the Chilean motion for adjournment of the discussion on the first article.

The motion for adjournment was rejected by 9 votes to 8, with 1 abstention.

The CHAIRMAN called upon the Commission to take a decision on the Polish amendment (E/CN.4/L.65/Rev.1).

Mr. BORATYNSKI (Poland) wished to alter the first part of his amendment; instead of requesting deletion of the words "achieving progressively" he called for a separate vote on each of those two words. He also asked that a separate vote be taken on each of the three paragraphs comprising the second part of his amendment.

The CHAIRMAN put to the vote paragraph 2 of the Polish amendment.

Paragraph 2 was rejected by 10 votes to 7, with 1 abstention.

/The CHAIRMAN

The CHAIRMAN called for a vote on paragraph 3 of the Polish amendment.

A vote was taken by roll-call.

In favour: Chile, Pakistan, Poland, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Uruguay, Yugoslavia.

Against: Australia, Belgium, China, France, Greece, India, Lebanon, Sweden, United Kingdom of Great Britain and Northern Ireland, United States of America.

Abstaining: Egypt

Paragraph 3 of the Polish amendment was rejected by 10 votes to 7, with 1 abstention.

The CHAIRMAN put to the vote paragraph 4 of the Polish amendment.

A vote was taken by roll-call.

In favour: Chile, Pakistan, Poland, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Uruguay, Yugoslavia.

Against: Australia, Belgium, China, France, Greece, India, Lebanon Sweden, United Kingdom of Great Britain and Northern Ireland United States of America.

Abstaining: Egypt.

Paragraph 4 of the Polish amendment was rejected by 10 votes to 7, with 1 abstention.

The CHAIRMAN put to the vote the Chilean amendment (E/CN.4/L.71 point 1).

The Chilean amendment was rejected by 9 votes to 7, with 2 abstentions.

The CHAIRMAN called for a vote on the Lebanese amendment (E/CN.4/L.73) the French text of which, with the amendments accepted by its author, read as follows: "Les Etats parties au présent Pacte s'engagent à prendre toutes les mesures nécessaires pour que les droits qui y sont enoncés soient exercés sans distinction aucune, etc...".

Mr. HOARE (United Kingdom) thought that the words introduced into that amendment would be properly translated into English by: "to take all necessary steps in order that...", and that the word "enjoyed" might express the Lebanese representative's idea better than "exercised".

/Mr. BORATYNSKI

Mr. BORATYNSKI (Poland) said that those last minute changes had altered radically the meaning of the Lebanese amendment and he therefore wished to take over and re-introduce that amendment in its original form (E/CN.4/L.73).

Mr. MOROZOV (Union of Soviet Socialist Republics) speaking on a point of order, remarked that the Commission had not been officially informed of the revised draft of the Lebanese amendment until it was being put to the vote. The situation was consequently the same as if the Lebanese representative had withdrawn his original text and had replaced it by a new amendment, and the Polish representative was free, under the rules of procedure, to re-introduce the original Lebanese amendment.

The CHAIRMAN thought that the Polish representative's proposal should be regarded as an amendment to the Lebanese amendment, to replace the words "take all necessary steps in order that" by the word "guarantee".

Mr. KYROU (Greece) asked whether the representative of Lebanon had not accepted at the previous meeting the change proposed on that occasion by the French representative.

Mr. CASSIN (France) explained that at that meeting his delegation had not submitted a written amendment to the Lebanese amendment at the meeting held on the previous day because the time limit set by the Commission for the submission of amendments had already expired. The Lebanese representative had informed the Commission of his decision to accept the French drafting changes during the present meeting, long before the voting had begun. That would have been the right time for the Polish representative to re-introduce the old Lebanese amendment, and not after the voting had begun.

Mrs. ROOSEVELT (United States of America) also thought that the Polish representative's proposal was out of order.

Mr. AZKOUL (Lebanon) said, in reply to the Greek representative, that at the beginning of the meeting the French representative had reminded him of the suggestion he had made at the previous meeting.

Mr. Azkoul had then accepted the proposed amendment together with an additional change suggested by the Chairman. The Polish representative, who had spoken next, could have made his proposal at that time.

The CHAIRMAN said that the Commission had before it the Polish representative's proposal to put to the vote the original text of the Lebanese amendment (E/CN.4/L.73), which thus became the Polish amendment to the United States text (E/CN.4/L.54/Rev.2).

He put that amendment to the vote.

That amendment was adopted by 10 votes to 7, with 1 abstention.

Mr. CASSIN (France) objected to the fact that a representative had been permitted to present an amendment after the voting had begun. That should be stated clearly in the summary record.

Mr. KYROU (Greece) and Mrs. ROOSEVELT (United States of America) associated themselves with the French representative in protesting against that procedure.

Mr. SANTA CRUZ (Chile) said that in his opinion the rules of procedure had been established in order to enable the Commission to express its opinion as precisely as possible. Those rules prohibited the presentation of amendments after voting had begun solely for the sake of orderly procedure, but they should not prevent the Commission from discharging its task to the best of its ability. In the present case it had been necessary for the progress of the Commission's work to accept the Polish representative's proposal.

Mr. BRACCO (Uruguay) entirely agreed with the Chilean representative.

Mr. HOARE (United Kingdom) criticized the Commission's decision not from the procedural point of view but because his Government, like other governments, would be unable to apply the provision adopted.

/Mr. NISOT

Mr. NISOT (Belgium) asked that the fact that he had voted against the amendment should be noted in the summary record.

AZMI Bey (Egypt) said that he had abstained on the Polish amendment contained in document E/CN.4/L.5/Rev.1 because, while approving of its general ideas, he had been unable to vote for a provision postulating that States undertook to guarantee that the competent political, administrative or judicial authorities would determine a person's right to redress, in view of the absolute independence of the judiciary in his country; furthermore, the words "all individuals within its territory" would have required clarification.

The CHAIRMAN stated that he had put to the vote the Polish representative's proposal taking into account the fact that the exact text of the Lebanese amendment had been announced just before the vote. If a text A that had been already for some time before the Commission was modified, just before the voting, into a form B, and if a member then moved A as an amendment to B, it seemed fair, even apart from the fact that the amendment, being receivable, had to be voted on first, to put A to the vote first as the text that had been for some time before it. Furthermore, by rejecting the Chilean motion for deferring voting on the article in question, the Commission had decided to proceed to a vote and had thus to some extent allowed for slight irregularities of procedure. If the Lebanese last-minute amendment was receivable, then so was the Polish last-minute amendment. Lastly, account had to be taken of the fact that most members were in favour of voting on the Polish proposal. The Commission could have overruled the order of voting suggested by the Chair. The question was one of the most important to be decided by the Commission; the latter could of course reconsider its decision if the majority so wished.

He called for a vote on the United States proposal (E/CN.4/L.54/Rev.2).

Mr. NISOT (Belgium) thought it would be wiser to postpone the vote until the following meeting, in view of the important change brought about by the amendment just adopted.

Mr. AZKOUL (Lebanon) agreed with the Belgian representative. Because of the adoption of the Lebanese amendment which had been restated by the Polish representative members who had been ready to vote for the United States text might change their minds.

The CHAIRMAN, noting that there had been no formal motion for adjournment, invited the Commission to vote on the United States text (E/CN.4/L.54/Rev.2)

Mr. SANTA CRUZ (Chile) asked for a separate vote on the words "to the maximum of its available resources".

The CHAIRMAN put those words to the vote.

Those words were adopted by 12 votes to 6, with no abstentions.

The CHAIRMAN recalled that the Polish representative had asked for separate votes on the words "achieving" and "progressively". For practical reasons, it would be preferable to vote first on the word "progressively" and then on the words "achieving progressively".

He accordingly put to the vote the word "progressively".

A vote was taken by roll call.

In favour: Australia, Belgium, China, France, Greece, India, Pakistan, Sweden, United Kingdom of Great Britain and Northern Ireland, United States of America.

Against: Chile, Egypt, Lebanon, Poland, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Uruguay, Yugoslavia.

The word "progressively" was adopted by 10 votes to 8.

The CHAIRMAN put to the vote the words "achieving progressively".

The words "achieving progressively" were adopted by 10 votes to 7, with 1 abstention.

AZMI Bey (Egypt) said that he had abstained in the last vote because the deletion of the words "achieving progressively" would have rendered the sentence meaningless.

Mr. MOROZOV (Union of Soviet Socialist Republics) moved the adjournment of the meeting.

The motion for adjournment was adopted by 6 votes to 4, with 6 abstentions.

The meeting rose at 1.30 p.m.

21/5 p.m.