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DRAFT INTERNATIONAL COVENANTS ON HUMAN RIGHTS AND  
MEASURES OF IMPLEMENTATION

Economic, Social and Cultural Rights

Memorandum by the Secretary-General

1. The Secretary-General has the honour to present to the Commission on Human Rights certain suggestions relating to the substantive provisions of the draft Covenant on Economic, Social and Cultural Rights (E/2256, Annex I, Part A). Most of the suggestions are of a linguistic character, although a few raise matters of substance.
2. It will be noted that these suggestions are made within the framework of the existing substantive provisions of the draft Covenant on Economic, Social and Cultural Rights and that they do not relate to such basic questions (raised by governments, delegations, specialized agencies and non-governmental organizations) as the organization and structure of the Covenant or the character and scope of the legal obligations of its contracting parties. One of those questions is whether economic social and cultural rights should be drafted in brief clauses of a general character, or should be set out with precision and in detail. Another is whether each article should lay down a specific obligation with respect to a specific right, or should contain a mere recognition of that right.

Preamble, paragraph 1

3. In the first paragraph of the Preamble the English expression "principles proclaimed in the Charter of the United Nations" is translated into French as

"principes exprimés par la Charte des Nations Unies". The word "exprimés" should be changed to "proclamés".

Article 2 paragraph 1

4. Paragraph 1 of Article 2 reads: "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."

5. It appears that there are certain undertakings which do not depend upon availability of resources and need not be made subject to progressive implementation. Such is the case in respect of the undertakings to ensure trade union rights (Article 8), to protect children and young persons (Article 10, paragraph 2), to respect the liberty of parents to choose the kind of education for their children (Article 14, paragraph 3), to work out and adopt a plan of action relating to primary education (Article 15) and to respect the freedom of scientific research and creative activity (Article 16, paragraph 3).

6. The Commission is invited to consider the advisability of adding a paragraph to Article 2 to the following effect: "Nothing in the present article shall be interpreted as limiting the undertakings of States Parties under Article 8, Article 10 (paragraph 2), Article 14 (paragraph 3), Article 15 and Article 16 (paragraph 3) of the present Covenant."

Article 6, paragraph 2

7. The French equivalent of the English expression "shall include programmes, policies and techniques" in paragraph 2 of Article 6 is "doivent inclure l'élaboration de programmes, de politiques et de techniques". The French wording may be changed to read as follows: "doivent inclure des programmes, des lignes de conduite et des techniques".

Article 7, paragraph (b)

8. Sub-paragraph (i) of paragraph (b) contains the following clause:

"in particular, women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work."

9 As paragraph (b) relates only to remuneration and as the clause quoted above refers to "conditions of work", of which remuneration is only one element, it is thought that the clause may well constitute a separate paragraph as paragraph (d), which would then read as follows: "(d) Conditions of work guaranteed to women not inferior to those enjoyed by men, with equal pay for equal work."

Article 7, paragraph (c)

10. Paragraph (c) reads in English as follows: "Rest, leisure, and reasonable limitation of working hours and periodic holidays with pay." In French it reads as follows: "La limitation raisonnable de la durée du travail, le repos, les loisirs et les congés payés périodiques." The various elements in this paragraph are not set out in the same order in the English and French versions.

11. Article 24 of the Universal Declaration of Human Rights reads as follows: "Everyone has the right to rest and leisure including reasonable limitation of working hours and periodic holidays with pay." It may be desirable that paragraph (c) of Article 7 of the Covenant should follow the wording of Article 24 of the Universal Declaration. Paragraph (c) would then read in English as follows: "Rest and leisure, including reasonable limitation of working hours and periodic holidays with pay"; and in French as follows: "Le repos et les loisirs, notamment la limitation raisonnable de la durée du travail et les congés payés périodiques."

Article 7, additional paragraph

12. In view of the importance of labour inspection as a means of implementing the right to just and favourable conditions of work, the Commission is invited to consider the advisability of adding another paragraph to Article 7 to the following effect: "The steps to be taken by a State Party to this Covenant to

achieve the full realization of the right to just and favourable conditions of work shall include provision of a system of labour inspection to ensure the enforcement of laws and regulations for the protection of workers."

Article 10, paragraph 2

13. Paragraph 2 of Article 10 contains a clause which in English reads:

"To protect children from exploitation the unlawful use of child labour and the employment of young persons in work harmful to health or dangerous to life should be made legally actionable." In French the clause reads: "Afin de protéger les enfants contre l'exploitation, la responsabilité pénale doit sanctionner l'utilisation illégale de la main d'oeuvre enfantine, ainsi que le fait d'employer des adolescents à des travaux de nature à compromettre leur santé ou à mettre leur vie en danger."

14. The French expression "responsabilité pénale" is narrower than the English "legally actionable" which includes civil as well as penal liability. The French text might be reworded as follows: "Afin de protéger les enfants contre l'exploitation l'utilisation illégale de la main d'oeuvre enfantine ainsi que l'emploi d'adolescents à des travaux de nature à compromettre leur santé, ou à mettre leur vie en danger doivent exposer leurs auteurs à des poursuites judiciaires."

Article 10, paragraph 3

15. Paragraph 3 of Article 10 reads: "The family, which is the basis of society, is entitled to the widest possible protection. It is based on marriage, which must be entered into with the free consent of the intending spouses." This paragraph is open to the interpretation that a family not based upon a marriage entered into with the free consent of the intending spouses is not entitled to the same protection as a family based upon a marriage freely entered into. The Universal Declaration of Human Rights, on the other hand, clearly distinguishes in paragraphs 2 and 3 of Article 16, between the two concepts, namely, (a) that marriage shall be entered into only

with the free and full consent of the intending spouses, and (b) that the family is entitled to protection by society and the State. The Declaration does not therefore make the protection of the family dependent upon the condition that the marriage be freely entered into.

Articles 11 and 12

16. These two articles may perhaps be merged so as to read: "The States Parties to the Covenant recognize the right of everyone to an adequate standard of living and the continuous improvement of living conditions, including the right of everyone to adequate food, clothing and housing."

Article 13, paragraph 2

17. In paragraph 2 (a) the English equivalent of the French expression "le développement sain de l'enfant" is "the provision for healthy development of the child." The words "provision for" may be deleted.

Article 14, paragraph 3

18. The English word "schools" is translated into "établissements". The word "scolaires" should be added after "établissements".

19. The expression "their children" ("leurs enfants") as applied to legal guardians is not precise. It is thought that the expressions "the legal guardian" and "the child" may be used wherever "legal guardians" and "their children" now appear.

Article 16, paragraph 3

20. Paragraph 3 of Article 16 provides that "The States Parties to the Covenant undertake to respect the freedom indispensable for scientific research and creative activity." It is felt that the word "indispensable" may be interpreted as limiting the freedom in question. The paragraph might be reworded as follows: "The States Parties to the Covenant undertake to respect freedom of scientific research and creative activity."

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