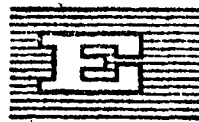


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REPORT OF THE COMMISSION ON HUMAN RIGHTS (SEVENTH SESSION)

Observations of Specialized Agencies on the Draft

International Covenant on Human Rights

The following is the text of the communication, dated 4 July 1951, received from the Director-General of the International Labour Office:

"It will be recalled that at the invitation of the Economic and Social Council the International Labour Organisation was represented at the Seventh Session of the Commission on Human Rights by a delegation composed of the Director-General and one member from each of the three groups of the Governing Body - Sir Guildhaume Myrddin-Evans (Government member, United Kingdom), Chairman of the International Organisations Committee of the Governing Body, Mr. Léon Jouhaux (Workers' member, France), and Mr. G. Bergenström (Employers' member, Sweden). On behalf of the other members of the I.L.O. delegation as well as on my own behalf, I would like to express appreciation to the Commission which extended every possible courtesy and consideration to the I.L.O. delegation while it was in Geneva and accorded similar facilities for full participation in its work to other representatives of the I.L.O. when the delegation was not able to be present.

The I.L.O. delegation made it clear to the Commission on Human Rights at the outset that the conclusions of the Commission in the matter of economic and social articles would need to be considered by the Governing Body and that there would be no question of committing the Governing Body to what was proposed in advance of such consideration. The text of the proposed International Covenant on Human Rights as approved by the Commission on Human Rights at its Seventh Session was accordingly brought to the attention of the Governing Body at its 115th Session (June 1951), which gave consideration to the text, in response to the request of the Commission on Human Rights indicated above, with a view to presenting its comments thereon to the Economic and Social Council when the Council considers the question at its forthcoming session.

On a matter of this importance certain members of the Governing Body would have liked further time to consider the draft Covenant in greater detail in order to formulate possible further observations on the matters dealt with therein of concern to the I.L.O. The Governing Body did, however, in the time available to it unanimously agree to present a number of considerations to the Economic and Social Council in connection with the matter.

In regard to articles dealing with implementation, the Governing Body noted that Part IV of the proposed Covenant deals with implementation machinery and was drawn up originally with Parts I and II in mind, and that Part V contains further articles on implementation which were drawn up with particular reference to Part III. The Governing Body understands however that the Commission on Human Rights left entirely open the question of how far the implementation provisions in Part IV and Part V should relate to the political and civil rights in Parts I and II on the one hand and the economic, social and cultural rights in Part III on the other. It noted that Part IV envisages the creation of a Human Rights Committee, to which would be referred in certain circumstances complaints of States parties to the Covenant that effect was not being given to a provision of the Covenant. The Governing Body considered that to apply such a machinery of implementation to the economic and social rights would run counter to the view which it has previously expressed, namely, that the I.L.O. should have the responsibility for the detailed working out and application of matters within its competence. It seemed to the Governing Body that reference

to the proposed Human Rights Committee of complaints on such matters could only give rise to a duplication of machinery and to consequent frustration. In these circumstances the Governing Body was of the opinion that the implementation machinery in Part IV should not apply to the economic, social and cultural rights which should, subject to the points dealt with in the following paragraphs, be governed by machinery on the lines contemplated in Part V of the proposed Covenant.

The Governing Body noted Articles 60, 61 and 62 which deal with the procedure under which States parties to the Covenant and specialised agencies would communicate reports on the progress made in achieving the observance of the provisions of the Covenant. The Governing Body attaches the greatest importance to the principle that the reports furnished by States in respect of matters dealt with in the Covenant which fall within the competence of specialised agencies of which they are members should be communicated to the agencies in question so as to avoid overlapping and duplication. It therefore suggests that this principle should be embodied in an appropriate manner in the Covenant. One way of doing this would be by means of a clause such as the Commission on Human Rights had before it providing that the States parties of the Covenant should furnish reports under Part V of the Covenant to the Secretary-General of the United Nations but, in the case of members of specialised agencies, to the specialised agency in respect of matters within the competence of that agency. Another method would be to modify Article 61, paragraph 1, so as to provide that the States parties shall furnish their reports in stages to the Secretary-General of the United Nations or the appropriate specialised agencies, in accordance with a programme to be established by the Economic and Social Council after consultation with the States parties to the Covenant and the specialised agencies concerned. The representative of the International Labour Organisation at the Thirteenth Session of the Economic and Social Council will be available to discuss with the Council an appropriate form of words to cover this point.

The Governing Body noted that under Article 63 as at present drafted the Economic and Social Council would automatically transmit to the Commission on Human Rights for study and recommendation the reports concerning human rights communicated by the competent specialised agencies. If the Council decides to

maintain the principle of reference to the Commission on Human Rights in Article 63 it may well consider that it would be preferable that the Article should be so drafted as to give the Council discretion to decide in particular cases whether it wishes to transmit the reports of the specialised agencies to the Commission on Human Rights for study and recommendation or, as an alternative, for information only. In putting forward this suggestion the Governing Body has in mind that these reports would no doubt contain information on the consideration given to the matters in question by the specialised agencies and, as appropriate, an account of action taken. In certain cases, therefore, the Economic and Social Council may consider that the position reflected in the reports makes it necessary only to keep the Commission on Human Rights informed of action already taken.

In concluding its examination of the draft articles on implementation the Governing Body wished to emphasise the importance which it attaches to Article 69, which states that "Nothing in this Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the Constitutions of the specialised agencies, which define the respective responsibilities of the various organs of the United Nations and of the specialised agencies in regard to matters dealt with in this Covenant". The view was also expressed that nothing in the Covenant should be interpreted as reducing the obligations of States under International Labour Conventions which they have ratified and it was suggested that paragraph 2 of Article 18 of the draft Covenant, which states that nothing in the Covenant may be interpreted as limiting or derogating from any of the rights and freedoms which may be granted under the laws of any Contracting State or any conventions to which it is a party, should be made clearly applicable to Part III.

The Governing Body also considered the various articles of the draft Covenant defining rights with regard to matters within the sphere of the I.L.O.

In regard to Article 5, which deals with forced labour, the Governing Body noted that the drafting for paragraph 3 (o) (iv) recommended by the Governing Body at the request of the Economic and Social Council had not been accepted in the present draft. While the Governing Body did not think it would be profitable

to raise this matter again at the present stage, the Workers' members of the Governing Body wished to place on record their view that the present draft of sub-paragraph (c) (iv) was not sufficiently clear and that the meaning of "normal civic obligations" should be more specifically defined.

The Governing Body considered that the present draft of Article 16 concerning the right of association was satisfactory and it attached particular importance to paragraph 3 of this Article, in which it is stated that "Nothing in this article shall authorise States parties to the Freedom of Association and Protection of the Right to Organise Convention, 1948, to take legislative measures which would prejudice, or apply the law in such a manner as to prejudice, the guarantees provided for in that Convention".

With regard to articles in Part III dealing with economic and social rights in respect of matters within the competence of the I.L.O., the Governing Body wished again to stress the principle approved by it at its last session and brought to the attention of the Commission on Human Rights by the I.L.O. delegation that the articles on economic and social rights should be drafted as brief clauses of a general nature, leaving to the I.L.O. or other specialised agency concerned the detailed working out and application in respect of matters within its competence by means of the precise and detailed provisions and obligations necessary for effective implementation. The Governing Body noted that in the present draft of the Covenant these articles were in conformity with this view. It also noted that the I.L.O. has already drawn up and there are being currently applied detailed provisions in a large number of International Labour Conventions and Recommendations covering matters dealt with in these articles of Part III of the draft Covenant with which the I.L.O. is primarily concerned. The I.L.O. has further international instruments on certain of these subjects currently under consideration.

Apart from these general considerations, the Governing Body wished to make several comments on matters of detail regarding certain articles in Part III.

(a) In Article 21 (b) it considered the word "minimum" as being unnecessary and limitative in its effect.

(b) In Article 24 the States parties to the Covenant would recognise the right of everyone to an adequate standard of living and the continuous improvement of living conditions. It is suggested that the intent of the Article might be more clearly and realistically conveyed by language referring to the right of everyone to "an adequate and improving standard of living".

The Employers' members of the Governing Body wished it to be recorded that in their view a statement of rights could have no clear meaning, since it would not be clear what the right to something implied, unless it were understood that the rights had corresponding duties and that only if these duties were recognised and acted upon could the rights in question be secured. They therefore were of the opinion that this principle that there could be no rights without corresponding duties should be stated in an appropriate manner in the Covenant, perhaps among other considerations included in the Preamble.

In accordance with the wishes of the Governing Body, I have the honour to request you to convey these various considerations to the Economic and Social Council".
