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COMMISSION ON HUMAN RIGHTS

Fifth Session

SUMMARY RECORD OF THE ONE HUNDRED AND THIRTIETH MEETING

Held at Lake Success, New York,
on Thursday, 16 June 1949, at 10.30 a. m.

CONTENTS: Draft international covenant on human rights: article 26, article 22, paragraph 2, proposed additional articles (E/CN.4/218, E/CN.4/221/Corr.1, E/CN.4/237, E/CN.4/243, E/CN.4/244/Corr.1, E/CN.4/296, E/CN.4/313, E/CN.4/317, E/CN.4/331, E/CN.4/339)

Chairman:	Mrs. ROOSEVELT	United States of America
Rapporteur:	Mr. AZKOUL	Lebanon
Members:	Mr. SHANN	Australia
	Mr. WOUIBROUN	Belgium
	Mr. SACUES	Chile
	Mr. CHANG	China
	Mr. SOERENSEN	Denmark
	Mr. LOUTFI	Egypt
	Mr. CASSIN	France
	Mr. GARCIA BAUER	Guatemala
	Mrs. MEHTA	India

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Mr. ENTEZAM	Iran
Mr. AQUINO	Philippines
Mr. KOVALENKO	Ukrainian Soviet Socialist Republic
Mr. PAVLOV	Union of Soviet Socialist Republics
Miss BOWIE	United Kingdom
Mr. MORA	Uruguay
Mr. VILFAN	Yugoslavia

Representatives of specialized agencies:

Dr. METALL	International Labour Organization
Mr. HILL	World Health Organization

Consultants from non-governmental organizations:

Category A

Miss SENDER	American Federation of Labor
Mrs. MEAGHER	World Federation of Trade Unions

Category B

Mr. FRIEDMAN	Coordinating Board of Jewish Organizations
Dr. ROBB	International Federation of University Women
Mr. NOLDE	Commission of Churches on International Affairs
Mrs. VERGARA	Catholic International Union for Social Service
Miss SCHAEFER	International Union of Catholic Women's Leagues

Secretariat:

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

DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS: ARTICLE 26, ARTICLE 22, PARAGRAPH 2, PROPOSED ADDITIONAL ARTICLES (E/CN.4/218, E/CN.4/221/Corr.1, E/CN.4/237, E/CN.4/243, E/CN.4/244/Corr.1, E/CN.4/296, E/CN.4/313, E/CN.4/317, E/CN.4/331, E/CN.4/339)

Article 26

The CHAIRMAN opened discussion on article 26 (E/CN.4/296) and the joint United States-United Kingdom amendment to that article (E/CN.4/339).

/Speaking

Speaking as the representative of the United States of America, she said that according to the United States-United Kingdom amendment, amendments to the Covenant would not need the approval of two-thirds of the Members of the General Assembly. It should be sufficient for them to be approved by two-thirds of the States parties to the Covenant, for she felt that States which had not assumed the obligations of the Covenant should not be entitled to have a voice in its amendment. The States which were putting the Covenant into effect might discover a need for practical changes which was not apparent to others.

Miss BOWIE (United Kingdom) supported the statement of the United States representative.

Mr. CASSIN (France) said that the amendment, on the whole, appeared reasonable. He reserved his position on paragraph 1, however; any decision on that paragraph must be provisional, since procedure would depend on the measures of implementation adopted.

Mr. HUMPHREY (Secretariat), replying to a question from the Yugoslav representative concerning precedents for such procedure in United Nations conventions, said he was informed by the Legal Department that to its knowledge there was no precedent; he drew attention, however, to Article 108 of the Charter, which might have some bearing on the question.

Mr. AZKOUL (Lebanon) felt that amendments, like the Covenant, should be subject to approval by the General Assembly but should only be binding on States parties to the Covenant.

Mr. MORA (Uruguay) supported the United States-United Kingdom amendment, since he felt that States which had not ratified the Covenant would be given an unjust privilege if they were permitted to determine its amendment.

Mr. PAVLOV (Union of Soviet Socialist Republics) hoped that the Covenant would be ratified by more than two-thirds of the Members of the United Nations, in which case there could be no objection to the provision that amendments must be approved by a two-thirds majority in the General Assembly. He did not feel that the

initiative of altering the Covenant should be given to a small group of States, which might be the case if the United States-United Kingdom amendment was adopted. He therefore opposed that amendment, which he felt to be a contravention of the Charter and of the basic organizational principles of the United Nations.

The CHAIRMAN pointed out that if all United Nations Members were to ratify the Covenant, the United States-United Kingdom amendment would mean that amendments would have to be approved by a two-thirds majority of the General Assembly. If, however, it were decided that the Covenant could only be amended by a two-thirds majority of the General Assembly, those States which ratified the Covenant might be unable to amend it as they found necessary in the light of their experience.

Replying to the representative of India, she supposed that any contracting State was entitled to submit an amendment to the Covenant.

Mrs. MEHTA (India) considered it unacceptable that only contracting States should be allowed to submit amendments.

Mr. AQUINO (Philippines) suggested that provisions should be made which would enable any signatory State to propose amendments.

Referring to the remarks of the USSR representative, he declared that the United States-United Kingdom amendment did not violate the principles of the Charter.

It had been asked why the Covenant should require the approval of the Assembly if that approval was not to be necessary for amendments. When the validity and effectiveness of the Covenant had been assured by the approval of the General Assembly, its operation would become the sole responsibility of the contracting parties. He felt that it would be most inequitable on both moral and legal grounds if Members of the General Assembly which had not ratified the Covenant had power to amend it. It was probable that certain Members, who paid lip service to freedom, would not in the end ratify the Covenant. Why, then, should they be given the right to amend it?

Mr. VILFAN (Yugoslavia) said it was difficult to defend the position that amendments required the approval of contracting States only. He pointed out that some States might be unwilling to accept the Covenant as it stood, but would accede to it in an amended form;

/they should

they should therefore be allowed to take part in decisions on proposed amendments.

The procedure formulated in the United States-United Kingdom amendment was an innovation in United Nations practice and, as such, required explanation by its proposers. It was not correct to say that it would place States which did not ratify the Covenant in a privileged position, for non-ratifying States were already in the same position with regard to all other United Nations conventions.

He emphasized the connexion between the Covenant and the Charter and pointed out that the General Assembly already had wide competence in the field of human rights and could discuss all questions relating to them. Acceptance of the United States-United Kingdom amendment would mean that a particular group of States would be given special privileges and authority in the field of human rights, which was in opposition to the whole concept of the Charter and would encourage the splitting of the United Nations into blocs. For these reasons his delegation opposed the amendment.

The CHAIRMAN agreed with the Indian representative that it should be open to any State to submit amendments to the Covenant. She felt, however, that only signatory States should have the right of decision, since amendments would have to be considered on the basis of the experience gained.

Mr. GARCIA BAUER (Guatemala) felt that article 26 was closely linked with article 23, which dealt with the ratification and acceptance of the Covenant. He suggested that the vote on article 26 should be postponed until the Commission had at its disposal a final version of article 23.

Mr. CASSIN (France) agreed that articles 26 and 23 were closely connected, and thought that consideration of paragraph 1 at least of the joint United States-United Kingdom amendment should be postponed. Paragraphs 2 and 3 were reasonable in themselves and could be adopted at once.

Mr. ENTEZAM (Iran) hoped that there would be no need to differentiate between States Members of the United Nations and States parties to the Covenant; like the representative of the USSR, he

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hoped that all Members of the United Nations would be able to accept the Covenant. However, provision must be made for the alternative. If the General Assembly's approval of the Covenant made it compulsory for all Members of the United Nations to accept that Covenant on their own behalf, he would agree that the General Assembly ought to exercise control over the amendments to that Covenant. Since that was not the case, however, he did not consider that the General Assembly should control the adoption of amendments to the Covenant. He was therefore in agreement with paragraphs 2 and 3 of the United States amendment.

On the other hand, he did not consider that the opportunity of any Member to propose amendments to the Covenant should be restricted. A State not party to the Covenant might be willing to adhere to it, if the amendment it proposed was accepted. He therefore proposed that the words "by a signatory State or a State Member of the United Nations" should be inserted after "any amendment proposed to this Covenant" in the first line of the joint United States-United Kingdom amendment to article 26. Prospective new signatories should not be prevented from submitting amendments, although only the parties to the Covenant should be able to accept them.

Miss BOWIE (United Kingdom) agreed with the representative of Guatemala that the vote on article 26 should be postponed. She recalled that it had already been decided to send other procedural articles direct to Governments for consideration, together with any proposed amendments and a record of the discussion. She suggested that the same procedure should be adopted in respect of article 26.

If, however, the amendments to article 26 were to be forwarded to Governments, she wished to withdraw United Kingdom sponsorship from the joint amendment (E/CN.4/339) and to put forward instead the original United Kingdom amendment (E/CN.4/255). She was unable to agree with the United States representative's interpretation of paragraph 1 of the joint amendment, and she wished therefore to submit the original text proposed by the United Kingdom, which was not open to the same construction.

Speaking as representative of the United States, the CHAIRMAN said that there was no intention of limiting the submission of amendments to States parties to the Covenant. In her view, paragraph 1 of the joint amendment was concerned only with the consideration and not

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with the submission of amendments to the Covenant. She was ready to adopt the Iranian representative's suggestion, in order to make it clear that no restriction was intended.

Mr. KOVALENKO (Ukrainian Soviet Socialist Republic) recapitulated the basic argument in support of the United States-United Kingdom amendment, as he saw it: the sponsors of that amendment feared that the General Assembly of the United Nations would intervene in the Covenant against the wishes of the parties to it. He considered, however, that the adoption of the amendment would lead to even greater dangers. If it were adopted, certain States would be unable to accept the Covenant as a whole. For instance, if the Covenant were to enter into force between three States only, two-thirds of those parties to the Covenant, i.e. two States, would be able to amend an instrument approved by the whole General Assembly. If the two parties to the Covenant were to make restrictive amendments in it, the whole of the General Assembly's work would have been useless. If they were to introduce amendments with which the majority of the General Assembly could not agree, the Assembly might be obliged to discard the Covenant and prepare a new one. It was inadmissible that a small group within the General Assembly should be able to place the Assembly as a whole in such a position, and the United States-United Kingdom amendment would open the door to such a possibility. He was therefore opposed to the adoption of the joint amendment to article 26.

Mrs. MEHTA (India) was unable to accept paragraph 1 of the United States amendment, since she considered it to be ambiguous. Moreover, if any State Member was to be allowed to propose an amendment, she was unable to understand why the amendment should not be considered by all the States Members of the United Nations, in the General Assembly. Paragraph 2, therefore, was also unacceptable. Paragraph 3, on the other hand, was reasonable and in her view made the proposed paragraph 2 unnecessary.

She considered that the original United Kingdom amendment was preferable to the joint amendment.

In view of the objections raised, Miss BOWIE (United Kingdom) withdrew her sponsorship of the joint United States--United Kingdom amendment in favour of the original United Kingdom amendment.

Mr. AZKOUL (Lebanon) expressed grave misgivings with regard to the results of the joint United States-United Kingdom proposal, if it were adopted. If a few parties to the Covenant were allowed to amend it, there would be two texts extant, only one of which would have the moral authority of the General Assembly. On the other hand, the amended text might be more liberal in guaranteeing human rights, and the General Assembly would then be in the unfortunate position of having put its name to a less liberal instrument. It was impossible for the General Assembly to agree to authorize a few of its Members to adopt a course which might place the Assembly as a whole in a difficult position. The original amendment proposed by the United Kingdom seemed to him to be preferable, in that it made allowance for the experience gained by the actual parties to the Covenant without derogating from the competence of the General Assembly.

The CHAIRMAN recalled that the representative of Guatemala had suggested that the voting on article 26 should be postponed until a final text of article 23 was available. The representative of the United Kingdom had proposed that the Drafting Committee's text of article 26 should be sent to Governments for consideration, in accordance with the method adopted in the case of the other articles on procedure, accompanied by the amendments and proposals made and the record of the discussion.

That procedure was adopted by 9 votes to none, with 3 abstentions.

Article 22, paragraph 2 (E/CN.4/317)

Mr. PAVLOV (Union of Soviet Socialist Republics) said he had previously expressed his delegation's views on article 22, and requested that a vote should be taken on it in parts.

Mr. CASSIN (France) reminded the Commission of the French amendment to article 4 concerning the question of conventions, which he had provisionally withdrawn in the hope that it would be understood that the Covenant could do nothing to diminish the rights and freedoms guaranteed by domestic laws or under other conventions.

The first part of article 22, paragraph 2, as far as the words "any contracting State" was adopted by 12 votes to none.

The words "or any conventions to which it is a party" were adopted by 8 votes to 2, with 2 abstentions.

Article 22 as a whole was adopted by 10 votes to none, with 2 abstentions.

/Proposed

Proposed additional articles (E/CN.4/331, E/CN.4/243, E/CN.4/313, E/CN.4/244/Corr.1, E/CN.4/221/Corr.1, E/CN.4/237 and E/CN.4/218)

The CHAIRMAN drew attention to the additional articles submitted by the delegations of Denmark, the United Kingdom, France, Australia and the Union of Soviet Socialist Republics. In order to enable the Commission to discuss all the new articles proposed, it was essential that the texts should be in the [illegible] in which their sponsors wished them to be forwarded to Governments, and that each delegation should submit all the new articles proposed in a single intervention.

She suggested that those delegations submitting only a single new article, namely, Denmark, the United Kingdom and France, should be heard first.

Mr. PAVLOV (Union of Soviet Socialist Republics) objected to the number of new articles proposed being taken as a criterion. It would be more correct to take the proposals in the order of their date of submission. However, a still more suitable criterion would be the substance of the proposed new articles. In his view, since the new articles concerning part II of the Covenant dealt with such important topics as the right to work, equal pay for equal work and trade union rights, they should be considered first.

The CHAIRMAN emphasized the fact there there was very little time remaining to the Commission and it was essential that a vote should be taken at once on the procedure to be adopted in the discussion of the new articles.

Miss BOWIE (United Kingdom) suggested that the substantive articles connected with part II of the Covenant should be discussed immediately. She had no wish to present the United Kingdom article for discussion, but merely wanted to ensure that it should be sent to Governments for consideration, together with the other articles in part III.

Mr. ENTEZAM (Iran) suggested that it would be more advisable for the new articles to be presented and discussed one by one.

Mr. SOERENSEN (Denmark) stated that he would not insist on presenting his proposal for an additional article, the sense of which he had already explained in connexion with article 2.

Mr. CASSIN (France) also relinquished his right to introduce his additional article.

The CHAIRMAN noted that consequently only the articles submitted by the USSR and Australia remained to be considered. She noted, in that connexion, that document E/CN.4/313 included brief explanatory notes on the additional articles proposed.

Mr. PAVLOV (Union of Soviet Socialist Republics) felt that the Commission should follow the normal procedure in respect of the proposed articles and consider as many of them as time would permit. He therefore moved that each proposed article should be separately discussed and put to the vote.

The CHAIRMAN put the USSR proposal of procedure to the vote.
The proposal was adopted by 8 votes to 2, with 2 abstentions.

Mr. SHANN (Australia), recalling an earlier discussion on the matter during which the view had been taken that it would be unfair to give a perfunctory treatment to such important proposals, stated that he would present his proposals in the manner suggested earlier by the Chairman.

Mr. PAVLOV (Union of Soviet Socialist Republics) stated that the Commission had reached a stage of discussion which although it might be brief, would be of great importance to its work. The proposed additional articles would vitally affect millions of workers throughout the world. They dealt with such social and economic rights as work, leisure, education and social security. The right to work was the most important; without it all the other rights laid down in the Covenant would be meaningless. There was no individual freedom for the hungry and unemployed. Consequently, the Covenant should lay down the obligation of States to guarantee the right to work, a right which had already been proclaimed in the Declaration. The first additional article proposed by his delegation contained a provision to that effect.

In most countries of the world, even during prosperity, there was a constant army of twenty to thirty million unemployed, to say nothing of the unemployed of the Far and Middle East; during a crisis, of course,

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that number grew considerably. There had been terrible famines in India under the British administration; in 1944 fifty thousand persons had died of starvation in a small mandated territory; and in the United States of America, a rich and healthy country, one out of every seven persons was undernourished. The purpose of the article therefore was to save the people of the world from unemployment and starvation.

Thus, in economic systems where unemployment was ever present, it was the duty of Governments to provide employment through Government enterprises and other measures whenever necessary.

There was, of course, a radical solution to the problem of unemployment which had been applied in the Union of Soviet Socialist Republics, where unemployment as well as the conditions leading to it had been abolished. Quoting from the Constitution of his country, Mr. Pavlov noted that unemployment had been unknown for two generations in the Union of Soviet Socialist Republics, where there was ample opportunity for constructive work. His delegation did not intend to propose any radical solution to that problem, but it felt that the proposed article constituted the minimum safeguard which it should be within the means of every Government to provide with a view to preventing starvation caused by unemployment.

In reply to a previous remark by the Chairman concerning unemployment in the United States, he stated that unemployment, notwithstanding the existence of social security, was a great social evil. Moreover, the unemployment benefits were not sufficient for subsistence and domestic and other workers were not eligible for them.

Consequently, at a time when unemployment was rising steadily in the United States and other countries, it was essential that Governments should assume the duty of providing work for the unemployed. That could be done without changing the economic structure of the countries concerned. The Charter provided that the Members of the United Nations should promote full employment; adoption of the proposed article would constitute a step towards implementation of that principle.

The second article of his proposal set forth, as a corollary to that right, the principle that women should enjoy in their work equal rights and privileges with men and should receive equal pay for equal work. In most countries of the world, notwithstanding international conventions, Council resolutions and declarations on that subject, there was persistent discrimination against women workers. In England, for

example, women workers were paid thirty to fifty per cent less than men for the same work. In the Union of Soviet Socialist Republics, on the other hand, the principle of equal pay for equal work had been fully ensured.

All Governments could and should assume the obligation to ensure equal rights to men and women workers, and Mr. Pavlov expressed the hope that all members of the Commission would support the article. Quoting Generalissimo Stalin's words regarding the role of workers in the history of States and nations, he called upon the Commission to fulfil its duty towards the working masses of the world by including in the Covenant the articles on the right to work and on equal pay for equal work of men and women workers. Failure to include such articles would be a betrayal of their faith in the Commission.

The meeting rose at 1 p.m.