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COMMISSION ON HUMAN RIGHTS

Seventh Session

SUMMARY RECORD OF THE TWO HUNDRED AND FIFTH MEETING

held at the Palais des Nations, Geneva,
on Wednesday, 18 April 1951 at 10.30 a.m.

CONTENTS:

pages

Draft International Covenant on Human Rights and
Measures of Implementation (item 3 of the agenda)

Inclusion in the Covenant of provisions
concerning economic, social and cultural
rights (continued) (E/1681, Annex III and
E/CN.4/353/Add.3 pages 9-10, E/CN.4/364 and
Corra. 1, 2 and 3 and Adda. 1, 2 and 3, E/CN.4/513,
E/CN.4/515 and Adda. 1-17, E/CN.4/525, E/CN.4/527,
E/CN.4/529, E/CN.4/530, E/CN.4/534, E/CN.4/537,
E/CN.4/538/Rev.1, E/CN.4/539, E/CN.4/541,
E/CN.4/542)

4 - 16

Present:

Chairman:

Mr. MALIK (Lebanon)

Members:

Australia	Mr. WHITLAM
Chile	Mr. VALENZUELA
China	Mr. YU
Denmark	Mr. SÖRENSEN
Egypt	AZMI Bey
France	Mr. CASSIN
Greece	Mr. EUSTATHIADES
Guatemala	Mr. DUPONT-WILLEMEN
India	Mrs. MEHTA
Pakistan	Mr. WAHEED
Sweden	Mrs. RÖSSEL
Ukrainian Soviet Socialist Republic	Mr. KOVALENKO
Union of Soviet Socialist Republics	Mr. MOROSOV
United Kingdom of Great Britain and Northern Ireland	Miss BOWIE
United States of America	Mrs. ROOSEVELT
Uruguay	Mr. GIASULLO
Yugoslavia	Mr. JEVREMOVIC

Representatives of specialized agencies:

International Labour Organisation	Mr. JENKS
United Nations Educational, Scientific and Cultural Organization	Mr. SABA
World Health Organization	Mr. BERTRAND

Representatives of non-governmental organizations:Category A

International Confederation of
Free Trade Unions

Miss SENDER

International Federation of
Christian Trade Unions

Mr. EGGERMANN

Category B and Register

Agudas Israel World Organization

Chief Rabbi SHAFRAN

Caritas Internationalis

Abbé HAAS

Catholic International Union for
Social Service

Miss de ROMER
Mrs. SHRADER

Commission of the Churches on
International Affairs

Mr. NOLDE

Consultative Council of Jewish
Organizations

Mr. MOSKOWITZ

Co-ordinating Board of Jewish
Organizations

Mr. BERNSTEIN

International Council of Women

Miss van EEGHEN

International Federation of
University Women

Miss ROBB

International Union for Child
Welfare

Mrs. SMALL

International Union of Catholic
Women's Leagues

Miss de ROMER
Miss ARCHINARD

Women's International League for
Peace and Freedom

Miss BAER

World Jewish Congress

Mr. BIENENFELD

World Union for Progressive
Judaism

Mr. WOYDA

Secretariat

Mr. Humphrey

Representing the Secretary-
General

Mr. Das

Secretary to the Commission

DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS AND MEASURES OF IMPLEMENTATION
(item 3 of the agenda)

- (b) Inclusion in the Covenant of provisions concerning economic, social and cultural rights (continued) (E/1681, Annex III and E/CN.4/353/Add.3, pages 9-10, E/CN.4/364 and Corra. 1, 2 and 3 and Adda. 1, 2 and 3, E/CN.4/513, E/CN.4/515 and Adda 1 - 17, E/CN.4/525, E/CN.4/527, E/CN.4/529, E/CN.4/530, E/CN.4/534, E/CN.4/537, E/CN.4/538/Rev.1, E/CN.4/539, E/CN.4/541, E/CN.4/542)

The CHAIRMAN stated that the Danish representative had submitted a proposal, the text of which (E/CN.4/542) would be distributed shortly.

He also drew attention to the proposal submitted by the Director-General of the United Nations Educational, Scientific and Cultural Organization (E/CN.4/541).

Mr. SABA (United Nations Educational, Scientific and Cultural Organization), speaking at the invitation of the CHAIRMAN, explained that the proposals of the Director-General of the United Nations Educational, Scientific and Cultural Organization (UNESCO) contained in the document before the Commission had been submitted in accordance with the instructions given to the Director-General by the General Conference of UNESCO. The text of the proposals, however, had not yet been laid before the General Conference, which would not be meeting until June 1951.

Moreover, the proposals did not contain any precisely worded articles covering measures of international supervision and implementation, and he would like to have an opportunity of submitting definite proposals on that subject later, when the Commission came to study the question of implementation.

Mr. EGGERMANN (International Federation of Christian Trade Unions), speaking at the invitation of the CHAIRMAN, said that the problems raised by the inclusion in the Covenant of economic, social and cultural rights could not fail to be of interest to his Federation, which had always attached the

greatest importance to the clearest possible statement of those rights, even in the Universal Declaration. The Christian Trade Unions, whose members were workers alive to the needs of daily life, considered it essential that economic, social and cultural rights should be defined in the Covenant. It therefore gave him great satisfaction to note that the Commission intended to proclaim those rights; that was the only way to strengthen and put life into the other rights and the fundamental freedoms of mankind, and to prevent them from remaining a dead letter.

He drew attention to Article 16, paragraph 3 of the Universal Declaration, which read: "The family is the natural and fundamental group unit of society and is entitled to protection by society and the State." The family background, with which economic, social and cultural rights should be integrated, endowed those rights with their true significance, and imbued them with the life and warmth of which the family was the natural source.

Moreover, it would hardly seem logical to confer "the right to social security" on "everyone, as a member of society" (Article 22 of the Universal Declaration) without mentioning at the same time "the natural and fundamental group unit of society", namely, the family. In other words, to speak of social security was to speak of the rights of man as a member of society, living by it and for it in the fulfilment of his spiritual destiny. But society did not consist of an amorphous mass of individuals: it was an integral whole whose natural and fundamental group unit was the family.

It was for his family that the worker claimed "just and favourable remuneration insuring for himself and his family an existence worthy of human dignity" (Article 23 of the Declaration). All the other economic rights connected with work and working conditions were implicitly directed to that end.

There was no need to lay similar emphasis on the more human and generous scope of the rights to rest and leisure, and to periodic holidays,

with pay (Article 24), if, in addition to the physical and mental restoration of the individual's strength, those rights were regarded as providing an opportunity for the freer development of family life.

In Article 25, the Universal Declaration twice stressed the family aspect of social rights. Finally, in the field of cultural rights, it recognized that the family also had a leading part to play in the education of children (Article 26).

He therefore hoped that in drafting the articles of the first International Covenant relating to economic, social and cultural rights, the Commission would take due account of the family background which was their natural setting. Far from blunting the legal precision of the Covenant's provisions, reference to the family would give them a vital force to which no one could remain indifferent; that was particularly true of the workers in all countries, whose first concern was that which they held dearer than anything else in the world: the family.

Mr. CASSIN (France) explained his personal impressions of the private consultations which had taken place the previous day, which, he thought, had enabled representatives to clarify their views as to the method to be followed to enable the Commission to accomplish its task.

The first question to be settled was that of the criteria for assessing the value of the clauses on economic, social and cultural rights which it was proposed to include in the Covenant.

In the first place, certain delegations considered it desirable to mention all those rights separately in a series of articles, each article containing a special undertaking; others advocated a general undertaking based on article 22 of the Universal Declaration of Human Rights; yet others favoured the drafting of an undertaking in general terms but supplemented by special undertakings it appeared that the last of those suggestions, which he himself favoured, represented the views of several delegations.

Secondly, some representatives, again including himself, held that the part of the Covenant relating to economic, social and cultural rights should include provisions for implementation adjusted to the nature of those rights and to the scope of the general or special commitments entered into with regard to them. They considered it to be impossible to separate the definition of a right to be guaranteed from the method of ensuring its observance by progressive stages.

In the third place, it was clear from the consultations between members that, both for the definition of undertakings and for the future implementation of the provisions on economic, social and cultural rights, the Commission could only gain by collaboration between the United Nations and the specialized agencies, each of which should primarily concentrate its energies on those rights which fell within its special sphere.

Fourthly, the general opinion seemed to be that, owing to the special character of economic, social and cultural rights and of the nature of the provisions to be laid down to ensure their implementation, it would be better not to disperse the articles relating to those rights throughout the body of the Covenant, but, to collect them together in a separate section or chapter.

Fifthly, the question had been raised whether, supposing a general undertaking were drafted, it would be desirable to include in the Covenant a detailed list of economic, social and cultural rights. Opinion varied rather more on that point. While it appeared relatively easy to list cultural rights, it would be more difficult to list all the rights of the worker without omitting any. For that reason, some members were reluctant to support an enumeration of that category of rights, although all had said that they were prepared to examine the advantages and disadvantages of such a method.

Sixthly, there was the question whether it would not be possible to combine the method of listing certain special rights, which would mean that the Commission would have to draft special undertakings, with the method of preparing a general undertaking and form of implementation.

Personally, he would prefer a combination of the three methods. The Commission could draft both a general undertaking and special undertakings for certain rights, but without separating the question of the implementation of the general or special undertakings. That somewhat complex procedure would, in his opinion, make it possible to devote a separate section of the Covenant to the question of economic, social and cultural rights.

In conclusion, he thought the Commission should first examine the structure of the various proposals before it, including the Danish proposal (E/CN.4/542), then decide, if necessary by a vote, which method of work it would follow, and finally set up a working party.

The CHAIRMAN thanked the French representative for his statement, which might be considered as the outline of a practical method of work for the immediate future.

Mr. SÖRENSEN (Denmark) thought that the French representative had very clearly described the general trends of thought in the informal conversations. However, in spite of those conversations, he (Mr. Sörensen) felt that there were still wide divergencies of views. Moreover, few representatives had so far committed themselves to any definite position. It might be helpful if some of the views set forth by the French representative were presented in the form of definite proposals.

He then outlined the salient points of his own proposal, which should be considered as a tentative draft embodying certain ideas on which agreement might be possible.

First, most representatives apparently felt that the provisions for implementation, which had been drafted in 1950 and incorporated in Part III of

the draft first International Covenant, would not be easily applicable in the case of economic and social rights. He was therefore suggesting that the provisions of Part III should be combined with Part II, perhaps by adding a few words to link the two parts.

Secondly, a new part should be added to the draft Convention, possibly between Parts II and III; in his proposal he had tentatively denoted it "Part II A". That new part should be regarded as an integral element of the Covenant to be ratified in the same way as the other parts. The close relationship, frequently stressed in the Commission, between civil liberties and economic and social rights was a cogent reason for considering the two parts together.

Thirdly, attention had also been drawn to the basic differences between civil liberties and economic and social rights. It was possible to define civil liberties in terms of individual rights, but the definition of economic and social rights was more difficult; they might perhaps be defined as rights the exercise of which States were obliged to promote. Stress should be laid not so much on the individual rights themselves, as on the obligation of States to further their observance. The latter concept was one of the fundamental ideas of the United States proposal (E/CN.4/539), and had been retained in the Danish proposal.

Fourthly, he felt that it was possible to define economic and social rights more specifically than had been done in the United States proposal. As the French representative had just indicated, that proposal embraced a general undertaking, whereas the Soviet Union proposal, and also the earlier Australian proposals, enumerated specific rights. The Yugoslav proposal (E/CN.4/538/Rev.1) aimed at combining the two approaches. He had followed the principle of the Yugoslav proposal, but had emphasized the obligations incumbent upon the State. The basis of his proposal was that there should be a general undertaking by States Parties to the Covenant to take appropriate action with a view to promoting economic, social and cultural development. In addition, specific articles should be included on such rights as the Commission might agree upon, some of which he had listed in his proposal.

Fifthly, the implementation of provisions relating to economic, social and cultural rights should take the form of a general undertaking by States Parties to the Covenant to cooperate, through the specialised agencies and other appropriate organs of the United Nations, with a view to promoting the exercise of the rights set forth in the preceding parts of his proposal. It might even be possible to request the specialized agencies and other competent bodies to submit annual reports on the implementation of those rights through the Commission and the Economic and Social Council to the General Assembly; but that was, of course, a matter of long-term policy. Once the Covenant, and whatever supplementary covenants were deemed necessary, had been drafted, it would be useful for the Commission to review annually the progress achieved throughout the world in the implementation of economic, social and cultural rights as well as of civil liberties.

The suggestions of the Danish delegation should be regarded not as a formal proposal, but rather as a contribution to the general discussion.

AZMI Bey (Egypt) said that he had gained the impression from the private conversations held the previous day that certain delegations entertained a perhaps exaggerated concern for the measures of implementation. He was almost tempted to believe that some members of the Commission wished more weight to be attached to those measures than to the nature or presentation of the principles to be laid down in the Covenant. The origin of that concern lay, he feared, in a certain feeling of mistrust prevailing between certain members. He would like therefore to appeal particularly to the representatives of the great powers to adopt a less suspicious attitude in their mutual relations, and to take into account the interests of the small and medium powers, which ardently desired the conclusion of a covenant in order that they might be able fully to enjoy the rights it would establish.

The question of economic rights seemed to give rise to certain difficulties. An example of how those difficulties could be met had been given by the representative of the United Nations Educational, Scientific and

Cultural Organization (UNESCO) in submitting his detailed draft text, which began by indicating the principle of the rights it would like to see respected and then specified the undertaking which governments ought to give. He wished to thank UNESCO for its efforts, and at the same time to request the other specialized agencies to carry out the same task in their respective fields so as to bring before the Commission not difficulties which it would be called upon to solve, but texts designed to overcome such difficulties and which the working parties could take into consideration.

Mr. JEVREMOVIC (Yugoslavia) felt that the attention of members should again be drawn to General Assembly resolution 421 (V), which clearly laid down that the Commission had to determine precisely the nature of economic, social and cultural rights, and to decide which of those rights should be regarded as fundamental. That instruction had already been clearly given by the General Assembly; there were therefore no grounds for the doubts in the matter expressed by some representatives.

The Yugoslav proposal (E/CN.4/538/Rev.1) included an enumeration of specific rights which should be regarded as a strict minimum for inclusion in the Covenant. The only possible question arising was what the obligations of States should be in implementing those rights; certain States, for example Yugoslavia herself, might find it difficult to implement those rights because of their backward economic development. The Yugoslav proposal supplied an answer to that problem, namely, that States should take all necessary steps to permit the exercise of those rights by their citizens. It did not, however, visualize imposing upon States the obligation to implement the rights if their economic situation precluded their doing so.

He could not support the United States proposal (E/CN.4/539), which simply stated that certain economic, social and cultural rights existed without specifying the nature of those fundamental human rights, and which was thus at variance with resolution 421 (V); nor could he agree with the Soviet Union proposal (E/CN.4/537) because it ignored reality. It was impossible to guarantee the right to work and the right to free choice of profession at one and the same time; the important point was to guarantee, not those two rights

taken together, but certain conditions of work conducive to the free development of the individual.

He must defer specific comment on the Danish proposal until he had been able to study its text, but he felt obliged to indicate his general opposition to it as adumbrated by the Danish representative, because it implied a discriminatory approach to certain economic and social rights. Such discrimination was useless and groundless, because governments were to be asked, not to guarantee that their citizens were accorded those rights, but to take all necessary steps to promote their exercise.

He commended the Yugoslav proposal to the Commission.

The CHAIRMAN suggested that the Commission should consider the substantive proposals already tabled, as well as the procedural proposal (E/CN.4/542) submitted by the Danish delegation, the text of which should be studied carefully before any decision was taken.

Mr. EUSTATHIADES (Greece) drew attention to the inter-relationship between the definition of the rights which it was desired to protect and their implementation. Should the Commission consider items 3(b) and 3(c) of its agenda together? The statements of the representatives of France, Denmark and Yugoslavia had clearly brought out the fact that such an inter-relationship existed, and that it was impossible to discuss the definition of rights without at the same time alluding to their implementation. But the existence of that inter-relationship did not necessarily involve the linking up of the two sets of clauses. Moreover, the special character of the right to be protected would necessitate special measures for implementation. That was, in fact, a task which could to a large extent be entrusted to the specialized agencies such as the United Nations Educational, Scientific and Cultural Organization and the International Labour Organisation.

In that connexion, however, another problem arose. In deciding whether the implementation of particular rights should be entrusted to certain specialized agencies, it must be borne in mind that certain States Members

of the United Nations were not members of all the specialized agencies concerned.

He, himself, considered that a traditional means of implementation already existed in international law, namely, the inclusion in an instrument of the provisions to which it was desired to give effect, the obligation to apply them following automatically from the ratification of the instrument.

He thought therefore that the Commission should decide whether or not to consider items 3(b) and 3(c) of the agenda together. That was a preliminary issue, the settlement of which might influence the attitude of some delegations.

The CHAIRMAN said that as soon as the general debate on item 3(b) was finished, the Commission would take up item 3(c). He considered it to be in order for any representative to comment, at the current stage, on methods of implementation; as the Greek representative had indicated, the definition of rights and their implementation were closely related.

Mrs. MEHTA (India) pointed out the obvious difficulties in the way of including economic, social and cultural rights in the draft first international Covenant. The rights were already set forth in the Universal Declaration of Human Rights; the Commission's problem was how to include those rights in the draft Covenant destined to be the legal instrument binding its signatories to implement them. She considered it necessary for the specialized agencies to intimate to the Commission which economic, social and cultural rights could, in their opinion, be justiciable rights to be included in the Covenant.

Mr. MOROSOV (Union of Soviet Socialist Republics), speaking on the procedural aspect, felt that once the Commission had completed the general discussion on the inclusion of economic, social and cultural rights in the draft Covenant, it ought to proceed to consider the specific proposals bearing on that issue; such a course would be logical. He thought that there must have been some misunderstanding regarding the procedure recommended by the Chairman, because, although the first stage of discussion had

not been completed, a tendency to drift to the next point on which definite decisions had to be taken had begun to make itself felt. If that method were to be followed, there would have to be a general debate on every item on the agenda, followed by a reconsideration of the same items in the light of specific proposals, by which time he feared that he, at least, would have forgotten all that had been said during the first discussion.

The only logical method was to complete the general discussion on the inclusion of economic, social and cultural rights first. Once that discussion had been finished, there should be a suspension (although in the meanwhile other proposals might be discussed) until it was possible to study the contents of the Danish proposal. The various proposals tabled should then be considered as submitted. A second possibility would be to suspend the meeting pending the distribution of the Danish proposal, and then to discuss all the specific proposals, including of course the Danish text. He therefore moved that the meeting be adjourned until the afternoon, when the Danish text would be available and when the Commission would be in a position to proceed with the debate on the specific proposals and on the extent to which they could be combined with a view to reaching ultimate agreement.

Mr. VALENZUELA (Chile) observed that the Indian representative had raised the question of the implementation of economic and social rights and of their special character. He did not think there were any great differences of opinion between members about economic and social rights in themselves. On the other hand, there were substantial differences regarding the possibility of working out a system of implementation which could be imposed on all States.

For instance, if one State accused another of not granting its population freedom of expression on the pretext of considerations of national security, the State accused should be required, on pain of being found guilty of violating a right covered by the Covenant, to prove that the exigencies of national defence were in fact such that the right to freedom of expression had to be restricted or suspended in its territory.

In the matter of economic rights, a case had occurred in which several countries had accused another of "dumping", and had agreed to boycott the goods sold by that country, on the ground that they were the product of forced labour. That had been possible in the absence of any legal instrument for the implementation of economic rights, because economic interests had existed sufficiently powerful to lead several States to take combined action.

There was next the hypothetical case of a country in which part of the working class population was unemployed, and which was therefore accused of not respecting the right to work. The accused State would then have to prove to the satisfaction of the competent international organ that its economic structure did not permit it to guarantee everyone the right to work. In such a case it might be thought that there would be an obligation on the other members of the international community who professed to be jealous guardians of human rights, to give economic assistance to the accused State to enable it to provide work for its whole population.

There were many cases in which the implementation of economic, cultural and social rights would give rise to serious difficulties. It was certainly easier to draft a declaration of principle in general terms than to ensure that those principles would be respected in practice.

Thus, in an ideal society, respect for the right to live, for instance, should not lead to an acrimonious exchange of accusations between two States for mainly political ends. It should rather lead to co-ordinated international effort which might, for instance, be directed to combating a particularly high rate of infant mortality. It might well be asked, in such a case, what was the practical import of the right to live, if the different countries failed to collaborate to reduce such mortality.

In conclusion, he asked representatives not to be deterred by technical difficulties, and to concentrate mainly on the spirit in which the Covenant should be drafted .

Mr. BIENENFELD (World Jewish Congress), speaking at the invitation of the CHAIRMAN, asked whether the right of asylum, which was one of the basic human rights, should be discussed in connexion with civil or with social rights.

The CHAIRMAN replied that the right of asylum had more the character of a civil right, and was mentioned as such in the Universal Declaration. It should therefore be discussed under item 3(a) of the agenda.

He then put to the vote the Soviet Union representative's proposal that the Commission rise forthwith to allow members to study the Danish representative's text (E/CN.4/542).

The proposal was carried unanimously.

The meeting rose at 12.05 p.m.