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COMMISSION ON HUMAN RIGHTS

Seventh Session

SUMMARY RECORD OF THE TWO HUNDRED AND THIRTY-SIXTH MEETING

held at the Palais des Nations, Geneva,
on Thursday, 10 May 1951, at 3.0 p.m.

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Present:

Chairman:	Mr. MALIK (Lebanon)
Members:	
Australia	Mr. WHITLAM
Chile	Mr. SANTA CRUZ
China	Mr. YU
Denmark	Mr. SÖRENSEN
Egypt	AZMI Bey
France	Mr. CASSIN
Greece	Mr. EUSTATHIADES
Guatemala	Mr. DUPONT-WILLEMIN
India	Mrs. MEHTA
Pakistan	Mr. MAHMUD
Sweden	Mrs. BÖSTEL
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. CLAUDIO
Yugoslavia	Mr. JAVREMOVIĆ
Representatives of specialized agencies:	
International Labour Organisation	Mr. PICKFORD
United Nations Educational, Scientific and Cultural Organisation	Mr. RAMADIER
Representatives of non-governmental organisations:	
Category A	
International Confederation of Free Trade Unions	Miss SENIOR
World Federation of United Nations Associations	Mr. BALDWIN

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All-Pakistan Women's Association	Mrs. [illegible]
Caritas Internationalis	Mr. [illegible]
Carnegie Endowment for International Peace	Mrs. CARTER
Catholic International Union for Social Service	Mrs. SCHELDER
Consultative Council of Jewish Organizations	Mr. MOSKOVITCH
Co-ordinating Board of Jewish Organizations	Mr. [illegible]
International Council of Women	Mrs. CARTER
International Federation of Business and Professional Women	Miss TONELDSON
International Federation of University Women	Miss ROBB Miss DUBOIS
International League for the Rights of Man	Mr. BALDWIN
International Union of Catholic Women's Leagues	Miss ARCHIBALD
Liaison Committee of Women's International Organizations	Miss ROBB
World Jewish Congress	Mr. MELNELFELD Mr. RIZGURO

Secretariat:

Mr. Humphrey	Representing the Secretary-General
Mr. Dos	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:

1. General clause relating to limitations (E/CN.4/610/Add.2) (continued)

The CHAIRMAN invited the Commission to continue with its consideration of the general clause relating to limitations.

Mr. MOROSOV (Union of Soviet Socialist Republics) took up the question raised by the Chilean representative at the preceding meeting, of the way in which the United States delegation approached the problem of deciding to which rights the restrictions in the limitation article were to apply. In answering that question, the United States representative had merely repeated her previous arguments for the limitation of certain rights, and had been no more convincing than when she had first advanced them.

However, the weakness of the United States arguments was in no way a reflection on the capabilities of the United States delegation. The fact of the matter was that it was impossible to devise any practical means of limiting the enjoyment of economic, social and cultural rights, and any attempt to do so was bound to end in ignominious failure.

The representative of France had attempted to come to the rescue of the United States delegation by quoting hypothetical and improbable examples, ostensibly to illustrate the need for a limitation article and the scope which such a limitation article should have, and had declared that he would support the United States proposal unless it could be demonstrated that a limitation article was unnecessary. Such arguments were illogical, and could only hamper the work of the Commission.

A careful study of the documents before the Commission showed clearly that the true aim of the authors of the United States proposal was to provide loopholes by which the implementation of the pitifully inadequate economic, social and cultural rights so far adopted could be evaded. The whole trend of the

discussion so far had been towards the creation of a covenant within the Covenant to which the implementation procedure laid down for civic, civil and political rights would not apply. If the Commission was not in fact creating a separate covenant guaranteeing economic, social and cultural rights, there would be no need to draft a general article like the one now under discussion, or to specify that Part IV of the Covenant and the principle of non-discrimination enunciated in Article 1, paragraph 2, were applicable to the provisions of that part of the Covenant dealing with economic, social and cultural rights.

In the General Assembly, the United States delegation had opposed the inclusion of economic, social and cultural rights in the draft Covenant. None the less, the General Assembly had decided that relevant provisions should be included. But the United States delegation, while pretending to abide by that decision, was still attempting to achieve its ends by depriving the articles relating to economic, social and cultural rights of all practical value.

There was clearly no question of submitting a new, patched-up version of the original United States proposal to the Commission. If the Commission did not want to abandon all hope of implementing the economic, social and cultural rights it had so far adopted, it must decide against the inclusion of a general limitation clause in the part of the Covenant dealing with those rights.

Mrs. ROOSEVELT (United States of America) stated that her delegation had consistently taken the line that economic, social and cultural rights were of a different nature from the other rights enunciated in the Covenant, since they were not justiciable, and therefore could not be enforced in the same way. Hence her delegation had felt that it would be more appropriate to concentrate those rights in a separate covenant. However, it had accepted the decision of the General Assembly without reserve, and was now attempting to see that the instructions of the General Assembly were carried out within the framework it (her delegation) thought most suitable. She was still convinced that some distinction should be made between economic, social and cultural rights and the other rights; nevertheless, all the rights involved would form part of one and the same Covenant.

In one sense, the limitation article was not limitative but protective. It restricted the rights of the individual only so far as was necessary to protect the rights of others. It was impossible to accept all the articles so far adopted without admitting that all of them must be subject to certain limitations. It was not always possible to grant the same thing to everybody at the same time and in the same way; the question of priority in health services was a case in point. The Commission was engaged in laying down the broad principles on which legislation for the protection of human rights was to be based; it was not drafting the actual legislation. If it refused to admit of a certain number of possible limitations, the Commission would be acting stupidly, perhaps even dangerously.

The case of education provided an example of the danger of making no provision for limitations.

The article proposed for the definition of the right to education spoke of free, primary compulsory education. Yet everyone knew that there were some children so mentally retarded that they could not profit from primary education. While some other type of provision should be made for such children, it might even harm them to compel them to attend primary schools together with normal children. Another example of such a danger was the use of the word "free" in that context. In one of its reports, the United Nations Educational, Scientific and Cultural Organization had raised the question of the exact meaning of the words "free education", in connexion with which there were differences of opinion as to whether they applied only to tuition, or to transportation, books etc., as well.

The United States proposal sought not only to provide for certain limitations on the enjoyment of economic, social and cultural rights, but also to protect the individual against undue limitation of the same rights when they were granted by the State.

In conclusion, she was prepared to accept the amendment proposed by the French representative to the United States proposal and also, as she had indicated at the previous meeting, the suggestion made by the Secretariat (E/CN.4/528, paragraph 197) that the words "public order" should be replaced by some such phrase as "prevention of public disorder".

The CHAIRMAN then read out the United States proposal, thus amended. It read:

> "Each State Party to the Covenant recognizes that in the enjoyment of those rights provided by the State in conformity with this Part of the Covenant, everyone shall be subject only to such limitations as are determined by law and solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, the prevention of public disorder and the general welfare in a democratic society."

Mr. SOROSOV (Union of Soviet Socialist Republics), invoking the final clause of rule 61 of the rules of procedure, proposed that no decision be taken on the substance of the United States proposal.

The CHAIRMAN put the Soviet Union proposal to the vote.

The Soviet Union proposal was rejected by 9 votes to 5 with 4 abstentions.

Mrs. ROOSEVELT (United States of America) asked whether the French representative would prefer the word "shall" or the word "may" before the words "be subject only to".

Mr. CASSIN (France) said that the expression "may be subject only to" would be preferable, although Article 29 (2) of the Universal Declaration contained the phrase "everyone shall be subject only to such limitations ...".

The CHAIRMAN stated that the question had been discussed on previous occasions, when it had been agreed in each case that the word "may" should be used in a negative context, and the word "shall" in a positive context.

Mr. SORENSEN (Denmark) accordingly proposed that that part of the United States proposal be amended to read: "no one may be subject to limitations except such as are determined by law."

Mr. CASSIN (France) suggested that that phrase be rendered in French by the phrase "nul ne peut être soumis qu'aux limitations ...".

Mr. KU (China) felt that the negative form suggested by the Danish representative was less appropriate than the positive form used in the United States proposal. Furthermore, the negative form made no allowance for such limitations as might be determined by morality, social customs, the conscience of the individual or unwritten law of any kind.

Miss BOWIE (United Kingdom) objected to the phrase "determined by law". Many issues, such as the conditions of membership imposed by trade unions, were not fixed by law. In such cases the only question that could arise was whether the limitations were consistent with the law. She therefore proposed that the words "determined by" be replaced by "consistent with".

The CHAIRMAN pointed out that the proposal in its amended form contained no reference to the rights being subject to limitations by the State.

Mr. CASSIN (France) suggested that the observations of the Chinese representative might perhaps have been prompted by an incomplete study of the corresponding article of the Universal Declaration. What Article 29 (2) of the Declaration said was that it was the law which determined certain limitations, adding that it determined them "solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society." There was no ambiguity in the wording of the sentence.

The United Kingdom representative had expressed the fear that the phrase "determined by law" would prove too narrow, since laws did not cover every eventuality, and it was frequently by virtue of the law or in accordance with the law that the exercise of a right was limited by magistrates. In France "the law" was not restricted to statute law. By "the law" was meant the whole body of legal precedent and practice, and he would be very surprised if in the United Kingdom and in the other countries governed by common law, the term "law" embraced only statute law. It probably included common law as well.

Mr. WHITLAM (Australia) pointed out that the re-drafting of the United States proposal in the negative form had completely changed its meaning and application. In its original form the proposal had been specifically intended to defend economic, social and cultural rights against limitation by the State, whereas in its amended form it was merely a vague general statement to the effect that such rights should be protected against undue restriction.

Mr. SANTA CRUZ (Chile) did not think that the expression "as are determined by law" could be changed, since the proviso it contained was the minimum safeguard that the Commission could include in the Covenant. The same proviso already figured in Article 29 of the Universal Declaration, and was also to be found in the majority of national constitutions. The limitations in question must be determined by law, that was to say, by statute law. He considered that the article proposed by the United States delegation would be even less acceptable if the phrase "determined by law" were replaced by some

other, more flexible formula, which might lend itself to wider interpretations.

Mr. DUPONT-WILLEMIN (Guatemala) was in full agreement with the representative of Chile. The phrase "determined by law" had been discussed at length by the Third Committee of the General Assembly, which had decided to retain it. The phrase "consistent with the law" had an entirely different meaning. The phrase should be left as it stood, otherwise the Covenant would not be in accordance with what the Third Committee had had in mind when adopting Article 29 (2) of the Universal Declaration.

The CHAIRMAN asked whether the United Kingdom representative wished to press her amendment.

Miss BOWIE (United Kingdom) said she would be prepared to withdraw her amendment if the original, impersonal form of the United States proposal, which laid the emphasis on States, was restored. But once the personal form was introduced, her amendment became necessary.

Mr. CASSIN (France) concurred with the Chilean representative. The law could be precise. And where, for example, a law referred to "morality", the courts gave their interpretation of what was meant by that concept. However, the concept of morality had evolved through the ages, and hence the legal interpretation was influenced by common law. Accordingly, he favoured the retention of the formula "determined by law". A further point was that the adoption of the formula "consistent with the law", or any similar expression, would inevitably necessitate the recasting of all the rest of the article.

In reply to the United Kingdom representative, he pointed out that it was not he who was responsible for the original shift in emphasis. Article 29 (2) of the Universal Declaration was based on the individual, whereas the text originally proposed by the United States delegation was based on the State. It would be most unwise, in his submission, to adopt that text or any text like it without carefully weighing the consequences. It would be

necessary, in particular, to make sure that the door was not being opened to the exercise of tyranny by certain groups of individuals. The text in the Universal Declaration had been drawn up very carefully, and should not be modified, except after full deliberation.

The CHAIRMAN put to the Commission the United States proposal in its amended form, reading:

> "Each State Party to the Covenant recognizes that in the enjoyment of those rights provided by the State in conformity with this part of the Covenant, no one may be subject to limitations except such as are determined by law and solely for the purpose ...."

Mr. YU (China) asked whether the original United States text was still to be voted on. He endorsed the Australian representative's view that in its negative form the proposal was not sufficiently precise.

The CHAIRMAN pointed out that the United States representative had accepted the Danish amendment.

Miss BOWIE (United Kingdom) suggested that the original United States proposal (E/CN.4/610/Add.2) should be taken as the basis for discussion.

The CHAIRMAN put the United Kingdom proposal to the vote.

The United Kingdom proposal was adopted by 10 votes to 2 with 6 abstentions.

The CHAIRMAN then put to the vote the Chilean amendment, namely, the insertion after the words "determined by law" of the words:

> "only in so far as this may be compatible with the nature of these rights."

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

The CHAIRMAN suggested that the English text of the amendment, submitted by the Uruguayan representative at the 234th meeting, to the last three lines of the proposal contained in document E/CN.4/610/Add. 2 should be modified to read:

"and solely for the purpose of promoting the general welfare in a democratic society."

He preferred the use of the word "welfare", which was much more positive than the word "interest".

It was so agreed.

The CHAIRMAN then put the Uruguayan amendment to the vote.

The Uruguayan amendment was adopted by 6 votes to 2 with 10 abstentions.

The CHAIRMAN then put the original United States proposal (E/CN.4/610/Add. 2), as amended, to the vote.

The original United States proposal, as amended, was adopted by 9 votes to 6 with 3 abstentions.

Mr. CASSIN (France) stated that while he was very much in favour of the principle of the clause in question, he was unable to accept the somewhat surprising improvisations that had been submitted orally. Texts which had been very carefully studied before their incorporation in the Universal Declaration ought not to be subject to amendments with implications which nobody was in a position to assess. The text as adopted would not protect individuals against any trespass on their rights that might be committed by other individuals, nor did it afford them protection against measures which the State might introduce to their detriment: for only measures taken in the general interest had been taken into account, and no regard had been paid to the fact that the State might also act as the protector of the individual. He had therefore voted, not against the principle itself of the limitation clause, but against the manner in which the Commission had presented that principle.

Mr. MUSTAFHIADES (Greece) regretted that he had been obliged to vote against the manner of presentation of a principle which he himself had championed at the preceding meeting. He deplored the abandonment of the text of the United States proposal as amended by the French representative to bring

it more closely into line with the corresponding text of the Universal Declaration. The text adopted by the Commission was unsatisfactory even from the legal point of view.

The CHAIRMAN pointed out that the Commission had proceeded in accordance with its normal practice.

He then invited the Commission to take up the United Kingdom proposal that a new paragraph be added to the United States proposal, reading:

"Nothing in this article shall be considered as affecting the provisions of article 16 of the Covenant."

Speaking as representative of Lebanon, he would propose the substitution of the word "this" for the word "the" before the word "Covenant", although he proposed to vote against the amendment as a whole.

Mr. SANTA CRUZ (Chile) questioned whether there could be any purpose in the Commission's adopting a provision such as that proposed by the United Kingdom delegation. He recalled that the Commission had already adopted article 16 of the draft Covenant. Furthermore, the Commission had also adopted an article relating to trade-union rights which subordinated the exercise of those rights to the provisions of article 16, thereby both restricting and protecting them. He feared that the adoption of the United Kingdom proposal might give rise to some confusion, as it was perfectly plain that no provision of the Covenant could affect either article 16 or that provision in the article on trade union rights which referred to article 16.

Miss BOWIE (United Kingdom) said that she had been prompted to move her amendment by the suggestions that the limitations covered by the United States proposal were deliberately designed to evade the limitations defined in article 16, on the right of the State to interfere. In her view, that was not the intention of the proposal, and she therefore suggested that attention should be drawn to the provisions of article 16.

The CHAIRMAN put to the vote the Lebanese amendment to the United Kingdom amendment, namely, that the word "this" should be substituted for the word "the" before the word "Covenant".

The Lebanese amendment was adopted by 9 votes to 4 with 3 abstentions.

The CHAIRMAN then put to the vote the United Kingdom amendment, as thus amended.

The United Kingdom amendment was rejected by 4 votes to 3 with 10 abstentions.

Mr. CASSIN (France) said that he had voted against the United Kingdom proposal, not because it was badly drafted, but because he considered it unnecessary. It was quite clear that the Commission's adoption of the general clause on limitations did not affect article 16 of the Covenant, as it was expressly stated in the article on trade union rights that the exercise of such rights was subject to the provisions of article 16.

The CHAIRMAN then put to the vote the United States proposal contained in document E/CN.4/610/Add. 2, as a whole, and with the amendments which had been accepted. It read:

> "Each State Party to the Covenant recognises that in the enjoyment of those rights provided by the State in conformity with this Part of the Covenant, the State may subject such rights only to such limitations as are determined by law only insofar as this may be compatible with the nature of those rights, and solely for the purpose of promoting the general welfare in a democratic society."

The United States proposal, as amended and as a whole, was adopted by 11 votes to 6 with 1 abstention.

2. General clause concerning economic, social and cultural rights (E/CN.4/618) (resumed from the 234th meeting)

The CHAIRMAN invited the Commission to resume its consideration of the new French proposal for a general clause concerning economic, social and cultural rights (E/CN.4/618).

Mr. CASSIN (France) said that following the decision taken by the Commission the previous day, he had tried to draft a text which, while keeping closely to his original proposal (E/CN.4/612) dropped the points that the Commission had voted down. Thus the new French proposal contained no reservation in regard to the organisation of States - after all, article 1 of the Covenant took into account the constitutional processes of the signatory States - but emphasized that they undertook to take steps to the maximum of their available resources.

The text of the first three paragraphs had not been changed. They would become meaningless if the fourth paragraph were not adopted. In the second paragraph, the word "and" should be added before "prevent"; and the word "et" should be deleted before "le logement" in the French text of the third paragraph. The enumeration in the third paragraph was not intended to be exhaustive.

Mr. MOROSOV (Union of Soviet Socialist Republics), speaking to a point of order, asked the Chairman whether the so-called new French proposal was admissible, in view of the fact that it was, to all intents and purposes, identical with a proposal already rejected by the Commission. Comparing the two texts, it would be seen that the only difference in the first paragraph was the omission from the revised text of the words in parentheses, which did not affect the substance. Paragraph 2 of the revised version was absolutely identical with the earlier text, except for the omission of the words "and incite them to hatred;", which again did not affect the meaning. Paragraph 3 of the revised version had been subjected to some insignificant drafting changes. Paragraph 4 repeated in principle the substance of the joint French/United States amendment (E/CN.4/615) to the fourth paragraph of the original version. The only difference was the use of the phrase "to the maximum of their available resources" instead of the phrase, "in accordance with their organization and resources", which was simply a different way of expressing the same idea.

The CHAIRMAN observed that the Soviet Union representative had raised an important point on which he would rule that, once the Commission had decided to re-open the reconsideration of any question, all members were free to submit any proposal, regardless of whether it was identical with a proposal already considered or not. By deciding to re-open an issue, the Commission cleared the way for the submission of any text without qualification.

The Soviet Union representative had in any case conceded that the new text was not absolutely the same as the former text.

Mr. CASSIN (France) observed that in the English version of paragraph 4 of the new French proposal the words "of their available resources" should be substituted for "of the available resources", and the words "of this Covenant" for "of the Covenant".

He pointed out to the Soviet Union representative that the first three paragraphs of the original French proposal for a general clause (E/CN.4/612) had been left unchanged because the Commission had adopted them by 11 votes to none, and had deliberately refrained from amending them. The words "(civil, civic and political)" had been omitted purely by accident, and he saw nothing against their being re-introduced.

The text of paragraph 4 of his new proposal was substantially different from all the texts previously submitted. He had tried to take into account the results of the votes upon those earlier texts, and to draft a combined text containing no provision which had been rejected by a large majority.

The CHAIRMAN, speaking as representative of Lebanon, proposed that paragraph 4 of the new French proposal be amended by the substitution of the word "implementing" for the words "achieving progressively the full realization of".

AZMI Bey (Egypt) said that he was fully prepared to abide by the decision on principle taken by the Commission in respect of the general clause and to abide by it. The Chairman had made it clear that the vote on the French proposal would not prejudge the exact point at which the articles on economic, social and cultural rights would be inserted in the Covenant. That being so, it was quite possible for the Commission to decide that those articles should be inserted immediately after article 17, the last article on civil and political rights, so that the first article on economic, social and cultural rights, that was to say, that dealing with the right to work, would become article 18 of the draft Covenant, and would not be separated from article 17 by any other provision. In those circumstances, he wondered what useful purpose would be served by the first three paragraphs of the French proposal, and therefore felt that they might be dispensed with, only the operative clause (paragraph 4) being retained. The latter could then be easily inserted in the text at whatever point the Commission might decide.

He wished to propose certain amendments to paragraph 4 of the new French

proposal. He considered that the words "whatever the resources available" might be substituted for the phrase "to the maximum of their available resources." The latter referred only to the resources of each individual State, but it was unlikely that the available resources of the small countries, even if utilised to the maximum, would be sufficient; as a result, those countries would have to fall back on international co-operation and he considered that the adoption of the phrase he had proposed would make it easier for them to do so.

He next proposed that the words "if necessary" be inserted after the word "progressively". Some members of the Commission had been opposed to the idea of progressive realization, and had pointed out, not without reason, that the exercise of certain economic and social rights, such as trade union rights, could and should be ensured immediately. But progressive action would be necessary in the case of other rights, for example, certain cultural rights. He further proposed, particularly in the light of his own suggestion that the first three paragraphs of the French proposal be deleted, that the words "economic, social and cultural" should be inserted after the words "full realization of".

Lastly, he would like the words "recognized in this part of the Covenant" to be replaced by "recognized in this Covenant" in the last line of the revised proposal.

Mr. SANTA CRUZ (Chile) thought that it was clear that in substance the new French proposal very closely resembled the original one. He would not press that point, since the Commission had already decided to re-open the discussion on the general clause, but would merely draw attention to the dangers inherent in such a procedure generally.

Having voted against the first French proposal, his delegation would also oppose the new one. Indeed, he considered that it would be an error of principle to introduce into the Covenant any special provision which would in effect mean the creation of a separate covenant for economic, social and cultural rights. The adoption of the French proposal would increase the risk already confronting

the Commission, of the Covenant's being split into two separate instruments, one of which would cover economic, social and cultural rights. That risk had become more evident since the submission of the Indian proposal (E/CN.4/619), the intention of which was precisely to request the Economic and Social Council not to include economic, social and cultural rights in the same covenant as civil and political rights, but to make them the subject of a separate covenant.

Furthermore, the French proposal provided for various limitations on the undertakings of States under the Covenant, limitations which would render illusory the rights set out in the Covenant. Thus, the expression "to the maximum of their available resources" could, in the absence of a closer definition, be interpreted as applying only to the resources of States available for that particular purpose, and not to their over-all resources. Again, the expression "undertake to take steps" did not constitute a formal undertaking to guarantee the exercise of the rights recognised. Finally, the adverb "progressively" also tended unduly to reduce the scope of the undertaking to be assumed by the signatory States.

The adoption by the Commission earlier in the meeting of a general clause relating to certain limitations seemed to him to render the French proposal even more superfluous and dangerous. Why introduce further, and serious, limitations on top of those contained in the clause just adopted?

In such circumstances, he would have to vote against the French proposal; but he would vote in favour of any amendments to it tending to liberalize it and render it less harmful should it finally be adopted.

Mr. SÖRENSEN (Denmark) said that he would vote in favour of the new French proposal, which was an improvement on the earlier proposals for a general clause. Such a clause was necessary, and the terms of paragraph 4 of the new proposal gave additional emphasis to the obligations to be undertaken by States. The word "available" as used in paragraph 4 had been criticized on two counts. The Egyptian representative had objected to it because it related only to national resources, whereas outside assistance in the implementation of social,

cultural and economic rights should also be anticipated. It was true that the latter possibility should not be ruled out, but surely the word "available" would apply to both national and international resources? The phrase was more widely conceived than its counterpart in earlier proposals, but he could not go so far as the Egyptian representative and support his suggestion that the word "whatever" be inserted before the words "the available resources", since that might be equivalent to an engagement to use the resources of other States for the purpose.

The Chilean representative, on the other hand, had criticised the use of the word "available" on the ground that States might argue that their resources for the implementation of the rights concerned were limited. But if the Commission was to be realistic, it could not close its eyes to the fact that in drawing up its budget any government had to make certain decisions about allocations. At the present moment, for example, many countries were faced with the problem of reconciling defence requirements with those of the social services. Even if that particular difficulty disappeared, governments would still have to apportion allocations between the various branches of the social services or other budgetary appropriations relating to the realization of economic, social or cultural rights. It would be unrealistic to attempt to dictate to States how they should allocate their resources in that respect.

The Chilean and Egyptian representatives had also commented adversely on the use of the word "progressively". He would submit that it was impossible to envisage the full implementation of all economic, social and cultural rights within a reasonable period. Anyone who was familiar with social and educational policy could not fail to realize that the programme entailed by the acceptance of the provisions concerning economic, social and cultural rights would be so far-reaching that it would take long to achieve. He therefore considered the word "progressively" both necessary and valuable. Furthermore, it introduced a dynamic element, indicating that no final fixed goal had been set in the implementation of economic, social and cultural rights, since the essence of progress was continuity. The Egyptian representative had suggested that the

notion of progressive realisation was inappropriate in the case of certain specific rights, and had especially mentioned trade union rights. He (Mr. Sörensen) considered that that argument applied to trade union rights alone, and to no others dealt with in the provisions already adopted by the Commission.

He agreed that it was wise to have omitted from the proposal any reference to the status of nationals. It was indeed a desirable objective that economic, social and cultural rights should ultimately be accorded to nationals and aliens alike without distinction in every country. Unfortunately, such a counsel of perfection was unlikely to prove realizable in the near future. Attempts were being made on a limited scale to introduce reciprocity between neighbouring countries in the provision of social security benefits, but that was a matter hedged about with numerous difficulties, and the day was still distant when all United Nations members would be ready to confer the full benefits of their social security system on all persons living in their territory regardless of nationality.

The CHAIRMAN, speaking as representative of Lebanon, associated himself with the Chilean representative's remarks. He believed that the Commission should consider the French proposal in relation to the United States proposal (E/CN.4/610/Add.2) just adopted, with certain amendments thereto. The French proposal had certain negative aspects. It allowed possible limitation of the full implementation of economic, social and cultural rights. He could only support such a proposal if it was sufficiently liberalized in regard to the duties of States.

If the first three paragraphs of the French proposal were adopted, he reserved the right to suggest that they be transferred to some place among the opening articles of the draft Covenant.

AZMI Bey (Egypt) said that the Danish representative had completely misinterpreted his (Azmi Bey's) concept of international co-operation. There was no question of laying hands on foreign capital in any country. By

international co-operation he meant the co-operation achieved through international bodies such as the United Nations, the International Monetary Fund, the Technical Assistance Board etc.

Mr. MOROSOV (Union of Soviet Socialist Republics) wished to offer some observations on the conduct of the Commission's business. It was not a pleasant task, as he was well aware that any decision to depart from the rules of procedure would automatically obtain the support of the majority. Nevertheless, as he was an advocate of the Commission's conducting its business strictly in accordance with the rules of procedure, he could not in the present circumstances remain silent.

He had asked the Chairman whether it was in order for the Commission to consider the latest French proposal, which had already been rejected in substantially the same form. The Chairman had not attempted to deny that the proposal did not differ substantively from earlier versions. At the 234th meeting, a motion to re-open the question of the time-limit for the receivability of proposals on the general clause relating to economic, social and cultural rights had been carried. In adopting that proposal, the Commission had not taken a decision to reconsider a matter on which a decision had already been taken. The Chilean representative, who had abstained from voting on the motion in question, had rightly pointed out that it would constitute a dangerous precedent if the Commission reconsidered its own decisions. It was unprecedented in United Nations practice for a proposal once rejected to be put to the vote a second time.

He (Mr. Morosov) would ask, furthermore, how the Commission could re-consider something which had never been adopted. Had a general clause been adopted earlier, discussion on it could have been re-opened by a two-thirds majority vote in accordance with the practice of the General Assembly, but since nothing had in fact been finalized with regard to the general clause, there was nothing to reconsider. All that the Commission could have done was to decide to accept new proposals, and to disallow the re-submission of old proposals.

He wished to make it absolutely clear that at the moment he was not advancing any views, either favourable or unfavourable, with regard to the

substance of the proposals on the general clause. He was merely raising a vital question of procedural principle, and appealing to the Commission not to turn its work into a farce. If such crude violations of the rules of procedure were allowed, anarchy would ensue. Even if the matter was put to a vote, and his view was turned down, he would continue to protest most emphatically at such a way of conducting the Commission's business. The Commission had not decided at its 234th meeting to re-open discussion on the same old proposals. The new French proposal should, therefore, be ruled out of order.

The CHAIRMAN, referring to the Soviet Union representative's assertion that any decision to depart from the rules of procedure would automatically be carried by a majority, appealed to him to refrain from passing moral judgments belittling the Commission's work and impugning the honour of its members, who voted according to their conscience and judgment. He hoped that the Soviet Union representative's remarks were due to some misunderstanding.

He would point out that earlier in the meeting the Soviet Union representative had, with perfect justification, raised a point of order, on which he (Mr. Malik), as Chairman, had given a ruling; if the Soviet Union representative had wished to challenge that ruling he should have done so at once; instead, he had remained silent and other representatives had subsequently spoken to the substantive aspects of the French proposal. A ruling from the Chair must be challenged at once; otherwise it was considered to have been upheld. The Soviet Union representative's second intervention on a point of order was therefore out of order.

Mr. MOROSOV (Union of Soviet Socialist Republics) said that after he had raised his first point of order the Chairman had expressed his point of view. He (Mr. Morosov) had then asked the Secretariat for the text of the decision taken at the 234th meeting concerning the re-opening of the question of the time-limit for the receivability of proposals on the general clause. He could not have intervened again before he had had sight of that text. He must assume that the Chairman was ruling his second intervention out of order as the result of a misunderstanding. He had not realized that the Chairman had given a ruling in answer to his first intervention on the point of order.

The CHAIRMAN replied that he had made it quite clear that he was giving a ruling; in fact, he had repeated it. He could not give a ruling on the same subject twice at the same meeting.

Mr. MOROSOV (Union of Soviet Socialist Republics) pointed out that rule 44 of the rules of procedure contained nothing which made it imperative to challenge a ruling from the Chair immediately it was given. He would not, however, formally challenge the Chairman's ruling, but would simply dissociate himself emphatically from such flagrant breaches of the rules of procedure. His delegation could not accept without protest such a method of conducting the Commission's business, and he reserved its right to give an account in the Economic and Social Council of the manner in which the general clause had been dealt with.

The CHAIRMAN said that the Soviet Union representative had made his position perfectly clear. He, as Chairman, must take exception to the allegation that the rules of procedure had been broken.

Mr. HOWARD (United Kingdom) opposed the Egyptian proposal that the word "whatever" should be inserted before the words "their available resources". His opposition was prompted by some of the reasons mentioned by the Danish representative, though he saw no ground for suspecting that the use of that word might result in States using the resources of others for the implementation of economic, social and cultural rights. Until governments had had an opportunity of examining all the draft articles relating to those rights, it would be impossible to decide either their final form or that of the general clause. Since, however, the Commission had decided to adopt a general clause, the United Kingdom delegation would vote in favour of the new French proposal in the belief that it would save time if such a proposal were forwarded, together with the draft articles, to governments for their examination and comments.

Mrs. ROOSEVELT (United States of America) drew attention to a typographical error in paragraph 3 of the new French proposal, from which the word "living" should be deleted.

With regard to the points raised by the Chilean representative concerning the re-consideration of decisions, she would point out that the Commission was a technical drafting body, and it would therefore be most unfortunate if it did not sometimes re-consider its decisions. If it were to be debarred from taking such action it would not satisfactorily carry out its function of preparing new texts for consideration by other bodies of the United Nations.

She considered that the words "available resources" as used in the French proposal included resources other than those of the country immediately concerned. The Egyptian representative need therefore feel no anxiety on that score. She agreed with the Danish representative that the retention of the word "progressively" was important, because it must be understood that implementation might in certain cases have to be carried out in stages. If that fact were not recognised, many countries might find themselves unable to ratify the Covenant. She agreed, however, that some provision must be made to guard against evasion of responsibility in the matter of implementation.

Mr. EUSTATHIADES (Greece) recalled that when the Commission had been drafting the text of the general clause which it had just adopted, he had urged very strongly that it should follow as closely as possible the text of the corresponding article in the Universal Declaration of Human Rights. On the other hand, he saw no objection to trying to amend the text of the French proposal with the object of making it acceptable to more of the members of the Commission.

For example, he was in favour of adopting the Lebanese proposal to replace the phrase "achieving progressively the full realisation of" by the word "implementing". That would not affect the sense of the paragraph. Again, he was agreeable to the words "if necessary" being added after the word "progressively", as proposed by the Egyptian representative. Nor had he any objection to the deletion of the adjective "available" qualifying "resources". Whether the adjective was retained or not would not alter the fact that what was implied was inevitably the resources actually available. The Danish representative had quite rightly pointed out that it could not be otherwise.

If the adjective "available" were deleted, he suggested that paragraph 4 of the French proposal be re-worded as follows:

> "Undertake to take steps, individually to the maximum of their resources, and through international co-operation ....".

He would prefer, however, that the words "international co-operation" be replaced by an expression which would suggest measures other than the mere despatch of a few experts by an international organization. He was inclined to favour the expression "international mutual assistance."

He appealed to the members of the Commission who had adopted a negative attitude towards the French proposal to re-consider their position. The question was whether the Powers with abundant resources did or did not want an international Covenant on human rights. Would those economically strong Powers be alarmed at the idea of mentioning the resources of each country and of an appeal to the economic resources of the international community to assist certain signatory states to meet their obligations under the Covenant? It might be argued that there was no question of resources and of international co-operation in regard to the implementation of the rights under articles 1-18 of the draft Covenant. He recalled what those rights were, and raised the question whether the States undertaking to observe them were to have special resources placed at their disposal for the purpose.

Following the second world war, international organs had been set up to provide international assistance in the economic field. It was to give further effect to that intention that he proposed that international assistance be mentioned in the Covenant. The members of the Commission should agree on a formula which would enable the governments of signatory States to give an honest undertaking. They could not confidently ratify a Covenant whose provisions they would be unable to implement. They must have both the desire to accept the Covenant and the means of applying it in their country. By retaining both elements, namely resources and international co-operation, wide adherence to the Covenant would be secured, which should be the Commission's main object at the present stage.

The CHAIRMAN agreed that representatives must know the intentions of their respective governments with regard to the draft Covenant. On the other hand, the Commission on Human Rights was not a policy-making body, matters of policy being reserved to the General Assembly and the Economic and Social Council. Those two bodies had instructed the Commission to carry out a specific task, and the Commission's duty was to accomplish that task as best it could, in the hope that the General Assembly and the Economic and Social Council would take the appropriate policy decisions.

Mr. EUSTATHIADES (Greece) was unwilling to make any forecast as to how the international situation would develop. But he felt that the efforts made by States should be within the framework of international mutual assistance. Fundamentally, his viewpoint was identical with the Chairman's. Both had the same idea in mind, namely, the preparation of a draft Covenant which would be acceptable to the General Assembly.

Mr. CLASULLO (Uruguay) said that he would abstain from voting on the first three paragraphs of the French proposal. It was not yet known for certain where that text, if adopted, would finally be placed in the draft Covenant. As it was a general provision, the Commission should act with circumspection in the matter.

With regard to the operative section, that was, paragraph 4 of the new French proposal, he would, in keeping with his position of the previous day, vote against its adoption. He had previously supported the Yugoslav proposal, while at the same time moving certain amendments to it, and he had also supported the proposal submitted jointly by the delegations of Chile, Egypt and Guatemala, while suggesting that it too should be amended to remove any reference to the organization of signatory States or to the progressive realization of the rights recognized in the Covenant.

Paragraph 4 of the French proposal contained limitations, which were implicit in the words "available resources" and in the adverb "progressively." He pointed out that, although the implementation of certain economic, social and

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cultural rights would necessarily have to be progressive, other provisions, such as those pertaining to health, periods of work, the equality of men and women, the protection of mothers and children etc., should not be made the subject of a partial or fixed-term commitment.

The fundamental defect of the French proposal was that it put economic, social and cultural rights at a disadvantage in relation to the other rights set forth in the draft Covenant. The Chilean representative had correctly pointed out that Article 56 of the Charter, which provided that "All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55", contained no reservation like those included in the French proposal. The latter would therefore represent a regression by comparison with Article 56 of the Charter.

With regard to the Danish representative's remarks, it should be pointed out that Uruguayan legislation on social security, like that of Chile, granted foreigners resident in the country the right to old age insurance benefits.

Mr. SORENSEN (Denmark), referring to the misunderstanding which had arisen between the Egyptian representative and himself, stated that his comments were not to be interpreted as criticism of the behaviour of any member of the Commission or of any government.

He repeated that he could only interpret the proposal as meaning that the obligations of governments were the same, whatever their resources. Countries without resources could not fulfill such obligations without assistance from outside. That was what he had meant by saying that the Egyptian proposal was tantamount to an obligation to use the resources of other States. He agreed, however, with the Egyptian representative that countries with insufficient resources should be able to obtain help under the technical assistance programmes or similar projects.

The CHAIRMAN said that the fundamental issues were now clear. He therefore asked the Commission to take an immediate decision; otherwise he would adjourn the meeting.

Mr. YU (China) stated that the importance of the decision to be taken arose out of the complexity of the situation in which the Commission found itself. The question of the adoption of a general clause had twice been re-opened; it was therefore clear that a general clause must be adopted. If the Commission again failed to do that, it would give the appearance of being incapable of carrying out the tasks assigned to it. He therefore appealed to members to make some attempt to see each other's viewpoints, and so break the deadlock. In the event of the general clause being found unsuitable, the Economic and Social Council and the General Assembly would be able to make the appropriate amendments.

He cordially endorsed the sentiments so gracefully and eloquently expressed in the three preambular paragraphs of the French proposal. It was essential that those paragraphs be inserted at some point in the draft Covenant.

In conclusion, he wished to state that, contrary to the assertions of certain representatives, the rules of procedure had, in his view, been strictly observed. The statement made by the Soviet Union representative that there was no precedent in the history of the United Nations for a proposal being put to the vote a second time after having been once rejected was not correct. He (Mr. Yu) would draw the attention of representatives to the case which had arisen in the Security Council the previous winter in connexion with the invitation extended to the representative of the Communist régime in China to make a statement before that body after the re-consideration of a proposal which had been rejected and put to the vote a second time. Ironically enough, although the rules of procedure had clearly been violated on that occasion, the Soviet Union delegation had remained silent, and had cast an affirmative vote.

AZMI Bey (Egypt) stated that he would accept all the amendments proposed by the Greek representative except the substitution of the word "entr'aide" for the word "co-opération"; he preferred the latter term because he interpreted it as including both material and technical co-operation.

The meeting rose at 6.40 p.m.