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COMMISSION ON HUMAN RIGHTS

Eighth Session

SUMMARY RECORD OF THE TWO HUNDRED AND SEVENTIETH MEETING

Held at Headquarters, New York,
on Monday, 28 April 1952, at 10.45 a.m.

CONTENTS:

Draft international covenants on human rights and measures of implementation (E/1592; E/CN.4/650, E/CN.4/654, E/CN.4/654/Add.1 to 6, E/CN.4/655, E/CN.4/655/Add.1 to 4, E/CN.4/660, E/CN.4/661; E/CN.4/NGO.35, E/CN.4/L.45, E/CN.4/L.46, E/CN.4/L.47, E/CN.4/L.48, E/CN.4/L.49, E/CN.4/L.50, E/CN.4/L.51, E/CN.4/L.52, E/CN.4/L.53 and Corr.1, E/CN.4/L.54, E/CN.4/L.55, E/CN.4/L.56, E/CN.4/L.57) (continued)

Chairman:	Mr. CASSIN	France
later:	Mr. MALIK	Lebanon
Rapporteur:	Mr. WHITLAM	Australia
Members:	Mr. NISOT	Belgium
	Mr. SANTA CRUZ	Chile

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Members:(continued)

Mr. CHENG PAONAN	China
Mr. GHORBAL) AZMI Bey)	Egypt
Mr. KYROU	Greece
Mrs. MEHTA	India
Mr. AZKOUL	Lebanon
Mr. WAHEED	Pakistan
Mr. BORATYNSKI	Poland
Mrs. ROSSEL	Sweden
Mr. KOVALENKO	Ukrainian Soviet Socialist Republic
Mr. MOROZOV	Union of Soviet Socialist Republics
Mr. HOARE	United Kingdom of Great Britain and Northern Ireland
Mrs. ROOSEVELT	United States of America
Mr. ERACCO	Uruguay
Mr. JEVREMOVIC	Yugoslavia

Also present:

Miss MANAS	Commission on the Status of Women

Representatives of specialized agencies:

Mr. PICKFORD) Mr. MORELLET)	International Labour Organisation(ILO
Mr. HILL	World Health Organization (WHO)

Representatives of non-governmental organizations:

Category A:

Miss SENGER	International Confederation of Free Trade Unions (ICFTU)
Miss KAHN	World Federation of Trade Unions (WFTU)

Category B

and Register:

Mrs. VERGARA	Catholic International Union for Social Service
Mr. MOSKOWITZ	Consultative Council of Jewish Organizations
Mrs. PARSONS	International Council of Women

/Miss CARTLAN

Category B
and Register: (continued)

Miss CARTLAN	International Union of Catholic Women's Leagues
Mr. JACOBY	World Jewish Congress
Mr. RONALDS Mrs. POLSTEIN	World Organization for Progressive Judaism
Mrs. SOUDAN	International Federation of Business and Professional Women

Secretariat:

Mr. HUMPHREY	Director of the Division of Human rights
Mr. DAS Miss KITCHEN	Secretaries of the Commission

DRAFT INTERNATIONAL COVENANTS ON HUMAN RIGHTS AND MEASURES OF IMPLEMENTATION (E/1992; E/CN.4/350, E/CN.4/354, E/CN.4/654/Add.1 to 6, E/CN.4/655, E/CN.4/655/Add.1 to 4, E/CN.4/660, E/CN.4/661; E/CN.4/NGO.35, E/CN.4/L.45, E/CN.4/L.46, E/CN.4/L.47, E/CN.4/L.48, E/CN.4/L.49, E/CN.4/L.50, E/CN.4/L.51, E/CN.4/L.52, E/CN.4/L.53 and Corr.1, E/CN.4/L.54, E/CN.4/L.55, E/CN.4/L.56, E/CN.4/L.57)(continued)

The CHAIRMAN reminded the Commission that it must decide whether it wished to examine the United States amendment (E/CN.4/L.54) and the French draft article (E/CN.4/L.55) immediately before continuing its examination of articles 20 to 32 of the draft Covenant.

Speaking as the representative of France, he asked the representative of Chile to re-state the question he had asked at the 269th meeting.

Mr. SANTA CRUZ (Chile) said his delegation wished to know whether the French and United States delegations considered that the adoption of a general provision on the obligations of States to implement the rights proclaimed in articles 20 to 32 would mean not including any special provisions for each separate right, or whether his delegation could still propose such special provisions.

The CHAIRMAN, speaking as the representative of France, replied that the adoption of a general clause would simply mean that all the rules common to economic, social and cultural rights would be consolidated in a single text;

/it would

it would in no way preclude special provisions for a specific right. The French delegation considered that there should be a differentiation between the various rights, depending on which specialized agency was interested in a particular right. UNESCO and WHO, for example, felt that the Covenant should include fairly detailed provisions, whereas the International Labour Organisation considered that it should be more concise on the right in which it was interested In view of existing labour conventions, the French delegation felt there was no need to be as specific in the case of the right to work as in the case of cultural or health rights.

Mrs. ROOSEVELT (United States of America) said her delegation wanted to avoid useless repetition. The Chilean delegation would, however, still be free to put before the Commission any proposals it deemed necessary. The United States delegation would not object to special additional provisions if it thought they were needed to implement a particular right.

Mr. KYROU (Greece) said his delegation would like to see the obligations of States to ensure economic, social and cultural rights stated in general terms in an opening article. The United States amendment and the French draft article should be considered immediately.

Mr. HOARE (United Kingdom) thought that the difficulties confronting the Commission were unavoidable; it must decide to face up to them and take a decision. There was a considerable difference between the texts proposed by the French and the United States representatives on the one hand, and article 1 of the draft covenant, on the other. That article laid an obligation on States to ensure the rights completely and without qualification to all persons in their territories, though that requirement was attenuated by paragraph 2 of the article providing that the requisite legislation or other measures might be taken "within a reasonable time" after ratification. Paragraph 1 of the article proposed by the United States delegation, however, was designed to take account of the fact that the "full realization" of the rights (a conception not found in the draft covenant on political and civil rights) must be an ultimate aim, which States must seek to attain progressively and to the maximum of their resources.

Mr. Malik (Lebanon) took the Chair.

/Mr. MOROZOV

Mr. MOROZOV (Union of Soviet Socialist Republics) said that in principle no one denied the need for a general clause or a preamble. It was solely for technical reasons that he would abide by the Commission's decision to begin with articles 20 to 32. His delegation felt that the preamble could not be discussed before the text of the various articles on economic, social and cultural rights had been considered, since the guarantees involved would vary from one right to another.

Mr. KYROU (Greece) thought the USSR delegation was quite right to remind the Commission of its previous decision, but pointed out that the United States amendment and the French draft article did not refer to the preamble. Actually, they contained general provisions on the obligations of States regarding the rights proclaimed in articles 20 to 32. Consequently, the Commission would not be reversing its decision if it took up the United States amendment and the French draft article immediately.

The CHAIRMAN urged the Commission to settle the question without further delay. In any event, it would have to consider part I at a later stage. As the Soviet delegation had quite rightly said, the Commission had undoubtedly decided to begin by considering part III of the draft Covenant. Strictly speaking, however, the United States amendment and the French draft article, although based on article 19, would nevertheless become the first article of the draft Covenant on economic, social and cultural rights and could therefore quite well be considered in connexion with part III of the draft Covenant. It had been decided that the Commission could consider any new draft article for inclusion in part III; it would thus seem to be in conformity with that procedure to consider the United States amendment and the French draft article.

Mr. SANTA CRUZ (Chile) noted that the United States draft amendment actually reproduced the provisions of article 19, paragraph 4, of the draft Covenant. Since the Commission had decided to start by discussing article 20 it should keep to that decision and study articles 20 to 32.

/The CHAIRMAN

The CHAIRMAN said that, as soon as he had exhausted the list of speakers, he would call for a vote on the question whether the Commission should start immediately discussing the United States draft amendment (E/CN.4/L.54) and the draft article submitted by France (E/CN.4/L.55).

Mr. MOROZOV (Union of Soviet Socialist Republics) said he would prefer the Commission to take a decision on the question whether it should consider the French and United States texts after articles 20 to 32 of the draft Covenant.

The CHAIRMAN saw no objection to that proposal and put the question to the vote in the form suggested by Mr. Morozov.

The Commission decided, by 10 votes to 7, with 1 abstention, not to wait until it had completed discussion of articles 20 to 32 of part III of the draft Covenant before discussing article 1 of the draft amendment to article 19 submitted by the United States (E/CN.4/L.54) and the draft article submitted by France (E/CN.4/L.55).

The CHAIRMAN asked the Commission what it wanted to do next in view of the negative character of its decision.

Mrs. ROOSEVELT (United States of America) proposed that the Commission should decide to examine the draft articles submitted by the United States (E/CN.4/L.54) and France (E/CN.4/L.55).

The proposal was adopted by 10 votes to 7, with 1 abstention.

Mr. SANTA CRUZ (Chile) pointed out that the Commission's decision altered the position regarding the time-limit for submission of amendments to articles 20, 21 and 22, which had been fixed for midday on 28 April. He wanted to know what time-limit would be fixed for the submission of amendments to the draft articles submitted by the United States and France.

The CHAIRMAN fixed a provisional time-limit for 10.30 a.m. on Thursday, 29 April.

/Mr. MISOT

Mr. NISOT (Belgium) asked the United States representative to clarify one point in paragraph 2 of her draft article 1 (E/CN.4/L.54), in which private action seemed to be opposed to legislative action; in his view the latter should stimulate the former. There was also some contradiction between the expressions "private action" and "action individuelle", as used in the provisional translation, since the latter referred to the steps taken by each State, whereas the former meant action taken by individuals.

Mr. WHITLAM (Australia) asked Mrs. Roosevelt what criteria would be applied in deciding when private action and when legislative measures would be "appropriate".

Mrs. ROOSEVELT (United States of America) explained that by "private action" she meant action taken by an employer or a scientist, etc. -- in order words, action by someone not connected with the State or the government. The expression "as appropriate" was intended to cover de facto situations. There were many rights, such as collective contracts, which had to be realized progressively, sometimes through State intervention and sometimes by private action.

The CHAIRMAN emphasized the importance of the article under discussion and hoped that the Commission would concentrate carefully on the drafting.

Mr. NISOT (Belgium) believed that what the United States delegation had in mind would be secured if its text were worded to read: "The steps to be taken by each State Party hereto shall include the adoption of legislative and other measures -- due allowance being made, as appropriate, for private action -- to achieve the progressive realization..."

/Mr. SANTA CRUZ

Mr. SANTA CRUZ (Chile) agreed that private action could sometimes be very important to achieve the purposes which the article was designed to serve, but, since the Covenant was to be an agreement between States, those purposes could be achieved with certainty, he felt, only if States assumed definite obligations. Paragraph 2 of the United States article (E/CN.4/L.54), therefore, simply confused the issue.

The CHAIRMAN suggested that the United States representative should change the words "shall include" to "may include" in paragraph 2 of the draft article submitted by her delegation, so that it would not be obligatory for States to adopt the measures suggested.

Mr. KYROU (Greece) said his delegation would support the Belgian verbal amendment but proposed that, in the French text, the words "les dispositions à prendre dans chacun des Etats parties..." should be replaced by the words "les dispositions qui seront prises dans chacun des Etats parties.

Mr. DLRATYNSKI (Poland) proposed that paragraph 2 of the draft article submitted by the United States (E/CN.4/L.54) should be replaced by the text of article 1 of part I of the Covenant, which the Commission had adopted at its seventh session. In his opinion discrimination should be forbidden in the covenant on economic, social and cultural rights in the same way as it was forbidden in the covenant on civil and political rights.

Mrs. ROOSEVELT (United States of America) accepted the Chairman's suggestion that the words "shall include" should be replaced by "may include" in paragraph 2 of the draft article submitted by her delegation (E/CN.4/L.54).

In reply to the Belgian representative she explained that in the United States it was not always necessary to adopt a law before private action could be taken. The idea of using the words "as appropriate" was to indicate that different measures might be taken in different States.

/The CHAIRMAN

The CHAIRMAN suggested that in paragraph 2 of the United States draft article the words "private action and the adoption . . ." should be changed to "private action or the adoption . . .".

Mrs. MEHTA (India) saw no need for the Polish amendment since the Commission had decided that article 1 of part I of the draft Covenant should appear in both covenants.

She pointed out that India had very small resources and could not undertake immediate action in that field. Her delegation would therefore support the United States proposal (E/CN.4/L.54) but, like the Belgian and Australian representatives, saw no need to mention private action since that, in any event, would have to be regulated by legislation.

The CHAIRMAN explained that the Commission had not yet taken any decision on article 1 of the draft Covenant and that the Polish amendment merely sought to replace paragraph 2 of the article submitted by the United States (E/CN.4/L.54).

Mr. SANTA CRUZ (Chile) thought that the points raised by the Polish amendment and the Indian representative's statement should be clarified. Put shortly, article 1 of the draft Covenant seemed to some delegations to be compatible with the proposals submitted by France (E/CN.4/L.55) and the United States (E/CN.4/L.54), whereas other delegations considered them incompatible. He asked the representatives of France and the United States whether their proposals were intended to take the place of a general clause.

Mr. AZKOUL (Lebanon) remarked that the Commission appeared to have forgotten General Assembly resolution 543 (VI) which asked it to draft two covenants. In his opinion, paragraph 2 of the United States draft article (E/CN.4/L.54) was incompatible with article 1 of the draft Covenant, which entailed immediate obligations. Similarly, the non-discrimination clause contained in the Polish amendment could not be inserted in the second covenant (on economic, social and cultural rights) since it made it obligatory immediately to give full effect to economic, social and cultural rights. It would therefore be better to leave the discussion of that clause until the Commission took up part I of the draft Covenant.

/The CHAIRMAN

The CHAIRMAN pointed out that paragraph 2 of article 1 of the draft Covenant, as it appeared in the Polish amendment, sought mainly to deal with the same problem as the French (E/CN.4/L.55) and United States (E/CN.4/L.54) proposals.

Mrs. MEHTA (India) considered that paragraph 1 of the article in draft Covenant I (civil and political rights) might be included in both covenants, but that did not apply to paragraph 2.

Mr. AZKOUL (Lebanon) pointed out that, in adopting article 1 of the draft Covenant, the Commission had envisaged it as applying to civil and political rights only and that it had intended to apply paragraph 4 of article 19 only to economic, social and cultural rights. The wording of that text rather attenuated the responsibility of States and it would therefore be impossible to attach to it measures of implementation which would increase such responsibility. Although his delegation was in favour of strengthening the obligations of States in Covenant II, the two texts should not be mixed up or else dangerous confusion would be unavoidable.

Mrs. ROOSEVELT (United States of America) endorsed the remarks made by the Lebanese and Indian representatives. She agreed that the word "and" might be replaced by the word "or" in paragraph 2 of her delegation's proposal, as suggested by the Chairman. It was quite essential for the article in question to indicate the necessity of international co-operation in the matter.

Mr. CASSIN (France) emphasized the importance of the article under discussion. He had studied the question carefully in an effort to find satisfactory and analogous wordings for inclusion in both Covenants, but had had to admit that, owing to the difference between the rights proclaimed, States could not undertake the same obligations in both Covenants. Article 1 of the draft Covenant should serve as a kind of model; if some of the rights proclaimed in Covenant II did not seem to call for the adoption of long-term

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social and financial programmes, the same form of words might be applied to them. This referred, in particular, to the question of freedom to form trade unions, on which conventions had already been concluded. The implementation of most economic and social rights, however, presupposed considerable changes and widespread reforms; those rights should therefore be embodied in technical conventions, which would constitute an intermediate stage; Covenant II would merely be the first step along the path of realization. Most States were not yet able to commit themselves as completely with regard to the rights contained in Covenant II as they could with regard to the rights included in Covenant I. Civil law distinguished between obligations leading to final results and obligations to take action. In the present case civil and political rights and some economic rights might connote obligations that would produce actual results; most economic and social rights, however, could only give rise to obligations to take action. The French delegation did not consider that the wording of article 1 of the draft Covenant, which stated that "the States Parties hereto undertake to respect and to ensure..." was applicable to most economic and social rights. The same applied to the phrase "within a reasonable time". The phrase "with a view to achieving progressively the full realization of the rights..." seemed to be preferable, since it corresponded more closely to reality.

The French delegation had so far taken no decision on the drafting of article 1, paragraph 2, of Covenant II. The United States proposal was worthy of consideration. The Commission should realize that it would be confronted with conflicting concepts. It did not seem advisable to specify, as the USSR delegation had proposed, both the purposes to be aimed at by States and the methods they would have to use; those methods would vary with the structure of the States, and the latter must be given every possible latitude in their choice of those methods.

Mr. SANTA CRUZ (Chile) pointed out that the Polish representative had complied with the Commission's decision to consider first the general provisions determining the obligations of States with regard to economic rights. It was inaccurate to state abstractly that the obligations of States with regard to

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economic and social rights would be harder to respect than those with regard to civil and political rights, since that was not always actually the case. The obligations of States with regard to economic rights should vary according to circumstances. The French representative considered that this might be achieved by concluding technical conventions through the specialized agencies, but it should be remembered that not all States Members of the United Nations were members of specialized agencies. All Member States could be reached precisely through the covenant on economic, social and cultural rights in which special guarantees and obligations would be provided for each right. The problems raised by the Polish proposal proved that it was difficult to draft a general clause on the obligations of States until each right had been examined separately. He would draw the Commission's special attention to that point.

Mr. MOROZOV (Union of Soviet Socialist Republics) thought the Polish representative's proposal was extremely interesting. It did not merely restate article 1 of the draft Covenant; it was really an amendment to the United States proposal (E/CN.4/L.5), paragraph 1 of which was retained in order to allow for the special characteristics of Covenant II. He reserved the right to return to that point subsequently.

He would point out that, procedurally, the Commission had taken the wrong course. The pertinent remarks of the representative of Chile confirmed the existence of a danger to which the USSR delegation had already drawn attention. It was not yet too late to reflect and turn back. The representatives of France and the United States might possibly, he suggested, decide to withdraw their proposals in view of the difficulties arising from the fact that the texts which they proposed could not be adopted unanimously. Possibly also certain delegations might reconsider the decision they had taken at the beginning of the meeting.

He would not formally suggest once again how the Commission should proceed in studying item 4 of its agenda, but he would support any proposal by which the normal procedure could be re-established.

/The CHAIRMAN

The CHAIRMAN agreed that the Commission was wrestling with matters of great difficulty connected with the gravest problems with which the world was confronted; the Commission should, however, forge ahead and overcome those difficulties.

Mrs. ROOSEVELT (United States of America) pointed out that the Commission was not at the moment considering the preamble to Covenant II, but only article 1 of that Covenant. It was a very difficult question, but it seemed unnecessary to go back on the decision taken by the Commission at the beginning of the meeting. It would be useful if certain delegations could consult together informally and try to draft an article 1 which would be acceptable to the majority.

Mr. HOARE (United Kingdom) said that, so far as procedure was concerned, the French draft article was clearly admissible; moreover its substance had already been brought in issue by the various amendments seeking to attach particular implementation provisions to particular articles, and the Commission was already fully embarked upon discussion of the obligations of States. If consideration of the French draft article were postponed, it would be continually cropping up again during the discussion of articles 20 to 32. He therefore thought it would be better to begin by considering that article. In the light of the decision whether there was to be such an article and what it should contain, it would be easier to determine what, if any, special obligations should be attached to specific rights in particular articles.

The effect of the Polish amendment would therefore be to combine in a single article two types of obligations which were incompatible and even contradictory from the juridical point of view. If the Polish representative wished to maintain his amendment, he should propose it in substitution for and not in addition to the United States draft.

The meeting rose at 12.45 p.m.

14/5 p.m.