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Eighth Session

SUMMARY RECORD OF THE TWO HUNDRED AND SEVENTY-SEVENTH MEETING

Held at Headquarters, New York,
on Friday, 2 May 1952, at 2.30 p.m.

CONTENTS:

Draft international covenants on human rights and measures of implementation: part III of the draft covenant drawn up by the Commission at its seventh session (basic documentation as in E/CN.4/SR.268; also E/CN.4/L.45, E/CN.4/L.46, E/CN.4/L.47, E/CN.4/L.53/Rev.1, E/CN.4/L.54/Rev.1, E/CN.4/L.59, E/CN.4/L.60, E/CN.4/L.62/Rev.1, E/CN.4/L.63, E/CN.4/L.64/Rev.1, E/CN.4/L.68, E/CN.4/L.90, E/CN.4/L.91, E/CN.4/L.93) (continued)

Chairman: Mr. CASSEIN (France)

Reporteur: Mr. WHITLAN (Australia)

<u>Members:</u>	Mr. FENAUX	Belgium	
	Mr. SANTA CRUZ	Chile	
	Mr. CHENQ FAOKAN	China	
	AZMI Boy	Egypt	
	Mr. JUVIGNY	France	
	Mr. KYROU	}	Greece
	Mr. KAPGAMBELIS		
	Mrs. MERTA	India	
	Mr. AZKOC'L	Lebanon	
	Mr. WAHEED	Pakistan	
	Mr. DORATYNSKI	Poland	
	Mrs. ROCCEL	Sweden	
	Mr. KOVALENKO	Ukrainian Soviet Socialist Republics	
	Mr. MCHROZOV	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. JEVREKOVIC	Yugoslavia	

Also present: Miss MAÑAS Commission on the Status of Women

Representatives of specialized agencies:

Mr. PICKFORD	International Labour Organisation (ILO)	
Mr. SABA	}	United Nations Educational, Scientific and Cultural Organization (UNESCO)
Mr. ARU'LEO		

Representatives of non-governmental organizations:

Category A:

Miss GEMLIN	International Confederation of Free Trade Unions (ICTU)
Miss KAHN	World Federation of Trade Unions (WFTU)

/Category B:

Category B:

Mr. LEVIN	Agudas Israel World Organization
Mrs. ALETA	Catholic International Union for Social Service
Mr. KOSKOWITZ	Consultative Council of Jewish Organizations
Mr. AVRAM	International Bureau for the Unification of Penal Law
Dr. GOUTAN	International Federation of Business and Professional Women
Dr. ROBB	International Federation of University Women
Mrs. POLSTEIN } Mr. ROMALES }	World Union for Progressive Judaism
Mr. FENCE	World's Alliance of Young Men's Christian Associations

<u>Secretariat:</u> Mr. HUMPHREY	Director, Division of Human Rights
Miss KITCHEN } Mr. DAS }	Secretaries of the Commission

DRAFT INTERNATIONAL COVENANTS ON HUMAN RIGHTS AND MEASURES OF IMPLEMENTATION:
PART III OF THE DRAFT COVENANT DRAWN UP BY THE COMMISSION AT ITS SEVENTH SESSION
(basic documentation as in E/CN.4/3R.268; also E/CN.4/L.45, E/CN.4/L.46,
E/CN.4/L.47, E/CN.4/L.55/Rev.1, E/CN.4/L.59/Rev.1, E/CN.4/L.59, E/CN.4/L.60,
E/CN.4/L.62/Rev.1, E/CN.4/L.63, E/CN.4/L.64/Rev.1, E/CN.4/L.66, E/CN.4/L.90,
E/CN.4/L.91, E/CN.4/L.93) (continued)

Articles 20, 21 and 22 (continued)

Mrs. ROSSER (Sweden) noted that article 20 drafted at the seventh session represented a joint effort by the tripartite delegation from ILO and the Commission. Although it was a declaration rather than an article with legally binding obligations, it was well worded and would therefore be supported by the Swedish delegation which wished it to remain in its present form.

/s/o additional

The additional paragraph relating particularly to full employment which some delegations favoured was important but must be carefully worded to avoid any interpretation opening the way to compulsory labour.

The USSR proposal (E/CN.4/L.45) gave the impression of a negative limitation, and should go further than precluding the danger of death from hunger or inanition. Such a provision would be more appropriate in relation to article 22 where it could play a more positive and constructive role.

The United States proposal (E/CN.4/L.82) best coincided with the Swedish delegation's interpretation of full employment. The Chilean suggestion for including a reference to "national and international" would be an improvement from many points of view but it should be carefully determined whether it limited or repeated the provisions of article 1. There was general agreement that full employment and unemployment were vital questions which could not be solved by national action alone. Nor could there be any doubt that low wages in one country affected the workers of all countries and were therefore a subject of international concern. The United States text was positive and progressive in its approach and contained a very significant reference to "conditions ensuring fundamental political and economic freedoms to the individual". The Swedish delegation considered it the best of the texts so far submitted.

The Chilean proposal (E/CN.4/L.62/Rev.1) to repeat the non-discrimination clause in article 21 seemed unnecessary in view of the provision of article 1. Restatement of the general clause in individual articles was undesirable.

Articles 21, 22 and 26 seemed so directly related that the Commission might wish to consider placing article 26 immediately following article 21 or article 22.

Mr. SANTA CRUZ (Chile) said in clarification of his position that the original Chilean proposal (E/CN.4/L.53) would not require States immediately to guarantee full employment but would place them under obligation merely to take steps to that end.

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Article 1 defined the general obligation of States in connexion with all the rights enumerated in the covenant on economic, social and cultural rights. The representative of Lebanon who had been strenuously opposed to the word "progressively" in article 1 seemed to have reversed his position and now considered it unnecessary to include a special provision in view of the wording of the general clause. The position of the Chilean delegation was that the provision in article 1 requiring States to take steps to the maximum of their available resources and on a progressive basis made implementation of the rights purely fictitious. A special provision was therefore needed in connexion with individual rights, particularly the fundamental right to work. Article 1 with all its restrictions failed to make it clear that States undertook to take steps immediately. Obviously complete implementation was impossible immediately but it was important to require that steps should be taken at once.

If the United States delegation accepted the changes he had suggested he would be able to withdraw his amendment in favour of the United States text.

Referring to the Lebanese representative's criticism of the Chilean delegation's acceptance of the United States text in principle, he could not agree that the United States text weakened the statement of obligations in article 1. The United States amendment proposed the insertion of a new paragraph in the article which would correspond to reality. In view of the consistent position of the United Nations that economic stability and economic development were impossible without decisive national and international action, a provision in the covenant recognizing the right to work and stating that the achievement of that right required programmes, policies and techniques could not be construed as a limitation. Without a provision recognizing contemporary conditions, the responsibilities of States would be restricted to the inadequate provisions of article 1. Accordingly the Chilean delegation proposed that an article be added after article 21 requiring States to adopt measures by legislative or other means to implement the rights embodied in articles 20 and 21, particularly full employment (E/CN.4/L.91). Such an article requiring immediate and concrete action was much more positive than article 1.

The United Kingdom representative's objection that the inclusion of a reference to full employment policy would introduce a transitory factor was unacceptable because of the dynamic nature of economic development and the

/impossibility

impossibility of restricting a covenant on economic rights to elements of lasting significance. The inclusion of references to economic development and full employment in Articles 55 and 56 of the Charter was evidence of the importance of those concepts and justified their insertion in the covenant.

Mr. WAHED (Pakistan) said that the delegation of Pakistan had earlier expressed its preference for improving rather than merely reaffirming the work of the seventh session, by broadening the scope of the articles and including specific obligations to be undertaken by States. It would therefore support more detailed formulas in the new draft. It felt that international action through the specialized agencies did not obviate the need for precise definition to supplement the statement of aims and objectives contained in the present draft. The specialized agencies which had expressed willingness to assume responsibility in the implementation of the rights and in drafting the statement of rights in the covenant could make a valuable contribution in furthering precise formulation. It was essential for contracting States to be fully aware of the exact obligation assumed under the covenant.

Referring specifically to article 20, he stated that he was unable to support the USSR amendment which would be limiting in effect and which did not represent a fuller or more exhaustive definition of the right to work.

The United States text which the Chilean delegation seemed prepared to accept would give adequate scope and significance to the right to work. The Chilean recognition of the limitations of economically under-developed countries was particularly commendable. The delegation of Pakistan would support the United States text as it would have supported the Chilean text because of the recognition of the need for programmes and because of the emphasis on economic circumstances and conditions.

He agreed with the representative of Chile that inclusion of a reference to "national and international" in the United States text would be a recognition of reality and hoped that such a reference would not be interpreted as postponing implementation of the right to work.

The Yugoslav amendment (E/CN.4/L.58) was a useful elaboration precluding the possibility of a restrictive interpretation.

/In connexion

In connexion with article 21, the delegation of Pakistan favoured the Chilean amendment incorporating a non-discrimination clause. If that amendment was rejected, the delegation of Pakistan would support the USSR proposal on article 21. It was also sympathetic with the Uruguayan draft amendment (E/CN.4/L.58/Rev.1) to that article.

Mrs. NEHTA (India) stated that in the light of the exhaustive discussions of article 20 at the preceding session, the difficulty of finding a satisfactory formulation of the abstract concept of the right to work, the difficulty of wording the article in precise terms and the difficulty of reaching agreement on a text, she felt it better to make no changes in the present text which had been drafted in consultation with ILO. She was therefore unwilling to support any of the amendments to the article. In her opinion the USSR amendment sought to limit the right to work and was therefore unacceptable.

She wished to ask the Chilean representative to explain what legislative measures he envisaged by which the State could guarantee full employment. In view of article 1 covering the general measures to be taken by States, the Chilean and United States amendments seemed unnecessary. She would therefore support the original text of article 20 only.

Mrs. ROOSEVELT (United States of America) preferred the wording adopted the previous year because it included safeguards against forced labour which did not appear in the Yugoslav text (E/CN.4/L.58/Rev.1).

In reply to the representative of Chile, she expressed the view that all articles must be considered in conjunction with article 1. Unless repetition seemed necessary because of an omission in article 1, restatement would weaken the general applicability of that article. Accordingly the addition of a reference to "national and international" to the United States text was unacceptable because it would already be found in article 1. As a general principle repetition in one article would create doubt as to whether the general clause was equally applicable to all articles. The Chilean suggestion could be moved as an amendment and voted upon by the Commission but the United States delegation would prefer it to be omitted.

/She could

She could not agree with the representative of Lebanon that the language of the United States proposal would limit the obligations assumed under article 1. In her opinion full attainment, in the light of article 1, would impose immediate obligations on States. The second paragraph did not say that full attainment was dependent upon the conditions set forth, but that certain conditions were required for full attainment. The two articles must be interpreted together. In the light of article 1 the United States text could not be misunderstood and could only be interpreted to mean national and international action according to the maximum resources of States.

Mr. MOROZOV (Union of Soviet Socialist Republics) said that, as he had already had occasion to point out, amendments proposed by the United States delegation to the covenant on economic and social rights did not improve the text adopted by the Commission at its seventh session, as required by the General Assembly, but on the contrary sought to weaken it.

The United States amendment to article 20 (E/CN.4/L.82) was a perfect example of that tendency. He agreed with the Lebanese representative that, far from improving the already inadequate original text, it would make that text completely ineffective. It contained no obligations whatever; it imposed no responsibility on States for implementing the right recognized in the original text; worse still, in spite of its fine-sounding phrases, its first part was actually a reservation which States could use as an excuse for not granting the right to work to their citizens. The verbal Chilean amendment would be of little help; the United States amendment was designed to weaken the obligations of States in the matter, and the addition of a few words was inadequate to counteract that design.

Turning to the USSR amendment to article 20 (E/CN.4/L.45) he said, in reply to the Greek representative's criticism, that whatever the Greek representative's feelings in the matter might be, the October Revolution had forever done away with the exploitation of workers in his country, where work was honoured as the basis of human existence; to criticize that state of things was to attack the Constitution of the USSR.

/There had

There had been other criticisms of the USSR amendment, which he could not regard as sincere. Certainly it was a gross distortion of the truth to say -- as had been said on repeated occasions by the United States representative -- that the amendment represented a limitation of the right concerned. It was not an independent text, but an addition to article 20, so that it maintained, and was indeed based upon, all the principles which the Commission had agreed to put into that article. The first idea contained in the USSR amendment was that the right to work, as described in article 20, must be guaranteed by the State; the second was that such a guarantee must at least preclude the possibility of any person dying of hunger or inanition. That second idea, which had been called a limitation, prescribed the absolute minimum which the State must guarantee; and if other representatives wished to raise that minimum, he would be glad to listen to any suggestions they might make. He feared, however, that the real objection was to the first half of the USSR amendment, and that attacks had been deliberately directed at the second half in an attempt to mislead and deceive millions of workers everywhere, great numbers of whom were actually dying of hunger while the Commission engaged in casualistic disputes.

In order to lay bare the true position of those who had attacked the USSR amendment, he was prepared to have that amendment voted on in two parts, so that, if their objections really applied to the second part, representatives would be able to vote for the statement that the right to work should be guaranteed by the State. He was unfortunately all too certain that the United States delegation and its supporters would not do so.

It was obvious even to its critics that the USSR amendment was designed to protect the working masses; but the days when the claims of those masses could be openly disregarded were over, and even the United States delegation found it necessary to distance the Soviet's for its opposition. He regretted, however, that some members who sincerely wished to improve the covenant, like the Lebanese representative, had come to believe the myth, created by the United States delegation, that the USSR amendment had a limiting character. He was grateful to the Chilean representative for supporting the ideas in that amendment, but could not agree that the amendment would be more appropriate in article 22, which dealt with social security. He did not deny the importance of taking care of the aged and disabled; but it was necessary to ensure that able-bodied young people did not die of hunger for lack of work.

/s/ Mr. WHITLAM

Mr. WHITLAM (Australia) remarked that the right to work was one of the most important, if not the most important, in the covenant; it was the cornerstone of all existing social systems.

He generally agreed with the remarks made by the Indian representative, and wished to add that the right to work was well described in article 20, a text which had been adopted the previous year after great controversy. The Australian delegation, after listening to a debate which had been largely a repetition of earlier discussions, maintained the stand it had taken at the Commission's seventh session.

He was unable to accept the USSR addition to article 20 because, as the Yugoslav representative had pointed out, it set too low a minimum. Article 20 was not only designed to prohibit coercion of labour, but reflected a dynamic conception of the right to work which was also that of the ILO. The ILO was constantly preparing new conventions to keep up with the changing times; in its view, and in the view of its members, of which Australia was one, labour was not a commodity, the right to work implied the need for full employment and steadily rising standards of living, and the worker must not merely be saved from starvation but there must be a proper recognition of the fact that he was a full-fledged member of society who contributed greatly to that society's well-being. The low minimum set by the USSR detracted from the dignity of that conception, which the Australian delegation was anxious to maintain.

Article 20 as adopted by the Commission at its seventh session was the best text before the Commission now, and should therefore be retained. The various additions to it were unnecessary when the article was seen in its proper context: not only as part of the covenant, but of a covenant which would be co-existent with the United Nations Charter, and with the activities of the Economic and Social Council and the specialized agencies. The additions proposed by the USSR, Chile, France and the United States might perhaps be inserted in the preamble, an arrangement which he was prepared to support.

Mr. BGRATYNSKI (Poland) observed that the United States delegation had been evolving a new theory of international law, which might be termed the theory of irresponsibility of States. Whereas he, and he thought most others present, had been taught that every international agreement, treaty or convention was concluded in order to place certain obligations on States, the

/United States

United States delegation had been endeavouring to persuade the Commission to draft a treaty under which States would not be obligated in any way. That theory, moreover, had given rise to another: the theory of progressive implementation, under which only civil and political rights were to be implemented immediately, while economic, social and cultural rights were to be realized only in a nebulous future.

The newest theory was that the USSR amendment represented a limitation of the right to work. The fact was that the amendment represented a minimum guarantee of the basic right to survival, and must be included in article 20. If the United States delegation was really anxious to guarantee greater benefits, it could vote in favour of articles 21 and 22, which did so.

He urged the Commission to abandon the theory of irresponsibility and to apply to all articles the wise counsel given by the Egyptian representative when criticizing the United States amendment to article 1 under which even non-discrimination would have been introduced "progressively". Since he himself thought that States should accept definite legal obligations under the covenant, he was in favour of the new article proposed by Chile (E/CN.4/L.91), and reserved the right to introduce a few amendments to it even after the closure of the general debate.

Mr. JEVREMOVIC (Yugoslavia) wished to explain to members who had criticized his amendment (E/CN.4/L.58) to article 20 that the text in question did not open the door to forced labour. The word "right" could not mean an obligation on the part of the person enjoying the right to exercise it. The Yugoslav text said, moreover, that everyone should be granted that right, thereby imposing an obligation on States to enable those people to work who wished to do so. Nevertheless, he was prepared to accept any drafting amendments which brought out those ideas more clearly.

His objection to the present wording of article 20 was that the statement that States recognized the right to work was merely a declaration and placed no obligation on States to supply work. He would be interested to hear another interpretation of the legal meaning of those words.

Mr. BRACCO (Uruguay) said that the Yugoslav representative's statement at the morning meeting had convinced him that the present wording of article 20

/did not

did not adequately guarantee the right to work. He was therefore prepared to support the Yugoslav amendment if the Yugoslav representative accepted the addition to his text of the words "which he freely accepts" and of another paragraph, taken from the USSR amendment and reading: "This right shall be guaranteed by the State."

He was, of course, equally prepared to vote for these words in the USSR amendment, if they were put to the vote separately. He did not think that the second part of the USSR amendment would be a useful addition to article 20, and was inclined to agree with the Chilean representative that it was better suited to article 22. He would vote in favour of the Chilean amendment to article 20 (E/CN.4/L.55) and of the new article proposed by Chile (E/CN.4/L.91).

He briefly introduced his amendment to article 21 (E/CN.4/L.60) consisting in an addition to sub-paragraph (b) which made it clear that the minimum remuneration to which workers were entitled must be more than subsistence pay, but must enable them to maintain an adequate standard of living satisfying their physical, intellectual and moral needs.

Mr. JEVREMOVIC (Yugoslavia) thanked the Uruguayan representative for his amendments, which he accepted.

AZMI Bey (Egypt) stated that there were three alternative methods of drafting article 20. In the first place, the text could be strengthened; secondly, it could be confined to a simple declaration of principle; lastly, it could take the form of a synthetic text, containing a declaration of principle which would be strengthened by subsequent action.

The Chilean amendment (E/CN.4/L.55) seemed to be confined to a statement of principle, with the inclusion of the new concept of full and productive employment. The United States amendment (E/CN.4/L.82) extended that declaration and left the way open to the addition of the new article proposed by Chile (E/CN.4/L.91) which would serve to strengthen the text.

One of the three alternatives would have to be chosen. If it were the second, the most appropriate text would be that of the French amendment (E/CN.4/L.90) which simply added the words "and the need for a full employment policy" to that article. If it were the first, the basic text would be the

/Chilean

Chilean amendment. The third solution, which the Egyptian delegation preferred, was based on the United States amendment (E/CN.4/L.82), as amended by the Lebanese draft (E/CN.4/L.92).

Although the wording of the Yugoslav amendment (E/CN.4/L.58) to the original article was succinct, the statement that "everyone should be granted the right to obtain employment" seemed redundant, since the word "right" implied free exercise and choice of work. He reserved the right to ask for a vote by division on the revised text of that amendment submitted jointly by Uruguay and Yugoslavia, and would vote against the first part, since it did not constitute a really operative provision.

Mr. AZKOU (Lebanon) thought it was necessary to clarify the relation between article 1 and the other articles of the Covenant. The question was that of the juridical use of the term "to recognize". Even if the obligation was not specifically mentioned in the subsequent articles, the existence of article 1 implied the obligation to grant the rights contained in the Covenant. Thus, the proposed second paragraph, which restated the guarantees undertaken by States, also carried with it the implication that the provisions of paragraph 1 of article 1 rendering implementation progressive would apply to all the definitions of the subsequent articles.

It would indeed be desirable to adopt an amendment which would strengthen the obligations of States with regard to the right to work; nevertheless, it was doubtful whether the Chilean amendment would have that effect. The Chilean representative had admitted that implementation could not be immediate owing to economic factors. It was impossible to aver that only certain provisions of article 1 applied to the right to work and it was therefore equally impossible to draft a text with a view to adding a new obligation.

The United States representative had said that article 1 did not strengthen or weaken any of the subsequent provisions, but such an interpretation could be attached to that article. The existing article 20 provided for the simple recognition of the right; if that were followed by a paragraph containing a more binding obligation, States which did not choose to implement the right immediately would be excused from doing so by the provisions of article 1.

/If the

If the Commission wished the article to contain an indication of the principal means of attaining the right, it should base itself on article 1 and precede the enumeration of those means by the words "the measures taken by each of the States Parties to this Covenant to ensure the full exercise of this right shall include....", in order to eliminate the possibility of avoiding immediate obligations through reference to article 1.

The French amendment (E/CN.4/L.90) to the Chilean amendment (E/CN.4/L.53) seemed to offer an easy solution by juxtaposing the ideas of recognition and need and thus transforming the meanings of the two concepts; nevertheless, it did not avoid the difficulty of interpretation in accordance with article 1, and he would be unable to vote for it.

Mr. SANJIN CRUZ (Chile) regretted that the United States representative felt unable to accept his amendment to her amendment, since, in his opinion, nothing in that sub-amendment was repetitious of article 1. The United States amendment (E/CN.4/L.82) formulated general principles, but it seemed to be advisable to add that the attainment of the right called for national and international action. The United Nations had recognized that full employment was possible only under conditions of international co-operation. Nevertheless, since the United States representative could not accept his proposal he would maintain his original draft (E/CN.4/L.53) with a few slight modifications. He wished to replace the phrase "particularly of a legislative nature" by the words "legislative as well as other measures" and to substitute the word "implement" for the word "guarantee".

The purpose of those modifications was, firstly, to harmonize the text with article 1 and, secondly, to allay the Indian representative's fears concerning the avoidance of obligations by not taking immediate steps to guarantee the right. Another advantage of that modification was that the Commission could express itself clearly by voting on the USSR amendment. That amendment would probably be voted on by division and the Chilean delegation would vote for the first part. If that clause was rejected, the Commission could vote on the Chilean amendment, in which the idea of implementation had been substituted for that of guarantee; there would then be no grounds for the Indian representative's objections.

/He agreed

He agreed with the Egyptian representative that the United States amendment taken together with the Chilean amendment had to be regarded as a basis for the inclusion of a new article to strengthen the obligations set forth in article 1. The United States amendment in itself could not strengthen or weaken those obligations. He did not consider that the Lebanese amendment served to balance the obligations contained in article 1; that amendment merely stated principles and closed the door to the adoption of a new article.

The USSR representative's statement that the Chilean amendment could come more appropriately under article 22 showed that that representative's concept of social security differed from the Chilean concept, according to which the right to social security should be enjoyed by individuals who did not work as well as by those who were employed. The USSR representative seemed to understand that right rather as a kind of social insurance. The Chilean text was not therefore suitable for inclusion in article 22.

Mrs. ROOSEVELT (United States of America) stated that she would be prepared to accept the Lebanese amendment (E/CH.4/L.92) to her amendment, provided that the words "the measures taken" were replaced by the words "the steps to be taken", which were closer to the text of article 1.

The CHAIRMAN suggested an order of voting for the following meeting. The Commission might vote first on the joint Uruguayan and Yugoslav amendment (E/CH.4/L.58/Rev.1), then on the USSR amendment (E/CH.4/L.45), on the French (E/CH.4/L.90) and United States (E/CH.4/L.82) amendments to the Chilean amendment (E/CH.4/L.53), or the Chilean amendment itself and, lastly, on the original article 20.

Mr. SANTA CRUZ (Chile) asked the United States representative to withdraw her text as an amendment to his amendment and to submit it as an amendment to the original article.

/Mrs. ROOSEVELT

Mrs. ROOSEVELT (United States of America) thought that her text should be submitted in its existing form, since it dealt with the new concept of full employment introduced by Chile.

Mr. JUVIGNY (France) agreed that the United States draft should remain a sub-amendment and stressed that the French sub-amendment should be voted on first because it was farthest removed from the Chilean amendment.

The meeting rose at 5.35 p.m.