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SUMMARY RECORD OF THE TWO HUNDRED AND EIGHTY-SEVENTH MEETING

Held at Headquarters, New York,
on Friday, 9 May 1952, at 10.30 a.m.

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Chairman:

Mr. MALIK

Lebanon

Reporters:

Mr. MIDJAN

Australia

<u>Members:</u>	Mr. HIGOT	Belgium
	Mr. VALDIVIELA	Chile
	Mr. CENSO FIGUEROA	China
	Mr. EGY	Egypt
	Mr. JUVENY	France
	Mr. PAPANIKOLAOU	Greece
	Mr. LUTHA	India
	Mr. AZUOL	Lebanon
	Mr. WARTO	Pakistan
	Mr. SKRZYŃSKI	Poland
	Mr. KESSEL	Sweden
	Mr. KOVNERD	Ukrainian Soviet Socialist Republic
	Mr. MEXICO	Union of Soviet Socialist Republics
	Mr. BLANE	United Kingdom of Great Britain and Northern Ireland
	Mr. ROOSEVELT	United States of America
	Mr. BRACCO	Uruguay
	Mr. J. TRENNIC	Yugoslavia

Representatives of specialized agencies:

Mr. PIOTROWSKI	}	International Labour Organisation (ILO)
Mr. KOWALEWICZ		
Mr. BADA	}	United Nations Educational, Scientific and Cultural Organization (UNESCO)
Mr. AFSALEO		

Representatives of non-governmental organizations:

Category A:

Miss CHIDEN	}	International Confederation of Free Trade Unions (ICFTU)
Mr. LEARY		

Category B

Category B
and Advisers:

Mr. LEVIN	Agudas Israel World Organization
Mrs. AIELA	Catholic International Union for Social Service
Mr. MOSKOWITZ	Consultative Council of Jewish Organizations
Mrs. FARMAN	International Council of Women
Mrs. SOLOMAN	International Federation of Business and Professional Women
Miss DEATHER	International Union of Catholic Women's League
Miss ROEB	Liaison Committee of Women's International Organizations
Mr. JACOBY	World Jewish Congress
Mr. RICHARDS Mrs. POLSTEIN } Mr. FELCE	World Union for Progressive Judaism
	World's Alliance of Young Men's Christian Associations

Secretary:

Mr. HENDERY	Director, Division of Human Rights
M. DAB	Secretary of the Commission

/DEPT INTERNATIONAL

DRAFT INTERNATIONAL COVENANTS ON HUMAN RIGHTS AND MEASURES OF IMPLEMENTATION:
PART III OF THE DRAFT COVENANT WORKED UP BY THE COMMISSION AT ITS SEVENTH SESSION
(... as amended, as in E/CN.4/SR.255; also E/CN.4/L.52/Rev.2, E/CN.4/L.53,
E/CN.4/L.54/Rev.1, E/CN.4/L.55/Rev.2, E/CN.4/L.85, E/CN.4/L.89, E/CN.4/L.95,
E/CN.4/L.96, E/CN.4/L.97) (continued)

Article 29 (continued)

Mr. MCGRATHSKI (Poland), speaking on a point of order, expressed the view that the Lebanese proposal (E/CN.4/L.96) was a completely new proposal and could not be regarded as an amendment to the United Kingdom proposal or as an amendment to the original draft of article 29. The procedural position and the Chairman's ruling should be explained, for if the Lebanese text was a new proposal rather than an amendment and had been submitted after the expiration of the time-limit for the submission of new proposals, it could not be considered except by a special decision of the Commission.

Mr. VODZOV (Union of Soviet Socialist Republics) expressed the view that the rules of procedure would not be circumvented or disregarded. The Chairman should remain impartial and rule that the Lebanese proposal could not be considered as an amendment to that of the United Kingdom. The Commission should first decide that the Lebanese amendment could not rightly be considered as an amendment to the United Kingdom amendment and should then decide whether it wished to consider the Lebanese proposal despite the fact that it had been submitted after the expiration of the time-limit for new proposals. In his opinion, no convincing argument had been advanced for the submission of the new Lebanese proposal at the present stage.

The CHAIRMAN said that the Lebanese proposal, a rearrangement of the text of article 29, could have been moved either as a substitution for the original text, in which case it was inadmissible unless the Commission made an exception in its favour, or as a substitution for another proposal rearranging the original material in article 29. As it had been presented by the representative of Lebanon as an amendment to the United Kingdom proposal, it should be so treated.

He referred to an earlier decision by the Commission to the effect that amendments to amendments were acceptable in the course of the general debate. An identical case had arisen several days earlier in connexion with the Chairman's ruling on a Chilean proposal and no objections had then been made by the representatives of Finland and the USSR.

In all objectivity, he must be consistent and rule again that the same procedure should be followed in similar cases and that the Lebanese proposal could be regarded as an amendment to the United Kingdom amendment but must, as a total substitution, be voted upon after a decision on the United Kingdom proposal.

Mr. EDWARDS (United Kingdom) agreed with the Chairman's position and noted that the Commission had accepted the principle that substitution was admissible. There was no ground for a departure from that principle if the Chairman's ruling was not challenged. If the Commission precluded the submission of proposals which arose in the course of discussion, it would be impeding its own progress and possibly excluding worthwhile ideas.

To facilitate the procedure, the Commission might consider two separate issues: whether the Lebanese text was properly before the Commission and, if so, whether it must be put to the vote after the United Kingdom amendment.

The CHAIRMAN, in accordance with the suggestion of the United Kingdom representative, called upon the Commission to decide whether the Lebanese text (E/CN.4/L.7) was formally before it for consideration.

By 10 votes to 3, with 5 abstentions, the Commission decided that the Lebanese proposal was formally before it.

The CHAIRMAN stated that when the Commission came to the vote on the various proposals for article 20, he would rule that the Lebanese proposal could be voted on only after the United Kingdom proposal.

Mr. NIJKT (Belgium), supported by Mr. KORCEV (Union of Soviet Socialist Republics) urged that the decision on the order of voting of the various proposals should be deferred.

It was so agreed

/On the

On the invitation of the CHAIRMAN, Mr. LEVIN (Agudas Israel World Organization) stated that the right to education involved two essential principles: the basic right of everyone to education in all its phases and the basic right of everyone not to be forced to receive an education incompatible with the standards accepted by the group to which he belonged. In the present draft of article 23, paragraphs 2 to 5 inclusive could be regarded as the implementation of the first basic principle set forth in paragraph 1 while the last two paragraphs contained a positive formulation of the second basic principle.

In the opinion of Agudas Israel World Organization, it would be preferable to have a basic article establishing the general principles of the right to education followed by a series of articles dealing with implementation of that right. The basic article would recognize the fundamental right of everyone to education without distinction of any kind. A second article would deal with elementary, secondary and higher education, now covered by paragraphs 2 to 5 of article 23. Paragraph 6 might be left for national legislation, but a separate article would be required to cover the general standards now contained in paragraph 7. A further article would embody the ideas contained in paragraphs 8 and 9. Thus, instead of one very long article on education, the Covenant would contain four brief articles which would strengthen its general structure.

The right of parents to ensure that their children received religious education of their choice was an important aspect of the right to education. In the past there had been tragic examples of intolerance which took the form of depriving children of education in the religion of their parents and imposing on them a different religion. A provision in the Covenant guaranteeing the right of parents to ensure the religious education of their children served the cause of tolerance and mutual understanding and also safeguarded an important minority right. By omitting a provision for the religious education of orphans in conformity with the presumed will of their parents the Covenant overlooked a small segment of the right to education. That omission could be remedied by the addition of the words "or guardians of orphans" after the

word "parents" in the paragraph on the right of parents to ensure the religious education of their children or preferably by adding at the end of that paragraph a statement that if the parents were not alive, their presumed wishes for the religious education of their children must be respected.

Mrs. ROOSEVELT (United States of America) introduced a revision of the United States amendment to article 28 (E/CN.4/L.50/Rev.2) meeting the suggestions made by the representatives of India and Greece by revising the substance of sub-paragraph 7 and incorporating it in sub-paragraph 1.

The United Kingdom proposal (E/CN.4/L.85) in combining paragraphs 8 and 9 had omitted an important element restricting the provisions of paragraph 8 to compulsory primary education. The United Kingdom text broadened the concept and extended the requirements for conformity to minimum standards laid down by the State to private higher education where uniformity was in her opinion undesirable. She therefore preferred the original wording of paragraphs 8 and 9 of article 28 with the United States and Australian amendments. The United States Delegation would vote in favour of the Australian text (E/CN.4/L.89) which represented an improvement in paragraph 8.

Referring to the Belgian amendment (E/CN.4/L.95), she stated that the idea of the progressive realization of the right to education was already set forth in article 1, paragraph 1 (E/CN.4/66). While she was not opposed to the concept expressed in the Belgian amendment to paragraph 7, she felt that the idea was embodied in the original text and in the United States amendment. It seemed undesirable in paragraph 8 to introduce a new word and raise doubts about the meaning of "State" throughout the text. It was her understanding that whenever the word "State" was used, public authorities were meant. The Belgian amendment to paragraph 9 increased the scope undesirably by giving parents control not only of the religious education of their children but of all phases of their education. The United States delegation would therefore vote against that amendment because it could not agree that parents should control school curricula according to their philosophical convictions.

In the Uruguayan amendment (E/CN.4/L.51/Rev.1) the United States delegation considered it unnecessary to mention "physical education" or "technical" or "artistic" education because all of those concepts were included in the present draft. Moreover the Uruguayan amendment on scholarships was limited while the United States amendment on that subject was much broader. The United States delegation agreed with the Uruguayan proposal for the deletion of the word "generally" in paragraph 4 and to the addition of the words "to all".

She also subscribed to the views of other members of the Commission on the USSR amendment (E/CN.4/L.51) which she considered unnecessary and could not therefore support.

Mr. HUN (United Nations Educational, Scientific and Cultural Organization) thanked the delegations, particularly those of the United States and Uruguay, which had taken his suggestions into account.

With regard to the Uruguayan representative's request for his views on a reference to physical education, UNESCO was of course aware of the benefits of mens sana in corpore sano, but the Commission was at that stage dealing only with the various stages of education in general, not with the details of the curriculum. If anywhere, the place for a provision such as that proposed by Uruguay (E/CN.4/L.51/Rev.1) would be in the international action agreed under draft article 57 of the covenant.

The representative of the ICFTU had spoken of the need for providing for professional training; but that was a matter for other international action. The ILO had adopted a convention on that subject in 1949 and due attention had been paid to it in paragraphs 57 and 58 of the recommendation adopted by the Fourteenth International Conference on Public Education.

The United Kingdom representative had been concerned about the age limits for primary education. They were currently fixed by domestic legislation, but the Fourteenth International Conference on Public Education had adopted in paragraphs 14, 15, 16 and 19 of its recommendation the principle that the period of primary education should be lengthened rather than shortened; the recommendation had, however, no binding force.

/The misgivings

The criticisms which some delegations felt about the words "shall be generally available" in paragraph 4 might be due to the imperfect translation of the word "disponible", which implied that the State must provide all the schools required for secondary education, whereas the English text appeared to be restrictive. As the French representative had observed, the progress from one stage to the next in article 20 had been very carefully worked out; that arrangement explained the variation in the stipulations attached to each stage. The structure of the article as it stood was entirely logical from that point of view; the Lebanese representative's criticisms were thus not justified. The definition of education had been included, after lengthy discussion, because it had been found that, while it was not possible under existing economic and educational conditions to establish the ideal system of education immediately, it was possible to define its aims and to make those aims as binding as possible upon the States Parties. That was why the mandatory word "shall" introduced paragraphs 2 to 7. In the whole, there was not a great deal to be said against a text so thoroughly discussed, so conscientiously worked over and, finally, so carefully scrutinized by the Governments. The Lebanese amendment (E/CN.4/L.10) was an interesting attempt to improve the text, but it was not wholly satisfactory. It was both weaker and stronger than the existing text. The provisions concerning fundamental and higher education were stronger. The provision concerning primary education, however, in paragraph II(a) of the Lebanese amendment, was weaker than the statement in paragraph 3 of the existing text, in which the words "shall be" were strongly mandatory. Furthermore, the text as it stood made it clear that not only a right but an obligation was involved: the child (and the parent for his child) had the right to free primary education, but they were compelled to avail themselves of it and the State was compelled to provide it. The Lebanese amendment was much less mandatory in stating only that steps were to be taken. The same criticism applied to the treatment of fundamental education in paragraph II (d). In paragraph III (a) the phrase "undertaken to have respect for" was weaker than the words "shall encourage" in paragraph 7. In substance the existing text and the Lebanese amendment were very similar; there seemed to be no convincing reason to alter the form. The text as it stood had been approved by UNESCO's Executive Board.

Mrs. HHTA (India) said that she had voted for the discussion of the Lebanese amendment because it was necessary to draft the best possible text for such an important article. The Lebanese representative had presented a text which had a logical order but she did not agree with paragraph I of the text, which seemed to be confused and needed clarification. When one thought of the right to education, one thought of education as a whole, something that would enable all persons to participate effectively in a free society, but the various grades and stages of the school system did not immediately spring to mind. Paragraph I of the Lebanese amendment, however, at once introduced the various stages. Furthermore, it was not correct to say that everyone had a right to higher education, since paragraph II(c) said that higher education should be accessible to all on the basis of merit. Fundamental education was not something different from primary, or secondary, or even higher education, but was a mixture of all. The confusion in paragraph I of the Lebanese amendment made it more desirable than ever that education should be defined at the beginning of the article. The revised United States amendment (E/CN.4/L.60/Rev.2) did so define it without altering the existing text as a whole. She would therefore vote for the United States amendment and against the Lebanese amendment.

Mr. A. KHAL (Lebanon) thanked the Commission for deciding that the Lebanese amendment (E/CN.4/L.60) could be discussed. He had not introduced any new ideas but he had tried to divert the existing text of its confusion and to bring the main ideas out more clearly. True, as the representative of INDIA had said, a great deal of work and discussion had gone into the framing of the existing text, but that did not mean that it could not be revised once again, if it was obviously not completely satisfactory. That representative had said that parts of the Lebanese amendment were stronger than the existing text. That was so, but the strength derived, not from the inclusion of any new obligations, but from the very fact that the clearer and firm brought existing obligations into greater relief. Paragraph I of the Lebanese amendment was a case in point. It combined in a statement of principle the recognition of the rights implicit in paragraphs 3, 4, 5 and 6 of the existing text, leaving the detailed applications to be dealt with in paragraph II. The structure of the

/existing

existing text was confused, because the recognition of a right did not entail an obligation as such, but merely a moral obligation, and even this was dependent upon the restrictions embodied in the general clause adopted as article 1 (E/CN.4/28). The recognition of a right must be absolute, although the right itself might be enforced only progressively and only to the maximum of a State's available resources. The right of everyone to primary, secondary, higher and fundamental education could not be denied. The qualifications of that right were not a matter of the principle but of the application. The statement of the principle had been latent in the existing text; it had merely been brought out more clearly in the Lebanese draft. He could not agree with the Indian representative that the rearrangement made the text more confusing.

He regretted to differ with the representative of UNESCO, as the Lebanese delegation had hitherto invariably supported all UNESCO's activities and proposals, but he could not agree that the Lebanese amendment was weaker in some places than the existing text. Rather the contrary was true: the Lebanese paragraph I (b) asserted the right to fundamental education, whereas paragraph 6 merely stated that the States Parties recognized that such education should be encouraged as far as possible. Fundamental education was an essential and inalienable human right and should not be hedged about with restrictions such as those in paragraph 6. Paragraph II (d), too, was framed much more forcefully than paragraph 6; in that context the word "encourage" implied that States should provide individuals who required fundamental education freely to take advantage of the full facilities supplied by it.

Paragraph III of the Lebanese amendment, furthermore, was stronger than paragraph 7 of the existing text. In the latter it was stated only that States would recognize that education "shall encourage" various things, but no obligation was specified and the paragraph would be subject to the restrictions in article 1, paragraph 1. Surely the representative of UNESCO did not wish the States to recognize the purposes of education stated in the paragraph only progressively. In order to avoid that difficulty he had used a new word, "undertake"; the Commission obviously did not intend that the definition of education should be

recognized progressively. The representative of UNEGO had wrongly thought that the words "to have respect for the principle" were weaker than the original. The phrase had been carefully chosen in order to prevent a State from availing itself of article 26 to direct or censor education arbitrarily; some phrase such as to take steps, although more far-reaching, would have had precisely that effect.

A few minor changes in the text had been made in the Lebanese amendment. Paragraph 2 of the existing text had been omitted. It could not be said that the Lebanese delegation was not in favour of a non-discrimination clause, as it had in fact sponsored paragraph 2 of article 1 (E/CN.4/600), which had been adopted. But article 1 applied to all the articles, and if such a clause was included in some articles and not in others, it would inevitably be assumed that the non-discrimination provision did not apply to the articles from which it was omitted. Furthermore, if it were included, it would become subject to the limitations in article 1, paragraph 1. Paragraph II (c) was somewhat different from the existing paragraph 5. The word "progressive" had been omitted since it appeared in the general covering clause. It was difficult to decide at once what methods would best make higher education equally accessible to all, but it was essential that students of merit should not be prevented from access by lack of resources. Those able to afford higher education should certainly pay for it, but no one of merit should be excluded from it.

In the definition in paragraph III (a) he had introduced the words "free and" before "full development" because free development was characteristic of a free democratic society. He had taken the phrase "the sense of the dignity of the human person and respect for moral and spiritual values" from the Belgian amendment (E/CN.4/L.75) and he had added "and all classes of society on the basis of justice", because many contemporary disputes arose from the class struggle rather than from racial or religious dissensions. The class struggle would of course continue, but it should be conducted on a basis of justice and tolerance.

/In paragraph

In paragraph III(b) he had adopted the wording of the Australian amendment (E/CN.4/L.99). He was not sure that the Egyptian representative's objection was well-founded. The phrase did not mean that the schools' standards must be approved by the State, but merely conform to those approved by the State: if, however, that representative insisted that his view was correct, he would not press the wording. The words "religious and philosophical convictions" had been taken from the Belgian amendment. Some parents had strong convictions which might not necessarily be religious ones; it would be unfair to make an exception in favour of religious-minded parents alone. The fusion of the existing paragraphs 8 and 9 had been derived from the United Kingdom amendment, but if the United States representative maintained her objection to the combination, he would consider returning to the original separation.

Mr. KOPCEV (Union of Soviet Socialist Republics) said, with reference to the point of order raised by the Polish representative, that the USSR delegation was in favour of the greatest possible freedom of discussion and would not wish the Commission's work to be hampered by technicalities. It had supported the Belgian representative's frank and straightforward request to be permitted to present his amendment late (E/CN.4/CR.282); and would have done as much for the Lebanese representative if he had chosen the same course. It would always, however, protect against any attempts to circumvent the rules of procedure.

Turning to the Lebanese amendment itself (E/CN.4/L.95), he remarked that there was a striking contrast between the generous motives explained by the Lebanese representative and the actual import of that text. Instead of clarifying article 28 and presenting it in a more logical form, as had been his declared intention, the Lebanese representative had weakened it greatly, a fact which had been noted by the representatives of India and Mexico. Thus, article 28 stated that primary education should be compulsory and available free to all, thereby imposing a definite obligation on States to provide compulsory free education to all children of the proper age; the Lebanese amendment merely obligated States to take steps which should include the necessary measures "to make primary education compulsory and free". As those measures

/need not

need not necessarily be effective, the Lebanese amendment did not represent a guarantee that free primary education would indeed be available to all, as in the original article.

He could not agree with the Lebanese representative that there was any contradiction between the provision on primary education in article 23 and paragraph 6 of the same article, which spoke of fundamental education for persons who had not received primary education. Two distinct ideas were involved: all children were to receive free schooling; uneducated adults long past school age were to be given outside the primary school system, such basic instruction as would make them useful members of society. The obligation to provide fundamental education for such adults in no way weakened a State's obligation to educate all the children of school age. Free and compulsory primary education, fully guaranteed, was a minimum which the Commission could not surrender without disobeying General Assembly resolution 544 (VI) which called on it to improve the covenant on economic, social and cultural rights.

The remarks he had made at the previous meeting when speaking on the United States amendment, with regard to the omission of the non-discrimination clause applied equally to the Lebanese amendment, and he would not repeat them, beyond stressing the fact that inserting a non-discrimination clause in articles dealing with rights where discrimination was particularly vicious did not have the effect of weakening the other articles any more than italics on one page of a book meant that the rest of the book was not worth reading.

In paragraph III (a) of his amendment, the Lebanese representative had -- for reasons he had not troubled to explain -- left out the reference to "the suppression of all incitement to racial and other hatred," which occurred in the original text of article 23 and to which the U.K. delegation attached particular importance for reasons stated at the previous meeting.

He took exception to the idea introduced by the Lebanese representative in that paragraph: that one of the aims of education was to promote understanding, tolerance and friendship among "all classes of society on the basis of justice".

Any State might become a party to the covenant, including those States in which society was not divided into antagonistic classes; the covenant could and should therefore contain provisions referring impartially to all States, irrespective of their social structure.

The U.S.A., for example, had long ago liquidated all social classes which lived by exploiting others, and therefore had no mutually antagonistic classes. Furthermore, he did not think it proper to speak of justice when referring to relations between the millions of workers and a handful who, by virtue of owning the means of production, were able to exploit them. In a society, founded on the exploitation of one human being by another, the principle of justice could not possibly be put into effect.

Taking up the latest text of the United States amendment (E/CN.4/L.90/Rev.2), he observed that the United States delegation was attempting, by means of a very subtle manoeuvre, to set aside the principle that primary education should be compulsory and free to all. The statement to that effect was allowed to stand; but the article would no longer say that secondary and higher education were to be made "progressively" free. The three types of education were thus placed on an equal footing, doing away with the distinction carefully established in article 26, which specified that only secondary and higher education should become free in the future and make it clear that primary education must be provided free immediately. Once that distinction disappeared, all three types of education would fall under the provisions of article 1, paragraph 1, which stated that all the rights recognized in the covenant were to be realized progressively, and the full attainment of the right to free and compulsory primary education would be relegated to the same distant future as the realization of free secondary and higher education. Thus the United States amendment, while appearing liberal, in reality greatly endangered the principle of free and compulsory primary education and all the delegations which had supported the original text of article 26 should vote against it.

He reserved the right to make further remarks on all the amendments to article 26 on another occasion.

The meeting rose at 1.5 p.m.