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COMMISSION ON HUMAN RIGHTS

Eighth Session

SUMMARY RECORD OF THE TWO HUNDRED AND NINETY-FIFTH MEETING

held at Headquarters, New York,
on Thursday, 15 May 1952, at 10.45 a.m.

CONTENTS:

Draft international covenants on human rights and measures of implementation (E/1952, E/2057/Add.2, E/CT.A/655/Doc.4, E/CN.4/L.61, E/CN.4/L.61/Rev.1, E/CN.4/L.48, E/CN.4/L.57, E/CN.4/L.77, E/CN.4/L.79/Rev.1, E/CN.4/L.83, E/CN.4/L.84, E/CN.4/L.20, E/CN.4/L.22, E/CN.4/L.109) (continued)

<u>Chairman:</u>	Mr. NALIK	Lebanon
<u>Reporteur:</u>	Mr. WHITLAM	Australia
<u>Members:</u>	Mr. NISOT	Belgium
	Mr. SANTA CRUZ	Chile
	Mr. CIFENG PAGHAN	China
	AMMI Bey	Egypt
	Mr. JUVIGNY	France
	Mr. KAPDAMBELIS	Greece
	Mrs. MENA	India
	Mr. AZKOUZ	Lebanon

Members: (continued)

Mr. WAHED	Fahisten
Mr. BORATYNSKI	Poland
Mrs. ROSCEL	Sweden
Mr. KOVALENKO	Ukrainian Soviet Socialist Republic
Mr. MORCLOV	Union of Soviet Socialist Republics
Mr. EGARE	United Kingdom of Great Britain and Northern Ireland
Mrs. ROOSEVELT	United States of America
Mr. BRACCO	Uruguay
Mr. JEVNICIC	Yugoslavia

Also present:

Miss D'VIG	Commission on the Status of Women
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Representatives of specialized agencies:

Mr. M'HELET)	International Labour Organization (ILO)
Mr. PICKFORD)	
Dr. INALLS	World Health Organization (WHO)

Representatives of non-governmental organizations:

<u>Category A:</u>	Miss FEMER	International Confederation of Free Trade Unions (ICFTU)
<u>Category B and Registrar:</u>	Mr. WOODWILL	Consultative Council of Jewish Organizations
	Mrs. SCUDAN	International Federation of Business and Professional Women
	Mrs. ALZANIA	International Union of Catholic Women's Leagues
	Mr. JACOBY	World Jewish Congress
	Mrs. POLSTEIN	World Union for Progressive Judaism
	Mr. FENCE	World's Alliance of Young Men's Christian Associations

Secretariat:

Mr. HAMPEREY)	Representing the Secretary-General
Mr. LIN)	
Mr. DAS)	Secretaries of the Commission
Miss KITCHEN)	

/DRAFT

DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS AND MEASURES OF IMPLEMENTATION
(E/1992, E/2057/Add.2, E/CN.4/655/Add.4, E/CN.4/L.61, E/CN.4/L.61/Rev.1,
E/CN.4/L.48, E/CN.4/L.57, E/CN.4/L.79, E/CN.4/L.79/Rev.1, E/CN.4/L.83, E/CN.4/L.84,
E/CN.4/L.86, E/CN.4/L.88, E/CN.4/L.109) (continued)

The CHAIRMAN remarked that at the last meeting the question had been raised whether an amendment in the form of a total deletion of a given text, or a proposal that a given text be totally deleted, was in order, and if in order, whether it could be voted on first. The question referred not to the deletion of one or more articles from the whole of the covenant once it was completed (which would certainly be in order), but to the deletion of a given article treated at the time as an integral, total proposal.

The procedural question that arose was a fundamental one, so that the time spent on considering it would not be wasted. The issue, which kept recurring in the United Nations, must sooner or later be faced and clarified.

Ultimately the problem was a fundamental one in logic, well-known to the ancient Greeks and studied by Alfred North Whitehead and Bertrand Russell in their Principia Mathematica. The question they had studied was whether a class was a member of itself and they had solved it by means of their famous "theory of types".

The United Kingdom proposal was that article 23 should be deleted and he had explained at the last meeting why that proposal could not be treated as an amendment. The Belgian representative had raised the interesting question whether it could nevertheless be viewed as a proposal with respect to article 23.

As a proposal it could be interpreted in one of two ways. It could be treated as a proposal concerning the present text of article 23. As thus interpreted, it could certainly be admitted and discussed, but for reasons which he had carefully considered but would not enter into at present, it had to be put to the vote last, not first.

The second interpretation was that the proposal did not refer to the text of article 23 as it stood, but to the general idea or principle contained in that article, namely to all possible proposals embodying that idea, as a class. Such a proposal would logically be quite different from the one to delete a given specific text.

/For a proposal

For a proposal raising the question of principle, or of a class of judgments, no guidance was to be found in the rules of procedure. In cases not provided for by the rules of procedure, he believed it always to be his duty to comply with the wishes of the delegation putting forward a motion, unless some other delegation should object, in which case he would first consult the Commission. For questions of principle, there were, however, precedents in the Commission, in the Economic and Social Council and in the Security Council, where such questions were disposed of first.

He believed that the second interpretation of the intent of the United Kingdom delegation was the correct one -- namely the question of principle or class of judgments -- and as such he would be happy to put it to the vote first, unless some other delegation objected.

Mr. ROATE (United Kingdom) said that the Chairman had correctly defined the position of his delegation which had not specifically objected to either the contents or the form of article 23, but was opposed, in principle, to the inclusion in the covenant of any repetitive texts.

What he wanted the Commission to decide was the purely formal question whether it was satisfied with the relationship between article 23 on the one hand and articles 24 and 25 on the other. He therefore felt justified in asking the Commission to take a vote on his proposal as it was a previous question.

The CHAIRMAN said that as the United Kingdom proposal was a previous question he would call upon the Commission to decide first whether or not article 23 should be inserted in the covenant.

Mr. SANTA CRUZ (Chile) thought that rule 61, paragraph 3 of the Functional Commissions' rules of procedure might help the Commission out of that procedural difficulty. The United Kingdom proposal could be framed as a request that no decision be taken on the substance of article 23, in which case the proposal could be considered as a previous question. The United Kingdom delegation would then know the Commission's views and could vote on the amendment to article 23.

/The CHAIRMAN

The CHAIRMAN was not sure whether rule 61, paragraph 3, applied as there had been no motion requiring that no decision be taken on the substance of the proposal; he would like the United Kingdom representative's views on the matter, however.

Mr. BODEN (United Kingdom) replied that he would be glad to agree to the Chilean representative's suggestion if it would help the Commission. He would like to ask the Commission whether it was desirable to include the same matter both in a special article and in other articles of the covenant. There was no need for the Commission to take a vote on the substance of article 23.

The CHAIRMAN wondered whether the Commission would still be able to consider article 23 were that proposal adopted.

Mr. BODEN (United Kingdom) said that the adoption of his proposal would in no way prevent the Commission from considering the article later.

Mr. SANTA CRUZ (Chile) thought, on the contrary, that were the United Kingdom proposal accepted, article 23 would automatically fall so that the Commission would no longer be able to consider it.

The CHAIRMAN put to the vote the United Kingdom proposal that no decision be taken on the substance of article 23.

The United Kingdom proposal was rejected by 14 votes to 4.

The CHAIRMAN explained that the amendments submitted by the delegations of the USSR (E/CN.4/L.46) and China (E/CN.4/L.47) both proposed additions to article 23 that were not incompatible. He thought the Chinese amendment should be put to the vote first.

The Chinese amendment was adopted by 9 votes to none, with 6 abstentions.

The CHAIRMAN put to the vote the USSR delegation's amendment (E/CN.4/L.46).

The USSR delegation's amendment was rejected by 11 votes to 6, with 1 abstention.

/The CHAIRMAN

The CHAIRMAN put to the vote article 23, as amended, as a whole.
Article 23, as amended and as a whole, was adopted by 14 votes to none, with 4 abstentions.

Mr. KAPSAMBELIS (Greece) had voted for article 23 as he felt that housing shortages, which raised serious social problems, were largely responsible for the low standard of living in some countries.

Mr. SANTA CRUZ (Chile) had voted in favour of the Chinese amendment because the article on standards of living should be separate from that dealing with the essential elements needed to assure a decent standard of living.

Mr. HOARE (United Kingdom) had abstained from voting on the Chinese amendment as its provisions were already covered by article 24. He had also abstained from voting on the article as a whole as its substance would or could be covered by articles 24 and 25 of the covenant.

The CHAIRMAN invited the Commission to consider article 24 of the draft covenant.

Mr. PICKFORD (International Labour Organisation) referred to the ILO's suggestion contained in document E/2057/Add.2, i.e. that the intent of the article might be more clearly conveyed if the States were to recognize the right of everyone to an adequate and improving standard of living.

Mrs. NEHTA (India) would vote for article 24 as it dealt with standards of living in general and stressed the need to assure a continuous improvement in living conditions. It should therefore be separate from article 23 which dealt with one essential element of a minimum standard of living.

Mr. HOARE (United Kingdom) was in favour of article 24 but the ILO representative's suggestion and the wording of the present text raised some doubt in his mind, since there were certain individuals whose standard of living was already more than adequate; to require any further improvement

for them

for them would be absurd. He was in favour of the general intention of this part of the text and it might be possible later to formulate it in a way which would avoid that difficulty. The Indian representative's remarks only strengthened his belief that the question of housing should be included in article 24 as that article dealt not with minimum but with adequate standards of living; that was a wider conception which should certainly apply to housing.

Mr. WHITLAM (Australia) would vote for article 24 although he would prefer the word "continuing" to be used instead of the word "continuous" which might mean "without interruption". Certain disasters such as droughts that were beyond the control of man might sometimes prevent States from ensuring a continuous improvement in the standard of living. It would therefore be unrealistic for a State to assume certain obligations under the covenant which it might not always be able to fulfill. He thought the word "continuing" would be the right equivalent for the word "constante" in the French text and that at the appropriate time the change should be made.

The CHAIRMAN put to the vote article 24 of the draft covenant.
Article 24 of the draft covenant was adopted unanimously.

The CHAIRMAN invited the Commission to consider article 25 of the draft covenant and the amendments thereto.

Mrs. ROOSEVELT (United States of America) announced that her delegation would submit a revised text (E/CN.4/L.79/Rev.1) of its amendment (E/CN.4/L.79) which would be circulated at once.

Mr. ECARE (United Kingdom) said that his delegation's amendment (E/CN.4/L.84) and the United States revised amendment both aimed at the deletion from article 25 of the implementation clause which already existed in article 1. He would therefore withdraw his amendment but that did not necessarily mean that his delegation accepted the rest of the United States amendment.

Mr. WHITLAM (Australia) explained that the purpose of his delegation's amendment (E/CN.4/L.86) was also to bring article 25 into line with article 1, but as the wording of the United States amendment was more satisfactory, he would withdraw it.

/The CHAIRMAN

The CHAIRMAN drew the Commission's attention to document E/CN.4/655/Add.1.

AMR Fay (Egypt) observed that the text of article 25 had been drafted by WHO. He would like to hear what the representative of that agency had to say about it.

Dr. INCALIS (World Health Organization) said that she had nothing to add, as the WHO had not proposed any amendment of the text of article 25 as adopted by the Commission at its seventh session.

The CHAIRMAN proposed that, while awaiting the distribution of the revised United States amendment (E/CN.4/L.79/Rev.1), the Commission should vote on article 29, the postponement of which had been decided at the 292nd meeting.

Mr. KOVALENKO (Ukrainian Soviet Socialist Republic) hoped that the representative of the United States would withdraw her delegation's amendment (E/CN.4/L.79/Rev.1) to expedite the Commission's work.

Mr. BENTON (Uruguay) said that, without prejudging the United States representative's reaction to the Ukrainian representative's suggestion, his own delegation wished to submit an amendment to the revised United States amendment (E/CN.4/L.79/Rev.1).

Mrs. BUCKWELL (United States of America) said that her delegation would press its amendment.

Mr. WAGNER (Union of Soviet Socialist Republics) supported the Chairman's proposal that the Commission should suspend the consideration of article 25 and pass on to the vote on article 29.

It was so decided.

The CHAIRMAN explained that under rule 61 of the rules of procedure, the United Kingdom amendment to article 29 (E/CN.4/L.82) could be put to the vote as a previous question.

/Mr. HOGRE

Mr. EGARE (United Kingdom) said that his delegation opposed article 29 for reasons which he had already fully explained concerning the balance between that article and other articles of the draft covenant, the undesirability of special implementation provisions, and the role in that field of the specialized agencies. Thus, his delegation's proposal (E/CN.4/L.88) fell into the first category of proposals referred to at the beginning of the meeting, namely those which bore on a given text and could be put to the vote only after the amendments to that text. So article 29 as a whole should be put to the vote and its rejection would be tantamount to the adoption of the United Kingdom proposal.

The CHAIRMAN said that that interpretation was correct and reminded the Commission that, at the Australian representative's request, the words "within two years" would be voted on separately, as would the word "progressive", at the USSR representative's request.

The words "within two years" were adopted by 11 votes to 5, with 3 abstentions.

The word "progressive" was adopted by 7 votes to 5, with 6 abstentions.

Article 29 as a whole was adopted by 12 votes to 5, with 1 abstention.

Mr. AZKOL (Lebanon) had voted for the word "progressive", although his delegation had voted against the inclusion of the word "progressively" in article 1 of the draft covenant, because he believed that, as it referred to the carrying out of positive obligations, the term was not restrictive in article 29. On the contrary, it showed that when submitting their plans, States would have to indicate the various stages by means of which they proposed to apply them.

Mr. WHITLAM (Australia) said that he had already explained why he was against that article.

Mr. SANTA CRUZ (Chile) had not taken part in the voting on the words "within two years", but his delegation had intended to vote for their inclusion.

Mrs. NEETA (India) had abstained from voting on article 29 as a whole because, like the United Kingdom representative, she thought it out of place in the draft covenant.

/Mr. EGARE

Mr. EDARE (United Kingdom) had voted against the words "within two years" not because he thought that period too short but because they implied a procedure that his delegation could not accept. He had abstained on the word "progressive", as he could not vote in favour of any part of article 29.

Mr. NISOT (Belgium) had voted against article 29.

Mr. JEVREMIĆ (Yugoslavia) said that he had voted for article 29 as a whole. He had, however, abstained on the word "progressive", although he had voted against the use of that word in article 1, which dealt with the general obligations of States. In view of the fact that a majority had voted for the use of the word in article 1 -- which was of a general nature -- the question whether or not the word "progressive" should be used in article 29 was no longer important.

Mr. Bey (Egypt) had voted for the word "progressive" for reasons similar to those adduced by the Icelandic representative and because, if it were not included, a State might claim the right to put off any action with regard to education until the time limit for the implementation of a plan had elapsed.

Mrs. RUSSEL (Sweden) said that she approved of the measures set forth in article 29, but had voted against it because she thought it out of place in the draft covenant.

Mr. JUVENY (France) and Mr. KAKOUMETIS (Greece) had voted for article 29.

The CHAIRMAN said that the Commission might require the consolidation of article 25, as the United States amendment (E/CN.4/L.70/Rev.1) had been distributed.

Dr. IGALIS (World Health Organization) thought that the United States amendment (E/CN.4/L.70/Rev.1) was consistent with the statement by WHO reproduced in document E/2057/Add.1, but would have wished the definition of health as it appeared in the WHO's Constitution to be reincorporated in it.

/s/ Mr. NISOT

Mr. NISOT (Belgium) said that in the English text of article 25 the expression "the right of everyone to the enjoyment of the highest standard of health obtainable" might lead to confusion but that the French text clearly referred to "droit de toute personne à l'état de santé le plus satisfaisant qu'elle soit capable d'atteindre".

Mr. BOAFE (United Kingdom) thought that the English text might read: "which he is capable of attaining", a literal translation of the French formula. Nevertheless, the English formula was comprehensive; it related to the individual in a given society and took account of all circumstances, including the individual circumstances of each person.

Dr. INGALLS (World Health Organization) commented that the English text was patterned on the definition contained in the Constitution of WHO which referred to "highest attainable standard of health". That formula was wider in scope than the French one.

Mr. AZEDUL (Lebanon) thought that a question of principle rather than a mere matter of drafting was involved. The French text gave consideration only to the individual's inherent limitations; it was therefore broader than the English text which seemed also to give consideration to social limitations.

Mr. JURENY (France) concurred in the position of the Lebanese representative. Article 25 imposed on States the obligation to take all possible steps to ensure to all the highest standard of health obtainable but that obligation was restricted by the physiological characteristics of the individual which, at the current stage of scientific development, might prove an unsurmountable obstacle.

Dr. INGALLS (World Health Organization) pointed out that in article 25 the word used was "obtainable" while the Constitution of WHO used the word "attainable".

/s/ SANTI CRUZ

Mr. SANTA CRUZ (Chile) noted that during the seventh session of the Commission the Chilean delegation had submitted a proposal based on the definition given in the Constitution of WHO. The Commission had adopted a United States amendment in which, among other things, the word "attainable" had been replaced by the word "obtainable", a change which had passed unnoticed by the Commission. He wished to know what had led the United States delegation to propose that amendment.

Mrs. ROOSEVELT (United States of America) said that the amendment in question was based on a text suggested by WHO appearing in document E/CN.4/544 which in English contained the word "obtainable". The original text of that document was drafted in French and contained the formula of the Constitution of WHO. She herself had no objection to the restoration of the word "attainable". She thought that the English formula was preferable to the French because in that field the efforts of the individual in isolation should not be given sole consideration; the part to be played by society should also be borne in mind.

Mr. JUVIGNY (France) held the contrary view that the French text was as broad as it possibly could be, inasmuch as it provided that the State should take all action to enable everyone to achieve the highest standard of health possible, the only limitations being the physiological characteristics of the individual.

Mr. HISOZ (Belgium) said he had decided not to press the comment he had made about the English text of article 25, which was reproduced in the United States amendment (E/CN.4/L.75/Rev.1).

Mr. SCARE (United Kingdom) pointed out that both the French and the English texts were equally open to two interpretations, one that the highest standard of health in the most general sense was intended, the other that the standard was the highest possible in the particular society in which the individual found himself. He suggested that the French and English texts should remain unchanged, except for the adoption of the word "attainable" in the English text.

Mr. JUVIGNY (France) expressed the view that any ambiguity which might exist in the French text was eliminated by virtue of the nature of the first paragraph of article 25 recognizing the right to health considered in the abstract as an ideal to strive for. It was normal to interpret the text in the way that would most favour the individual. If the individual in a given society were considered when that provision was interpreted, it could be said that the stage of implementation had been reached.

/Mr. FRACCO

Mr. BRACCO (Uruguay) said that paragraph 1 of the Uruguayan amendment was intended to complete the statement of the right to health by the definition contained in the original text of the United States amendment (E/CN.4/L.79). Paragraph 2 was intended to emphasize the obligation of States to protect health through legislative or other measures.

Mr. WAHED (Pakistan) said that in his opinion the United States amendment (E/CN.4/L.79/Rev.1) did not significantly change the text of article 25 but represented an effort to organize the provisions of that article, which seemed worthy of support. He would also support the Uruguayan amendment defining more clearly the obligation of States in connexion with the implementation of the right to health, based on the original text of the United States amendment.

Mrs. ROOSEVELT (United States of America) said that paragraph 2 of the Uruguayan amendment was pointless because it repeated the obligation set forth in article 1, paragraph 1.

Mr. BOARE (United Kingdom) agreed. Moreover, in his opinion, it was unnecessary to define the right to health, any more than other rights. The proposed definition seemed objectionable in that it provided not only for complete physical and moral well-being but also for complete social well-being.

The CHAIRMAN noted that the definition was taken from the Constitution of WHO.

Mr. BOARE (United Kingdom) said that he was criticizing that definition only in connexion with the question of its inclusion in the covenant.

Mr. AZEDUL (Lebanon) said that he would vote against paragraph 2 of the Uruguayan amendment. The definition given in paragraph 1 of that amendment

/scent

seemed excellent if taken within the framework of the Constitution of WHO; it should not, however, appear in the covenant. Moreover it was unnecessary in article 25 to refer to the concept of social well-being because many articles in the covenant gave adequate consideration to that point; that objection was not applicable to the definition of "the right to health" taken within the framework of the Constitution of WHO.

The meeting rose at 1.5 p.m.