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Seventh Session

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held at the Palais des Nations, Geneva,
on Tuesday, 8 May 1951, at 3.0 p.m.

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Present:

Chairman: Mr. MALIK (Lebanon)

Members:

Australia	Mr. WHITLAM
Chile	Mr. VALENZUELA
China	Mr. YU
Denmark	Mr. SØRENSEN
Egypt	AZHÏ Bey
France	Mr. CASSIN
Greece	Mr. EUSTATHIADES
Guatemala	Mr. DUPONT-MILLENIN
India	Mrs. MEHTA
Pakistan	Mr. WAHED
Sweden	Mr. ROSSEL
Ukrainian Soviet Socialist Republic	Mr. KOVALENKO
Union of Soviet Socialist Republics	Mr. MOROSOV
United Kingdom of Great Britain and Northern Ireland	Miss BOWIE
United States of America	Mrs. ROOSEVELT
Uruguay	Mr. CIASULLO
Yugoslavia	Mr. JEVROMOVIĆ

Representatives of specialized agencies:

International Labour Organisation	Mr. PICKFORD
United Nations Educational, Scientific and Cultural Organization	Mr. THOMAS Mr. HAVET Mr. BANQATE

Representatives of non-governmental organizations:

Category A

International Confederation of Free Trade Unions	Miss SENDER
International Federation of Christian Trade Unions	Mr. EGGERMANN

Category B and Register

Caritas Internationalis	Mr. PETERKIN
Carnegie Endowment for International Peace	Mrs. CARTER
Catholic International Union for Social Service	Miss de ROMER Mrs. SCHRADER
Co-ordinating Board of Jewish Organisations	Mr. WARBURG
International Council of Women	Mrs. CARTER
International Federation of Business and Professional Women	Miss TOMLINSON
International Federation of University Women	Miss ROBB
International League for the Rights of Man	Mr. BALDWIN
International Union of Catholic Women's Leagues	Miss de ROMER Miss ARCHINARD
Liaison Committee of Women's International Organizations	Miss ROBB
Women's International League for Peace and Freedom	Miss BAER
World Jewish Congress	Mr. BIENEFELD

Secretariat:

Mr. Humphrey	Representing the Secretary-General
Mr. Das	Secretary to the Commission

DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS AND MEANS OF IMPLEMENTATION
(item 3 of the agenda):

(b) Inclusion in the Covenant of provisions concerning economic, social and cultural rights:

General clause concerning economic, social and cultural rights (E/CN.4/574, E/CN.4/609, E/CN.4/610 and Add. 1 and 2, E/CN.4/612) (continued)

The CHAIRMAN invited the Commission to continue its consideration of the proposals relating to the general clause concerning economic, social and cultural rights.

Mr. WHEED (Pakistan) stated that his Government had always attached great importance to the inclusion of economic, social and cultural rights in the Covenant, which it wished to see become a powerful and effective legal instrument. He would therefore vote in favour of the text which most effectively achieved that object. The French and United States texts both contained many excellent points, and he hoped that the version finally adopted would incorporate the substance of both without any sacrifice either of clarity or of simplicity.

He had no objection to the content of the three paragraphs which formed the preamble to the French text. If, however, there was any danger of that preamble constituting an argument in favour of drawing up a separate covenant dealing with economic, social and cultural rights alone, he would propose that it be deleted entirely. In such an eventuality, he would ask that separate votes be taken on the preamble and the final (fourth) paragraph.

Like the Egyptian representative, he preferred the words "pledge themselves" used in the final paragraph of the French text, to the word "undertake". He also supported the Egyptian proposal that the words "take steps" in that paragraph should be qualified by the addition of the words "by legislative or other methods" used in the United States proposal (E/CN.4/610/Add.1). Moreover, the word "promote" should be replaced by the word "secure" in the United States proposal. Such changes would make the article finally adopted more specific and binding, which was, or should be, the essence of such a general article.

The CHAIRMAN pointed out that the principle of international co-operation for the implementation of economic, social and cultural rights had already been laid down in Article 22 of the Universal Declaration of Human Rights, and also in Article 1 and 56 of the Charter of the United Nations. In particular, the words "pledge themselves" appeared in Article 56 of the Charter, under which all Member States pledged themselves "to take joint and separate action in co-operation with the Organisation" for the implementation of all economic, social and cultural rights.

Mr. VALENZUELA (Chile) wished to explain his delegation's attitude to the "general clause". When the Commission was examining texts on specific rights which it was trying to define and exchanging views on the subject, the discussion might sometimes be heated but a positive conclusion could always be reached. But the situation was quite different when a definition of the responsibilities of States which would eventually sign the Covenant was being sought. His delegation would therefore have preferred for each article a clause involving a separate undertaking; but the majority of the Commission had decided otherwise.

He recalled that the Chilean delegation had constantly declared in the Commission, in the Economic and Social Council and in the General Assembly that the United Nations would do better to defer drafting an international covenant on human rights until the international situation had cleared up, and the international atmosphere had accordingly become such that States could take direct responsibility for implementing the human rights laid down in the Universal Declaration. His delegation was sure that it would have been better to stop for the time being at the Universal Declaration, which constituted a moral weapon that the peoples of the world could use in their struggle in each country, and to renounce for the time being any attempt to draft a legal instrument specifying the minimum responsibility which States were prepared to assume. It considered that its view had been confirmed by the discussions on the Covenant.

The authors of the various proposals for a general clause now before the Commission had displayed what might be described as political realism, and he admired their skilful use of words, which had enabled them to reduce the responsibility to be assumed by signatory States to an absolute minimum. But he did not see how the theoretical desiderata expressed could be squared with practical possibilities. He was, however, willing to co-operate in the attempts of members to bring their work to a successful conclusion. Indeed, under the proposals in question States would undertake to promote conditions favouring the creation of a climate in which enjoyment of the rights defined in the Covenant might be ensured in the distant future.

He greatly admired the Yugoslav representative, whose proposal provided for indirect recognition by States of the rights laid down in the Covenant and contained no reservation to allow for the existence of conditions unfavourable to such recognition in the different countries.

The first three paragraphs of the French proposal were worthy of note, but the fourth merely implied that signatory States should make a promise instead of taking a pledge. It did however contain something constructive, since by providing for recourse to international co-operation instead of allowing the enjoyment of certain rights to be put off, it filled the gap between what certain States could in fact do and the steps they would have to take to meet their obligations under the Covenant.

He therefore maintained his previous attitude: the signatory States should take a formal pledge; otherwise there was no object in trying to draft a Covenant.

Mr. YU (China) reminded the Commission that the decisions already taken, on specific articles had often been made subject to the provisions of a general article to be drafted at a later date, and that certain articles had been adopted on the assumption that their application would be clarified by such an article. The Commission's future work would be made easier by the existence of a general article, which would provide a framework within which the relative

Importance of the specific articles could be assessed and adjusted. On the other hand, any attempt to define specific rights without also providing a general framework might well make their implementation impossible.

He favoured the adoption of the French text, which mentioned all the fundamental economic, social and cultural rights to which the individual was entitled.

Mr. DUPONT-WILLEMIN (Guatemala) preferred the French proposal, at any rate so far as concerned the introductory paragraphs, which fully satisfied the desiderata of the International Labour Organisation and, in particular, Mr. Jouhaux's request that the Commission should proclaim its aims in terms intelligible to the masses. He congratulated the French delegation.

On the other hand, he could not pass final judgment on the fourth paragraph of the French proposal, since he understood that the representatives of France, the United States of America and Yugoslavia intended to submit a revised text to the Commission. At all events, he considered that the pledge to be taken in the general clause should not have less force than that contained in individual articles, for example, that on the right to health.

He disagreed with the reservation concerning the organization of States in the fourth paragraph of the French proposal, since he was afraid it might be construed as a kind of loop-hole, and that States might ascribe to their structure and organization any failure on their part to comply with their obligations under the Covenant.

The CHAIRMAN admitted that the phrase in question was capable of being interpreted as an escape clause, but pointed out that Article 22 of the Universal Declaration of Human Rights used almost identical language.

Mr. CASSIN (France) announced that provisional agreement had been reached on the new text of the fourth paragraph of his proposal.

After some discussion as to the exact wording to be adopted, the CHAIRMAN read out the provisional English translation of the draft article submitted by the French representative:

"The States parties to the present Covenant,"

[here follow the three preambular paragraphs]

"Undertake, whatever their organization and in accordance with their resources, to take on a national basis, or through international co-operation, legislative measures or other methods with a view to ensuring the enjoyment of the rights recognized in this part of the Covenant."

Mr. MOROSOV (Union of Soviet Socialist Republics) pointed out that under rule 49 of the rules of procedure he was entitled to propose that the discussion be deferred till the following day. However, as he did not wish to delay the proceedings unduly, he would content himself with requesting that the meeting be suspended until the text of the new French draft article was available in English, French and Russian.

The CHAIRMAN stated that that request would have been justified had the delegations concerned failed to reach agreement, but in view of the fact that the French and United States delegations had almost reached full agreement, he asked the Soviet Union representative to have patience.

Mrs. RUSSELL (United States of America) would prefer to use the words "in accordance with their organization and resources" and "on a national basis, and through international co-operation" in the final paragraph. She was, however, willing that those two points should be put to the vote separately.

Mrs. AZHAR (India) proposed that the Commission should examine forthwith the three preambular paragraphs of the French proposal.

Mr. JEVREMOVIĆ (Yugoslavia) found the new French text basically acceptable, but did not wish to pass final judgment on it until he had seen it in writing.

Mr. MOROSOV (Union of Soviet Socialist Republics) formally moved that the meeting be suspended until the text in question had been circulated in English, French and Russian.

The Soviet Union motion was carried by 11 votes to 3 with 3 abstentions.

The meeting was suspended at 4.15 p.m. and was resumed at 4.45 p.m.

The CHAIRMAN announced that no agreement had been reached. There was, therefore, no compromise text before the Commission.

Mr. MOROSOV (Union of Soviet Socialist Republics) wished to seize that opportunity to make a general statement on the substance of the proposals before the Commission. He considered that those proposals constituted proof of an attempt being made by certain delegations to embody the provisions relating to economic, social and cultural rights in a separate instrument within the draft Covenant.

If the United States proposal (E/CN.4/610/Add.1) was compared with article 1, paragraph 2, of the draft Covenant, it would be seen that the former was conceived in much weaker and less precise terms. It only required States "to promote by legislative or other methods conditions of economic, social and cultural progress and development for securing the rights recognized in this part of the Covenant." It did not lay on governments the responsibility for taking legislative measures to give effect to the rights recognized in the Covenant as laid down in the relative article of the draft Covenant. If the text proposed by the United States representative were adopted, the section of the Covenant concerning economic, social and cultural rights, would be covered neither by paragraph 2 nor by paragraph 3 of article 1. No other interpretation of the intention behind the United States proposal was possible.

Passing to the other general provision submitted by the United States delegations (E/CN.4/610/Add.2), he pointed out that it enumerated a number of special considerations on the basis of which limitations could be imposed on the recognition and respect for economic, social and cultural rights, contrary

to the terms of article 2, paragraph 1, of the draft Covenant, which stipulated that such limitation was only permissible in cases of emergency or public disaster proclaimed by the authorities. The criteria prescribed in the United States proposals were indeed somewhat strange. What limitation could be justified by the need for "meeting the just requirements of morality"? That consideration was itself one of those which had prompted the formulation of provisions on economic, social and cultural rights. How then could it be invoked to authorize their limitation? The other considerations mentioned in the United States proposal served further to obscure its reactionary intention of imposing additional limitations in respect of economic, social and cultural rights over and above those laid down in article 2, paragraph 1, whose provisions would, in fact, cease to govern those rights if the United States proposal were adopted.

Thus, there could be no doubt at all that an attempt was being made to create a covenant within a covenant, the provisions on economic, social and cultural rights being given a separate preamble and a separate general clause. If that attempt succeeded, the rights affected would be relegated to a secondary place by comparison with the others enunciated in the draft Covenant. Not only had the substantive provisions relating to economic, social and cultural rights been adopted in an unsatisfactory form, but they would be further weakened owing to the fact that Part I of the draft Covenant would not apply to them. The implementation of provisions which were already too nebulous would thus be rendered even less effective.

He doubted whether anyone would be deceived by the high-sounding phrases of the French proposal (E/CN.4/612). Many of the principles therein enunciated were unexceptionable in themselves, but of no value in the given context, since the last paragraph of the French proposal whittled down the responsibility to be undertaken by States to a simple pledge to ensure the progressive implementation of those principles. The French proposal, having opened as a prayer for the restoration of a sick man, ended as a requiem.

His delegation had never considered that articles 1 and 2 of the draft Covenant were satisfactory, yet they had been conceived in much stronger terms than the proposals at present before the Commission. It was obvious that the

authors of these proposals, under cover of drafting so-called "umbrella" provisions, were simply concealing their real aim, which was to avoid carrying out the express instructions given to the Commission by the General Assembly in its resolution 421 (V). It would be recalled that a number of delegations had been opposed to the inclusion in the draft Covenant of provisions on economic, social and cultural rights. Having been defeated in the General Assembly, they had then attempted to create a separate instrument, governed by a different general clause, to deal with those rights. Such a manoeuvre did credit to their persistence and ingenuity, but was too transparent to take anyone in. He would therefore vote against all the proposals before the Commission, since they were designed to delude public opinion into thinking that the instructions of the General Assembly were being genuinely carried out, and because he believed that the provisions relating to economic, social and cultural rights should be on an equal footing with the remaining articles of the draft Covenant.

Mr. CASSIN (France) said that his delegation always strove to comply with the General Assembly's wishes, and he believed, in the present instance, that his proposal for a general clause was in keeping with General Assembly resolution 421 (V). He appreciated what the Soviet Union representative had said regarding the difference between the general clause which the Commission was at the moment examining and the clause contained in article 1 of the Covenant. He (Mr. Cassin) was not sure that the latter clause might not have sufficed in most cases. But it was necessary to be realistic. In the case of civil and political rights it was sufficient to adopt a law ensuring that they would be respected; on the other hand, legislative texts might prove inadequate when it came to the reforms or, indeed, upheavals that were sometimes necessary to implement certain economic, social and cultural rights which had not yet been recognized for the reason that a number of diverse measures had to be adopted involving changes in the country's economic and social equilibrium. It would be deceiving the peoples of the world to let them think that a legal provision was all that was required to implement certain promises, when in fact an entire social structure had to be transformed by a series of legislative and other measures.

The methods suggested by the Soviet Union representative were very attractive, but he did not think that they would lead to the desired objective. He felt that, in the case of economic, social and cultural rights, a general clause slightly different from that appearing in article 1 should be adopted. That in no way precluded the adoption of special clauses involving more rigorously worded commitments in the case of certain rights, more particularly those relating to education and culture set forth in the suggestions submitted by the United Nations Educational, Scientific and Cultural Organization.

He was prepared to accept amendments which would improve the wording of the French proposal, the first three paragraphs of which were, he felt, compatible with the other proposals before the Commission.

The CHAIRMAN, speaking as representative of Lebanon, said he would ask for a separate vote on the words "within the framework of its organization and compatible with its resources," in the United States proposal, on the words "in accordance with their organization and resources," in the French proposal, and on the words "in accordance with the level of their economic development" in the Yugoslav proposal, all of which he believed to be unnecessary statements of self-evident facts which might, moreover, be exploited as an escape clause. He had the governments of backward countries, particularly in mind. The term "resources" was extremely difficult to define, and would only create difficulties. He believed that such language should be eliminated from the general clause, but had no objection to the remaining sections of any of the texts before the Commission.

Mr. DUPONT-WILLEMEN (Guatemala) observed that the members of the Commission had expected to have before them a compromise text proposed by the delegations of France, the United States and Yugoslavia. But it appeared that agreement had proved impossible and that there were therefore still three different proposals before the Commission. That being so, he thought that the representatives of Chile and Uruguay and he himself might perhaps submit an independent text comprising the amendments which they had intended to propose to the expected compromise text.

The CHAIRMAN said that the Commission had before it only the Yugoslav, United States and French proposals. He could not accept an amendment to a proposal which was not before the Commission.

Mr. CIASULLO (Uruguay) recalled that he had expressed his willingness to support the Yugoslav proposal (E/CN.4/609) subject to a few minor changes. He agreed with the Chairman that the words "in accordance with their organization and resources" in the French proposal might be construed as providing a loop-hole. A State might invoke the argument that its financial or economic resources were inadequate, to explain its failure to implement certain rights.

Hence the representatives of Chile, Guatemala and Uruguay, while supporting the Yugoslav proposal, suggested that in the French version the words "en vue de rendre possible" be replaced by "en vue d'assurer". Furthermore, it would be advisable to include in the Yugoslav proposal a clause referring to international co-operation and the collaboration of the specialized agencies, on the lines of the fourth paragraph of the French proposal. Perhaps something like "through international co-operation and with the collaboration of the specialized agencies" would do. Signatory States whose economic situation was difficult would thus be aware that they could rely on help from the international community in implementing economic, social and cultural rights. In the absence of such a clause, the provisions of the Covenant would be purely academic, since the obligations they entailed in the shape of the practical implementation of economic and social rights would apply equally to all signatory States, whereas there were very great differences between the economic and financial resources of the various countries. The Commission would not achieve satisfactory results if it disregarded the capacities of the signatory States to give practical effect to the provisions of the Covenant.

He was prepared to vote in favour of the first three paragraphs of the French proposal, but could not support the fourth paragraph, in view of its reservation regarding the organization and resources of signatory States, and of the epithet "progressive" used to qualify the implementation of the whole

series of rights. He would vote in favour of the substitution of the Yugoslav proposal, with the amendments he had indicated, for the final paragraph of the French proposal.

Miss BOWIE (United Kingdom) said that the proposals before the Commission closely resembled one another. Each would require the States Parties to the Covenant to assume serious responsibilities, but she considered that those responsibilities must be viewed in connexion with the duties laid on governments by the substantive provisions relating to economic, social and cultural rights already adopted by the Commission. None of those provisions had been expressed in the same form, or implied the same kind of commitments. She could not envisage any kind of a general clause which could cover them all. For example, the provision on the right to work opened with a philosophical preamble and went on to suggest a very wide programme of economic action to be initiated by States. The just and favourable conditions of work also implied a most comprehensive programme of action. The right to social security, which was perhaps the widest and most comprehensive right in that section of the Covenant, had not been defined at all. The Commission had also adopted a provision on the right to adequate housing, not strictly speaking a fundamental right at all, but merely one aspect of the standard of living. The provision relating to the latter right had been drafted in very general terms, whereas the right to health implied a most far-reaching commitment on the part of governments to take legislative measures for carrying out a vast and detailed programme. The provision relating to the protection of women and children, in her opinion, did not constitute a statement of a fundamental right at all, but was merely one way of expressing the right to fair working conditions and standards of living. The provision on education had been adopted in a form which was almost as comprehensive as that on health. These brief illustrations showed the wide variety of form in the provisions concerned.

She could not say that any of the proposals for a general clause before the Commission would satisfy the United Kingdom Government. The substantive clauses would first require re-consideration, in order to define exactly what

was to be undertaken by governments in each case. After such re-consideration it would be possible to visualize the kind of general clause that could be accepted covering all the substantive clauses. She could not regard the articles drafted by the Commission as embodying a consistent programme, and would, therefore, abstain from voting on all three proposals for a general clause.

Mr. WHITLAW (Australia) said he had not intervened earlier because he had not lost all hope that a compromise text might yet be evolved. None of the proposals before the Commission would entirely satisfy his Government, for the same reasons as those given by the United Kingdom representative. Nevertheless, he would be prepared to accept the first three paragraphs of the French proposal, although he would have preferred a more concise formulation of those points, which he agreed needed to be stated. He would also have favoured the United States operative clause (E/CN.4/610/Add.1), but in its present form it could not, without amendment, be appended to the preamble of the French proposal. He understood that an amendment to resolve that difficulty was to be put forward. If such a fusion of the French and United States proposals could be brought about, he would be able to support it.

Mr. VALENZUELA (Chile) said that the decision taken by the Commission at the 222nd meeting concerning the final date for submitting proposals relating to the general clause¹⁾ appeared to preclude the submission of texts other than those in the hands of the Commission. None of those drafts was completely satisfactory; moreover, there seemed to be a feeling in favour of evolving a compromise proposal.

He therefore proposed that the Commission should reconsider its previous decision, and grant a period of 24 hours for the submission of new proposals or amendments.

¹⁾ See Summary Record of the 222nd meeting (E/CN.4/SR.222), page 15.

The CHAIRMAN observed that it would be most regrettable if, in the event of the Chilean representative's motion being adopted, representatives were still unable to agree on a compromise text by the following morning.

Mrs. ROOSEVELT (United States of America) observed that a joint French/United States text had already been handed to the Secretariat.

Mr. JEVREMOVIC (Yugoslavia) supported the Chilean proposal. He would be prepared to collaborate with the representatives of Chile and Uruguay in an attempt to draft a compromise text.

The CHAIRMAN put to the vote the Chilean proposal that the Commission should reconsider the decision taken at the 222nd meeting.

The Chilean proposal was adopted by 10 votes to none with 8 abstentions

Mr. CIASULLO (Uruguay) proposed that members of the Commission should be allowed until Wednesday, 9 May, to submit proposals relating to the general clause which was to serve as a preamble to the articles dealing with economic, social and cultural rights.

The CHAIRMAN said he hoped that it would be implicitly understood that no representative would ask for the prescribed 24 hours' delay on the decision regarding the new proposal.

He then put to the vote the Chilean proposal that a dead-line of 9 a.m. on Wednesday, 9 May, be fixed for the submission of new proposals relating to a general clause concerning economic, social and cultural rights.

The Chilean proposal was adopted by 13 votes to none with 5 abstentions

The meeting rose at 6 p.m.