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COMMISSION ON HUMAN RIGHTS

Eighth Session

SUMMARY RECORD OF THE TWO HUNDRED AND SEVENTY-SECOND MEETING

Held at Headquarters, New York,
on Tuesday, 29 April 1952, at 10.30 a.m.

CONTENTS:

Draft international covenants on human rights and measures of implementation (E/1992; E/CN.4/C54, E/CN.4/654/Add.1 to 6, E/CN.4/655, E/CN.4/655/Add.1 to 4, E/CN.4/650, E/CN.4/660, E/CN.4/661; E/CN.4/HCO.35; E/CN.4/L.45, E/CN.4/L.46, E/CN.4/L.47, E/CN.4/L.48, E/CN.4/L.49, E/CN.4/L.50, E/CN.4/L.51, E/CN.4/L.52, E/CN.4/L.53, E/CN.4/L.53/Corr.1, E/CN.4/L.54/Rev.2, E/CN.4/L.56, E/CN.4/L.57, E/CN.4/L.58, E/CN.4/L.59, E/CN.4/L.60, E/CN.4/L.61, E/CN.4/L.62, E/CN.4/L.63, E/CN.4/L.64, E/CN.4/L.65/Rev.1, E/CN.4/L.66, E/CN.4/L.67, E/CN.4/L.68, E/CN.4/L.70, E/CN.4/L.71, E/CN.4/L.72, E/CN.4/L.73) (continued)

Chairmen: Mr. MALIK (Lebanon)

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<u>Rapporteurs:</u>	Mr. WHITLAM	Australia
<u>Members:</u>	Mr. NISOT	Belgium
	Mr. SANTA CRUZ	Chile
	Mr. CHENG FAONAN	China
	AZMI Bey	Egypt
	Mr. CASSIDY	France
	Mr. KYRZU	Greece
	Mrs. MEHTA	India
	Mr. AZKOUL	Lebanon
	Mr. WAHEED	Pakistan
	Mr. BORATYNSKI	Poland
	Mrs. ROSSEL	Sweden
	Mr. KOVALENKO	Ukrainian Soviet Socialist Republic
	Mr. MOROZOV	Union of Soviet Socialist Republics
	Mr. EOARE	United Kingdom of Great Britain and Northern Ireland
	Mrs. ROOSEVELT	United States of America
	Mr. BRACCO	Uruguay
	Mr. JEVREMOVIC	Yugoslavia
<u>Also present:</u>	Miss MAÑAS	Commission on the Status of Women
<u>Representatives of specialized agencies:</u>		
	Mr. MORELLET)	International Labour Organisation
	Mr. PICKFORD)	(ILO)
	Mr. STUJ	World Health Organization (WHO)
	Mr. ARGALDO	United Nations Educational, Scientific and Cultural Organization (UNESCO)
<u>Representatives of non-governmental organizations:</u>		
<u>Category A:</u>		
	Mr. LEARY)	International Confederation of
	Miss SENDERN)	Free Trade Unions (ICFTU)
	Mr. THORMANN	International Federation of
		European Trade Unions (IFETU)
	Miss KAHN	World Federation of Trade Unions (WFTU)

/Category B

Category B and Registers:

Mr. NOLDE	Commission of the Churches on International Affairs
Mr. MOSKOWITZ	Consultative Council of Jewish Organizations
Mrs. PARSONS	{ International Council of Women Liaison Committee of Women's International Organizations
Mrs. SOUDAN	International Federation of Business and Professional Women
Mrs. GARTLAN	International Union of Catholic Women's Leagues
Mr. JACOBY	World Jewish Congress
Mrs. POLSTEIN } Mrs. FARBER }	World Union for Progressive Judaism
Mr. PENCE	World Alliance of Young Men's Christian Associations
<u>Secretariat:</u> Mr. HUMPHREY	Director, Division of Human Rights
Mr. DAS } Miss KITCHEN }	Secretaries of the Commission

DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS AND MEASURES OF IMPLEMENTATION:
(E/1992; E/CN.4/54, E/CN.4/654/Add.1 to 6, E/CN.4/655, E/CN.4/655/Add.1 to 4,
E/CN.4/650, E/CN.4/660, E/CN.4/661; E/CN.4/NGO.35; E/CN.4/L.45, E/CN.4/L.46,
E/CN.4/L.47, E/CN.4/L.48, E/CN.4/L.49, E/CN.4/L.50, E/CN.4/L.51, E/CN.4/L.52,
E/CN.4/L.53, E/CN.4/L.53/Corr.1, E/CN.4/L.54/Rev.2, E/CN.4/L.56, E/CN.4/L.57,
E/CN.4/L.58, E/CN.4/L.59, E/CN.4/L.60, E/CN.4/L.61, E/CN.4/L.62, E/CN.4/L.63,
E/CN.4/L.64, E/CN.4/L.65/Rev.1, E/CN.4/L.66, E/CN.4/L.67, E/CN.4/L.68,
E/CN.4/L.70, E/CN.4/L.71, E/CN.4/L.72, E/CN.4/L.73) (continued)

The CHAIRMAN stated that the United States Delegation had presented a revised version of its draft amendment (E/CN.4/L.54/Rev.2), which would be circulated as soon as possible.

/Mrs. ROOSEVELT

Mrs. ROOSEVELT (United States of America) read out the revised draft amendment.

AZMI Bey (Egypt) said that in the presence of the revised draft he would withdraw the Egyptian amendment (E/CN.4/L.56).

Mr. CASSIN (France) also withdrew his delegation's amendment (E/CN.4/L.70) which contained only drafting changes.

Mr. WHITLAM (Australia) wished to explain his delegation's position on the covenant on economic, social and cultural rights in general, as well as on its first article, and to make a few remarks on proposals relating to that article.

The Commission had to abide by the General Assembly's decision and consequently to draw up two separate covenants, containing as many similar provisions as possible. His delegation felt that the articles drawn up at the Commission's preceding session were satisfactory on the whole, provided a few drafting changes, which it would propose in due course, were made in their texts. Certain general problems arose, particularly with regard to the implementation of the rights enunciated. The article proposed by the United States constituted a general provision, whereas the Chilean amendment (E/CN.4/L.71) called for writing in special clauses for each right. The two methods were not mutually exclusive and could be combined. For his part, he was in favour of a general clause which would facilitate the interpretation of the entire covenant, on the understanding that it would not preclude the insertion of specific clauses where necessary.

The word "progressively", which had already been discussed at length, was particularly important in the context of the article under consideration, since it clearly indicated that there should be constant progress in the implementation of the rights enunciated in the covenant on economic, social and cultural rights. His delegation would support the new text submitted by the United States, with which it was fully satisfied. It particularly welcomed the clause prohibiting all discrimination; on the other hand, it would be unable to support the Chilean amendment (E/CN.4/L.71) or the Polish amendment (E/CN.4/L.65/Rev.1) which attempted to apply to the covenant on social, economic and cultural rights an article drafted for the other covenant.

/Mr. KYROU

Mr. KYROU (Greece) said that while his delegation was satisfied with the revised United States draft, the submission of that new text would require changes to be made in the amendments. In his view, the second Chilean amendment (E/CN.4/L.72), as well as point 4 of the first Chilean amendment (E/CN.4/L.71) now served no purpose; while the Polish amendment (E/CN.4/L.(5)/Rev. 1) would have to be redrafted.

Mr. BORATYNSKI (Poland) explained that his amendment now proposed the deletion of the word "available" and of the words "achieving progressively" and the substitution of points 2, 3 and 4 of his amendment for the final provisions of the article proposed by the United States.

Mr. NISOT (Belgium) wished to know whether the proposed United States text meant that article 20 and the succeeding articles would apply to aliens as well as to nationals.

Mrs. ROOSEVELT (United States of America) thought that aliens, subject to reasonable limitations and classifications, living and working in a country should receive the same treatment as nationals, at least with respect to most rights. Tourists and transients would not, of course, be entitled to the benefits of the rights in question.

Mr. NISOT (Belgium) said that the United States text in its present form did not appear to admit of even such exceptions.

Mr. SANTA CRUZ (Chile) thought the provision perfectly clear. It contained the phrase "without distinction of any kind, such as...national...origin". Any alien who lived and was permitted to work in a country should enjoy all the benefits of the covenant. That would not preclude some exceptions, for example, with regard to tourists, but it was unnecessary to go into such details in the text.

Mr. KYROU (Greece) thought that the words "without distinction...such as...national...origin" were intended to mean that no distinction should be made between the nationals of the same country, whatever their origin. The provision
/consequently

consequently did not apply to aliens. The best way of satisfying the Belgian representative would be to draft a general article stating that the rights recognized in the covenant were granted to the nationals of each country, as well as to aliens complying with certain conditions.

The CHAIRMAN thought that the desired result would be obtained if the United States text said that States undertook to ensure the full realization of the rights recognized in the covenant to all individuals within their territory. It should be noted that the passage beginning with the words "without distinction of any kind" had been taken from the Universal Declaration of Human Rights and had become an established formula.

AZILI Bey (Egypt) pointed out that article 32 should solve the difficulties raised.

Mr. KYROU (Greece) agreed with the Egyptian representative that the Commission would have to consider the point raised by the Belgian representative when it studied the clauses limiting the rights recognized in the covenant.

Mr. KOVALENKO (Ukrainian Soviet Socialist Republic) stated that his delegation was unable to accept the new text presented by the United States. It contained changes of form only and the United States delegation maintained its position: while ready to recognize certain principles, it refused to take concrete measures for their application.

A comparison of the United States text with article 1 of the draft covenant reproduced by the Polish representative showed that there was a basic difference between the two. Only the Polish text imposed definite obligations and provided for the adoption of concrete measures. The United States delegation was once again trying to draw a distinction between economic and social rights on the one hand and civil and political rights on the other. That delegation, together with some others, was repeating the attempt made at the preceding session to prevent the provisions of article 1 from applying to economic and social rights.

/His delegation

His delegation was very interested in the Chilean amendment (E/CN.4/L.71), and he wished to know what changes the Chilean representative would make in that amendment in order to take into account the revised version of the United States proposal.

Mr. WAHED (Pakistan) had previously stated his position on the covenant on economic, social and cultural rights and had stressed the fact that the rights enunciated must be guaranteed to all individuals without discrimination, in accordance with article 1 of the draft covenant. He therefore welcomed the Polish amendment (E/CN.4/L.65/Rev.1) and the non-discrimination clause which had been introduced into the United States proposal.

The Commission had been requested by the General Assembly to insert as many similar provisions as possible in the two covenants. Article 1 of the draft covenant which was reproduced in the Polish amendment seemed to be equally applicable to both covenants. The delegation of Pakistan would therefore vote in favour of the second part of the Polish amendment.

Economic and social rights could be implemented only progressively, particularly in the case of under-developed countries. Those States which were most anxious to eliminate economic instability, among them Pakistan, were not necessarily in a position to ensure the rights contemplated in the covenant to their people immediately. He would support the United States proposal (E/CN.4/L.54/Rev.2) which took that point into consideration and placed highly industrialized and less developed countries on an equal footing.

Mr. MORCZOV (Union of Soviet Socialist Republics) considered that the revised text of the United States amendment (E/CN.4/L.54/Rev.2) was even more unsatisfactory than the original text. Neither of them laid down any specific obligations by which States undertook to guarantee enjoyment of the rights enunciated in the covenant. The first version had included among the steps to be taken by each State private action as well as legislative or other means, whereas the revised text referred only to "legislative or other means".

It was his impression that the representative of Belgium had suggested that the United States should replace the word "and" in the original text by the word "or". The United States had eagerly accepted that suggestion so that according to the revised amendment States were no longer even required to take

/legislative

legislative measures. They could choose between such measures and other means. An "other means" was undefined, a State could use the pretext of vague propaganda in favour of the rights enunciated in the covenant to avoid taking legislative measures. He added that it was not sufficient for a State to enact laws; it must provide for concrete obligations effectively guaranteeing implementation of the right recognized in the covenant.

Mr. NISOT (Belgium) said that he had not mentioned the passage in the United States text to which the USSR representative referred in connexion with the words "and" and "or" with regard to the Egyptian representative's observation, he was not sure that in its present form article 32 allowed of exceptions, particularly to the prejudice of non-nationals. The article should be clarified, so as to allow for legitimate exceptions.

Mrs. ROOSEVELT (United States of America) said that, in order to take into account the position of different States, her delegation had agreed to replace the formula "with due regard to its available resources" which had appeared in the original text of the United States amendment by the words "to the maximum of its available resources". Her delegation had also deleted the expression "private action" because it considered that the resources covered by that expression were included in the "other means" referred to in the revised text of the United States amendment. It was important to retain the word "progressively" because it marked the only way in which States could achieve economic, social and cultural rights, taking into consideration all the factors which might prevent them from acting as rapidly as they might wish.

Mr. SANTA CRUZ (Chile) referred to the questions raised by the representative of Belgium in connexion with the non-discrimination clause in the draft article submitted by the United States; he agreed with the United States and Egyptian delegations that it was unnecessary to provide for exceptional cases in the covenant itself.

He stated for the benefit of the representative of the Ukrainian SSR that, in view of the revised United States amendment, one of the Chilean amendments (E/CH.4/L.72) was no longer necessary, and the same was true of the fourth point of the other Chilean amendment (E/CH.4/L.11), the first three

/points

points of which remained applicable. He explained that there was no reason to contemplate different provisions for political and civil rights and for economic, social and cultural rights and that he had consequently requested the deletion of the word "progressively" in the draft article submitted by the United States. Even if the Commission adopted that first article, the rights concerned must necessarily be interpreted so as to take into account the economic resources of States parties to the covenant. It was therefore unnecessary to refer to the maximum resources available to States. The limitation of the expressions "progressively" and "maximum of its available resources" would cancel the rights enunciated in the covenant and nullify the obligations of States.

The clause "Without prejudice to such specific obligations ..." which Chile proposed for addition at the beginning of the United States text was designed to reserve the possibility of specifying the particular obligations for each right at a later date.

Mr. CASSIN (France) referring to Mr. Morozov's criticisms thought there was no fundamental divergence between the USSR and the United States delegations. The United States delegation had clearly stated that, in addition to the legislative measures which States were required to take, they should use the most appropriate means to ensure the enjoyment of the rights enunciated in the covenant. Moreover the United States delegation might perhaps agree to use an expression such as "both by legislative and other means" or "by legislative as well as other means".

He noted that difficulties regarding the first article of the covenant on economic, social and cultural rights had already existed at the time of the drafting of article 22 of the Universal Declaration of Human Rights which specified that the organization and resources of each country must be given consideration. There had been all the more reason therefore to take those factors into account in the drafting the first article of the covenant which referred only to political and civil rights and provided for a reasonable period of time for implementation of the undertakings assumed by States, in accordance with their constitutional processes.

/It was

It was impossible to reconcile the Polish draft amendment (E/CN.4/L.65/Rev.1) and the first article proposed by the United States (E/CN.4/L.54/Rev.2) as the Polish text provided for fulfilment of the obligations of States "within a reasonable time" while the United States text provided that those undertakings would be carried out "progressively". A choice must be made between the two methods. In the matter of economic, social and cultural rights, the French delegation favoured a long-term policy with progressive achievement of the rights concerned. It was therefore in favour of the United States amendment. Absolute guarantees could be required subsequently not on the basis of the covenant itself but on the basis of precise conventions concluded by States.

Mr. MARCZOV (Union of Soviet Socialist Republics) stated in reply to the representative of France that the revised United States text (E/CN.4/L.54/Rev.2), which he could judge only on the basis of the Russian translation, was ambiguous and made no reference to the obligations contemplated in the original text (E/CN.4/L.54). The Commission could not be content to proclaim the principle of the obligation of States to ensure implementation of the rights enunciated in the covenant. While the legislative measures taken by States were an essential condition of implementation, they were not in themselves adequate. In any case, even if the United States delegation agreed to restore the word "and" in place of "or", its revised text would still be weak and would not meet the basic objections of the Soviet Union.

Mr. AZKOU (Lebanon) said that the criticisms levelled at the United States text by the USSR representative also applied to the Polish amendment (E/CN.4/L.65/Rev.1) which referred to "legislative or other means".

Commenting on the Lebanese amendment (E/CN.4/L.75), he emphasized that delegations held two divergent opinions on the nature of the obligations to be imposed on States parties to the covenant. Some of them wished the material resources of the various States and other concrete factors to be borne in mind when obligations were defined, and therefore asked that the obligations laid down should be carried out progressively. That tendency was reflected in the United States amendment. Other delegations, however, wished the covenant to impose obligations to be carried out within a definite time limit. The Polish amendment expressed that point of view (E/CN.4/L.65/Rev.1).

/The Commission

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The Commission had not yet discussed the question whether the principle of non-discrimination should be applied immediately or progressively. The article suggested by the United States delegation (E/CN.4/L.54/Rev.2) established a link between that principle and the obligation to achieve progressively the full exercise of the rights recognized in the covenant, while paragraph 4 of the Polish amendment (E/CN.4/L.65/Rev.1) called for a full and immediate undertaking. He thought that a middle course should be followed and for that reason his delegation had submitted a draft amendment (E/CN.4/L.73) to replace the final phrase of the United States proposal (E/CN.4/L.54/Rev.2) beginning with the words "without distinction of any kind". The purpose of that amendment was, on the one hand, to ensure the progressive realization of rights and, on the other hand, the immediate compulsory implementation of the principle of non-discrimination, regardless of the degree of realization of those rights.

The CHAIRMAN drew the Commission's attention to the fact that on page 53 of the report on the work of its fourth session E/CN.4/CR.1, Annex II, Recommendations III and IV) the Sub-Commission on Prevention of Discrimination and Protection of Minorities recommended the Commission to insert the word "legitimacy" after the word "birth" in the list in paragraph 1 of article 1 of the draft covenant. The Sub-Commission also recommended that a general provision forbidding discrimination in regard to economic, social and cultural rights should precede the formulation of such rights. He wished to hear the opinion of members of the Commission on those points.

Mr. SANTA CRUZ (Chile) agreed with the representative of Lebanon that the USSR representative had been unjust in criticizing the expression "legislative or other means" in the United States proposal (E/CN.4/L.54/Rev.2) as the expression also appeared in paragraph 2 of article 1 of the draft covenant. The differences between various States should moreover be borne in mind. His delegation supported the Lebanese draft amendment (E/CN.4/L.73), the reasons for which he fully approved.

Mrs. ROCHEVELT (United States of America) said that her delegation had no objection to taking up the original text of the proposal (E/CN.4/L.54), but, as the Commission had to draft a covenant and not a declaration, or

effort

effort should be made to obtain the greatest possible number of ratifications, and that consideration influenced the drafting of proposals.

As regards the Lebanese amendment (E/CN.4/L.73), her delegation preferred its own text (E/CN.4/L.54/Rev.2) which endeavoured to provide for all reasons for discrimination. She thought it would be impossible for all rights, including economic and social rights, to be recognized immediately, especially when public opinion was not ready to agree to their being enforced. Thus, in the United States of America the principle of "equal pay for equal work" was not fully recognized as far as women were concerned, although technically there was nothing to prevent its application being decreed by law. It should be fully recognized that laws, even good ones, were not always welcomed and progress was not achieved by laws alone. It might sometimes be desirable that a law should come into effect before it was accepted by public opinion, but in the case of a treaty the only valid guarantees were those which States could observe.

Referring to the recommendation on page 53 of the report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities (E/CN.4/641) she recalled that the Sub-Commission had adopted the word "birth" after a lengthy discussion as the result of a difficulty in the Russian translation of the term, and there was no reason to interpret it as meaning anything other than the exclusion of all discrimination on account of illegitimacy.

The CHAIRMAN supported the United States representative's remark and said that the insertion of the word "legitimacy" would weaken the general character of the list of reasons for non-discrimination and might raise questions of interpretation as regards the Universal Declaration, which did not include the word.

Mr. BONE (United Kingdom) agreed with other representatives that the Polish draft amendment (E/CN.4/L.65/Rev.1) and the United States proposal (E/CN.4/L.54/Rev.2) were quite incompatible. At the Commission's sixth session his delegation had opposed, as it would continue to oppose, paragraph 2 of article 1 of the draft covenant, because the expression "within a reasonable time" seemed to it to give an unjustifiable latitude in respect of the obligations which paragraph 1 of the article imposed. Paragraph 2 of the article had, however, never been intended as anything in the nature of a

/provision

Provision for progressive implementation: it had been inserted to meet certain constitutional difficulties said to exist in some States, and the words "within a reasonable time" had been included in a restrictive sense, and not to give greater latitude. The United States text represented a quite different approach based on the necessity, in dealing with economic, social and cultural rights, of taking account of the particular economic, social and cultural position of each State and in consequence the necessity of progressive implementation. The addition to the United States text of the terms of article 1 would lead to inextricable confusion as the French representative had stated and would throw doubt upon the interpretation of article 1 in relation to the civil and political rights. He hoped that the Pakistan representative who had expressed support of paragraph 3 of the Polish amendment (E/CN.4/L.65/Rev.1) would recognize those dangers.

As regards the substitution of the words "the adoption of legislative and other measures" (E/CN.4/L.54) by the words "by legislative or other means" which appeared in the last revised text of that proposal (E/CN.4/L.54/Rev.2), he pointed out that the second phrase did not exclude the first and that the word "or" should be taken as having the English legal meaning of "and/or". The United Kingdom delegation therefore supported the revised United States proposal.

As regards the Chilean amendment (E/CN.4/L.1), he thought that it would be wrong to delete the words "to the maximum of its resources available for this purpose" which imposed an obligation on a State and took into account the inequality of the resources of various States. On the other hand, he thought that the first Chilean amendment, to add at the beginning the words "without prejudice", prejudged the question whether specific obligations would in fact be attached to particular articles. If such obligations were attached the question of an appropriate reference to them in article 6 would of course arise, but that was a mere matter of drafting which could be dealt with at a later stage.

He saw no need to insert the word "legitimacy" as recommended by the Sub-Commission on Prevention of Discrimination and Protection of Minorities in its report, as he considered that that term was implied by the word "birth" (E/CN.4/641).

/The CHAIRMAN

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The CHAIRMAN, referring to the United Kingdom representative's last remark, considered that the phrase "or any other status" in the last line of the United States proposal (E/CH.4/L.54/Rev.2) also included "legitimacy".

The meeting rose at 1.10 p.m.

14/3 p.m.