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COMMISSION ON HUMAN RIGHTS

Eighth Session

SUMMARY RECORD OF THE TWO HUNDRED AND EIGHTY-SIXTH MEETING

Held at Headquarters, New York,
on Thursday, 8 May 1992, at 2.50 p.m.

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<u>Chairman:</u>	Mr. MALIQ	Lebanon
<u>Reporteur:</u>	Mr. WILLYAM	Australia
<u>Members:</u>	Mr. NISOT	Belgium
	Mr. SANTA CRUZ	Chile
	Mr. VILSIZUELA	Chile
	Mr. CHENG H. CHANG	China
	AMHI Bey	Egypt
	Mr. JUVIGNY	France

Members (continued):

Mr. KURCU Mr. KAPSAKHELIS	Greece
Mrs. MENCA	India
Mr. AZKOU	Lebanon
Mr. WAKED	Pakistan
Mr. BRATYNSKI	Poland
Mrs. RUSSEL	Sweden
Mr. KOVALENKO	Ukrainian Soviet Socialist Republic
Mr. MROSOV	Union of Soviet Socialist Republics
Mr. HOANE	United Kingdom of Great Britain and Northern Ireland
Mrs. POOTVPLT	United States of America
Mr. BRACCO	Uruguay
Mr. JEVREMIJC	Yugoslavia

Representatives of specialized agencies:

Mr. MORILLAT	International Labour Organization (ILO)
Mr. GARA	United Nations Educational, Scientific and Cultural Organization (UNESCO)

Representatives of non-governmental organizations:

Category A:

Mr. LEVY) Miss SLEIN)	International Confederation of Free Trade Unions (ICTU)
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Category B and Register:

Mr. LEVIN	Aguda Israel World Organization
Mrs. JAPETS	International Council of Women
Mrs. SOUDAN	International Federation of Business and Professional Women
Mrs. ROSE	International Federation of University Women
Miss SCHAEFER	International Union of Catholic Woman's Leagues
Mr. HEPLEWIS	World Jewish Congress
Mr. RCHALIC	World Union for Progressive Judaism
Mr. FENCE	World's Alliance of Young Men's Christian Associations

/Secretariat:

Secretariat: Mr. HUMPHREY
Mr. DAS

Director, Division of Human Rights
Secretary of the Commission

DRAFT INTERNATIONAL COVENANTS ON HUMAN RIGHTS AND MEASURES OF IMPLEMENTATION
(E/1992, E/CH.4/69/ADD.4, E/CH.4/L.52, E/CH.4/L.51/Corr.1, E/CH.4/L.51,
E/CH.4/L.61/Rev.1, E/CH.4/L.80, E/CH.4/L.80/Rev.1, E/CH.4/L.85, E/CH.4/L.95,
E/CH.4/L.96) (continued)

Mr. JEVRENOVIC (Yugoslavia) congratulated the UNESCO representative on his statement at the 265th meeting and supported his view that the existing text of article 28 of the draft covenant should be maintained. A praiseworthy effort had been made in the amendments of the United States (E/CH.4/L.80) and of the United Kingdom (E/CH.4/L.85) to draft a shorter text, but they eliminated important elements which were in the existing text, in particular, the clause on non-discrimination and the reference to the principles of the United Nations. The United Kingdom amendment omitted the clause on incitement to racial hatred, which must be included in article 28 for historical reasons. He would support paragraph 9 of the Belgian amendment (E/CH.4/L.95) because it was a notable improvement on the original text of the kind that the General Assembly had instructed the Commission to make. He reserved his delegation's position with regard to the other amendments submitted.

Miss SENDER (International Confederation of Free Trade Unions) reminded the Commission of the fight waged by the trade unions against illiteracy and stated that education at all stages should be available to everyone. The problem should be approached in a realistic manner, however, and it should be made certain that no large group of society would be deprived of the benefits of education. She did not think that the texts before the Commission made adequate provision for the training of young people who had to leave school upon the completion of their primary education. It was the duty of society to give them vocational training; and the present draft of
/article 28,

article 26, paragraph 4, did not entirely meet that need. At present many young people were unable to avail themselves of such training and yet, under modern economic conditions, it was important that they should acquire knowledge which would enable them to contribute to general economic progress. It was, for example, most desirable that advanced agricultural methods should be generally applied, thus aiding in the struggle against the world shortage of food. She therefore suggested that the following paragraph should be inserted in article 26: "For those who enter vocational life after the termination of primary education, compulsory and free vocational training shall be made available until their training for the required vocational skill will be completed."

Mrs. MEHTA (India) feared that some delegations' efforts to shorten article 26 might eliminate important provisions from it. Thus, the United States amendment (E/CN.4/L.80) omitted paragraph 7 of the original text, the purpose of which was to ensure good relations among individuals and to civilize mankind. Paragraph 1 of that amendment weakened the obligation of States, and she therefore proposed that the words "designed to" should be replaced by the word "shall", which should introduce each of the subsequent phrases. The provision on secondary education in paragraph 2 should be more detailed, as the UNESCO representative had suggested.

With reference to the United Kingdom amendment (E/CN.4/L.85) she would prefer, in paragraph 1, the word "education" to the words "educational facilities". She approved of paragraph 2 but thought that ancillary services should be free.

She also approved of the Australian amendment (E/CN.4/L.89) and of paragraph 6 of the Belgian amendment (E/CN.4/L.95), but thought that in paragraph 9 the word "religious" was sufficient, as it was about religious teaching in schools that parents were concerned. In the Uruguayan amendment (E/CN.4/L.61) the word "artistic" and the reference to physical education seemed unnecessary as artistic education would be a part of professional education, while physical education would be included in primary, secondary or higher education. The Commission was concerned not so much with the subjects of education as with its stages, primary, secondary and higher. Article 30 would be a better place for the question of the establishment of public libraries.

She thought that paragraph 1 of the USSR amendment (E/CN.4/L.51) was unnecessary, while with regard to paragraph 2, the implementation of the right recognized should be left to each country.

/Mr. MICHOLSON

Mr. MORGEOV (Union of Soviet Socialist Republics) said that, in order to meet the Chilean and UNESCO representatives' remarks on the United States amendment (E/CN.4/L.51) he wished to insert the words "in particular" after the words "this right" in point 1 and in point 2. He expressed that the United States amendment imposed on the State the obligation of setting up a school system without, however, prescribing any definite type of school, and that this text, in conformity with the General Assembly's instructions, would constitute an improvement on the present drafting of article 26.

The United States amendment (E/CN.4/L.80), on the contrary, was a step back from the old article 26, as a comparison of the two texts would readily show. The only new provisions in that amendment were the statement that "education should be a continuous process" in point 1 and the phrase "the full attainment of this right requires as a minimum" in point 2. He did not think that the United States delegation had seen fit to change the sequence of provisions in article 26 simply in order to introduce those words, but rather in order to conceal the omission of a number of provisions which it found unacceptable. Owing to that procedure, paragraph 2 of article 26 had disappeared in the United States amendment, although everyone knew how widespread discrimination was in educational matters. To those who claimed that it was unnecessary to repeat the non-discrimination clause in article 26 because it already existed in article 1, he replied that it was necessary, lest its absence should serve as an excuse for incitement to racial or other discrimination, incompatible with the Charter and opposed to human progress. Paragraph 1 of the United States amendment was inadequate because it in no way improved the old text.

He agreed with speakers who had said that paragraph 2 of point 1 of the United States amendment did not obligate the State to make primary education free and compulsory. Paragraphs 3, 4 and 5 of article 26 imposed different obligations on the State with regard to primary, secondary and higher education. By making a common provision for those three stages of education, the United States amendment eliminated the absolute obligation contained in paragraph 3. Furthermore, it omitted all reference to technical /and professional

and professional education, which was mentioned in article 28 and did not stipulate that higher education should be made progressively free and that education should further the activities of the United Nations for the maintenance of peace. He would like to know the reasons for those criticisms.

The United States amendment would be acceptable only if it were reduced to a mere proposal to insert the words "realizing that education should be a continuous process". He hoped that delegations which regarded article 28 of the draft covenant as satisfactory would agree its being changed and curtailed.

He reserved the right to comment at a later stage on the United Kingdom amendment (E/CN.4/L.17) and on the other amendments before the Commission.

Mrs. ROOSEVELT (United States of America) was sorry that the USSR representative had been unaware of the distribution of a revised text of the United States amendment (E/CN.4/L.10/Rev.1) at the very opening of his statement.

The revised United States proposal made no change in paragraph 1 of article 28. It called for the deletion of paragraph 2. In that connexion she wished to point out for the benefit of the USSR representative that her delegation had opposed the inclusion of the word "guarantee" in article 1, paragraph 2 only because it was, in its opinion, impossible for all States to implement the provision in question immediately. Her delegation had, however, voted for article 1 as a whole. Moreover it should be noted that at the time of the drafting of article 28, paragraph 2, the Commission had thought that there would be only one covenant on human rights. In view of the adoption of article 1 of the covenant on economic, social and cultural rights containing a non-discrimination clause, the repetition of that clause in some articles might give the impression that the general clause in the first article did not apply to all articles, thus diminishing its scope.

She explained the various points in the revised United States amendment. In point 4, in accordance with the Indian representative's suggestion, the United States delegation had agreed to alter the text of its amendment to read: "that education shall be a continuous process to enable everyone ...".

/The amendment

The amendment to paragraph 5 had been altered in the light of the comments made by a number of representatives. There were varied methods of making higher education available to all, either by the establishment of educational institutions or by scholarships. The choice of methods should be left entirely to the State; that was the purpose of the United States' delegation's amendment. In the United States, for example, there were both public and private institutions in the field of higher education. The State did not wish to modify that system because it recognized the tremendous value of private contributions in the field. That was also true in the case of scholarships.

Mr. MOROZOV (Union of Soviet Socialist Republics), speaking on a point of order, said that when he had presented his comments on the United States amendment (E/CN.4/L.80), the United States delegation had not yet informed the Commission of its intention to submit a revised text. He had not had time to study the new text and reserved his right to present comments at a later stage.

Mr. KYROU (Greece) agreed with the representative of UNKJCO that the Commission should accept amendments to article 26 only if they improved the text.

He agreed in principle with the United States representative on the deletion of paragraph 2; nevertheless he was reluctant to adopt a position in this matter because of the unfortunate psychological effect such a deletion might have if it gave the impression that the Commission wanted to restrict the implementation of the right to education.

He supported the first four points of the Belgian amendment (E/CN.4/L.95); amendments to paragraphs 4 and 5, in particular, rightly stressed the fact that secondary and higher education should be made available to all by being made progressively free. The amendment to paragraph 7 was interesting and he wondered whether the United States and Belgian representatives could agree to retain the new text of the United States amendment to paragraph 7. He himself would prefer to have a statement of the aims of education in paragraph 1 of article 26.

He could not support the Belgian amendment to paragraph 9. That paragraph of article 26 was intended to ensure respect for the liberty of parents in the religious education of their children. He requested a separate vote on the word "philosophical".

He was prepared to support the Australian amendment (E/CN.4/L.69). On the other hand, he agreed with the representative of UNESCO and some members of the Commission that the idea of artistic education introduced in the Uruguayan amendment (E/CN.4/L.61) was already included in the idea of technical education. Moreover, he thought that the Belgian amendment to paragraph 4 was preferable to the Uruguayan text. He would support the part of the Uruguayan amendment proposing the insertion of a new paragraph between paragraphs 5 and 6, making the same reservation as the Indian representative, namely that public libraries came within the scope of article 30 rather than article 28.

Mr. JUVICHY (France) said that in the opinion of his delegation article 28 was satisfactory as it stood as it recorded the need to proclaim the right to education, a fundamental right, with the need to outline the stages in the practical implementation of that right, without however going into excessive detail and thereby destroying the universality of the article.

Some representatives were of the opinion that article 28 was too long and too detailed by comparison with the first articles of the covenant on economic, social and cultural rights. That comment had some point but a distinction should be drawn between rights which were within the competence of well-established specialized agencies such as ILO and those within the competence of more recently established specialized agencies such as UNESCO. As article 28 was satisfactory, its precision must not be endangered by a more general wording. He understood the concern for logical construction which had led some delegations to revise the article. Unfortunately their amendments omitted some of the ideas that it contained. Nevertheless, two very important elements had been introduced in the revised United States amendment (E/CN.4/L.60/Rev.1): technical education and free higher education. Technical training was essential in a period of rapid scientific progress and was a basic requirement in the under-developed countries. Free higher education, besides enabling the gifted individual to develop his fullest potentialities, contributed to social stability and to the maintenance of an educated nucleus in a democratic society. The reference to scholarships in the United States amendment should be made clearer, since the idea could be interpreted in a number of ways.

In addition the United States amendment did not reproduce the idea embodied in article 28 that secondary education must be made generally available.

Paragraph 4 of the text adopted the previous year introduced a new idea; in effect, it called upon States to make provision for the extension of secondary education in addition to making such education free.

The United Kingdom amendment (E/CN.4/L.50) proclaimed, first and foremost, the right of everyone to access to educational facilities. While that was an important clarification, the general plan of article 26 seemed preferable. That article began by solemnly proclaiming the right of everyone to education and then presented a general outline for the implementation of that right. He fully understood why the United Kingdom delegation would prefer paragraph 7 to be omitted from the covenant. That paragraph was not couched in legal language and contained ideas the philosophical meaning of which might rouse controversy. Nevertheless, it was an essential paragraph. It embodied the minimum international and national moral principles to which all States could and should subscribe, the inculcation of which would help to produce a generation of men conscious of their duty towards mankind. It might perhaps avert any revival of an educational system which had taught the doctrine of race superiority and of might before right. In addition, the United Kingdom amendment omitted the paragraph on fundamental education, the importance of which had been stressed by the representative of U.K.C.C.

The French delegation was of the opinion that the provisions of sub-paragraph 7 taken from the Universal Declaration of Human Rights should remain unchanged. It would adhere to that principle in connexion with all the amendments. It also considered that to repeat what was already included in the provisions of article 26 was useless. Accordingly, it would not vote for the U.K. amendments (E/CN.4/L.51). The comment made in connexion with point 3 of the United States amendment (E/CN.4/L.50/Rev.1) also applied to point 3 of the U.K. amendment.

The French delegation would accept the Belgian amendment (E/CN.4/L.95) to paragraph 8, which referred to public authorities rather than to the State. Education was not the exclusive responsibility of the State; in many countries it required the co-operation of the State with other public authorities: departments, communes etc. He thought that the provision contained in the Belgian amendment to paragraph 9 lacked precision. Paragraph 9 was intended to make it possible for parents to ensure religious education for their children. The Belgian amendment might give the impression that official State education must be in conformity with the religious and philosophical convictions of parents, a state of affairs which was impossible because their convictions might be contradictory. Paragraph 9 therefore seemed preferable as it stood. Nevertheless, it might be laid down that "the State shall respect the liberty of parents to ensure the religious and philosophical education of their children in accordance with their own convictions".

Mr. WAREED (Pakistan) noted that the General Assembly had recommended that the Commission improve the articles of the draft covenant and strengthen the obligations of States in connexion with implementation of the rights set forth therein. Consequently, any amendment which ran counter to those instructions should be rejected. The delegation of Pakistan was of the opinion that it was impossible to cut down the text of article 26 to shorter formulas without sacrificing a part of the essential content of the right dealt with in the article. He would therefore oppose any amendments reducing the scope of the original text of article 26 or making the article purely declaratory. His delegation considered that the non-discrimination clause should be retained in paragraph 2.

AZMI Bey (Egypt) associated himself with those delegations which had congratulated the representative of UNESCO for his statement at the preceding meeting and noted that UNESCO's work had helped considerably in determining the text of the articles on cultural rights.

Referring to the Uruguayan amendment (I/CN.4/L.61) he expressed agreement with the representatives of Chile and UNESCO who considered that artistic education was included in technical education and that physical education was an integral part of education at all stages.

In connexion with the Australian amendment (E/CN.4/L.89), he wondered whether private schools would prefer minimum standards laid down by the State rather than approved by the State. Usually, the State laid down general standards and left complete freedom with regard to the details of the curriculum to the various institutions operating in the country, as was the case in Egypt.

In connexion with the USSR amendment (E/CN.4/L.51/Corr.1) which would require States to establish educational institutions to ensure implementation of the right to education, he wondered whether it was necessary to state that obligation explicitly when in his opinion it was implicit in the concept of compulsory and free education.

The part of the Belgian amendment (I/CN.4/L.95) relating to paragraph 9 of article 26 changed the meaning of that paragraph radically. The discretion given parents related to the religious education of their children

/rather

rather than to their general education. In addition it seemed dangerous to associate the somewhat ambiguous idea of philosophical education with religious education.

He considered that the United States and United Kingdom amendments (E/CN.4/L.80/Rev.1 and E/CN.4/L.85) represented a step backward in relation to the present text of article 26. The principle of non-discrimination set forth in paragraph 2 of the article was omitted in the United States amendment. The United Kingdom amendment was silent on the right to fundamental education set forth in paragraph 6 and provided an exception to the principle of free education laid down in paragraphs 3, 4, 5 and 8 of the present text. In the United States amendment free higher education was ensured by scholarships which restricted their benefits to needy persons.

Therefore, the Egyptian delegation preferred the present text of article 26.

Mr. AZZUL (Lebanon) commented that the statement of the representative of UNESCO at the preceding meeting had been extremely helpful in showing the scope, meaning and limits of article 26. There were no fundamental divergencies of view among delegations on the text of that article but that text would be improved if it were made more specific and if the ambiguities in the meaning and scope of the various obligations it set forth were removed. All the provisions of article 26 should be considered in the light of the general obligations set out in article 1 which applied to all the articles relating to individual rights. According to article 1, States undertook either to take action to ensure full enjoyment of those rights or to guarantee the enjoyment of those rights without discrimination of any kind. Article 26 provided that States should recognize the right to education, that education should be available to all and that education should be compulsory and free. In such a juxtaposition of obligations, guarantees and standards, it was difficult to establish a logical link or to distinguish clearly what was imposed as an obligation and what was merely the abstract recognition of a right. Consequently, the first step was to achieve a more precise drafting of the article and to alter its structure so that the obligations it contained

/would be

would be clearly defined. To that end, he was submitting an amendment (E/CN.4/L.95) to the United Kingdom amendment (E/CN.4/L.85). Part I of that sub-amendment related to the recognition of the right to education including the right to education at all levels. Part II provided for certain steps to be taken by States to achieve the realization of that right. Part III defined the immediate obligations, not subject to the limitations contained in article 1, which States must assume in the field of education.

He pointed out that his amendment should be adopted or rejected as a whole since it constituted a single unit.

The meeting rose at 5.40 p.m.