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Eighth Session

SUMMARY RECORD OF THE TWO HUNDRED AND NINETY-SECOND MEETING

Held at Headquarters, New York
on Tuesday, 13 May 1952, at 2.30 p.m.

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<u>Chairman:</u>	Mr. MALIK	(Lebanon)
<u>Reporteur:</u>	Mr. WHITLAM	Australia
<u>Members:</u>	Mr. NEGOT	Belgium
	Mr. VALLENZUELA	Chile
	Mr. CHENG FACHAN	China
	Atal Bihari	Egypt
	Mr. JUVIGNY	France
	Mr. KATSAMBELIS)	Greece
	Mr. KYROU)	

Members (continued)

Mrs. MERDA	India
Mr. AZEKUL	Lebanon
Mr. WAHED	Pakistan
Mr. BORATINSKY	Poland
Mrs. ROSS	Sweden
Mr. EDVALEND	Ukrainian Soviet Socialist Republic
Mr. MEROZOV	Union of Soviet Socialist Republics
Mr. HOARE	United Kingdom of Great Britain and Northern Ireland
Mrs. ROOSEVELT	United States of America
Mr. BRACCO	Uruguay
Mr. JEVREMOVIC	Yugoslavia

Also present: Miss MARIAS

Representatives of specialized agencies:

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

Representatives of non-governmental organizations:

CATEGORY B:

Mr. LEWIS	Agudat Israel World Organization
Mrs. MARGARA) Mrs. AIETA)	Catholic International Union for Social Service
Mrs. CARTER	International Council of Women
Mrs. SOUDAN	International Federation of Business and Professional Women
Miss ROSS	International Federation of University Women
Miss ZIZZANI	International Union of Catholic Women's Leagues
Mrs. CARTER) Miss PHILLIPS)	Litlen Committee of Women's International Organizations
Mr. REGALIS	World Union for Progressive Judaism

Secretariat:

Mr. HUGHREY	Director, Division of Human Rights
Mr. DAG) Miss KITCHEN)	Secretaries of the Commission

/DRAFT

DRAFT INTERNATIONAL COVENANTS ON HUMAN RIGHTS AND MEASURES OF IMPLEMENTATION:
PART III OF THE DRAFT COVENANT DRAWN UP BY THE COMMISSION AT ITS SEVENTH SESSION
(E/1992, E/CH.4/635/ADD.5, E/CH.4/L.52, E/CH.4/L.73, E/CH.4/L.81, E/CH.4/L.88,
E/CH.4/L.104, E/CH.4/L.105, E/CH.4/L.106, E/CH.4/L.107) (continued)

Article 29 (continued)

Mr. WAHED (Pakistan) could not support the United Kingdom amendment (E/CH.4/L.73) for the deletion of article 29, because the Executive Board of UNESCO had agreed that it should be retained and because deletion would run counter to the General Assembly's instructions that the article should be improved.

Mr. NISSE (Belgium) would support the United Kingdom amendment for the same reasons as those adduced by the United Kingdom representative.

Mr. BOARE (United Kingdom) said that no speaker so far had successfully refuted his arguments against the retention of article 29. The French representative had indeed admitted their validity, while the Egyptian representative seemed to have misunderstood his reference to the time factor in connexion with that article. He had not been referring to any difficulties peculiar to the United Kingdom, whose record with regard to its own domestic legislation in the past ten years was ample evidence of the speed at which it could move. Furthermore, the Egyptian representative's statement that there were at least seven limitations in the text of the article as it stood bore out his own argument that an article so hedged about with restrictions was neither useful nor necessary. The French representative seemed to believe that the Commission should in some sort take UNESCO, a flagging organization, under its wing; but UNESCO, though a comparatively new agency, had been doing excellent work and could continue it perfectly well without the support of such an article in the covenant. The representative of Lebanon had been on firmer ground in contending that the right to education was more limited than the other rights, in that the right to free and compulsory primary education, already stressed in article 26, was more particularized than, for instance, the general right to work. That point,
/however,

however, reinforced the argument that article 29, which constituted an even further particularization of what was already particularized, dealt with an aspect which should more properly be handled by the specialized agencies. He appreciated the Indian representative's remarks, which showed that, as ever, she was open to conviction by argument.

Mr. MOROZOV (Union of Soviet Socialist Republics) said that the Commission should bear in mind the changes that had occurred since the article had first been drafted, particularly the way in which the scope of article 29 had been modified by the adoption of paragraph 1 of the new article 1 (E/CN.4/666). That fact made the United Kingdom representative's arguments somewhat inconsistent. The gist of that representative's contention was that he did not want any obligation with regard to the provision about primary education in article 29; even the two years for working out the plan seemed too short to him. Although the United Kingdom had responsibilities for colonies in which the situation was bad, as United Nations documents showed, its representative could not accept even an article so hedged about with limitations. Those who supported the retention of article 29 should be fully aware of the limitations in it. Some might well be retained, but others were unnecessary. A separate vote might be taken on the word "progressive", as the word "progressively" already appeared in paragraph 1 of article 1, the general clause governing article 29. The idea was in any case covered by the phrase "within a reasonable number of years". The USSR delegation had already said that it would attempt to strengthen article 1, paragraph 1; it would be unwise to retain such limitations in other articles.

It was somewhat disturbing to find the United Kingdom delegation, which had voted for the article at the previous session, now opposing it. The debate had shown the need for further reflection before the Commission reached a definite and thoroughly considered decision. He therefore proposed that the voting -- but not the debate -- should be adjourned until Thursday, 15 May 1952.

The CHAIRMAN observed that that was a perfectly proper proposal under rule 45 of the rules of procedure. He asked the Commission to vote on

/the proposal

the proposal that the vote on article 29 should be deferred until the beginning of the meeting in the afternoon of Thursday, 15 May 1952.

That proposal was adopted by 8 votes to none, with 10 abstentions.

Article 30

Mr. MOPKOV (Union of Soviet Socialist Republics), introducing his amendment (E/CN.4/L.52), said that the original text was in general acceptable but required something further. The USSR amendment was self-explanatory, especially as the Commission had already adopted somewhat similar principles in connexion with the right to education. Many delegations felt that all action taken by the United Nations should be governed by the principle of the maintenance of peace and co-operation between peoples. The need for the statement of that principle in connexion with the right to science and culture was at least as great as it had been in connexion with the right to education, as education was only one component of culture, a prerequisite for its enjoyment. Although he could cite ample factual evidence that such an article was required, he would refrain from doing so, unless objections to the article as it stood or to his amendment made it essential.

Mrs. ROOSEVELT (United States of America), introducing her amendment (E/CN.4/L.81), said that her delegation, complying with the General Assembly's instructions, had attempted to improve the original text and make it clearer. The United States text conformed in style with that of the other articles. UNESCO's Committee on Human Rights had agreed that the wording suggested was an improvement because it embodied an explicit recognition of the right to culture, whereas the original text merely spoke of ensuring conditions conducive to the development of cultural life (E/CN.4/655/AAA.4, para 7). Emphasis had been laid upon the freedom necessary for scientific research and creation because the original text called merely for the right to enjoy the benefits of scientific progress, or, in other words, simply the right to enjoy the results of scientific research, whereas what was really required was to ensure conditions in which such research could be freely conducted. She was opposed to the USSR amendment (E/CN.4/L.52), because it was yet one more attempt to impose obligations on States, whereas the place for the statement of such obligations was article 1. Furthermore, it limited the

/freedom

freedom of the scientific researcher or artist, because it would ensure the development of science and culture of only one particular kind. Under its terms, pure science could be prohibited unless the State thought it conducive to progress. A covenant designed to safeguard the rights of individuals should not place limitations on individuals. The USSR delegation had sought to define education in article 23; there was no need to repeat such a restrictive definition in article 30.

Mr. JUVIENY (France) said that his delegation had submitted at the previous session an amendment identical with that he was now proposing (E/CN.4/L.75) and had then fully explained it. Art, literature and science were the most tangible expressions of the full development of the human personality, which had, in article 27, been laid down as the main goal of education. The draft covenant included provisions for the protection of the property and emoluments of professional workers and should therefore be completed by a provision for the protection of the moral and material interests resulting from scientific, literary or artistic production. Admittedly, the matter required complex legal implementation both nationally and internationally, and that was complicated still further by the fact that personal creation eventually became the property of the community. Such difficulties should not, however, act as a deterrent to the inclusion of such a right in the draft covenant. There were conventions covering certain aspects of the matter, but complete protection had not so far been found possible. It was not a matter only of material rights; the scientist and artist had a moral right to the protection of his work, for example against plagiarism, theft, mutilation and unwarranted use. He had submitted his amendment (E/CN.4/L.174), couched in the same terms, to the United States amendment in case that text was adopted as a substitution for the original text.

Mr. VALENZUELA (Chile) said that his delegation in the main preferred the original text of article 30.

/The United States

The United States amendment (E/CN.4/L.81) was an improvement on that text in so far as form went; he agreed that all the articles in the covenant should begin by recognizing a right. He failed to see, however, why sub-paragraph (b) of that amendment -- recognizing the right to enjoy freedom necessary for scientific research and creation, an idea which he supported -- was submitted not as an addition to article 30 but as a replacement for the old sub-paragraph (b), which recognized the right of all individuals to enjoy the benefits of scientific progress and its applications, and which should certainly be maintained. In many countries, people were prevented from enjoying the benefits of scientific discoveries and inventions because the latter were suppressed by powerful economic or political interests which were unwilling to make the capital investment required; it was necessary to ensure that such benefits were made available to all, without obstruction. He therefore urged the United States delegation to retain that clause and, incidentally, to delete the word "necessary" in its own sub-paragraph (b), which in the present context might have a restrictive meaning.

His delegation had explained its position with regard to the French amendment (E/CN.4/L.75) at the previous session. He fully sympathized with the praiseworthy intentions of the French delegation and agreed that intellectual production should be protected; but there was also need to protect the underdeveloped countries, which had greatly suffered in the past from their inability to compete in scientific research and to take out their own patents. As a result, they were in thrall to the technical knowledge held exclusively by a few monopolies. As the French amendment would perpetuate that situation, he would have to vote against it. In general, the subject was so complex that it were better dealt with in a separate convention than in a single article of the covenant on human rights.

The first part of the USSR amendment (E/CN.4/L.52) was unacceptable. It was hardly necessary to say that the development of science and education should be in the interests of progress, since such development constituted progress; while saying that it should be in the interests of democracy would seem to indicate that only democratic countries would be permitted to sign the covenant, which was not the case. The statement, however, that the development of science and education should serve the interests of the maintenance of peace and co-operation among peoples was unexceptionable, and he would vote for it.

/ALMI Bey

AZMI Bey (Egypt) generally shared the views of the Chilean representative. He added, with regard to the USSR amendment, that he was strongly opposed to placing science and education side by side in that context. Education should, of course, serve all the admirable purposes enumerated, and the Commission had already said so in article 28; but science should be free from any mundane considerations, no matter how praiseworthy, and scientists should receive no guidance from outside but should obey only their own conscience and the exigencies of their work. The search for truth must remain unshackled. He therefore asked the USSR representative to delete the reference to science, which he could not in any circumstances accept.

Much to his regret, he would be obliged to vote against the French amendment for the reasons given by the Chilean representative. Furthermore, scientific literary and artistic property should be protected on the national plane by domestic legislation, but on the international plane all countries should have free access to the cultural achievements of other countries. It was thus that French culture had spread far beyond the confines of France itself; the French Government had a gentleman's agreement with Egypt, permitting free translation of scientific, literary and other works written by French nationals into Arabic, and itself recompensing the authors. Owing to that generous arrangement, the whole Arab world had received access to the culture of France, and both had gained thereby. It would be in the interests of all if such a system were universally applied.

Mrs. ROCKWELL (United States of America) said with reference to the French amendment that work was already in progress on the highly complex and technical subject of copyrights and patents. Certain international conventions on the subject already existed, and a convention on copyrights was at present being negotiated. UNESCO in particular had gone into the matter in great detail, and had called attention to two difficulties it had encountered in securing recognition for the principle that authors had a right to the protection of their moral and material interests: the first was one of theory, since the right was not recognized in all countries to the same extent or on the same basis; the second was due to the complexity of the legal problems to which the question of copyrights gave rise, making it difficult to work out a concise text to cover the many problems encountered in dealing with the subject. UNESCO was consequently endeavouring to collate all the laws and conventions dealing with copyright, in order to arrive at a body of doctrine on which it would be possible to secure unanimous agreement (E/1752, pages 52 and 53).

/In view

In view of that situation, it would be both unnecessary and confusing to introduce a provision on patents and copyrights in the covenant. Worse still, an imperfectly drafted provision might seriously jeopardize the acceptance of the covenant by a number of countries. She therefore urged the Commission to reject the French amendment.

Mr. HOARE (United Kingdom) entirely agreed with the Egyptian representative concerning the USSR amendment. Science in the past had always grown from within; it was and must remain autonomous, and no external criterion, no matter how praiseworthy, should be applied to it or to its development. Even with reference to education alone, the USSR amendment was unacceptable, since it opened the door to the control of education for limited aims which might be in conflict with such general aims -- stated in article 26 -- as the full development of the human personality. He would therefore vote against it.

With regard to the French amendment, he agreed with the United States representative that the complex subject with which it was concerned was not for the covenant, but should be resolved by UNESCO and by such international consultation with a view to preparing a multilateral convention as was being carried on.

The United States amendment had the advantage of beginning by the statement, used in preceding articles, that the States parties to the covenant recognized the right which was subsequently described. It was too much to say, however, that the States recognized the right of everyone to take part in cultural life, since that right was obviously circumscribed by individual capacity. States could at most recognize the right of everyone to have access to cultural facilities, thus permitting each individual to make use of those facilities to the extent of his ability. That objection applied even more strongly to sub-paragraph (b); he wondered whether States would thereby assume the obligation to provide the freedom necessary for scientific research and creation, say by endowing scientists and artists with a private income. While he agreed with the idea expressed in its most general sense, he felt that the provision should be made clearer lest it should be interpreted in that manner.

/The Chilean

The Chilean representative had raised an interesting point: the conflict between the conception that the rights of the creative worker must be protected and the principle that there should be no obstruction to the general utilization of the results of his work in the interests of humanity. In the light of those remarks, sub-paragraph (b) of the original article 30 deserved further examination. He had always understood it to mean that the benefits of scientific progress were to be made available to all within the limits and by use of the machinery which already existed. If the Chilean representative believed that the clause was intended to do away with all the intermediaries between the inventor and the general application of his invention, he was proposing to reform the world by one brief article. Such a conception went far beyond the scope of the covenant, and the United Kingdom delegation could not subscribe to it.

Mr. BORATYNSKI (Poland) introduced an amendment (E/CN.4/L.107) to the United States amendment (E/CN.4/L.81) to article 30.

Mr. BRACCO (Uruguay) also introduced an amendment (E/CN.4/L.106) to the United States amendment, representing a composite of texts which he supported. In particular, he was strongly in favour of the USSR provision (E/CN.4/L.52) that the development of science and education should be in the interests of democracy and of the maintenance of peace and co-operation among peoples because, if such an article had existed in the days of Nazi Germany, civilized nations would have had legal as well as moral grounds for claiming that that country had perverted science and education to uses banned by the international community. There was every reason for saying that science and education should serve the interests of democracy rather than despotism, and of peace rather than war.

Mrs. MATHA (India) noted that the United States amendment was so phrased as to make the article, quite properly, subject to the provisions of article 1. In content, it differed little from the old article 30, save for the omission of sub-paragraph (b) of that article, which she thought unwarranted.

/She failed

She failed to see why the USSR amendment (E/CN.4/L.52) spoke of education in an article devoted to science and culture. Since the import of the amendment was not clear to her, she was unable to accept it.

She was in full sympathy with the French amendment, which asked, in the most general terms, for general protection of the rights of creative workers, and would vote for it.

Mr. AZKUL (Lebanon) thought that the incorporation of the USSR amendment (E/CN.4/L.52) in the Uruguayan amendment (E/CN.4/L.106) to the United States amendment (E/CN.4/L.81) showed a certain confusion of thought. The USSR amendment in fact opened the way to State control of all science and culture. It was a unique characteristic of science that its objectives were independent of all factors such as policy and human interests and desires. Thus, it was impossible to direct the development of science in any given direction. The adoption of the USSR amendment would enable the State arbitrarily to suppress any scientific activity which was contrary to its peculiar concept of democracy and peace.

The extension of the power of the State was one of the greatest problems with which mankind was confronted. That extension might be justified to a certain degree, but it was obvious that State powers had to be limited at some point: that point seemed to be the freedom of science and culture. It could be argued that limitation and orientation of the use of scientific discoveries was desirable, but that could not apply to the development of pure sciences. Moreover, the inclusion of the USSR provision was incompatible with paragraph (b) of the United States amendment (E/CN.4/L.81) which was restated in the Uruguayan text.

The objections that had been raised to the French amendment (E/CN.4/L.104) were understandable, but he agreed with the Indian representative that the general nature of the provisions of that text did not warrant all the anxiety that had been expressed. He would therefore abstain from voting on that amendment.

He then introduced the Lebanese amendment (E/CN.4/L.105) to the United States amendment (E/CN.4/L.81) and pointed out that the purpose of the
/text was

text was to bring the United States draft into line with the other articles adopted. He hoped that the United States representative would accept that clarification of her text.

In conclusion, he thought that the United Kingdom representative's interpretation of paragraph 2 of the United States amendment was too narrow; the right to participate freely in cultural life and to engage in scientific research did not imply the extension of facilities and time to everyone for those purposes, but rather the fact that no individual would be prevented from pursuing those activities.

Mr. SABA (United Nations Educational, Scientific and Cultural Organization) stated that his organization's views on the inclusion of cultural rights in the covenant were given in the report of UNESCO's Committee on Human Rights contained in document E/CN.4/655/Add.4. The Executive Council of UNESCO was of the opinion that those rights could not be referred to adequately in the covenant, but considered that the preservation of the independence of each country's cultural inheritance and the preservation of the cultural inheritance of minorities might be referred to in the measures of implementation.

Useful proposals had been made to UNESCO by the United States, Italy and France. The United States, in particular, had made suggestions for two substantial improvements, by making the recognition of the right to culture more explicit and by referring to the need to guarantee the freedom necessary for scientific research and creation. Italy and France had proposed the insertion of a clause concerning the protection of the moral and material interests of authors of scientific, literary or artistic productions. UNESCO recognized the need for such provisions, but wished to stress the difficulty and complexity of the subject. The legal methods of protecting those rights would have to be elaborated outside the covenant; UNESCO hoped that it would be possible at an international conference to be held at Geneva in July to establish a closer

/liaison by

liaison by means of a UNESCO convention between the inter-American system and the Berne Copyright Convention, which was frequently revised. Although the technical problems involved could not be dealt with within the framework of the covenant, it was nevertheless desirable to state the need for such protection in that instrument.

He could not make any definite statement on the USSR amendment (E/CN.4/L.52), since no such proposal had been submitted to UNESCO. The Constitution of that organization contained references to co-operation among nations with a view to ensuring democracy and the maintenance of peace; nevertheless, the wording of the USSR amendment seems to contain the concept of providing a legal defence for State guidance of culture and science, whereas it was more important to maintain the fundamental idea of co-operation in that connexion.

Mr. EFACCO (Uruguay) recalled that many references had been made during the debate to the fact that existing world conditions had to be taken into consideration. In that connexion, he wished to point out that in recent years certain words, such as "peace" and "democracy" had been given a distorted connotation in their general use. His delegation, however, refused to acknowledge that the meaning of those words could be changed by their context or by the fact that they were used by certain delegations. He quoted the saying "The Devil can cite Scripture for his purpose", and stated that the scriptures could not be rejected merely on the grounds that they were so quoted.

Mr. JUVIGNY (France) agreed with the Indian representative that the fact that the general problem of copyrights was complicated was not in itself an objection to a statement of principle on such protection. The UNESCO representative had given a good idea of the complexity and importance of the problem, and had urged the need for elaborating technical measures for its solution; it was none the less important to include such a reference in the covenant.

The Egyptian representative had said that such protection should be guaranteed on the national, and not on an international, level; national

/measures, however,

measures, however, seemed to be inadequate at a time when the propagation of ideas was so extensive. With reference to the Franco-Egyptian cultural agreement, he pointed out that the French authors to whom the Egyptian representative had referred had been paid by the French Government; the purpose of his amendment was to ensure that all authors should be thus compensated. He did not agree with the Chilean representative that monopoly in the field of patents represented such a grave danger; moreover, the absence of protection was not a remedy for the unfavourable situation in under-developed countries.

With regard to the USSR amendment (E/CH.4/L.52), he agreed with other speakers that the reference to education was misplaced. Educational rights were dealt with exhaustively in article 26 and any repetition would serve to weaken the text. Moreover, the terms "education" and "culture" were different; they had been thought by some to be practically contradictory. He also agreed with other representatives on the dangers of including the provision concerning the development of science in the interests of progress and democracy, since the implied orientation would result in the limitation of the right concerned. Although some manifestations of culture might be harmful and were dealt with by legal methods, freedom had to be regarded as the principle to be observed, and legal limitation as an exception to that principle.

Mr. WHITMAN (Australia) agreed with other speakers that the reference to the development of science in the interests of progress and democracy in the USSR amendment was undesirable, since that reference did not relate to the application of science, but to science itself. Science could be regarded only as an autonomous growth, and as such should not be subjected to any interests, however admirable they might be in themselves. He also considered the reference to education to be out of place and would vote against the amendment for those reasons.

He sympathized with the motives that had prompted the submission of the French amendment, but thought that it was inadvisable to provide for the protection of the author without also considering the rights of the community. He would therefore vote against that amendment.

He hoped that the United States representative would see fit to accept the Lebanese amendment (E/CH.4/L.105) to her text, since the Lebanese draft would serve to bring the United States amendment into line with the articles that had already been adopted.

/Be considered

He considered that the Polish and Uruguayan amendments (E/CN.4/L.107 and E/CN.4/L.106) to the United States draft were incompatible with the latter text, since they restated parts of the original article, the best elements of which had been incorporated in the United States amendment.

The CHAIRMAN drew attention to the fact that amendments to the first eighteen articles and proposals for additional articles submitted at the previous session by several delegations appeared in annexes III and IV of the report of the seventh session (E/1992). If the sponsors wished to submit them again, they need only inform the Secretariat at their convenience; they would not have to submit them again in writing, unless they wished to change them in any way.

The meeting rose at 5.30 P.M.