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COMMISSION ON HUMAN RIGHTS

Eighth Session

SUMMARY RECORD OF THE TWO HUNDRED AND NINETY-SEVENTH MEETING

Held at Headquarters, New York,
on Friday, 15 May 1992, at 10.45 a.m.

CONTENTS:

Draft international covenants on human rights and measures of implementation (E/1992; E/CN.4/L.49, E/CN.4/L.74, E/CN.4/L.74/Rev.1, E/CN.4/L.77/Rev.1, E/CN.4/L.87, E/CN.4/L.112, E/CN.4/L.113, E/CN.4/L.114, E/CN.4/L.116, E/CN.4/L.117) (continued)

<u>Chairman:</u>	Mr. MALIK	(Lebanon)
<u>Rapporteur:</u>	Mr. WHITLAM	Australia
<u>Members:</u>	Mr. NISOT	Belgium
	Mr. SANTA CRUZ Mr. QAZZAM)	Chile
	Mr. CHEG DACCAN	China
	AMR Dey	Egypt
	Mr. JUVENY	France

Members: (continued)

Mr. KAPSAGHELIS	Greece
Mrs. KHETA	India
Mr. AZYOUL	Lebanon
Mr. VAIJED	Pakistan
Mr. BODATINSKI	Poland
Mr. ESTERHERO	SWEDEN
Mr. KOVALSKIY	Ukrainian Soviet Socialist Republic
Mr. KORCZAK	Union of Soviet Socialist Republics
Mr. BOAPE	United Kingdom of Great Britain and Northern Ireland
Mrs. BOGGSVELT	United States of America
Mr. DAVOCO	Uruguay
Mr. JAVENAGIĆ	Yugoslavia

Also present: Miss KARAS Commission on the Status of Women

Representative of a specialised agency:

Mr. PILYPOW International Labour Organisation (ILO)

Representatives of non-governmental organisations:

Category B and Register:

Mrs. ATEFI	Catholic International Union for Social Service
Mr. MOSKOWITZ	Consultative Council of Jewish Organisations
Mrs. JORDAN	International Federation of Business and professional Women
Miss SCHEFFER	International Union of Catholic Women's Leagues
Mr. JACOFF	World Jewish Congress
Mrs. POLSKIN	World Union for Progressive Judaism

Secretariat: Mr. HUMPHREY Director of the Division of
Human Rights
Mr. D'S
Miss MITCHELL } Secretaries of the Commission

/DRAFT INTERNATIONAL

DRAFT INTERNATIONAL CONVENTION ON HUMAN RIGHTS AND MEASURES OF IMPLEMENTATION
(E/1992; E/CN.4/L.49, E/CN.4/L.74, E/CN.4/L.74/Rev.1, E/CN.4/L.77/Rev.1,
E/CN.4/L.87, E/CN.4/L.112, E/CN.4/L.113, E/CN.4/L.114, E/CN.4/L.115, E/CN.4/L.117)
(continued)

Mr. WAREED (Pakistan) said that it had emerged from the discussion that the Commission wished to strengthen article 26. His delegation was similarly inclined and would support the amendments submitted with that end in view. That applied to the Swedish amendment (E/CN.4/L.77/Rev.1) which was in conformity with the ILO recommendations. Similarly, the first part of point 1 of the USSR amendment (E/CN.4/L.49) granted more rights to a woman when she became a mother to correspond to her added responsibilities. That was provided for in Pakistan's legislation and his delegation would have no difficulty in supporting that text. By contrast, the second part of point 1 of the USSR amendment seemed unnecessary and he would be unable to support it. He would, however, support point 2 of that amendment because its provisions were already covered in his country's legislation.

He would vote in favour of the French amendment (E/CN.4/L.74/Rev.1) but he could not support the Belgian amendment (E/CN.4/L.113), although he sympathized with the idea, because he did not think that such a provision was suitable for inclusion in the covenant. Finally, he announced that his delegation would support the amendment submitted by Chile and Yugoslavia (E/CN.4/L.112) to the Swedish amendment.

Mr. KOVPLEVKO (Ukrainian Soviet Socialist Republic) said that his delegation would vote in favour of the USSR amendment (E/CN.4/L.49) which guaranteed to gainfully employed women special holidays before and after confinement. Article 103 of the Ukrainian Constitution guaranteed to all persons the right to free medical services. In addition, the State provided free care for mothers before and after confinement, and also for the children. As a result, infant and maternal mortality had been virtually eliminated. Furthermore, mothers and children, and particularly mothers of large families, were helped by the social welfare services, received financial assistance and benefited by the existence of a system of pre-school institutions for children.

/His delegation

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His delegation would support point 2 of the USSR amendment because it was absolutely essential to protect children from exploitation. The General Assembly had taken up the question of corporal punishment which still existed, particularly in the Non-Self-Governing and Trust Territories, and that question was especially urgent where children were concerned.

He was very surprised at the illogical attitude adopted by the United Kingdom representative who opposed the USSR amendment on the grounds that it was unnecessary since its purposes had already been achieved, whereas earlier he had maintained that the USSR amendments to article 21 were unacceptable because their purposes had not yet been achieved.

Unlike some representatives, Mr. Kovalenko did not consider that the USSR amendment was restrictive, except for point 2 which was intended to prevent the exploitation of children.

In his opinion, the wording of the French amendment (E/CN.4/L.74/Rev.1) was not clear enough and he preferred the Belgian amendment (E/CN.4/L.115).

Mr. SZKAPSKI (Poland) said that, after making a logical comparison of the texts of certain articles already adopted with the proposed amendments to article 26, he could not understand why certain representatives should agree to include detailed provisions forbidding the exploitation of children and young persons when they had refused to include detailed provisions in article 23 regarding primary education. The same attitude had been displayed in connexion with the phrase in article 21 concerning equal pay for men and women workers, but on that occasion the majority of the Commission had not shared that view.

Some representatives also maintained that the purpose of the USSR amendment (E/CN.4/L.115) was covered by the provisions of article 22 on social security. However, many contingencies were not covered by article 22 and, even if they had been covered, that would not have been an adequate reason for objecting to the clear and precise wording of the USSR amendment. He noted that no one had denied the need to protect children against exploitation; therefore the USSR amendment should not be rejected.

/Mr. JUVIGNY

Mr. JUVIGNY (France) announced that his delegation was submitting a revised version of its amendment (E/CN.4/L.7^b/Rev.1), which did not in any way alter the substance of the original text (E/CN.4/L.7^b), but simply took into account the comments made by various representatives, in particular the representatives of the United Kingdom and Australia.

Mrs. ROOSEVELT (United States of America) wished to correct the statements made by the USSR representative regarding child labour in the United States. Title 29 of the Federal Code contained very strict provisions on the subject, violations being punishable offences. She read pertinent provisions from the laws. The question was also dealt with in the legislation of States and territories. In Puerto Rico, for example, there was legislation specifying the minimum age at which children could be employed and establishing special working conditions for children.

Consequently, the United States delegation was opposed to the USSR amendment (E/CN.4/L.7^b), not because the United States Government objected to the application of legislation on child labour, but simply because it believed that the amendment was out of place in the covenant. Point 2 did not add anything to article 16 because article 1 already stipulated that States would undertake to take legislative and other measures to achieve the realization of the rights recognized in the covenant, and that implied the adoption of measures on child labour. Furthermore, children who worked were covered by the social security system and benefited from a whole series of social services to protect their health and life.

She noted that the USSR amendment did not mention any standard of protection which legislation should guarantee. It seemed therefore that the amendment was intended to lower the standards of protection already guaranteed by the existing text of article 26 and that was why her delegation was opposed to the amendment.

She drew attention to page 3^a of document E/CN.4/L.111 which contained her Government's comments on the draft Declaration of the Rights of the Child. There the United States urged that priority should be given to the protection of children in the development of national programmes, through legislation if appropriate.

The second part of point 2 of the USSR amendment would also be out of place in the covenant. It did not mention all the risks attached to child

/labour, whereas

labour, whereas article 26 as it stood was far wider in scope and its provisions, would be subject to the measure of implementation, in particular, the legislative measures which would have to be taken by virtue of article 1.

Mr. HUGHES (United Kingdom) wished to explain his position since several representatives had misinterpreted it. The United Kingdom delegation had always been in favour of drafting the articles of the present covenant in general terms. As the implementation of article 26 concerned the specialized agencies, the Commission had decided at its seventh session to adopt only a very general text. Now the USSR amendment (E/CN.4/L.49) had been submitted with a view to specifying particular measures. He was quite prepared to agree with the Polish representative that the Commission had not always been consistent on the question of specifying particular measures, but the United Kingdom was opposed to specification in article 26 because the substance of the article came within the purview of the ILO and conventions had been or would be concluded on the subject under its auspices. Moreover, the measures listed in the USSR amendment did not seem to him to be the most important in the field of provision for maternity. The provision of special paid leave before and after confinement was not so fundamental as the provision of maternity benefits and services including pre- and post-natal care, and in fact in the United Kingdom such paid leave, though it was widely granted, was not mandatory by statute.

Contrary to what the Polish representative had stated, the United Kingdom delegation had not opposed the adoption of a clause on equal pay for men and women workers; it had simply opposed the attempt to make the equality compulsory forthwith.

He would not be particularly concerned if the USSR representative were to carry out his proposal of revealing certain alleged scandals in the United Kingdom; it was because criticisms were free in the United Kingdom that the USSR representative had been able to procure the documentation to which he had referred.

/s/ Mr. HUGHES

Mr. NIEZET (Belgium) explained that his delegation's amendment (E/CH.4/L.115) was intended to fill a serious gap, since article 25 dealt solely with the protection of children and not with the protection of the family, which was the very basis of society.

Mr. KURGZOV (Union of Soviet Socialist Republics) said that he would not use the pretext of a point of order to reply at that late stage to the statements of the representatives of the United States and the United Kingdom. He simply wished to ask the United States representative if she had any definite concrete principles to add to those contained in the USSR amendment, which she had criticized as being vague and restrictive.

Mrs. ROOSEVELT (United States of America) said that her delegation had no amendment to submit to the USSR amendment, because she felt that article 26 in its original form satisfactory, expressed the purpose which the covenant sought to achieve.

The CHAIRMAN asked the Commission to consider an amendment which had been submitted within the time-limit by the Egyptian delegation and had just been circulated.

ADNI EY (Egypt) introduced his amendment (E/CH.4/L.116) which was intended to avoid the misunderstanding to which point 2 of the French amendment (E/CH.4/L.74/Rev.1) might give rise. The French amendment implied that, in certain cases, children could be required to work provided that the work was not likely to hamper their normal development. There had, however, always been general agreement in the Commission that the illegal use of child labour should be prohibited, no matter what form it took. In order to avoid any confusion on that point, he proposed that the words "children and" should be deleted from the French amendment and that the first part of the USSR amendment to paragraph 2 of article 26 (E/CH.4/L.49) should be added to the French amendment. It would then be clear that, while young persons could not be required to do work likely to hamper their normal development, children, on the other hand, were to have special legally enforced protection against exploitation.

/Mr. JUVIGNY

Mr. JUVIGNY (France), while sharing the views and the concern of the previous speaker, felt that the distinction between children and young persons was not very clearly drawn and that it varied according to circumstances, not only from country to country, but also according to the context of the various national legislations. In the French Labour Code, for example, the term "children" referred to persons aged fourteen or over and was sometimes applied to those who would ordinarily be regarded as young persons.

Mrs. MEHTA (India) said that the Belgian amendment (E/CN.4/L.113) was so important that its subject matter should be dealt with in a separate article.

The Egyptian amendment (E/CN.4/L.116), on the other hand, should be treated with some caution; it should, for instance, be made clear whether or not work performed by children at school fell within the scope of the amendment.

Mr. AZKOUJ (Lebanon) observed that the terms of the Egyptian amendment (E/CN.4/L.116) did not quite reflect the author's intention. In fact, the presence of the word "illegal" gave rise to the assumption that there might be a "legal" employment of child labour which would not constitute exploitation or a punishable offence.

AMEH Boy (Egypt) explained that his amendment (E/CN.4/L.116) related merely to work performed by children in industrial or agricultural undertakings on behalf of others and not to work which children were required to do at school as part of their normal education. However, Mr. Azkoul's point was a sound one and he would therefore agree to omit the word "illegal".

Mr. WHITMAN (Australia) said that, while agreeing with the purpose of the Egyptian amendment (E/CN.4/L.116), he was unable to support the amendment owing to the practical difficulties it raised. In Australia, for instance, as a result of the manpower shortage, children took part in school maintenance work and helped their parents in doing agricultural work. He regretted that the representative of the ILO had not been in a position to give details in the matter and felt that the best course was to adopt article 26 subject to a more thorough consideration of the question raised by the Egyptian amendment.

Mrs. ROOSEVELT

Mrs. ROOSEVELT (United States of America) asked the Egyptian representative whether he would agree to amend the terms of his amendment to read as follows:

"Children and young persons permitted to work should not be required to do work likely to hamper their normal development."

That text would meet the concern of the Egyptian representative who wished merely to prohibit exploitation of child labour without going so far as to prohibit the employment of children for minor tasks in schools and in the family.

Mr. BOARS (United Kingdom) was unable to accept either the Egyptian amendment or the text proposed by the United States representative. The purpose of paragraph 2 of article 26 was to protect children as well as young persons. Although those terms did not mean the same thing in every country, in the United Kingdom they represented specific legal concepts. A person was a "child" up to the end of the school age, which meant at the age of 15; he became a "young person" at the age of 15 and remained so until reaching the age of 18, or in some cases, 21 years. There were specified instances where, subject to the necessary safeguards, the employment of children under the age of 15 years was permitted. The Egyptian amendment would, as it stood, prevent the employment of persons under the age of 15 even in those special cases which in the United Kingdom were the subject of safeguards imposed by law. He would therefore prefer to retain the article in its original form as he objected to the inclusion in the covenant of unduly specific provisions. Moreover, the purpose of the Egyptian amendment was adequately covered by child labour legislation in English-speaking countries, and international legislation for that purpose was the function of the ILO.

Mr. MORGENTHAU (Union of Soviet Socialist Republics) supported the original text of the Egyptian amendment (E/123.4/20.431). The word "illegal" should stand so as not to permit one extreme form of child labour to prevent the other. The employment of children in schools or for minor tasks obviously did not create any criminal liability for anybody. Unless the Egyptian representative agreed to re-insert the word "illegal", he himself would propose its re-insertion as an amendment.

/Moreover, if

Moreover, if the Egyptian amendment was adopted, he intended to propose the inclusion of the second part of his own amendment (E/CH.4/L.49), omitted by the Egyptian representative, in the following form:

"The employment of young persons in work harmful to health or dangerous to life should also be made a punishable offence."

AZMI Bay (Egypt) was unable to accede to the wish of the representatives of Australia, the United Kingdom and the United States that he should withdraw or amend his amendment (E/CH.4/L.116). Upon close study, his text would be found not to justify the anxiety which had been expressed. The object was not to prohibit all employment of children whatsoever but merely to prevent the exploitation of child labour. Work performed at school or in the home could hardly be regarded as exploitation.

Mr. AZMOUL (Lebanon) said, with reference to the remarks of the Soviet Union representative, that the word "illegal" was superfluous in the text under consideration, for whatever was punishable under the law was ipso facto illegal and vice-versa.

Mr. MORCZOV (Union of Soviet Socialist Republics) said it was conceivable that an act was prohibited although not punishable. Certain violations might not always give rise to criminal liability. The word "illegal" would clarify the text and encourage countries to enact the necessary legislation to regulate the question of child labour.

Mr. NISOT (Belgium) said that, while his delegation favoured the Egyptian amendment (E/CH.4/L.116) which seemed to satisfy all the dictates of ethics, it would be unable to vote for the amendment if the word "illegal" was dropped since without the word the entire content of the amendment would be different.

Mrs. ROOSEVELT (United States of America) proposed that the Egyptian amendment should be voted on in parts, the first part ending with the word "development". The United States delegation would vote in favour of the first part and against the second, whatever the decision concerning the word "illegal".

/If the

If the word was omitted, States would be able to prohibit employment of child labour in any manner or form, whereas if it stood they would have undue latitude in that respect.

Mr. FICHTENGD (International Labour Organisation) wished to make two points in connection with the Egyptian amendment (E/CH.4/L.116). In the first place, it was difficult in a covenant couched in general terms to give an exact definition of "child" and "young person", because ideas varied widely according to countries. Secondly, the word "illegal" might be interpreted to mean that some forms of employment of child labour might be legal, in which case children might lose the special protection provided for in the first part of article 26, paragraph 2. Difficulties might also be caused if the word was omitted. The drafting of the article was therefore a delicate matter. In all the circumstances the present wording of article 26 (2) might be thought to offer a satisfactory solution on the point at that particular stage of the Commission's work.

AZMI Bey (Egypt) felt that, broadly, a minor under the age of 9 or 10 years might be considered a child. In France, for instance, article 2 of Book II of the Labour Code contained a provision stipulating that "a child of either sex may not be employed until the normal school attendance requirements have been fulfilled", in other words before reaching the age of 14 years.

Mr. JUVIGNY (France) pointed out that the provision referred to by the Egyptian representative did not mean that only persons under the age of 14 years were deemed to be "children"; for instance, article 4 of Book II of the Labour Code spoke of children under the age of 16 years. Hence it would be preferable if it were left to the competent specialized agencies to prepare a definition, the Commission confining itself to the text of article 26 of the draft covenant.

Mr. SANTA CRUZ (Chile) concurred in the French representative's views. He added that the different legislations should prescribe penalties for the illegal employment of child labour, but no such provision should be included in

article 26. Indeed, the articles of the covenant concerning civil and political rights, which dealt with the right to life and the right to freedom, did not specify what would be the consequences of violations of those rights. Furthermore, article 1 of the covenant merely provided that persons whose rights had been violated might apply for redress. The Chilean delegation would vote against the Egyptian sub-amendment (E/CN.4/L.116) for the reasons given earlier in connexion with point 2 of the Soviet Union amendment (E/CN.4/L.49).

Mrs. ROOSEVELT (United States of America) stated that the United States amendment to the Egyptian amendment (E/CN.4/L.116) would be worded as follows:

"Children and young persons permitted to work should not be required to do work likely to hamper their normal development."
(E/CN.4/L.117)

Mr. HOARE (United Kingdom) proposed that at the beginning of the Egyptian text (E/CN.4/L.116) the words "Children and..." should be inserted. The Egyptian text should be voted on in parts. The United Kingdom delegation would be unable to vote for the second part.

Mr. NEROSOV (Union of Soviet Socialist Republics) formally moved an amendment to the Egyptian sub-amendment (E/CN.4/L.116), which was to delete the second part of the Egyptian text and to add, after the words "their normal development", point 2 of the Soviet Union amendment (E/CN.4/L.49). He moved the same amendment to the United States sub-amendment (E/CN.4/L.117) and requested that both texts, as amended, should be voted on in parts. Should the USSR amendments be rejected, his delegation would be unable to vote for the French amendment (E/CN.4/L.74/Rev.1). It would only agree to concessions on the text as a whole if it was improved by the Soviet Union amendments.

He noted with satisfaction that the Chilean representative's objection to the insertion of a provision creating a criminal liability was not based upon considerations of principle but merely upon the fact that a similar provision had not been included in other articles of the covenant concerning civil and political rights. That omission could easily be rectified. Such a provision was particularly appropriate in article 25, but it would be difficult to propose a similar clause for the other articles of the covenant relating to economic,

/social and

social and cultural rights because the majority of the Commission did not wish to insert a provision which would impose an obligation upon States. Accordingly, he hoped that the Chilean representative would reconsider the problem and support the Soviet Union amendment (E/CN.4/L.49).

AMR Bey (Egypt) said that at first he had not thought that article 26 of the Draft covenant needed amending. However, after seeing the revised French amendment (E/CN.4/L.74/Rev.1), he had felt some misgivings because the final sentence of paragraph 2 of article 26 was in the form of a separate paragraph; that had prompted him to submit a sub-amendment (E/CN.4/L.116).

In the light of the United Kingdom and United States proposals, which reflected a wish to return to the original text of the French amendment, and after hearing the comments of the ILO and Chilean representatives, he was prepared to withdraw his amendment (E/CN.4/L.116) if the French representative agreed to adhere to the original text of his amendment (E/CN.4/L.74).

Mr. JUVIGNY (France) said he was prepared to withdraw the revised text of his delegation's amendment (E/CN.4/L.74/Rev.1). However, the insertion of the original text of the French amendment in article 26 raised a problem of logical construction which had been commented on by the representatives of Australia and the United Kingdom.

AMR Bey (Egypt) suggested that the amendment might propose adding the words "normally given within and with the help of the family" immediately after the words "special measures of protection".

Mr. JUVIGNY (France) said that wording struck him as satisfactory.

Mr. MOPANOV (Union of Soviet Socialist Republics) proposed point 2 of the Soviet Union amendment (E/CN.4/L.49) as an amendment to the French amendment. His attitude to the latter would depend on the action taken on his own delegation's sub-amendment. He still feared that the text proposed by the French representative, stressing the role of the family in the protection of the child, would weaken the obligations of States in that respect.

Mr. JUVIGNY (France) observed that the family merely constituted the medium through which the proposed protection would be given, the State being exclusively responsible for providing that protection.

21/5 a.m.

The meeting rose at 1.15 p.m.