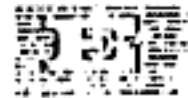


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COMMISSION ON HUMAN RIGHTS

Eighth Session

SUMMARY RECORD OF THE TWO HUNDRED AND NINETY-EIGHTH MEETING

Held at Headquarters, New York,
on Friday, 16 May 1952, at 3 p.m.

CONTENTS: 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/1952, E/CN.4/S35/Add.5, E/CN.4/L.49, E/CN.4/L.47/Corr.1, E/CN.4/L.74/Rev.2, E/CN.4/L.74/Rev.2/Corr.1, E/CN.4/L.77/Rev.1, E/CN.4/L.112, E/CN.4/L.113, E/CN.4/S35/Add.3, E/CN.4/L.50/Rev.1, E/CN.4/L.78, E/CN.4/L.110, E/CN.4/L.111) (continued); article 26 (continued); article 27

<u>Chairman:</u>	Mr. WALIK	Lebanon
<u>Rapporteur:</u>	Mr. WHITIAM	Australia
<u>Members:</u>	Mr. NISOT	Belgium
	Mr. OYARZUN	Chile
	Mr. CHENG FANGHAN	China

Members (continued):

AZMI Boy	Egypt
Mr. JUVIGNY	France
Mr. KAPSAMBELIS	Greece
Mrs. MEHTA	India
Mr. WAHEED	Pakistan
Mr. BORATINSKI	Poland
Mr. WESTERBERG	Sweden
Mr. KOVALENKO	Ukrainian Soviet Socialist Republic
Mr. MOROZOV	Union of Soviet Socialist Republics
Mr. HOARE	United Kingdom of Great Britain and Northern Ireland
Mrs. DOOSPVELT	United States of America
Mr. ERACCO	Uruguay
Mr. JEVRENOVIC	Yugoslavia

Also present: Miss MAÑAS Commission on the Status of Women

Representative of a specialized agency:

Mr. PICKFORD International Labour Organisation (ILO)

Representatives of non-governmental organizations:

Category A: Miss SENTER International Confederation of Free
Trade Unions (ICFTU)

Category B: Mr. LEVIN Agudat Israel World Organization
Mrs. AIEDA Catholic International Union for Social
Service

Mrs. CARTER International Council of Women
Mrs. LOUDAN International Federation of Business and
Professional Women

Mrs. NIANYAN International Union for Child Welfare
Miss SCHAEFER International Union of Catholic Women's
Leagues

/Category B

Category B (continued):

Miss ROBB	Liaison Committee of Women's International Organizations
Mrs. WALSER	Women's International League for Peace and Freedom
Mrs. FOLSTEIN } Mrs. FARBEN }	World Union for Progressive Judaism
Mr. FENCE	World Alliance of Young Men's Christian Associations

Secretariat:

Mr. LIN	Division of Human Rights
Mr. DAS } Miss KITCHEN }	Secretaries of the Commission

DRAFT INTERNATIONAL COVENANTS ON HUMAN RIGHTS AND MEASURES OF IMPLEMENTATION:
PART III OF THE COVENANT DRAWN UP BY THE COMMISSION AT ITS SEVENTH SESSION
(E/1952, E/CN.4/635/Add.5, E/CN.4/L.49, E/CN.4/L.49/Corr.1, E/CN.4/L.74/Rev.2,
E/CN.4/L.74/Rev.2/Corr.1, E/CN.4/L.77/Pav.1, E/CN.4/L.112, E/CN.4/L.113,
E/CN.4/655/Add.3, E/CN.4/L.50/Rev.1, E/CN.4/L.78, E/CN.4/L.110, E/CN.4/L.111
(continued))

Article 26 (continued)

The CHAIRMAN reminded the Commission that the submission of the revised French amendment (E/CN.4/L.74/Rev.2) had led to the withdrawal of the Egyptian amendment (E/CN.4/L.110) and of the United States amendment (E/CN.4/L.117) to the Egyptian amendment. There was a corrigendum to the French text of the revised French amendment (E/CN.4/L.74/Rev.2/Corr.1).

Mr. MORZOV (Union of Soviet Socialist Republics) thought that the revised French amendment was far weaker than the original text of the draft article. Moreover, it was not entirely clear that the special measures of protection were to be taken by the State, not by the family itself. The words

/"by the States

"by the States Parties to the Covenant" should therefore be inserted after the word "taken". A separate vote should be taken on the words "in all appropriate cases within and with the help of the family". Opposition to that phrase did not imply a view that the family had no significance, but merely that the French amendment as it stood seemed to place the onus of responsibility on the family rather than on the State.

Mr. WEITLAM (Australia) pointed out that the word "that" before "in particular" was redundant and should be deleted.

Mr. JUVIGNY (France) accented that deletion. The revised French amendment, in his opinion, cleared up all misunderstandings with regard to the nature of the obligation. It merely implied that whenever the State could act through the family, it should do so. When it could not, it would assume the responsibility for the direct protection of children and young persons.

The CHAIRMAN said that paragraph 1 of the USSR amendment (E/CN.4/L.49/Corr.1) was the furthest removed from the original text of paragraph 1, but did not exclude the Swedish amendment (E/CN.4/L.77/Rev.1) and the joint Chilean and Yugoslav amendment (E/CN.4/L.112) thereto. It would therefore be voted upon first.

Mr. WAHEED (Pakistan) asked that the two sentences in paragraph 1 of the USSR amendment should be voted on separately.

The first sentence of paragraph 1 of the USSR amendment (E/CN.4/L.49/Corr.1) was rejected by 8 votes to 7, with 3 abstentions.

The second sentence of paragraph 1 of the USSR amendment (E/CN.4/L.49/Corr.1) was rejected by 9 votes to 3, with 6 abstentions.

The joint Chilean and Yugoslav amendment (E/CN.4/L.112) to the Swedish amendment (E/CN.4/L.77/Rev.1) was adopted by 8 votes to 5, with 5 abstentions.

The Swedish amendment (E/CN.4/L.77/Rev.1), thus amended, was adopted unanimously.

AZMI Bey (Egypt) proposed that the Belgian amendment (E/CN.4/L.113) should be voted on after the revised French amendment and paragraph 2 of the USSR amendment, since it introduced a new idea.

The CHAIRMAN reminded the Commission that the USSR representative had proposed the insertion of the words "by the States Parties to the Covenant" after the word "taken" and a separate vote should be taken on the words "in all appropriate cases within and with the help of the family" in the revised French amendment (E/CN.4/L.74/Rev.2). The vote would be taken on the text in French.

The USSR oral amendment to the revised French amendment was rejected by 2 votes to 6, with 3 abstentions.

The phrase "in all appropriate cases within and with the help of the family" was adopted by 14 votes to none, with 4 abstentions.

The revised French amendment (E/CN.4/L.74/Rev.2) was adopted by 15 votes to none, with 3 abstentions.

Mr. MOROZOV (Union of Soviet Socialist Republics) withdrew his request for a vote in parts on paragraph 8 of the USSR amendment (E/CN.4/L.49/Corr.1) and asked that the vote should be taken by roll-call.

A vote was taken by roll-call.

Yugoslavia, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Yugoslavia, Egypt, India, Lebanon, Pakistan, Poland, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Uruguay.

Against: Australia, Chile, China, France, Sweden, United Kingdom of Great Britain and Northern Ireland, United States of America.

Abstaining: Belgium, Greece.

Paragraph 8 of the USSR amendment (E/CN.4/L.49/Corr.1) was adopted by 9 votes to 7, with 2 abstentions.

Mr. WHITMAN (Australia) explained that he found some difficulty in accepting the Belgian amendment (E/CN.4/L.113) as an addition to the paragraph 2 just adopted, since it dealt with an entirely different subject.

/Mr. JUVIGNY

Mr. JUVIGNY (France) asked for a separate vote on each of the two sentences in the Belgian amendment.

The first sentence of the Belgian amendment (E/CN.4/L.113) was adopted by 14 votes to 3, with 1 abstention.

The second sentence of the Belgian amendment (E/CN.4/L.113) was adopted by 13 votes to 3, with 2 abstentions.

The Belgian amendment (E/CN.4/L.113) as a whole was adopted by 13 votes to 3, with 2 abstentions.

At the request of Mr. NISOT (Belgium), the CHAIRMAN said that the Belgian amendment just adopted would appear as paragraph 3 of article 26.

Draft article 26, as amended, was adopted by 15 votes to none, with 3 abstentions.

Mr. MURZEV (Union of Soviet Socialist Republics) had voted in favour of the article as amended because it had been greatly improved. He could not regard the rejection, by only one vote, of paragraph 1 of the USSR amendment as decisive and would bring it forward again.

Mr. WHITLAM (Australia) had abstained on the vote on the article as a whole because he thought paragraph 2 of the USSR amendment unnecessary and believed that paragraph 3 should have been placed in a separate article, in which it might have been more strongly worded.

Mr. BWARE (United Kingdom) had voted against the USSR oral amendment to the French amendment because it would not have added anything. He had voted for the revised French amendment because he thought it avoided the difficulties which had been raised by the USSR representative though he wished to reserve his final decision until he had seen the official English translation of the French text. He had abstained on the article as a whole because it had been damaged by the inclusion of the USSR amendment, which appeared simply to mean that the State should make legally actionable whatever was unlawful. The Belgian amendment had also damaged the article because it was irrelevant, although it might be useful in another article.

Mr. JUVIGNY (France) had not voted for paragraph 2 of the USSR amendment because its provisions -- long in force in France -- were too detailed to be suited to the draft article. It was restrictive, because there were many other
/ways of

ways of protecting the health of adolescent workers beside making it a penal offence. In any case, it was a matter for the ILO to deal with. He had asked that the Belgian amendment should be voted on in parts because, while the first sentence was appropriate in an article dealing with social protection, the second was really connected with the definition of civil status and should therefore be included in the covenant on civil and political rights.

AZMI Bey (Egypt) expressed his extreme gratification at the inclusion of the Belgian amendment. The question of the family was a delicate one, as its status varied from country to country. The Belgian formulation of general principle was a good one and would suffice until a separate covenant on the rights of the family was drafted.

Mrs. MEHTA (India) had supported the Belgian amendment, but still felt that its substance should be incorporated in a separate article.

Mr. KAPSAHELIS (Greece) had abstained from voting on paragraph 2 of the USSR amendment and on the Joint Chilean and Yugoslav amendment to the Swedish amendment because their wording had not seemed entirely satisfactory.

Article 27

The CHAIRMAN called upon the Commission to consider article 27 and the various amendments which had been submitted to it: a USSR amendment (E/CN.4/L.50/Rev.1), a Yugoslav amendment (E/CN.4/L.78), a Lebanese sub-amendment to the USSR amendment (E/CN.4/L.110) and a Lebanese sub-amendment to the Yugoslav amendment (E/CN.4/L.111).

Mrs. MEHTA (India) on a point of order, noted that trade union rights were only one aspect of the right of association which was a civil right. She wondered whether an article on trade union rights could appropriately be included in the covenant on economic, social and cultural rights.

/The CHAIRMAN

The CHAIRMAN replied that at its preceding session the Commission had discussed that question and had decided to have a separate article on trade union rights in addition to article 16 on the right of association. The Commission was of course at liberty to reconsider that decision, if it so desired.

Speaking as the representative of Lebanon, he expressed the view that article 2, must be included because of the direct relevance of trade union rights in economic and social affairs. Trade unions were a necessary instrument for implementing economic, social and cultural rights. It would therefore seem strange not to include a reference to those rights in the second covenant notwithstanding the provision of an article in the first covenant on the right of association.

Mr. MOROZOV (Union of Soviet Socialist Republics) said that the question of whether article 27 was necessary should not even be discussed, in view of the Commission's lengthy consideration of the question at its previous session and in view of the importance of trade union rights. The possibility of including an article on trade union rights in both covenants could be considered at a later stage particularly in view of the General Assembly's request for as many similar provisions as possible in the two covenants.

The USSR delegation favoured the inclusion of article 27 in the covenant on economic, social and cultural rights with some modifications and additions to ensure complete implementation. In the first paragraph of its amendment (E/CN.4/L.50/Rev.1) the USSR delegation stressed the fact that States must not only recognize the right to join trade unions but must also undertake to guarantee that right to everyone. Any attempt to justify limitation of trade union rights was inconsistent with the objectives of the covenant. In its second paragraph, the USSR proposed a non-discrimination clause which it considered essential in the case of all important rights. The third paragraph prohibiting all regulation against trade unions might appear unnecessary in view of the comprehensive guarantee in the first paragraph but was essential in the light of crude violations of trade union rights in capitalist States. The fifth paragraph guaranteeing the right to strike was also a further amplification of the first paragraph of the USSR proposal but should be accepted because the

/right

right to strike was vital for the protection of the economic and social rights of workers throughout the world. Paragraphs 7 and 8 were directed against widespread practices of preventing trade union leaders from leaving their countries to attend international trade union conferences or subjecting them to police measures after their return from such conferences. Paragraph 4 guaranteed the vital right of trade union organizations to hold free elections while paragraph 6 would permit trade union participation in the framing of economic and social policy at all levels. In the tremendous efforts which would be required to carry out the obligations assumed under the covenant, the co-operation of trade unions and other popular organizations must be enlisted.

Mr. JEVREŠKOVIC (Yugoslavia) said, in reference to the question raised by the representative of India, that the Yugoslav delegation felt that an article on trade union rights was required in the covenant on economic, social and cultural rights because trade union rights were an essential condition for the guarantee of all other economic rights. Precise obligations for States must be contemplated if effective implementation was to be ensured. Moreover, the rights of individual salaried workers must be clearly established. Article 24 in its present draft was unsatisfactory because it was too concise and therefore presented an exceedingly generalized statement of a most important group of rights.

The reference to "protection of . . . economic and social interests" in the present draft was objectionable because it could be interpreted to mean that factory owners and employers could associate to form monopolies to protect their economic and social interests. It was essential for the article to apply only to the right of salaried workers to form and join trade unions to protect their economic and social rights. Trade union rights should be envisaged in the covenant as a protection of human rights rather than of interests which might be contrary to human rights. The right of employers to join organizations for other purposes could be safeguarded elsewhere but article 27 must protect the rights of the group which was economically weakest and therefore most vulnerable.

Although article 27 was closely linked to article 16 on the right of association, a reference in the text to article 16 would be inadvisable because
/the restrictions

the restrictions contained in that text gave inadequate protection to trade unions. The United States delegation, the original sponsor of article 27 in its present form had expressed doubts regarding the text and had referred to the possibility of revision.

It should be noted that some articles in the covenant were very brief and concise and contained no specific obligations of States. Progressive implementation, lack of adequate resources and other reservations could be invoked at almost any point in connexion with almost any right. The Commission must, however, prevent weakening of the covenant and seek to improve the text of the various articles.

In an effort to correct the defects of article 27, the Yugoslav delegation presented an amendment (E/CN.4/L.78) restricting the scope of the article to wage-earners only, the rights of others being amply covered by article 16. The Yugoslav text contained an explicit reference to the right to strike, the only effective instrument for the protection of the rights of workers. Although abuse of that right was possible, the serious implications of loss of income for the worker made unjustified strikes extremely unlikely. The Yugoslav text also replaced the objectionable reference to economic and social interests by a reference to economic and social rights.

The second paragraph of the Yugoslav proposal prohibited dismissal or persecution of any person for exercising the rights recognized in the article. The third paragraph required all States to implement those rights immediately. Progressive implementation could not be invoked in the case of trade union rights because no expenditures were necessary on the part of the State. The only requirement was a democratic spirit.

The Yugoslav amendment contained the very barest minimum required to guarantee trade union rights. Exclusion of any of these essential elements would be dangerous.

In the interest of consistent form for the various articles, the Yugoslav delegation would be prepared to amend the opening words of its proposal to achieve uniformity.

/The CHAIRMAN

The CHAIRMAN, speaking as the representative of Lebanon, said that the basic idea of the Lebanese sub-amendments (E/CN.4/L.110 and E/CN.4/L.111) was to have States guarantee free exercise of trade union rights to all. The right in question could not be made subject to the progressive principle enunciated in article 1, as obligations on the State other than the mere granting of the right by non-interference with trade unions were not involved. Such negative obligations could be fulfilled without falling within the scope of the provisions of article 1 relating to progressiveness. The first article should therefore not govern the rights set forth in article 27.

The Lebanese amendment also stressed free exercise of trade union rights without State interference. It was essential that freedom should be fully accorded by the State.

In the case of the USSR proposal, the Lebanese sub-amendment provided for a new paragraph to be inserted before paragraph 1 of the USSR text. In the case of the Yugoslav amendment, the Lebanese delegation proposed a complete substitution for which the general relevant procedure would be followed.

Mrs. ROOSEVELT (United States of America) recalled that it had been considered expedient at the previous session to repeat the provisions of the Universal Declaration on trade union rights with a minimum of alterations, since any detail would lead to the limitation of the right. She therefore preferred the existing text of article 27, with the deletion of the reference to article 16, and would vote for the Lebanese amendment (E/CN.4/L.111), to the Yugoslav amendment (E/CN.4/L.78) which stressed the freedom of the individual in that matter. She hoped, however, that the Lebanese representative would agree to substitute the word "ensure" for the word "guarantee" in the first line of that amendment, in order to bring it into line with the articles that had already been adopted.

She would vote against the USSR amendment (E/CN.4/L.50/Rev.1), as she had done when similar provisions had been proposed at the Commission's seventh session. Paragraph 2 of that amendment in fact represented a non-discrimination clause, which already existed in article 1; the prohibition contained in paragraph 3 related to the rights of trade unions, and not those of the individual, and therefore had no place in a covenant on human rights; paragraph 4 gave

details of the operation of trade unions and thus led to the assumption that trade unions could be operated only in that way and that no one could join a union that was operated otherwise; the reference to the right to strike in paragraph 5 laid undue emphasis on one method of achieving the purposes of trade unions; paragraph 6 seemed to exclude the essential element of collective bargaining by substituting legislative measures for that method; and paragraphs 7 and 8 also referred to the rights of trade unions, as distinct from those of individuals.

The Yugoslav amendment (E/CN.4/L.79) also contained provisions that had been rejected by the Commission at its seventh session. She would vote against that amendment, because its effect would be to limit the scope of the article by implying that the provisions which were not specifically mentioned were of secondary importance.

Mr. MOPOZOV (Union of Soviet Socialist Republics) pointed out that the Lebanese amendment (E/CN.4/L.110) to the USSR amendment seemed to refer to the original text of the latter document rather than to the revised text (E/CN.4/L.50/Rev.1). He asked the Lebanese representative where he wished his amendment to be inserted.

The CHAIRMAN, speaking as the representative of Lebanon, accepted the United States representative's suggestion for the substitution of the word "ensure" for the word "guarantee" in his amendment. In reply to the USSR representative, he stated that he would move the Lebanese amendment (E/CN.4/L.111) to the Yugoslav amendment as a substitution for paragraph 1 of the revised USSR amendment. As his delegation had frequently pointed out, it was essential to make a distinction in certain cases between the mere recognition of a right and undertaking to ensure the exercise of a right. Moreover, the Lebanese delegation considered that reference to the free exercise of the right concerned was essential.

Mr. BRACCO (Uruguay) stated that, although the right to strike was an essential element of trade union rights, he would find it difficult to vote for that provision as expressed in the USSR and Yugoslav amendments, because the right was applied with certain reservations in his country. In Uruguay, the right of government employees to strike was subject to certain restrictions and

/the right

the right in a general sense was not applicable until all efforts at conciliation and negotiation had failed. Although the time-limit for the submission of amendments to amendments had expired, he accordingly asked the Commission if he could submit a suitably worded sub-amendment in order to be able to vote for the right to strike.

At the proposal of Mr. NISOT (Belgium) and in the absence of any objections to that proposal, the CHAIRMAN stated that the Uruguayan representative might submit a sub-amendment.

Mr. MUGOZOV (Union of Soviet Socialist Republics) accepted the Lebanese amendment (E/CN.4/L.111) to paragraph 1 of the USSR revised amendment (E/CN.4/L.50/Rev.1).

The CHAIRMAN reminded the Commission that all amendments to articles 1 to 18 would have to be submitted by 10.30 a.m. on Monday, 19 May.

The meeting rose at 5.20 a.m.