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Item 4 of the provisional agenda

DRAFT INTERNATIONAL COVENANTS ON HUMAN RIGHTS  
AND MEASURES OF IMPLEMENTATION

Observations submitted by Specialized Agencies on the Proposed Covenant  
on Economic, Social and Cultural Rights in pursuance of Resolution  
543 (VI) of the General Assembly

United Nations Educational, Scientific and Cultural Organization

(Letter dated 8 April 1952 from the Director-General of UNESCO  
to the Secretary-General)

May I refer to Miss Henderson's letter No. SOA/317/2/01(8) of 14 February, drawing my attention to resolutions concerning the views to be expressed by the Specialized Agencies as to the form and contents of the proposed Covenant on Economic, Social and Cultural Rights, adopted on 5 February 1952 by the General Assembly of the United Nations.

The General Conference of UNESCO, at its Sixth Session, adopted the following resolution (9.1):

"The General Conference,

"After consideration of the Report of the Director-General concerning the inclusion of economic, social and cultural rights, into a Draft International Covenant on Human Rights,

"Approves the action taken by the Director-General to give effect to resolution 9.22 adopted at the Fifth Session, and in particular the collaboration of the Secretariat of Unesco with the Commission on Human Rights in the preparation of provisions of the Draft Covenant concerning the right to education and the right to culture;

"Having furthermore examined the request transmitted by the Secretary-General of the United Nations which invites Unesco to present its observations upon the Draft Covenant adopted by the Commission on Human

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Rights at its Seventh Session;

"Considering that the Constitution of Unesco places upon the Organization special responsibilities for the advancement of education, science and culture, and that it is therefore incumbent on the Organization to collaborate closely with the United Nations in order to define and put into operation the right to education and the right to culture;

"Considering that the Draft Covenant adopted by the Commission on Human Rights refers to matters of the utmost importance to Unesco;

"Considering that the General Conference, at its present session, unfortunately, has not had sufficient time to study, as their importance warrants, the various aspects of the provisions adopted by the Commission, and that while expressing general approval of the principles underlying these provisions, the Conference cannot at present supply the comments required by the Secretary-General of the United Nations;

"Declares itself prepared to assume, as regards the implementation of the right to education and the right to culture, the responsibilities which would devolve upon the Specialized Agencies under Chapter V of the Draft Covenant adopted by the Commission on Human Rights;

"Instructs the Director-General to communicate to Member States the text of the Draft Covenant on Human Rights and to invite them to submit to him, within three months, their observations upon the provisions concerning the right to education and the right to culture and their implementation;

"Instructs the Director-General to submit to the Executive Board the observations transmitted by Member States on this subject;

"Invites the Executive Board to formulate, in the light of these consultations, observations which the Director-General might be called upon to make in the name of Unesco upon the Draft Covenant, to the next Session of the General Assembly of the United Nations and at any subsequent meeting of the appropriate organs of the United Nations;

"Instructs the Director-General to report to the Seventh Session of the General Conference upon the progress made towards the adoption of the International Covenant on Human Rights, and to present to the Conference a study of the measures which it may be necessary to adopt to enable Unesco

/to participate

to participate fully in the implementation of the right to education and the right to culture as defined in the Covenant;

"Instructs the Director-General to communicate the text of the present resolution to the Economic and Social Council."

This resolution was mentioned in the statement made on 12 December 1951 by the representative of Unesco before the Third Committee of the General Assembly.

In conformity with the request made by the General Conference, I submitted to the Executive Board, at its 29th Session, the observations transmitted by Member States. On 3 April 1952, the Board adopted the following resolution:

"The Executive Board,

"Having considered the Director-General's various reports on the Draft Covenant on Human Rights, the decisions relating to the Draft Covenant adopted by the United Nations General Assembly at its Sixth Session, and the results of the consultations with Member States conducted in accordance with the General Conference's decision at its Sixth Session (resolution 9.121);

"Having studied the report (29EX/49) presented by the Special Committee set up to consider the problems involved in the preparation of Covenants on Human Rights;

"Endorses the views and conclusions set forth in that report;

"Requests the Director-General to present Unesco's observations, on the basis of these views and conclusions, to the various organs of the United Nations responsible for preparing Covenants on Human Rights."

I accordingly enclose herewith a copy of document 29EX/49 [See Annex below], containing the report of the special Committee mentioned in the second paragraph of this resolution.

The representative of Unesco will be at the disposal of the Commission on Human Rights to provide it with such additional information as may be necessary.

ANNEX

Report of the Committee on Human Rights (29EX/49)

The Committee on Human Rights set up by the Executive Board held three meetings on 27 and 29 March and 2 April 1952.

The membership of the Committee was as follows:

H.E. Dr. C. Parra-Perez, Chairman  
H.E. Count Stefano Jacini  
Mr. C. Lucet (deputy for Mr. R. Seydoux)  
Mgr. J. Maroun  
Professor J. Piaget  
Mr. S. M. Sharif  
Professor A. Sommerfelt  
H.E. Mr. V. Ribnikar

After considering the Director-General's various reports on the Draft Covenant on Human Rights, the recent decisions of the United Nations General Assembly<sup>1/</sup> and the results of the consultations with Member States<sup>2/</sup> which the General Conference had decided were desirable, and after hearing explanations of the technical problems involved from the Legal Adviser and the Directors of the Department of Education and Cultural Activities, the Committee went on to examine and discuss the various clauses in the draft relating to educational and cultural rights.

It then considered the various Articles in the draft relating to the implementation of Human Rights.

At the close of its discussions, the Committee reached the following conclusions, which it proposes to the Executive Board for approval, so that they may serve as directives to Unesco when taking part in the work of the various organs of the United Nations responsible for preparing Covenants on Human Rights.

I. Definition of Educational and Cultural Rights

a. The Committee took note of certain observations regarding the relative length and complexity of the Articles dealing with educational and cultural rights, as compared with other clauses in the Covenant. It considers that the definition of educational and cultural rights should not be compromised in any way by the effort to secure a balance of form in the drafting of the Covenant; it is of importance to Unesco that those rights shall be guaranteed in the most

1/ Resolutions 543 to 549 (VI).

2/ cf. documents 29EX/2 and Addenda 1 and 2; and 29EX/22 and Addenda 1 and 2.  
/explicit

explicit way possible; precision might, however, be sacrificed if the clauses were cast in more general terms than those employed in the present wording. In this connexion, the Committee referred to resolution 544 (VI) adopted by the General Assembly of the United Nations at its Sixth Session, on the question of Human Rights, drawing attention to the need "to protect more effectively" economic, social and cultural rights.

b. Article 28 of the Draft Covenant

Article 28 of the Draft Covenant, defining what is involved in the right to education and specifying the aims to be pursued by States, appears to be satisfactory as it stands.

c. Article 29 of the Draft Covenant

The Committee considered and discussed the observations put forward by a few States on the question whether Article 29 should be kept in the Covenant. It was agreed that, in its present position in the Draft Covenant, this Article inserts a clause relating to implementation in a section concerned with the definition of economic, social and cultural rights. The Committee noted, however, that this objection involved no more than a point of drafting, and that the importance of making primary education, free of charge, universally compulsory, and the desirability of working out plans for that purpose, were not questioned.

The basic importance of the right to education, the urgent need to find a solution to the problem, and the fact that there is hardly any other economic, social or cultural right for whose implementation the ground has been better prepared by governmental and international action over the last few years make it necessary to maintain this clause. Only if it is inserted in the Covenant can there be any guarantee that it will generally be applied, and that the recognition of the right to education by the various States will have any practical effect.

Besides this general question, two questions of detail were considered in connexion with Article 29. Some members of the Committee wondered whether the obligation to work out a plan would apply to States which had not yet been able to put the principle of compulsory primary education fully into effect, although they had already passed legislation on the subject, or whether Article 29 related solely to States which had not yet passed any laws for the purpose. In the latter event, the scope of the Article should be extended.

/The Committee

The Committee considered that Article 29 should be interpreted as applying to all States which had not yet succeeded in making primary education free and compulsory, whether or not they had passed legislation on the subject.

The second question was whether it was advisable to specify, in the plan itself, the term of years within which it was to be achieved. Some members of the Committee pointed out that it was difficult to lay down time-limits in advance in such matters, and that States would therefore be inclined to specify very long periods, so that they could be sure of being able to fulfil their undertakings.

The Committee felt that the plan might be drawn up with too little regard for reality unless it fixed the term within which the programme was to be carried out. If it was to be really practical, the plan should provide for gradual implementation by stages, and should specify the aims to be achieved at each separate stage.

In this connexion, the Committee referred to a recommendation of the Fourteenth International Conference on Public Education, that compulsory education enforcement plans "should include both measures for immediate execution and measures to be gradually applied over a fixed number of years". The Committee drew attention, in general, to the importance of this Conference's recommendations.

Referring to the observations put forward by certain members about the difficulty of determining in advance the precise time required for implementation, in view of the possible effects of economic and demographic changes upon the application of the plans in each country, the Committee stated that, as it interpreted the present wording, Article 29 in no way prevented the States concerned from adopting such amendments to the plans as circumstances might dictate. The international obligation imposed on States by Article 29 is, simply, that each of them shall prepare a plan to take account of the needs and resources of the nation and of the special circumstances of the various territories under its authority. On the other hand, the questions of fixing the time-limits for implementation of the plan; of altering those time-limits, where necessary, owing to given economic circumstances or population conditions; and of adopting the necessary measures for carrying out the plan, are matters within the competence of States themselves and are the responsibility of the national bodies dealing with the problem.

d. Cultural Rights - Article 30 of the Draft Covenant

Various Member States were in general agreement with Article 30 of the Draft Covenant, but the Committee had before it two proposed amendments, submitted by the United States of America and Italy.

The Committee agreed that the wording suggested by the United States of America was an improvement, in two respects, on the wording of sub-paragraph 2 of the present draft, and that those two improvements might well be accepted.

(a) The wording proposed by the United States of America embodies an explicit recognition of the right to culture, whereas the present text merely speaks of ensuring conditions conducive to the development of cultural life;

(b) The draft proposed by the United States of America refers to the need for guaranteeing the freedom of the creative mind in scientific and intellectual research; it thus adds a new idea to those contained in the text as it stands.

The Committee also agreed that certain additions proposed by Italy were desirable. In particular, in order to give full effect to Article 27 of the Universal Declaration, it would seem advisable to insert in Article 30 a clause referring to the protection of the moral and material interests of the author of any scientific, literary or artistic production. A proposal to this effect had also been moved by France.

The Committee also considered two other additions proposed by Italy, designed respectively:

(a) To preserve the independence and integrity of each country's cultural inheritance;

(b) To assure minorities, and particularly linguistic minorities, of the preservation and development of their cultural inheritance.

The Committee noted that Unesco is to carry out a general study, in 1952, of the right to participate in cultural life and scientific progress, the results of which would be published towards the end of the year. Plans have been drawn up for another study, which might be carried out in 1953-1954, on the consideration accorded to the cultural activities of minorities.

In the circumstances, the Committee considered that it would be premature to formulate additional clauses for insertion in the Covenant, until those studies

/have been

have been completed. These particular aspects of the right to participate in cultural life, and other aspects which might be more closely defined by later studies, might, however, be dealt with in special conventions to assist in protecting Human Rights, as provided for in Part V of the Draft Covenant.

## II. Implementation

a. The Committee noted that the provisions for supervision by the competent organs of the United Nations and the Specialized Agencies, and for progressive implementation, contained in Part V of the Draft Covenant, were, generally speaking, appropriate to the character and complexity of the problems connected with economic, social and cultural rights.

It emphasized that, at its Sixth Session, the General Conference of Unesco declared itself "prepared to assume, as regards the implementation of the right to education and the right to culture, the responsibilities which would devolve upon the Specialized Agencies under Chapter V of the Draft Covenant adopted by the Commission on Human Rights." (Resolution 9.12)

This resolution means, in particular, that Unesco will devote all the means of action at its disposal, and all its machinery for supervision and regulation, to the implementation of the rights to education and culture.

The Committee thought it would be well, at future stages in the preparation of Covenants, to re-emphasize the importance of avoiding duplication in the procedure for the submission and examination of reports, having regard to the systems already elaborated by several Specialized Agencies.

In the circumstances, the Committee welcomed the suggestions, made by the United States of America and Italy in response to the Director-General's inquiries, that the powers of the Specialized Agencies with regard to the receipt and examination of reports from their Member States on economic, social and cultural rights should be specified in the Covenant.

b. On the question of the application of Part IV of the Draft Covenant to economic, social and cultural rights, the Committee noted that the remedies for violation of rights would raise many difficulties in a sphere in which the implementation of rights is necessarily bound up with economic and social developments, and in which States are required to undertake general and progressive obligations.



Without ruling out the possibility of a system of appeal by States, or even of petitions by private persons or non-governmental organizations, the Committee felt it necessary to emphasize:

(1) That such appeals should be restricted to the specific obligations undertaken by States;

(2) That appropriate safeguards should be laid down regarding the procedure for the consideration of such appeals or petitions, which necessitated a thorough knowledge of the technical requirements for the implementation of the right in question.

c. The Committee took note, with great interest, of the proposals submitted to Unesco by the World Jewish Congress, and to the United Nations by the delegations of Israel and Lebanon. The object of the proposals was to distinguish, among economic, social and cultural rights, those which it would be possible to implement immediately. The World Jewish Congress, for instance, mentioned as clauses which should be implemented immediately those relating to non-discrimination in the provision of opportunities for education and culture, and those relating to the promotion of international understanding through teaching.

The Committee wished to draw attention to the fact that Unesco attaches great importance to the observance of the principle of non-discrimination. Some members of the Committee pointed out that there were serious difficulties in the way of the suggested classification. To take an instance, the existing educational systems in many countries gave boys precedence over girls and the social traditions of these States were such that they could not accept clauses which would immediately give boys and girls equal opportunities for admission to the various existing educational establishments; in the same way, the effective use of education as a means of promoting international understanding would necessitate the revision of certain school textbooks, and for this some time would be required.

Accordingly, the Committee considered that, if any system of classifying educational or cultural rights was to have real practical effect, full allowance should be made for the circumstances mentioned above.

### III. Reservations

The Committee took note of resolution 546 (VI), adopted by the General Assembly of the United Nations, relating to the admissibility or inadmissibility

/of reservations

of reservations in the two Covenants on Human Rights.

The Committee considered that the problem involved political and technical matters, and it confined its remarks to the question whether the educational and cultural rights set forth in Articles 28, 29 and 30 were of such a nature that they might be the subject of reservations and, if so, to what extent. It felt that Articles 28 and 30, which contain definitions of rights in general terms, ought not to give rise to reservations. The Committee considered that Article 29, setting forth the obligation upon States to work out plans for the general provision of compulsory primary education, free of charge, left the governments themselves to fix their own rate for carrying out the plan - a provision which should remove the need for any reservation in this respect. Moreover, the implementation of economic, social and cultural rights was linked with a collective programme of international action, in which the United Nations and Specialized Agencies had an important part to play; this also seemed to limit the possibility of reservations.

Nevertheless, so far as Article 29 was concerned, certain members of the Committee thought that States might make reservations with regard to the two-year time-limit laid down for the preparation of the plan. States might also expressly reserve the right to alter the time-limits for the implementation of the plan in the light of experience acquired during its execution.

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In presenting its report to the Executive Board, the Committee submits the following draft resolution for the Board's approval:

"The Executive Board,

"Having considered the Director-General's various reports on the Draft Covenant on Human Rights, the decisions relating to the Draft Covenant adopted by the United Nations General Assembly at its Sixth Session, and the results of the consultations with Member States conducted in accordance with the General Conference's decision at its Sixth Session (resolution 9.121);

"Having studied the report presented by the special Committee set up to consider the problems involved in the preparation of Covenants on Human Rights;

/ "Endorses

"Endorses the views and conclusions set forth in that report;

"Requests the Director-General to present Unesco's observations, on the basis of these views and conclusions to the various organs of the United Nations responsible for preparing Covenants on Human Rights."

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