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SESSIONAL WORKING GROUP ON THE IMPLEMENTATION OF THE
INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND
CULTURAL RIGHTS

SUMMARY RECORD OF THE 4th MEETING

Held at Headquarters, New York,
on Wednesday, 7 April 1982, at 10.30 a.m.

Chairman: Mr. BURWIN (Libyan Arab Jamahiriya)

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by States parties to the Covenant concerning rights covered by articles 6-9
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The meeting was called to order at 10.55 a.m

CONSIDERATION OF REPORTS SUBMITTED IN ACCORDANCE WITH COUNCIL RESOLUTION 1988 (LX)
BY STATES PARTIES TO THE COVENANT CONCERNING RIGHTS COVERED BY ARTICLES 6-9
(continued)

Report of Italy (E/1978/8/Add.34) (continued)

1. Miss CAO-PINNA (Italy) said that her delegation was prepared to elaborate on the replies it had given at the previous meeting to the questions raised by members of the Working Group.
2. Mr. MARDOVICH (Byelorussian Soviet Socialist Republic), said that although he was satisfied on the whole with Italy's reply, he wished to clarify the substance of the question which he had put at the previous meeting regarding the extent to which employment was guaranteed in Italy. Section A of article 6 (right to work) of the report of Italy (E/1978/8/Add.34) stated that the constitutional provision affirming the right to work and the corresponding provision in the Covenant were in the form of guidelines and that, although they required the State to achieve increasing levels of employment, they did not guarantee each citizen the right to a job. The point he had made was that in so far as article 4 of the Italian Constitution did not guarantee full employment, it was not consistent with article 6 of the Covenant.
3. Mr. VEITIA (Venezuela), referring to section B of article 6 (right to work) of Italy's report (E/1978/8/Add.34), said that more ample information and a more detailed analysis would have been welcome regarding the general relationship of cause to effect between the rise in unemployment and the deterioration in the terms of trade with the oil-producing countries.
4. Mr. MRATCHKOV (Bulgaria) commended the representatives of Italy for their replies at the previous meeting, which had confirmed the impression he had originally gained from Italy's factual and comprehensive report, namely, that the Italian Government had encountered serious difficulties in applying certain provisions of the Covenant. For instance, there was an obvious incompatibility between article 6, paragraph 1 of the Covenant, which stipulated that States Parties to the Covenant not only recognized the right to work but also took appropriate steps to safeguard that right, and the fact that article 4 of the Italian Constitution did not guarantee the right to work, a fact confirmed, according to section A of article 6 (right to work) of the report, in a judgement of the Constitutional Court. Moreover, the figure of 2 million unemployed provided clear evidence of failure to safeguard the right to work and thus to comply with article 6 of the Covenant. The task of the Working Group was not to make a distinction between recommendatory and preceptive provisions but to analyse the facts and examine the concrete social measures taken for the implementation of the fundamental rights embodied in the Covenant.
5. Mr. BORCHARD (Federal Republic of Germany) said that the report was an outstanding piece of work. It was comprehensive in its exposition of the general political framework and detailed in providing exhaustive coverage of trade-union

(Mr. Borchard, Federal Republic
of Germany)

rights in the civil service and in the police and armed forces as well as social security entitlements. Moreover, it contained statistics to corroborate statements in the body of the report. Moreover, it was lucid and balanced in its treatment of the achievements of the Italian Government in the implementation of the Covenant and candid in identifying certain areas where problems persisted.

6. Miss CAO-PINNA (Italy) said that the comments made by the representative of the Federal Republic of Germany were all the more welcome as a considerable amount of work had gone into the preparation of the report, which had been much more difficult to compile than the report on civil and political rights because the latter tended to be governed by preceptive rules.

7. To revert to the points raised by the Byelorussian and Bulgarian representatives, she stressed that in article 4 of the Italian Constitution the expression "right to work" was not followed by a full stop but by the words "and promotes such conditions as will make this right effective". The implication was that the right to work was not preceptive, but depended on promotion by the Government of conditions making it effective for each and every citizen. Reference to one of the basic documents on the Covenant, namely document A/2929, would confirm that the discussions held in the Commission on Human Rights on specific articles of the Covenant had led to the conclusion that the right stated in paragraph 1 of article 6 of the Covenant could not be taken as absolute. It was a question of interpretation. Moreover, if article 6 were interpreted as preceptive, many developing countries would be unable to ratify the Covenant, despite their desire to do so.

8. Furthermore, as indicated in the report, the Italian Government had spared no effort since the end of the Second World War to remedy the structural economic difficulties contributing to unemployment. Although those difficulties, combined with the current international situation temporarily prevented the Government from guaranteeing the right to work to every citizen, it was a clear priority of all government programmes to give precedence to the creation of new jobs for population groups with the highest unemployment, i.e. particularly women and young people.

9. Clarifying the point raised at the previous meeting regarding the concept of the right to work as a duty, she pointed out that under the Italian Constitution no citizen could be obliged to work or forced to choose a specific job, although the range of choice would naturally be limited to existing employment opportunities.

10. The representatives of Venezuela and Libya had requested further explanations regarding the general causes of Italy's current economic difficulties. It was widely known that the rise in the price of oil in 1973 had created difficulties not only in developing countries but also and particularly in industrialized countries, where it had generated a high rate of inflation which was only now beginning to be brought under control. Although statistical analyses of economic phenomena exceeded the terms of reference of the Working Group, the Italian delegation was willing, if the Libyan and Venezuelan representatives so wished, to provide them with figures on how far Italy, unlike other countries which were oil producers or

(Miss Cao-Pinna, Italy)

imported less, had been affected by the increase in the price of oil. The increase had been directly reflected in retail prices in general and had resulted in a greater demand for employment and an increase in the budget deficit. Before the 1973 price increase there had been some unemployment, but at a much lower level.

11. Mr. FERRARI-BRAVO (Italy) observed that the Working Group had dwelt too long on the issue of the price of oil, which was just one factor among many which had contributed to Italy's economic difficulties and on which there was ample evidence from a multitude of sources, including the Organisation for Economic Co-operation and Development. It had never been Italy's intention to blame its difficulties on any particular group of countries or any one factor. It was natural that there should be a temporary increase in unemployment before Italy's far-reaching efforts to restructure its economy and to redress the existing imbalance actually yielded results. The long and comprehensive section B of the report on measures to achieve the full realization of the right to work described all the action taken by the Italian Government to tide it over that transitional period, including the significant support it provided to the unemployed to enable them to overcome temporary joblessness. It must also be borne in mind that unemployment figures reflected not so much full unemployment as partial unemployment.

12. To elaborate on Miss Cao-Pinna's comments on the right to work, he noted that it was significant that "will" rather than "shall" had been used in the second part of paragraph 1 of article 6 with reference to the appropriate steps to be taken to safeguard the right to work. The practical measures taken by Italy were fully consistent with the spirit of article 6, which was clearly intended to state the ultimate objective.

13. Finally, to answer the very important question raised by the representative of Japan about the relationship between the Italian legal system and international law, it was important to note that, under article 10 of the Italian Constitution, all human rights, including economic and social rights, took precedence over other international provisions. The Covenants, inasmuch as they reflected generally accepted standards and principles of international law, had even greater force than treaties. For example, the Constitutional Court, when asked to rule as to precedence in the hypothetical case of conflict between legislation enacted by the European Economic Community and national legislation on basic human rights, had issued the same finding as the German Constitutional Court a few years ago, namely that even treaties concluded in the European Economic Community, which were binding on Italy and prevailed over Italian law, would not take precedence over basic human rights as embodied in the Constitution of Italy. The force of legal provisions on basic human rights gave the full measure of the crucial importance which Italy attached to the observance of basic human rights as embodied in the Covenants and the Universal Declaration of Human Rights.

14. Mr. SOFINSKY (Union of Soviet Socialist Republics) said that the report spoke of the adverse effects on employment of the deterioration in terms of trade with the oil-producing countries. He would like to know what the situation had been before the oil crisis began in 1973 and what were the causes of any unemployment existing before that date. Unemployment was not a minor problem since the enjoyment

(Mr. Sofinsky, USSR)

of many fundamental rights, such as the right to housing, education, health protection and, in the last resort, even the right to life, depended to a considerable degree in some countries on the right to work. As he understood it, the Italian Government's approach to the right to work as reflected in the Italian Constitution was that it constituted only a moral responsibility. The Soviet interpretation of government and State responsibilities in that respect was quite different.

15. Miss CAO-PINNA (Italy) said that most of the Soviet representative's observations had been covered by previous replies, but she would like to comment on his contention that other rights depended on the right to work. In her country, all the fundamental freedoms were recognized in law and in fact, and it was difficult to accept the argument that the right to work could be interpreted as encompassing all others. Freedom of association, for example, was not dependent on the right to work and her country's recognition of that freedom and of free trade unions stimulated the Government to take the necessary measures to solve the unemployment problem, giving priority to economic development. The statement in article 1 of her country's Constitution that "Italy is a democratic republic based on labour", to which the Soviet representative had referred, was of fundamental importance. Her country had more than 20 million people at work and they were very well protected by many measures, as was illustrated by the report.

16. Miss Cao-Pinna, Mr. Librando and Mr. Ferrari-Bravo withdrew.

17. The CHAIRMAN said that, if he heard no objection he would take it that the Group had concluded its consideration of the report submitted by Italy.

Report of Yugoslavia (E/1978/8/Add.35)

18. At the invitation of the Chairman, Mr. Lazarević (Yugoslavia) took a place at the table.

19. Mr. LAZAREVIĆ (Yugoslavia) said that his country's report reviewed legal provisions as well as current practice with regard to application of articles 6-9 of the Covenant. The report's terminology required certain explanations, but he would like first briefly to review Yugoslavia's social and economic structure.

20. Socialist Yugoslavia was a federal State which united the peoples of six republics and two autonomous provinces and was based on the power of the working people. It also implemented the principles of self-management and of equal rights for all nations and nationalities (i.e. national minorities). Constitutional guarantees ensured that all decisions of substance affecting the interests of constituent republics and provinces were taken by consensus.

21. The institutional system was designed to encourage ever-greater participation by all sectors of the population in considering every issue, from the municipal to the federal level. At the same time, it reflected society's striving to reduce the role of the State apparatus and to transfer authority, so far as possible, to the people themselves. The multiplicity of interests characterizing various areas

(Mr. Lazarević, Yugoslavia)

of the country's life were discussed openly and decisions were taken in the basic organizations of associated labour or the workers' assemblies at commune, provincial, republic or federal level.

22. Social ownership was the predominant feature of the economy. Private ownership still prevailed in agriculture but large agro-industrial complexes had developed on the basis of social ownership and individual farmers could hold no more than 10 hectares of arable land. The country was a developing one and, while it had made substantial progress, it still faced many problems, including a rate of unemployment of about 12 per cent of the work force and difficulties of access to markets in many countries, especially those of the European Economic Community. Many Yugoslavs worked abroad, an estimated 560,000 in Western industrial countries, although their number was constantly declining owing to the economic difficulties besetting those countries, and they had recently been returning at a rate of 50,000 a year.

23. In ratifying the Covenant, his country had assumed an obligation to strive for the promotion and observance of the rights recognized in it. Article 210 of his country's Constitution provided that international treaties should be applied as of the day they entered into force, unless otherwise provided, and that international treaties which had been promulgated should be directly applied by the courts. The Covenants on Human Rights had been translated into all the official and other languages of his country and circulated widely as soon as they entered into force.

24. The report of Yugoslavia attempted to show as clearly as possible how articles 6 to 9 of the Covenant were reflected in Yugoslav legislation and what efforts were being made to apply them progressively in practice. However, the terminology used required some elucidation.

25. As used in the report, the term delegate referred to members of the delegations elected by working people in self-managing organizations to represent them in assemblies at commune, province, republic and Federation level. Delegates were required to adopt the position decided upon by the delegation or assembly which had selected them and the delegate system was the universal principle underlying the entire socio-political structure.

26. The expression local communities meant self-managing territorial units concerned with questions of local significance in rural or urban areas which did not exercise any public power. They differed from socio-political communities such as the communes, autonomous provinces, republics and the Federation itself, in which the people exercised public power.

27. The term socially-owned resources denoted those resources used by associated labour and managed by the workers which, in his country, were neither privately- nor State-owned. The right to work with social resources was an inalienable right of every worker operating in associated labour to satisfy his personal and social needs on an equal footing with others.

(Mr. Lazarević, Yugoslavia)

28. The term organization of associated labour referred to those organizations which operated with socially-owned resources and were organized on a self-management basis. Contractual organizations of associated labour, on the other hand, were a form of organization in which workers operated with their own means of production in private ownership, but pooled their efforts on a self-management basis. Such an organization was a transitional phase from individual work with private means of production to collective labour with social means of production.

29. Social compacts were concluded on a basis of equality by organizations of associated labour, governmental agencies and socio-political organizations and their purpose was to take over the role of the State in solving social problems. Such compacts were legal and the parties determined the means and responsibilities for implementing them.

30. Self-managing agreements were the means by which local organizations managed their own affairs and self-management courts included courts of associated labour, arbitration tribunals, conciliation councils and other judicial bodies which administered the law independently and, in principle, on the same basis as regular courts.

31. Lastly, past labour meant the right of elderly workers to share in the benefits of increased productivity achieved by the accumulation of the results of this labour over many years.

32. Mr. FUJII (Japan) said that it appeared from paragraph 122 of the report that there were still some people in Yugoslavia who were not covered by the social security system. He wished to know who was not covered and what measures the Government had taken or envisaged taking to assist them. More generally, he wished to know what percentage of the Government's total budget went for social security and what the Government was likely to spend on social security in the future.

33. Mr. BOUFFANDEAU (France) said that it would have been useful to have some figures on the social development plans and employment promotion efforts described in paragraphs 12 to 17.

34. Paragraph 3 referred to the freedoms and rights of aliens. He was curious to know what rights aliens did not enjoy and whether aliens working in Yugoslavia could belong to trade unions on the same conditions as Yugoslav workers.

35. With regard to paragraph 50, he wished to know at what level criteria for the allocation of resources for personal incomes were determined, in other words whether at enterprise or industry level, at provincial or State level.

36. With regard to the right to strike covered by paragraphs 107 to 113, he noted that there were many procedures for preventing strikes but no actual mention of strikes as such. He wished to know whether, if all attempts at negotiation or conciliation failed, workers could actually go on strike.

37. Mr. MARDOVICH (Byelorussian Soviet Socialist Republic) observed that paragraph 25 of the report was particularly interesting in that it dealt with a problem which was a familiar one for many countries and which different countries tackled in different ways depending on prevailing conditions. His own country was trying to resolve the problems that arose when jobs were lost as a result of technological or structural changes in a manner consistent with the interests of both the worker and the State. He wished to know how Yugoslavia dealt with such problems and what organizational and structural measures it had taken to that end. In some countries, technological progress led to conflicts between workers and management and also to unemployment and he wondered how a country that was based on the principle of self-management dealt with them.

38. Mr. MRATCHKOV (Bulgaria) requested further information on the mechanism for the distribution of income and resources for personal incomes referred to in paragraph 54.

39. Mr. ALLAFI (Libyan Arab Jamahiriya) noted that Yugoslavia had an unemployment rate of 12 per cent. Paragraphs 32 and 33 described the steps taken by the Yugoslav Government to deal with the problem of Yugoslav workers employed abroad, but he was curious to know how the Government solved the problems which arose when large numbers of those workers returned to Yugoslavia. He would also like to know what priorities applied when dealing with unemployment within Yugoslavia and among Yugoslavs who returned from abroad.

40. Mr. RUIZ-CABAÑAS (Mexico) observed that, as a developing country, Mexico shared many of Yugoslavia's problems, particularly those of unemployment and migrant workers. He would welcome further information on the specific characteristics of Yugoslav migrant labour in Western Europe, for instance from which regions of the country migrant workers came, to which age group they belonged and what kind of professional qualifications they possessed. Migrant workers often represented a source of income for the country to which they migrated and hence a loss of income for their country of origin in terms of the money it had spent on their education and training. He wished to know what policy Yugoslavia had adopted on that issue and how it was dealing with the return of migrant workers..

41. Mr. BORCHARD (Federal Republic of Germany) suggested that, in future reports, the Government of Yugoslavia should include a brief explanation of the terminology used in its reports in order to make them easier to understand. Not all those who read the present report would have had the benefit of the detailed explanation given by the Yugoslav representative.

42. Paragraph 27 mentioned that 98 per cent of Yugoslavia's active population was employed in the social sector and he wondered where the remaining 2 per cent were employed. He noted from the statistics given in paragraph 68 that the number of accidents at work had increased dramatically between 1976 and 1978 and asked whether there were more recent figures on occupational accidents.

43. He would welcome further clarification as to the actual functions of Yugoslav trade unions and would also like to know, in connexion with paragraph 102, whether

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all workers were unionized. Finally, the Yugoslav representative had circulated as a separate document a number of articles extracted from Yugoslavia's domestic legislation; could he identify the legal instruments from which they were drawn?

44. The Federal Republic of Germany was extremely interested in developments in Yugoslavia, in particular in its socialist model, about which many Yugoslav workers who had resided in his country for some time now had also disseminated information. He wished to place on record that the working relationship between Yugoslav migrant workers and his country's own labour force was greatly appreciated.

45. Mr. LAZAREVIĆ (Yugoslavia) explained that the legislative document circulated to members of the Working Group contained articles of the Constitution and the Associated Labour Act which were referred to specifically in brackets in various parts of his country's report.

46. With regard to the questions raised by the representative of Japan, he pointed out that all those employed in working organizations or institutions were covered by the social security system, while agricultural workers working on their own farms rather than on agro-industrial co-operatives were only partially covered. The latter enjoyed full coverage for communicable diseases such as tuberculosis and were also fully covered after the age of 65. Consideration was now being given to the possibility of extending social security coverage to all peasants, however, as an incentive to young people to stay on their parent's farms.

47. Replying to the questions raised by the representative of France, he said that it was very difficult to increase the number of employment openings. In recent years, there had been a 3-4 per cent annual increase in the number of jobs, depending on the resources available for investment. Since most enterprises were now capital- rather than labour-intensive, however, the creation of new enterprises did not usually create many jobs. There was a government policy, particularly in the less developed southern part of Yugoslavia, of setting up enterprises using local materials, but the global problem might take years to solve. The Government was particularly concerned at the high level of unemployment among young people, especially those leaving higher education institutes. The north of Yugoslavia was much more developed, but population growth was greatest in the south. A federal fund had been created to channel resources towards the development of the less developed regions and provinces. Moreover, the developed regions of the country had an obligation to help open up enterprises in the less developed areas and establish links between those enterprises and their own in order to stimulate development.

48. In reply to the questions raised by the representative of Mexico, he said that most of the Yugoslav workers employed in Western Europe were non-skilled, although they did include some professional people. Some workers left Yugoslavia to find a job, while others left to find a better-paid job. Peasants, for instance, sometimes left their families for four or five years and went to work abroad to earn enough money to build better homes and to buy farm implements and equipment when they returned. Skilled mechanics might want to work abroad in order to earn

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enough money to set up a small business back in Yugoslavia. Not many professionals returned to Yugoslavia as there were much better job openings and educational opportunities abroad. Since every citizen was entitled to a passport, unless he had a criminal record or was likely to participate in activities abroad which were detrimental to Yugoslavia's socialist system, a conflict inevitably arose between citizens' freedom to travel and Yugoslavia's need for the professional and skilled personnel it had trained. Efforts were under way in some international organizations to devise a scheme whereby countries whose qualified citizens emigrated to take up employment in another country might receive compensation from that country commensurate with the benefit it derived from the training such migrant workers had received in their country of origin.

49. Aliens enjoyed rights under articles 201 and 202 of the Constitution, including the right to join trade unions. It should be remembered that trade unions in Yugoslavia were not the same as the traditional unions of the West: since enterprises were under worker control, trade unions could influence the over-all economy and organization of the country.

50. The Constitution and the Associated Labour Act did not actually specify the right to strike, since workers controlled their work place and therefore had no need to strike. Disputes regarding conditions of work could arise, however, in which case workers had the right to organize work stoppages should negotiation or conciliation fail. There had been about 50 such stoppages in 1981. Workers were not persecuted if they stopped work and the authorities simply endeavoured to resolve the disputes should negotiation and conciliation fail.

The meeting rose at 1.15 p.m.