



CONTENTS

	Page
Agenda item 28:	
Draft International Covenants on Human Rights (continued)	141

Chairman: Mr. Omar LOUTFI (Egypt).

AGENDA ITEM 28

Draft International Covenants on Human Rights (E/2573, annexes I, II and III, A/2907 and Add. 1 and 2, A/2910 and Add.1 to 5, A/2929, A/2943, chapter VI, section I, A/C.3/L.460 and Corr.1, A/C.3/L.466, A/C.3/L.472, A/C.3/L.475, A/C.3/L.476, A/C.3/L.477, A/C.3/L.479, A/C.3/L.480) (continued)

GENERAL DISCUSSION (continued)

Article 1 (continued)

1. Mr. PAZHWAQ (Afghanistan) asked for permission to reply to certain remarks by the representative of Lebanon concerning the intention of the authors of article 1 of the draft International Covenants on Human Rights (E/2573, annex I).
2. The representative of Lebanon had asserted (649th meeting) that originally it was only in the specific case of the Non-Self-Governing Territories that the supporters of the principle of self-determination had tried to secure recognition of that principle as a right; not till later had they sought to widen its scope to include other classes of territories. He had also asserted that the inclusion of a clause on economic, social and cultural status answered the desire of the authors of the article to protect the principle of non-interference in the domestic affairs of States. Lastly, he had claimed that it had been the aim of the sponsors of the article to limit the effect of the obligations set forth in paragraph 2 to the administering Powers.
3. He (Mr. Pazhwak) must point out that, while the Lebanese delegation might perhaps have thus interpreted the intentions of other delegations, the Afghan delegation had certainly never intended that the exercise of the right of self-determination should be confined to the peoples of the Non-Self-Governing Territories. It was true that the representative of Lebanon had admitted that he had been unable to attend all the meetings of the Third Committee. He (Mr. Pazhwak) could easily restate the considerations which his delegation had already expounded in detail (644th meeting), but, in order to save the Committee's valuable time, he would merely refer the representative of Lebanon, first to the admirable statement made by the representative of Egypt (651st meeting); second, to the summary record of the 644th meeting, which clearly showed

that the representative of Lebanon had misinterpreted the intentions of the authors of article 1; and lastly, to article 1 itself.

4. To come to the procedural proposals before the Committee, he would like to make some observations on the draft resolutions submitted by Denmark (A/C.3/L.479) and Ecuador (A/C.3/L.477).

5. The first impression produced by the Danish proposal was that it was both deceptive and misleading. The Danish delegation's attitude had been inconsistent right from the start. After beginning with an appeal to the spirit of conciliation and concord — an appeal which had not gone unanswered — the representative of Denmark had made, at the 644th meeting, a statement to the effect that to adopt an article on self-determination would be to display a lack of realism; he had added that his country was opposed to the inclusion of article 1 in the draft covenants. In other words, after preaching conciliation, he had clearly committed himself, since, by requesting the deletion of article 1, he had firmly ranged himself on the side of the opponents of the article. In those circumstances, he wondered how the Danish representative's latest proposal could be regarded as in any way prompted by the spirit of conciliation.

6. Moreover, the proposal meant going back on a General Assembly decision which had already been unequivocally confirmed both at the ninth session and at the current session. At its ninth session, the General Assembly had expressed the view that the work of the Third Committee at that session constituted a first reading,¹ and had decided that at the tenth session the draft covenants should be given a second reading with a view to their adoption at the earliest possible date (resolution 833 (IX)). At the beginning of the tenth session, the Third Committee had decided (636th meeting), by a majority vote, to consider the covenants in a given order, always with the aim in view that they should be adopted as quickly as possible.

7. In support of his proposal, the representative of Denmark had invoked considerations of time (650th meeting). He had pointed out that, in addition to item 28, the Committee still had a fairly heavy agenda and only a limited number of meetings in which to consider the other items. He could assure the Danish delegation that no delegation had those considerations more at heart than the Afghan delegation: he was not ashamed to say that his delegation could not afford prolonged stays in New York, and that, furthermore, it attached as much importance as the representative of Denmark to the other items on the agenda. He was, however, of the opinion that the real reason for the Danish proposal was that Denmark, as its representative had said, was opposed to the inclusion of an article

¹ See *Official Records of the General Assembly, Ninth Session, Annexes*, agenda item 58, document A/2808 and Corr.1, para. 23.

on self-determination in the covenants and was therefore in favour of the deletion of article 1.

8. However that might be, what the Danish representative wanted was, in substance, that the question should be referred to Governments, which should communicate observations, amendments or proposals to the Secretariat, which in turn would assemble them in a document to be submitted to the General Assembly. That would mean that all the work the Committee had done so far would be wasted, and that the Committee would lose still more precious time. Actually the procedure advocated by the representative of Denmark had already been followed: the working paper (A/C.3/L.460 and Corr.1) was there to prove it. Governments had already expressed their views, and the most the Secretariat could do would be to reproduce the same document. Furthermore, no delegation had so far expressed a desire on the part of its Government to have more time in which to study the question further.

9. What emerged most clearly from the Danish proposal was that its chief aim was to defer examination of the question of self-determination. Adoption of the proposal would be a serious blow to the cause of human rights, not to speak of the harm it would do to the prestige of the United Nations. The Afghan delegation would therefore vote against it. He had no intention of appealing to the representative of Denmark, but if that representative really wanted to save time and to pass on quickly to the other items on its agenda, he might perhaps find it wiser to withdraw his draft resolution.

10. As regards the Ecuadorian proposal (A/C.3/L.477), he did not think it necessary to set up a working party, but nor did he think that the effort need be altogether useless. In any case, if the Third Committee decided to set up the working party, it would have to fix a definite time limit for its work, so as not to delay unduly the adoption of article 1. Also, there should be a clear understanding right from the start as to the working party's terms of reference so that, when its report was received, there would be no need for further prolonged discussion. Lastly, the working party should be guided in its task by the fundamental principle that any amendments to the text would not affect the spirit of the article. As the representative of Egypt had said (651st meeting), that article was the fruit of the work of other organs of the United Nations, including the General Assembly and the Commission on Human Rights, and revision of the text should not be made an excuse for losing sight of the fundamental considerations by which those organs had been guided. In that connexion, he was of opinion — and he hoped that was the Ecuadorian representative's intention — that the task of the working party should be confined to amending the form of the text, in the light of the suggestions that had been made, so that it could be accepted by a greater number of delegations.

11. Before deciding, however, on the establishment of the working party in question, it was important to come to a decision, first, concerning the inclusion of article 1 in the draft covenants and, secondly, concerning its adoption at the current session. For if the working party revised the article and the proposals for its deletion were upheld, as was theoretically possible, it would have wasted its own time and have caused the Third Committee to waste even more time; in other words, if the Committee decided to set up the working party, that decision should automatically

imply the rejection of the United Kingdom amendment (A/2910/Add.1) and the Danish proposal (A/C.3/L.479).

12. He paid a tribute to the representative of Ecuador for the conciliatory spirit he had displayed. Nevertheless, the delegation of Ecuador and all those in favour of article 1 should ascertain, before voting for the establishment of a working party, whether the opponents of the article were prepared to display the same spirit. If no compromise was possible, the result would be the same, whatever improvements were made in the text, since the delegations which were opposed to article 1 would maintain the same attitude.

13. To avoid all confusion, the most sensible course would be to vote first on the amendments for the deletion of the article. If, as was probable, those amendments were rejected, a working party could be established to prepare a text acceptable to all.

14. He did not think the Syrian amendment (A/C.3/L.475) or the joint Chilean, Ecuadorian and Peruvian amendment (A/C.3/L.476) need take very much time, and the Third Committee could deal with them itself. He would not, however, have any objections to their being previously discussed by the working party, if the working party was established subject to the conditions he had mentioned.

15. He reserved his delegation's right to speak again, in view of its special interest in the question.

16. Mr. HOARE (United Kingdom) considered that the lengthy debate which had just taken place had been instructive. He was happy to say that, on many points, he agreed with the views of several representatives whose basic position was quite different from his own; that made his task easier because several of the objections to which his remarks had given rise had already been refuted by some of those representatives.

17. In his first remarks (642nd meeting) he had not touched on the question whether self-determination was an individual or a collective right because he felt that, though the question was important, it was not the most fundamental. He would merely associate himself with the views of the representative of Ecuador on the question, which seemed to him conclusive, as regards the use of the words "peoples" and "nations" in paragraph 1 of article 1. The representative of Saudi Arabia had said that the second of those words had been added at the instance of the colonial Powers. Even if that were so — and he (Mr. Hoare) doubted whether his own delegation had taken any such step — the arguments which he had developed in relation to article 1 were in no way weakened since they were related to the word "peoples". He had already explained that he took the word "peoples", in paragraph 1, to mean peoples who were not independent and the word "nations" to mean sovereign States. He would observe, however, that in paragraph 3 the word "peoples" could only mean sovereign States; any wider interpretation, such as that suggested by the Syrian representative, might give rise to curious results and cause serious alarm.

18. The United Kingdom delegation had pointed out that the Universal Declaration of Human Rights made no mention of self-determination, whereas certain resolutions of the General Assembly, adopted subsequent to that Declaration, enunciated it as a right and even as the prerequisite of the enjoyment of all fundamental human rights. The reply had been given that there was nothing to prevent the covenants from

enunciating rights that did not appear in the Declaration. That was certainly true: for example, there were proposals for including in the draft covenants the right of property, which did not appear in the Declaration. Conversely, certain rights set forth in the Declaration, such as the right to a nationality and the right to a certain social and international order, did not appear in the draft covenants; the reason was that at the current stage of international relations, such rights could not be formulated as legal obligations in the covenants. There was an analogy there to article 1. But his objection was directed against a more serious anomaly, namely the assertion in the Assembly's resolutions that the right of self-determination was the corner-stone of human rights. It must be concluded either that the corner-stone had been inadvertently omitted from the edifice of the Universal Declaration, or that the Assembly's assertion of the fundamental character of that right was open to question. The representative of Brazil had demonstrated that it was indeed open to question. According to the Egyptian representative, the right had not been mentioned in the Declaration because it had already been recognized in other declarations. Unhappily, that argument was not convincing, because the Declaration contained numerous rights which were already well recognized in various instruments.

19. On the question of minorities, many representatives appeared to have been indulging in wishful thinking, and had not analysed the facts objectively. He referred to the arguments of the representatives of Greece, Syria, Saudi Arabia and India, and asked the Committee to try to realize the legal consequences which might arise from the provisions of article 1. No one wanted to encourage separatist or irredentist movements. But if it were acknowledged, as it must be, that certain minorities could be regarded, or substantiate a claim to be regarded, as peoples, article 1 indubitably sanctioned their right to independence, with all the dangers that that involved. Even minorities whose minority rights were carefully protected could make such claims and avail themselves of the right of self-determination. It had been said that minority questions could always be satisfactorily settled by constitutional and democratic processes. On the contrary, the history of Europe showed that minorities could not always obtain their independence by democratic means, since two wars had been necessary for some of them to obtain recognition of their rights.

20. On the question of self-determination considered as a principle, he unreservedly agreed with many of the views put forward during the debate: for example, that the principle might have to be subordinated in practice to other principles, in particular to the maintenance of peace, as the representative of Guatemala had rightly observed, and that its application must not be automatic, since certain peoples were not yet ready for independence or were not asking for it. But one important fact must be emphasized, namely, that the covenants were not a declaration of principle, but legal instruments with binding force. The attachment of the Latin American countries to the principle of self-determination, to which they owed their existence, was understandable; but he was afraid some representatives of those States did not always realize that it was now not a question of affirming a principle, but of creating an obligation.

21. It was important once again to make clear the general attitude of the United Kingdom delegation on

that point. The principle of self-determination was of supreme importance; but for the time being it could not be enunciated as a legal right, since no legal formula could take adequate account of every individual case which might arise. The United Kingdom had a wide experience of the practical application of self-determination, and its goodwill in the matter was not open to doubt. It might perhaps appear paradoxical, therefore, that it should be asking for the deletion of article 1; but its decision to do so was in fact founded upon its experience, since the practical difficulties which it had encountered made it sceptical as to whether any satisfactory formula could be found.

22. Self-determination was a moral concept which, in its essence, was the application, in relations between groups, of the principles of justice, liberty and fair play, linked with the democratic notion of respect for the will of the people. In the opinion of the United Kingdom delegation, the time had not yet come to codify that concept and to transform it into a universally applicable obligation.

23. On the question of procedure, it would be wise, as the representative of the Dominican Republic had suggested, not to take any hasty decision. Many fresh views had been put forward in the course of the debate; it would be well for all Governments to examine them carefully. As regards the proposal for a working party, the terms of reference of the working party were to revise the text of article 1. The United Kingdom delegation would unfortunately be unable to serve on such a working party, in view of the very firm attitude which it had adopted, on grounds which he had just explained, in regard to article 1.

24. It had been proposed that article 1 should be redrafted so as to apply only to the peoples of Non-Self-Governing Territories. In reply to that argument it was sufficient to point out that the Third Committee was drafting universal covenants on universal human rights; it might well be asked, therefore, how it could, without failing in its task, limit to particular groups a right said to be not only universal but the prerequisite of the enjoyment of all human rights. A victory for the supporters of an article conceived in such terms would be purely illusory since the administering Powers could not possibly accept such a partial and partisan solution. Moreover, it would be indefensible to ignore the aspirations to freedom of peoples in territories other than the Non-Self-Governing Territories; such aspirations indubitably existed, and the United Nations could not simply disregard the possible freedoms of the future.

25. Mr. VELA (Guatemala) pointed out that, contrary to the apparent understanding of the United Kingdom representative, his delegation did not subordinate the principle of self-determination to that of the maintenance of peace. There were three stages on the road to self-determination, the first being recognition of the principle, the second recognition of the right corresponding to the principle, and the third the adoption of measures to ensure international respect for that right and its application in the various individual cases. The Guatemalan delegation was ready immediately to agree to the enunciation of the principle of self-determination in the form of an obligation.

26. Mr. HAKIM (Syria) explained, for the benefit of the United Kingdom representative, that in his opinion, the term "nations" applied to sovereign States,

and "peoples" to communities which had not yet attained independence. It was therefore logical to agree that, in the economic sphere, the right to sovereignty of peoples still subject to a foreign Power should be guaranteed.

27. The States which were opposed to paragraph 3 of article 1 considered sovereignty from the viewpoint of States which were already independent and sovereign. They tended to conceive the right of self-determination in accordance with the view which prevailed in Europe, and not to concern themselves with the fate of the Asian or African peoples subject to foreign exploitation or the colonial yoke. It was deplorable that that attitude was shared by so eminent an authority on international law as Professor Georges Scelle, whose views had been mentioned by the New Zealand representative.

28. He regretted that the administering Powers very frequently adduced the paramount interest of law and order when they refused to grant the populations of Non-Self-Governing Territories the possibility of self-determination. It was an argument which they invoked very readily, but it must not on that account be forgotten that self-determination was a fundamental right for all peoples who were still dependent.

29. The amendment he had submitted to the Committee (A/C.3/L.475) was simply intended to make the English text of article 1, paragraph 3, more explicit. While a people might not exercise its sovereignty at a particular juncture, it always had the right to claim and recover its sovereignty.

30. Mr. BEAUFORT (Netherlands), replying to statements made by the Indonesian representative (644th meeting), said that it was not because it feared that the principle of self-determination might be applied to New Guinea that his Government was opposed to the inclusion of article 1 in the covenants; it had, in fact, undertaken to grant the people of that Territory the right freely to decide its political status when the time came. New Guinea was not an integral part of Indonesia, as Mr. Sudjahri had alleged. In 1949 it had been explicitly excluded from the territories covered by the transfer of sovereignty; moreover, it was doubtful whether its people had had, in August 1945, the opportunity of expressing its opinion on the political status it wished to adopt.

31. Mr. AZKOUL (Lebanon) said he would like to reply to certain points raised by various delegations.

32. He was just as anxious as the Egyptian representative to see an article on the right of peoples to self-determination included in the draft covenants. The reason he had criticized article 1 was that he firmly believed in the fundamental idea enshrined in it. But he would be better able to uphold that idea if he were more convinced of the excellence of the text. He would therefore like the wording of article 1 to be improved since, in his opinion, the text as it stood exhibited certain points of obscurity, and therefore certain dangers.

33. For instance, the word "peoples" might give rise to controversy. That was why he had thought it well to define its various connotations. It should not be overlooked that the covenants were not instruments with no binding force, but on the contrary were sets of legal provisions binding the signatory States; those States must therefore know exactly what they were undertaking. A general formula might be given more or less unexpected interpretations. Paragraph 2, for

example, might mean that States should concern themselves exclusively with the condition of the minorities in their respective territories. He asked whether the conclusion ought to be drawn that the States concerned must prepare an annual report, as provided in article 48 of the draft Covenant on Civil and Political Rights, even if the minorities in question had no claim to make. It was obvious that the draft covenants failed to make suitable provision for their application in such cases. It was therefore desirable to amend a text which, if interpreted in certain ways, might give rise to serious difficulties and even preclude all possibility of its implementation. It was for those reasons that he had considered it prudent to remind the Committee of the underlying intentions which, in his view, had inspired the authors of paragraph 1, and that he advocated the adoption of a text drafted in less general terms. Egypt, moreover, was inclined to share that view, as it had declared its willingness to support a proposal by the Pakistan representative that the original General Assembly text should be restored.

34. The Egyptian representative had expressed surprise that the Lebanese delegation should have proposed that the scope of article 1 should be restricted. He had pointed out that, at the Asian-African Conference held at Bandung, Lebanon, far from wishing to limit the right of self-determination to the Non-Self-Governing and Trust Territories, had advocated the widest possible extension of the principle. There was only an apparent contradiction in that. While at Bandung it had been a question of proclaiming a principle, the Third Committee was now required to define a strict legal obligation which was to be accompanied by measures of implementation.

35. In reply to Mr. Hoare, who had been surprised that a restriction on the application of the right of peoples to self-determination could be seriously contemplated, he recalled that he had suitably clarified that point in his speech at the 649th meeting.

36. In conclusion, he wished to reply to certain comments made by the Israel representative at the previous meeting. Whenever he had to mention the State of Israel he took care to say that he had no wish whatever to attack it. He took that precaution both because he did not wish to be accused of systematic anti-Semitism and because he had the greatest respect for Jewish culture. The danger he had stressed in commenting on the expression "cultural status" remained, and Israel was a good example of it: it was a State that insisted on being Jewish and proclaimed that its role was to accomplish the historic mission of Zionism, thus excluding not only the non-Jewish elements but also all the Jewish elements which did not share its Zionist ideology. The expression included in article 1, paragraph 1, might justify a cultural dictatorship; it was thus clear what dangers it presented and why his delegation considered it unacceptable.

37. Mr. MOROZOV (Union of Soviet Socialist Republics) said that, despite the criticisms which had been expressed, article 1 as it stood retained all its force. The arguments advanced against its provisions were not new. His own delegation had not claimed any originality in continuing to defend, at the current session, a position that had long been known and was in keeping with the Soviet Union's policy with regard to the exercise of the right of self-determination.

38. In view of the vigour of the attacks which had been levelled against paragraph 3 of article 1, he must define his Government's opinion on that point. It had been said by some that the adoption of a text of that kind might have the effect of reducing the economic assistance, especially capital, furnished by the industrialized countries to the economically under-developed countries. It was difficult to regard statements of that kind as arguments. They denoted rather a desire, on the part of their authors, to bring certain pressure to bear. There was, however, nothing in the terms of paragraph 3 that warranted the assumption that their application would give rise to difficulties with regard to the furnishing of economic assistance — provided, of course, that that assistance was not made subject to any political conditions or to any desire for economic exploitation.

39. Being anxious that the article on the right of peoples to self-determination should be put to the vote as soon as possible, he was opposed to any proposal that might prevent the consideration and adoption of the article at the current session. He would therefore vote against the draft resolution submitted by Denmark (A/C.3/L.479).

40. It was apparent from the discussions that there was very little chance of compromise on the substance. He accordingly did not think that a working party such as that proposed by the representative of Ecuador (A/C.3/L.477) would lead to concrete results. It might

complicate the Third Committee's work, and the number of amendments proposed was not so large as to necessitate a special procedure for their examination. The Committee itself could undertake the task of bringing the amendments into harmony; except for those proposed by Denmark and Ecuador, they did not affect the substance. Moreover, the working party's deliberations would faithfully reflect the current discussion, and for that reason would not be very useful. However, if the Committee voted in favour of a working party, it should also define its terms of reference carefully. The Committee should also fix a time limit for the work of the working party. In the opinion of his delegation it would be inadmissible if the establishment of the working party were to be a means of unduly delaying the adoption of article 1, to which his Government attached the greatest importance.

41. Mr. NAJAR (Israel) noted with regret that the Lebanese representative's remarks indicated complete ignorance of conditions in Israel. That was not surprising, since he had never visited the country, as perhaps he should. He would find it to be a genuine social and political democracy operating for the benefit of all inhabitants and possessing a parliamentary, political and cultural life open to everyone. The ignorance of the Lebanese representative on that subject was to be deplored; it was but another example of the unfortunate results of barriers between nations.

The meeting rose at 1.10 p.m.