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CONTENTS

Chairman: **Mr. Omar LOUTFI (Egypt).**

AGENDA ITEM 28

Draft International Covenants on Human Rights (E/2573, annex I, A/C.3/L.489 and Corr.1 and 2, A/C.3/L.495) (*continued*)

REPORT OF THE WORKING PARTY ON ARTICLE 1 (A/C.3/L.489 and Corr.1 and 2) (*continued*)

1. Mr. JEVREMOVIC (Yugoslavia) congratulated the Working Party on its text (A/C.3/L.489 and Corr. 1 and 2) of article 1 of the draft covenants, which was in many respects an improvement on the original text (E/2573, annex I). Paragraph 1 was certainly more happily worded than it had been, and the elimination of the reference to "nations" precluded any possible confusion. The word "peoples", which remained, was used in the widest possible sense and took in all ethnic groups, regardless of their stage of development. Similarly, paragraph 2 gave proper expression to the basic idea of the original text, and he would be able to vote for both paragraphs.

2. However, he had certain objections to paragraph 3 of the new draft, which differed not only from the original text but from the provision contained in paragraph 1 of General Assembly resolution 545 (VI). The General Assembly had recognized that not only colonial Powers but all States should promote the realization of the right of peoples to self-determination. The objection that the original broader wording of the paragraph would impose an obligation on States to accord the right of self-determination to their own peoples, which had presumably already exercised it, was invalid. Such peoples, under article 23 of the draft Covenant on Civil and Political Rights, were guaranteed the right to take part in the conduct of public affairs. They could make their wishes heard without invoking article 1, and there was therefore no need to fear that the general obligation imposed by that article might lead to trouble between a people and its Government.

3. Furthermore, the new wording of paragraph 3 presented a great danger: a colonial Power would have only to proclaim its colonies part of its metropolitan territory to evade any obligation to enable the people of those colonies to exercise their right of self-determination.

4. For those reasons he was submitting several amendments to paragraph 3 (A/C.3/L.495) which would broaden the scope of the text and bring it closer to that of resolution 545 (VI).

5. Mr. LANNUNG (Denmark) said that the Working Party had been faced with an almost impossible task because of its unduly narrow terms of reference and the brief time it had had at its disposal, and it was therefore perhaps not surprising that it had failed to make those improvements in the text of article 1 which he regarded as highly necessary. The revised draft was still both vague and incomplete. Clear and unambiguous definitions were still lacking, and Governments could not be certain what constructions might later be placed on the obligations they would be assuming under the article. Such a text could not be included in legally binding instruments.

6. Paragraph 1 of the revised text was not clear, and despite the Salvadorian representative's explanations, the import of the changes made was obscure. Many of the objections made to the original draft remained, and new ones could be raised. The text of paragraph 2 also suffered from a lack of clarity. He had objections to paragraph 3 similar to those raised by the Yugoslav delegation: the right of self-determination should be made applicable, in unambiguous terms, to all peoples and territories, and not only to Non-Self-Governing and Trust Territories. A national group desiring to exercise that right was just as likely to be found in the border province of an independent State as in a colonial territory, and should be given the same opportunity to further its aspirations by democratic means and should, as a consequence, be allowed to exercise its right of self-determination.

7. A basic weakness of the revised text was that the statement of the right in paragraph 1 was not accompanied by a statement of the obligation of States to ensure that their peoples enjoyed the free exercise of the right. Moreover, the article should be so precise that no signatory State could place upon it an interpretation that would detract from the universality of the right in question. It should be borne in mind that countries with authoritarian régimes would find no difficulty in proclaiming themselves adherents of self-determination, because the peoples within their borders were effectively prevented from voicing their national aspirations. The article should place the right of self-determination in its relationship to other purposes and principles of the United Nations, and it should provide for certain limitations generally recognized to be necessary. For example, the exercise of the right of self-determination must not lead to anarchy, and political realities must be borne in mind.

8. As the representative of Venezuela had already noted, in drafting the covenants the Committee was in fact engaging in diplomatic negotiation. The Con-

vention for the Protection of Human Rights and Fundamental Freedoms, which was now in effect, had been the outcome of an earnest effort on the part of the States concerned to take one another's views and possibilities into account and to work together to find common ground. If the Third Committee wished the covenants to be adopted, ratified and implemented, it must make a similar effort. If it did so, it would come to see that it was unrealistic to insist on the inclusion of an article on self-determination in the draft covenants, and that it would be far better to enunciate that right in a separate instrument. Indeed, no satisfactory explanation had ever been given why the article should be included in the draft covenants. The International League for the Rights of Man, it should be noted, had taken the view that the article on self-determination should not be included in the same instrument as articles setting forth individual human rights.

9. The Swedish and Danish delegations had suggested to the Working Party that the right of self-determination should be stated, in clear and comprehensive terms, in a separate instrument; but unfortunately the Working Party had apparently been prevented by its narrow terms of reference from considering that suggestion.

10. While he realized that to enunciate the right of self-determination in an adequate legal form was no easy task, he felt that the Committee could not content itself with the result obtained so far. A great effort should be made to seek a substantial measure of agreement on basic principles and essential elements. His delegation would be glad to support the Secretary-General's suggestion for the setting up of a new committee—with reasonably broad terms of reference—to prepare for consideration and adoption by the General Assembly a draft declaration, or, if preferred, a protocol, or a third draft covenant on the right of peoples to self-determination. When the endeavours to establish a proper text had succeeded, his delegation would support the adoption of the text in a separate instrument. Such a course might lead to fruitful compromise and ensure the widest possible acceptance of all the instruments in their final form.

11. He emphasized that the realistic suggestions he had made must not be taken to imply that Denmark took a lukewarm attitude towards the right of self-determination; on the contrary, its record of respect for that right was second to none.

12. Mrs. CISELET (Belgium) said that the text of article 1, far from being an improvement, merely accentuated all the defects of the original. Many serious objections had been made in the course of the debate to the original text but the Working Party had chosen to consider only one kind of objection. It had transposed two paragraphs, but had otherwise made very few changes, and all the objections made to the original text applied equally to the new one.

13. The Working Party had made no attempt to define self-determination, although a definition was essential if the principle was to become a positive right. The meaning of the word "peoples" was no clearer than it had been in the original text and the word "nations", which had the advantage of being slightly more precise than "peoples", had been deleted. It was not clear whether the right of self-determination was to be exercised by minorities and ethnic groups, or whether, if it did apply to such groups, it included the right of secession. No attempt had been made to specify the conditions under which the right was to be exercised or who was to decide on behalf of the peoples concerned. If the principle of self-determination was not embodied in a text which guaranteed democratic liberties to the full, the result might be the destruction of those liberties and the defeat of the purposes of the draft covenants. Finally, as the new text contained no safeguards against abuses of the right of self-determination, it might be used to encourage agitation, separatist movements and violence.

14. The number of questions the representative of El Salvador had had to answer at the preceding meeting had shown that the text, particularly paragraph 3, was very far from clear. The Lebanese representative had wondered whether it imposed any obligation at all, or was merely a statement of principle. The obligations of States called upon to give effect to the principle of self-determination and of other States were not defined. Furthermore, instead of applying to all States, the new paragraph 3 applied only to the States parties to the covenant which had responsibility for the administration of Non-Self-Governing and Trust Territories, and was therefore inconsistent with paragraph 1.

15. The meaning of the expression "Non-Self-Governing Territories", which was also used in Chapter XI of the United Nations Charter, was far from clear and had already been the subject of considerable controversy. The Belgian Government's attitude was well known. Under Article 73 of the Charter, Chapter XI was applicable to all territories whose peoples had not yet attained a full measure of self-government. Such a definition obviously covered not only colonies or protectorates but also territories inhabited by aboriginal peoples in the various continents. However, some delegations might wish to interpret the expression in a narrower sense, in which case paragraph 3 would provide a pretext for distorting the meaning of article 1, which would be even more harmful to the cause of self-determination than the original text.

16. She would be unable to vote for the new text of article 1. She would make known her views on the Yugoslav amendment (A/C.3/L.495) to paragraph 3 when she had had time to study it.

17. Mr. McCLURE-SMITH (Australia) recalled that he had voted against the resolution by which the Committee had decided (655th meeting) to establish the Working Party, as he had considered the terms of reference proposed too narrow. They had, in fact, precluded the Working Party from considering the Brazilian[1] and Chinese proposals[2] for drawing up alternative instruments, or the suggestions put forward by the Iranian representative (645th meeting, and the Secretary-General, 633rd meeting) that the question should be given further study. Widely differing views had been expressed in the Committee. His own delegation upheld the principle of self-determination but could not consider that self-determination was a right that could be expressed in a legally binding international agreement. That basic objection applied as much to the new text as to the original one.

18. The Working Party's text did not improve matters. The deletion of the words "and all nations" from paragraph 1 did not remove the confusion as

[1] See *Official Records of the General Assembly, Ninth Session, Annexes*, agenda item 58, document A/C.3/L.412 (incorporated in A/2808 and Corr.1, para. 41).

[2] *Ibid., Seventh Session, Third Committee*, 443rd meeting, para. 31.

to the meaning of the word "peoples", as the Belgian representative had pointed out. The omission of a reference to nations strengthened the argument that article 1 might encourage secession movements within sovereign States, and the new wording must obviously present great difficulties to the Governments of multi-racial States. It should be remembered, in that connexion, that, after the covenants had been adopted, any disagreement as to interpretation would be referred to the Human Rights Committee to be set up under part IV of the draft Covenant on Civil and Political Rights (E/2573, annex I).

19. The original text gave a definition, however unsatisfactory, of self-determination, but the new text contained no definition of any kind. The absence of any definition supported the view expressed by the Lebanese representative (668th meeting) that article 1 might be taken as a mere declaration of principle. The original text contained the words "shall have the right to self-determination", whereas the new text stated that "all peoples have the right to self-determination". The supporters of article 1 had assured the Committee that the stage for the assertion of a principle was past and that the time had come to enunciate the principle in an article which would make of it a legally binding right. The Working Party's text bore out the Australian delegation's view that that was not possible.

20. Some of the controversial phraseology used in the original paragraph 3 had disappeared from the new paragraph 2, but the meaning was still obscure. Although the words "permanent sovereignty over their natural wealth and resources" had been deleted, the paragraph might still be so interpreted as to allow a minority within a State to claim the free use of its natural resources, regardless of the economy of the State as a whole or the interests of other groups.

21. Paragraph 3 raised an important question of principle. He agreed with the Danish representative that it was illogical to declare self-determination a prerequisite for the exercise of all other rights while laying the obligation for implementing it only on States having responsibility for Non-Self-Governing and Trust Territories. According to the new text, the States in question were to promote the realization of the right in such territories. But the countries which had entered into trusteeship agreements were undoubtedly doing their utmost to carry out their obligations under the Trusteeship System, the objectives of which were defined in Article 76 of the Charter. If paragraph 3 was supposed to imply that self-determination was synonymous with the objectives of Article 76, he strongly disagreed. Self-determination was not mentioned in Article 76, or anywhere else in Chapters XI, XII and XIII; and the obligations laid down in those chapters could only be altered by amending the Charter and the trusteeship agreements. Furthermore, the obligations assumed under the Charter in respect of Non-Self-Governing Territories and of Trust Territories were not the same; but paragraph 3 made no distinction between them.

22. The revised text ignored the internal implications of self-determination, to which the Netherlands and other delegations, including his own, had drawn attention, and it laid down no criteria by which it would be possible to judge when a people was exercising the right of self-determination. The view that all peoples living within sovereign States enjoyed the right of self-determination, which was the only conclusion to be drawn from paragraph 3, was clearly untenable. Such an assumption would make a mockery of the struggle for freedom that was being carried on by many unfree peoples.

23. If the principle of self-determination was to be given expression in a formal instrument, an alternative must be found to both of the existing texts of article 1, and the Committee should consider the other proposals that had been made. He agreed with the United Kingdom representative that a statement of the right of self-determination suitable for inclusion in an international instrument must be applicable to all situations. The statement should therefore enunciate the principle in comprehensive terms and lay down criteria whereby the extent of its application could be determined.

24. Although the Committee was agreed on the importance of the principle of self-determination, there was wide disagreement as regards the advisability of including it in a covenant. The debate had made it clear that the Committee was not yet ready to take a final decision on the question. The article might be adopted by a majority in the Committee, but that would be a Pyrrhic victory; that would be a serious blow to the future of the draft covenants, as many States which had fine records in the field of human rights would be unable to sign them. Furthermore, such a victory would profit no one, least of all the peoples for whom the covenants were intended. The unwisdom of forcing the issue had already been emphasized by many representatives. If the covenants were to have any real meaning, they must be acceptable to most States.

25. If article 1 was put to the vote, he would vote against its inclusion in either the original or the revised text, but he hoped that in view of the serious disagreement that existed on that article and the importance of the decision for the future of the covenants, the Committee would not take a formal decision at the current session. He therefore supported the Danish draft resolution (A/C.3/L.479).

26. Finally, it would be inadvisable to take a vote on article 1 when the Committee was to consider various proposals connected with self-determination under item 29 of the agenda of the General Assembly. A vote on the question of including article 1 would prejudge the discussion of those proposals.

27. Mr. PAZHWAK (Afghanistan), speaking on a point of order, observed that the matters that were being raised by some representatives were irrelevant, since it had already been decided to include an article on self-determination in the covenants. The Committee had before it a revised text (A/C.3/L.489 and Corr.1 and 2), prepared by a Working Party which had been set up by a decision of the Committee (655th meeting); it also had before it the United Kingdom amendment (A/2910/Add.1) proposing the deletion of article 1. The Committee could save time by voting on the amendment, since if it were adopted there would be no further need to discuss the article, and if it were rejected representatives would no longer have any grounds for putting forward alternative ways of dealing with the question. He proposed that the United Kingdom amendment should be put to the vote.

28. Mr. HAKIM (Syria) supported the Afghan proposal.

29. Mr. URQUIA (El Salvador) agreed with the Afghan representative. In setting up the Working

Party on Article 1 the Committee had in effect decided on the inclusion of an article on self-determination in the draft covenants. However, a vote on the United Kingdom amendment would be a negative way of confirming that decision. He therefore proposed that the Committee should reaffirm its previous decisions that an article on self-determination should be included in the draft covenants, and should accordingly decide to continue its consideration of the various texts that had been proposed for article 1.

30. Mr. LANNUNG (Denmark) thought that the Afghan and Salvadorian proposals were illogical, since it was impossible to decide to delete or include a text which had not yet been submitted in its final form.

31. Mr. BAROODY (Saudi Arabia) considered that in view of the intransigent stand that had been taken by some delegations, the Salvadorian proposal was timely and would be likely to avoid further repetitious statements by representatives who seemed to be ignoring the Assembly's previous decisions on the matter.

32. Mr. HOARE (United Kingdom) said that the Afghan proposal was surprising, since the United Kingdom amendment (A/2910/Add.1) had been before the Committee since the beginning of the session and there was no more reason for voting on it now than at any other time during the discussion of article 1. His delegation still believed that the article should not be included in the covenants, and did not consider the new text to be satisfactory; nevertheless, out of courtesy to the members of the Working Party, it had felt bound to express its views on that text. In order to facilitate the Committee's work and to preclude any possibility of cutting short the debate on the new text, he withdrew his delegation's amendment. The United Kingdom would express its position on the question by voting against article 1.

33. Mr. PAZHWAK (Afghanistan) was glad that the United Kingdom representative had decided to withdraw an amendment which, although technically in order, in fact amounted to a proposal to reverse several decisions of the General Assembly. He suggested that the Salvadorian proposal should be amended to provide for the adoption of the article during the current session.

34. Mr. BEAUFORT (Netherlands) said that his delegation had also proposed the deletion of article 1, but would withdraw its amendment (A/2910/Add.3) in the same spirit of conciliation as that shown by the United Kingdom delegation, and would confine itself to expressing its views by casting a negative vote.

35. Mr. MOROZOV (Union of Soviet Socialist Republics) considered that the withdrawal of the United Kingdom and Netherlands amendments would help to clear the way for a constructive debate on the new text of article 1. The only obstacle to such a debate now seemed to be the Danish draft resolution (A/C.3/L.479); if that were withdrawn, there would be no need for the Salvadorian proposal. He suggested that the position would be further clarified if the Solvadorian proposal provided that the Committee should accept the text submitted by the Working Party as a basis for discussion.

36. Mr. URQUIA (El Salvador) said that as a member of the Working Party he could not accept the amendment suggested by the USSR to his proposal; however, he would vote for such an amendment if it were moved formally. The last sentence of his proposal referred to the texts submitted by the Commission on Human Rights (E/2573, annex I) and the Working Party (A/C.3/L.489 and Corr.1 and 2) and all amendments thereto.

37. The CHAIRMAN suggested that the vote on the Salvadorian proposal should be postponed until the written text had been circulated.[3]

It was so decided.

The meeting rose at 1.15 p.m.

[3] The proposal by El Salvador was subsequently issued as document A/C.3/L.496.

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