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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.483) (continued)

MEMBERSHIP OF THE WORKING PARTY ON ARTICLE 1

1. The CHAIRMAN informed the Committee that he had appointed representatives of the following nine countries to form the Working Party provided for in the resolution adopted at the 655th meeting: Costa Rica, El Salvador, Venezuela, Syria, Poland, Greece, Pakistan, Brazil and India.

ORGANIZATION OF WORK

2. The CHAIRMAN then enumerated the agenda items to be considered at the current session and invited the Secretary of the Committee to explain the situation with regard to the work to be completed before the closure of the session.

3. Mr. VAKIL (Secretary of the Committee) recalled that the Committee had already held thirty-three meetings, twenty-three of which had been devoted to item 28; it could hold twenty-eight or twenty-nine more. It was difficult to estimate, even approximately, how long item 29 would take. On the basis of the experience of previous years, a reasonable estimate for item 62 would be two or three meetings; for item 63, two or three meetings; for item 12, about eight meetings; and for item 61, one or two, making fifteen or sixteen in all.

4. Mr. ABDEL-GHANI (Egypt) observed that there were several factors to be taken into account by the Committee in organizing its work: the provisions of General Assembly resolution 833 (IX), the large number of questions referred to it by the General Assembly, the fact that some agenda items were closely related and that the number of meetings still left was limited. It had already had a lengthy and useful discussion of a number of delicate and controversial matters arising out of the draft covenants, and could be considered to have largely discharged the obligations imposed upon it by resolution 833 (IX). The Working

Party on Article 1 must report to the Committee on 19 November; consequently discussion of agenda item 29, concerning the right of self-determination, a matter which was also the subject of article 1 and which was closely linked with the whole question of the covenants and their implementation, could not begin before 21 November. He therefore suggested that the Committee should devote the rest of the current week to an examination of article 2 of the draft Covenant on Economic, Social and Cultural Rights and the following articles and that the following week it should discuss agenda items 62 and 63, and item 12 if it had time. On 21 November, it would begin its study of the Working Party's report and then, when it had finished with that, it could start on item 29.

5. Mr. HIMIOB (Venezuela) said that, as regards the order of items, his delegation was prepared to fall in with any suggestions agreeable to the majority. He thanked the Chairman for the honour he had done the Venezuelan delegation by inviting it to be a member of the Working Party. Venezuela regarded self-determination as a right which ought to be included in the covenants and approved of the provisions of article 1, paragraph 3, though it considered that they should not be included in the covenants. Its final position on article 1 would depend on the new draft proposed by the Working Party.

6. Miss BERNARDINO (Dominican Republic) thanked the representative of Egypt for his suggestion, which met the points she had made at the preceding meeting. She fully agreed with the first part of the suggestion, but could not accept the proposed timetable. It was important to respect the Committee's decision on the order of its work; according to that decision, the Committee was to begin its study of item 29 if its consideration of the draft covenants was interrupted. She had always stressed the need for adopting a procedure which would link their examination of items 28 and 29, which dealt with closely related questions.

7. Mr. BAROODY (Saudi Arabia) observed that when the Committee drew up its programme of work, it had clearly not bargained for the appointment of a working party, which would involve interrupting its work on article 1. As the Egyptian representative had rightly pointed out, items 28 and 29 were closely linked; in fact it was the existence of item 29 on the agenda, which was intended to permit the deletion of article 1, that had forced the Committee to devote so much time to the examination of article 1. In any case, it could not undertake the examination of item 29 without seriously interfering with the Working Party. Accordingly, the Egyptian representative's suggestion seemed very much to the point. If, however, some representatives were anxious that the Committee should stand by the decision it had taken at the beginning of the session (636th meeting), he would have

to urge that that decision be observed in its entirety, and that the study of the various articles of the draft covenants be continued.

8. Mr. McCLURE-SMITH (Australia) considered that the procedural question which had arisen should be examined in the light of the directives given in General Assembly resolution 833 (IX) and of the total number of meetings which the Committee still had at its disposal. In view of those two factors, it could surely very well afford to devote ten more meetings or so to the draft covenants and then go on to examine item 29. The Working Party could not do as it was asked to do in its terms of reference and submit a text to the Committee, at the same time bearing in mind the amendments proposed and the comments and suggestions made, since those amendments, comments and suggestions included proposals both for suppressing article 1, and for entrusting the study of article 1 to a committee of experts. On the other hand, the last-named proposal could logically be studied under item 29 of the agenda. The Committee could therefore embark on the study of that item the following week, without in any way interfering with the Working Party's deliberations.

9. Mr. PAZHAWAK (Afghanistan) felt that it would be better to hold over the procedural discussion and to continue with the examination of article 2. The Chairman could then go into the question with the representatives concerned, and put before the Committee a suggestion for the organization of its work.

10. Mr. NAJAR (Israel) agreed with the Afghanistan representative that the Chairman should make a suggestion. He pointed out that the Working Party would not concern itself with the implementation of the right of peoples to self-determination, so that there was nothing to prevent the Committee from studying item 29 of the agenda — which in fact dealt with measures for ensuring the international respect for that right — even before the Working Party completed its work.

11. Mr. KADHIM (Iraq) thought the Committee should keep to the order it had decided upon. If it concluded the study of the draft covenants by 19 November, it should take up the other items of the agenda in their logical order.

12. The CHAIRMAN noted that the members of the Committee were agreed that they should continue with the study of the draft covenants until the end of the week. The Committee could wait until 11 November before taking a decision with regard to its work beyond that date.

13. Replying to questions put by Mr. ROY (Haiti), Mr. CAMACHO (El Salvador) and Mrs. TSALDARIS (Greece), the CHAIRMAN explained that in accordance with the procedural decision it had taken (636th meeting), the Committee would study the provisions common to the two drafts or similar in both. It would first of all examine article 2 of the draft Covenant on Economic, Social and Cultural Rights, and then go on to article 2 of the draft Covenant on Civil and Political Rights.

ARTICLE 2 OF THE DRAFT COVENANT ON ECONOMIC,
SOCIAL AND CULTURAL RIGHTS
(E/2573, annex I) (*continued*)

14. Mrs. CISELET (Belgium) said that her delegation had some criticism to make of article 2 of the

draft Covenant on Economic, Social and Cultural Rights (E/2573, annex I).

15. Under paragraph 2, Signatory States undertook to guarantee that the rights enunciated in the covenant would be exercised without distinction of any kind. But it was not yet known what rights the Committee would adopt, and in what terms. In other words, States were being asked to sign a blank cheque, which was both dangerous and illogical. Article 2 was therefore not the place for the provision under consideration, and the Belgian delegation proposed that it should be placed at the end of part III. If the Committee did not accept that suggestion, it should at least wait, before voting on article 2, until it had taken a decision concerning all the rights enunciated in part III. Her criticism, incidentally, applied equally to articles 3, 4 and 5, which, logically, should also be placed after article 16.

16. She associated herself with the remarks made at the 655th meeting by the Netherlands and United Kingdom representatives in regard to paragraph 2. There was no discrimination in Belgium; nevertheless there were distinctions between individuals, based on such factors as nationality and birth. Thus, for economic reasons, foreigners could not carry on certain occupations, and owing to the legal protection afforded to the family, illegitimate children did not have the same rights of succession as legitimate children. Consequently, she did not see how Belgium could agree to a clause like article 2, paragraph 2, under which it would be forced to modify the situation overnight. Such things must proceed by stages, and therefore the Netherlands amendment (A/2910/Add.3), with its idea of a gradual transition, seemed distinctly preferable to the text drafted by the Commission on Human Rights.

17. The Belgian delegation would vote in favour of that amendment, and would request that the text be placed at the end of part III. With regard to the amendment submitted by Pakistan (A/C.3/L.483), it reserved the right to make a statement at a later stage in the debates.

18. Mr. BAKHTIAR (Pakistan) thanked the Chairman for having invited the delegation of Pakistan to take part in the work of the Working Party on article 1.

19. Article 2 went too far and imposed certain obligations which the majority of States would not be able to fulfil. Thus, under paragraph 2, every distinction between aliens and nationals in respect of the right to work ought to disappear as soon as the covenants came into force. Again, from that time onward women ought to receive the same pay as men for equal work. That was a measure that it was difficult to apply otherwise than progressively. While the Government of Pakistan could endeavour to ensure that all discrimination on the basis of sex was eliminated among its civil servants, it could not interfere with private enterprise, where pay was fixed by employers and workers after negotiations to which it was not a party. It seemed likely that, in view of the vast scope of the obligations deriving from article 2, a number of States might refuse to accept it. In order to prevent that, his delegation had proposed an amendment (A/C.3/L.483) under which States would be able to make reservations if they thought fit.

20. Finally, some of the questions of principle which arose in connexion with the covenants were being

considered by the Pakistan Constituent Assembly and in those fields his Government would not be able to assume any definite undertaking until the Constitution had been adopted.

21. Mr. RIPHAGEN (Netherlands) wished to reply to certain comments made at the previous meeting by the representative of the USSR. In recognizing that the principle of free secondary education might be implemented progressively Mr. Morozov had admitted that, notwithstanding the absolute terms of paragraph 2 of article 2, it was possible for a right not to be granted immediately to all.

22. He (Mr. Riphagen) reaffirmed that certain inequalities and distinctions could not be tolerated; like Mr. Morozov, he would be glad if it were possible to foresee and enumerate all eventualities. Such, however, was not the purpose of the covenants, and to the extent that the Committee was required to lay down general rules, the Netherlands amendment (A/2910/Add.3) seemed well suited to its purpose.

23. With regard to recognition of the right to work, Mr. Morozov had objected to the measures to which aliens were subject in many countries. According to him, any person resident in the territory of a State ought to enjoy the right to work. But surely States might then be compelled, in order to obviate the need for special measures with regard to aliens resident in their territory, to forbid outright the entry of aliens into their territory. That was an example of the arrangements which Governments might be obliged to adopt if they accepted a text such as that of article 2, which they obviously could not apply without some transition. Moreover, the Soviet representative distinguished between residents and non-residents; it was questionable whether that was quite consistent with his interpretation of article 2.

24. It was far from his intention to reduce to a simple statement of principle the article designed to prohibit discriminatory measures. His sole concern was to improve the text which, as it stood, was unacceptable to many delegations.

25. Mr. MOROZOV (Union of Soviet Socialist Republics) was happy to note that the Soviet delegation had not been mistaken at the previous meeting in regard to the meaning of the explanations given by the Netherlands representative. The Netherlands representative had just confirmed that he (Mr. Morozov) had correctly construed his intentions and that it had not merely been a question of, as it were, a purely technical operation for the purpose of fusing two paragraphs into one, but of an amendment affecting the very substance of the question. As the Soviet delegation had already pointed out, the effect of the Netherlands proposal was considerably to extend the period of implementation of the rights proclaimed in the covenant.

26. The comments made in connexion with the Netherlands amendment had shown that there were two opposite concepts regarding article 2, and as the Netherlands amendment now appeared in its true light—a fact which constituted a step forward in the Committee's work—the Soviet delegation could now define its own position, namely that it was entirely in favour of retaining the text of article 2 as it stood.

27. He regretted that the Netherlands representative had misunderstood his line of argument with regard to the artificial examples cited in support of the amend-

ment proposed by the Netherlands delegation. Indeed, the Netherlands representative had imputed to him views to which he himself would take exception if he heard them expressed in the Committee; it was for that reason that he wished to make a correction in order to dispel any doubt concerning the Soviet delegation's position.

28. When he had referred at the previous meeting to the example cited by the Netherlands representative regarding the right of aliens to work, he had said that when an alien was legally resident in a particular country, the alien, though not a national, should nevertheless have the same right to work as a national of the country. Obviously, in the case of a tourist, whose stay was essentially temporary, the situation was quite different; but once the alien, having complied with all the requirements for admission to a country, was legally resident there, he should not become a slave or a pauper; he should, therefore, enjoy—at the economic level, of course—all the rights granted to nationals of the country. That was the Soviet delegation's view. Those who thought differently should not distort his delegation's views, but should state frankly that they were opposed to measures by which every discriminatory practice would be abandoned as soon as the covenants came into force.

29. The example concerning education, which the Netherlands representative had just cited, proved nothing, for it was at variance with the ideas which the Commission on Human Rights had expounded in the draft Covenant on Economic, Social and Cultural Rights, as article 14 showed. The Netherlands representative had stated that if the right to education were recognized, it was possible that, at certain levels, it would be to the advantage of the propertied classes and to the detriment of the poor classes. If the Third Committee accepted that point of view, it would not get very far. Actually paragraph 2 of article 2 answered the question raised by the Netherlands representative exactly. Under that paragraph, States undertook, with regard to the right to education, to take steps to render primary education compulsory and available free to all without distinction of any kind. If education was open to Whites, it must also be to Negroes; if it was available to children of a particular religion it must be available to children of all other religions; if it was open to persons speaking a particular language, it must be to those who spoke other languages, and so forth. As for secondary education (and it was there that the artificial nature of the example invoked by the Netherlands representative became clearly apparent), while it was certainly the subject of a provision under which it was to be generally available and made progressively free, that progressive character did not extend to the implementation of the right itself, considered in its universal aspect. In other words, every step taken to make secondary education generally available and progressively free must be applied to all, without distinction.

30. He had tried to bring out the artificial nature of the examples cited by the Netherlands representative in order to show that the Netherlands amendment was an attempt to modify article 2. While the Soviet delegation respected all opinions, it felt itself free to criticize the arguments advanced in their defence. In its turn, it was prepared to listen to replies to the criticisms it expressed, provided its arguments were not distorted.

31. Mr. HOARE (United Kingdom) shared the Belgian representative's view that article 2 of the draft Covenant on Economic, Social and Cultural Rights and the following articles should not be considered until the articles in part III had been discussed, as the latter were specifically concerned with the rights in respect of which article 2 imposed general obligations. It would have been more logical to settle the rights first and then to consider those general obligations. That was one of the reasons which had led his delegation to recommend a procedure different from that adopted by the Committee at its 636th meeting, namely, to begin with the substantive articles, including, as well as article 1, the articles in part III. The Committee had, however, to make the best of the situation.

32. The arguments put forward by the Belgian delegation merited careful consideration by the Committee, which should bear in mind the possibility of deferring any decision on article 2 and the following articles until it had taken a decision on the articles in part III.

33. He also wished to deal with a number of points in the USSR representative's statement. First, the word "artificial" was not well chosen, when it referred to examples cited by representatives from the experience of their own countries, as in the case of the Pakistani representative, who had said that his Government would have difficulty in giving effect to some of the rights proclaimed in the covenant, such as that relating to equal pay.

34. In dealing with an amendment such as that proposed by the Netherlands (A/2910/Add.3), the real question was whether article 2 presented any difficulties; if it did, they must be overcome, and any proposals presented to that end should be welcomed in the spirit in which they were made.

35. Turning to the examples which had been given by the Netherlands representative and confirmed by the United Kingdom delegation, and then attacked by the USSR delegation, he remained convinced that they had been aptly chosen to show that article 2 did create a problem.

36. Regarding the right to work, the Soviet representative had said that any alien admitted to a country as a resident should enjoy the right to work on the same footing as the country's nationals. He willingly subscribed to that statement, particularly since that right was accorded in the practice of his country (except as regards special types of employment such as government service) to all aliens who had entered the country legally and acquired resident status. The Soviet representative appeared to have over-simplified the situation, however, for so far as the right to work was concerned, article 2 would not affect alien residents only; it would affect the very large category of persons who, having entered a country temporarily (which might be for a substantial period) might invoke the right to work, despite any national laws to the contrary. That category included tourists, students and other casual visitors numbering thousands or hundreds of thousands admitted very freely to many countries. In general, the provisions of the covenants did not apply only to nationals, and that was clearly right: it was obvious that an alien who entered a country temporarily should enjoy every

guarantee and right affecting his personal liberty—freedom from arbitrary arrest, the right to a fair trial and so on, on the same footing as the country's nationals—but it was equally evident that he could not claim the same rights where employment was concerned. According to the wording of article 2 as it stood, however, a State would be obliged to grant the right to work to any person who happened to be in its territory. The wording of the article should accordingly be changed in order to obviate such difficulties.

37. The Pakistani representative's statement about the right to equal pay was another example of the difficulties that the text of article 2 entailed. In the United Kingdom, steps were being taken to give effect to that right in government service, and some progress had been made in the field of education, but full implementation had not yet been achieved. The difficulty was greater in industry, where employment was governed by collective bargaining between employers and employees in which the Government had no part; consequently the United Kingdom, like Pakistan, could not pledge itself to give a guarantee of equal pay for equal work. A requirement of such a guarantee was contained in article 7, sub-paragraph (b) (i) of the draft Covenant on Economic, Social and Cultural Rights. Even if that article were amended so as to permit its gradual application, the effect of such an amendment would be nullified by article 2, paragraph 2.

38. In addition to the right to work, which posed problems for all States, and the right to equal pay, which posed problems for most of them, there were a number of other rights, such as those relating to social security and family allowances, which might raise difficulties as regards foreigners. They would affect many countries, which might not be able to sign the covenant if article 2, paragraph 2, were retained in the form in which it stood. A careful examination of the articles in part III of the draft covenant would probably reveal to other delegations the dangers that paragraph 2 of article 2 might entail for their countries, by reason of its scope. The Committee could certainly consider whether there was any better solution than those which had so far been proposed. Meanwhile, the Netherlands delegation had submitted its well-conceived amendment, which he would support.

39. The Pakistani amendment (A/C.3/L.483) involved a difficulty in that, before taking a decision on it, the Committee would first have to settle the general question of the admissibility of reservations, their scope, and the effect of objections to them. Three main proposals had already been made on that subject, and the Commission on Human Rights had included them in its report on its tenth session (E/2573, annex II) without, however, coming to a decision on any of them. It was possible that an article dealing with reservations might provide a solution for certain problems peculiar to individual States arising from article 2, but a problem common to all States or to the majority of States ought not to be left to be solved by a general reservation. The article ought not to be drafted in such a way that all States would have to make reservations on it.

The meeting rose at 5.20 p.m.