



C O N T E N T S

Agenda item 28:

Draft International Covenants on Human Rights
 (continued) 221

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) (continued)**

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

1. Mr. URQUIA (El Salvador), Chairman of the Working Party on Article 1 of the draft International Covenants on Human Rights (E/2573, annex I), said that the Working Party had scrupulously adhered to its terms of reference. It had made as few changes as possible in the original text, feeling that that would be in accordance with the Third Committee's wishes.

2. It had, however, made some changes. On the proposal of Costa Rica, the original paragraphs 2 and 3 had been transposed. In the new text (A/C.3/L.489 and Corr.1 and 2), paragraph 2 was complementary to paragraph 1 and should therefore immediately follow it.

3. The words "and all nations" had been deleted from the first sentence of paragraph 1, as they had given rise to much discussion and apparently to some confusion. The Working Party had preferred the original wording contained in General Assembly resolution 545 (VI); it had merely changed the tense of the verb from the future to the present, to emphasize the fact that the right referred to was a permanent one. As there had been a wide divergency of views when the definition of the right had been discussed in the Third Committee, the Working Party had decided to use only the phrase "by virtue of this right", which avoided the difficulties and limitations of a definition. Finally, the words "they freely determine their political status and freely pursue their economic, social and cultural development" had been adopted to meet the views of the delegations which had pointed out that although a country could determine its political status, its economic, social, or cultural status was not entirely within its control.

4. The word *estatuto* in the Spanish text had not seemed a suitable translation for the word "status". It had therefore been decided to use the word *condición*, as in *Comisión de la condición jurídica y social de la mujer* (Commission on the Status of Women).

5. The new paragraph 2, which was a redraft of the former paragraph 3, contained no reference to permanent sovereignty over natural wealth and resources. The new text had been preferred because the old one had roused strong opposition, and in addition because a reference to sovereignty seemed out of place when the article as a whole referred only to peoples; for sovereignty was an attribute of nations organized as States. The original idea was clearly expressed in the new wording, which had the added advantage of meeting the objections of the delegations which had feared that the paragraph might be invoked to justify expropriation without compensation. The final sentence stated the principle that no country could be deprived of its means of subsistence, but the end of the original sentence had been deleted, as the preceding sentence of the new text clearly stated that action in that field was also subject to international law.

6. At the beginning of the new paragraph 3 the Working Party had replaced the words "All States", which had appeared in paragraph 2 of the original text, by the words "The States Parties to the Covenant", since an international instrument could not be binding on States which were not parties to it. The paragraph as a whole now referred to States having responsibility for Non-Self-Governing and Trust Territories, upon which the United Nations Charter imposed an obligation in that respect. By deleting the reference to States controlling the exercise of the right of self-determination by another people, it had been possible to produce a text which was a clear statement of the obligations of administering Powers under the Charter of the United Nations. The reference to respect for the maintenance of the right of self-determination in other States had been deleted as superfluous.

7. On the proposal of the Venezuelan representative, the Working Party had unanimously decided to include paragraph 6 in its report (A/C.3/L.489 and Corr.1 and 2). However, as the Third Committee had fully debated the substantive issue, it might be wiser to limit further observations to the text under consideration, which should provide a basis for agreement.

8. Mr. FERREIRA DE SOUZA (Brazil) said that although his delegation would have preferred a separate protocol on self-determination, it had agreed to participate in the Working Party, since the terms of reference assigned it had given it the authority to consider substantive amendments, and not merely to produce a revised text of article 1. Indeed, Brazil could not have consented to be a member of the Working Party if the latter had not been requested to consider article 1 in the light, *inter alia*, of the amendments proposed.

9. That being so, the Working Party should, in his opinion, have considered and defined the units to which the right of self-determination was to be accorded. However, the other members of the Working Party had not shared his views, and had restricted themselves to redrafting the article. They had done less than he might have wished, but they had certainly produced a text which was an improvement on the original. The deletion of the reference to nations in the first paragraph had made the text clearer and would prevent confusion and disagreement. The new order of the last two paragraphs was more logical than the original, and gave the article a better legal form.

10. Nevertheless, despite the marked formal improvement that had been achieved, the new article 1 still left much to be desired. It was still far from being a clear text setting forth a provision that could be put into force. The style had been improved, and the whole article had been toned down, but the fundamental defects and the unilateral character of the article had not been removed. It was unlikely to win the support of a large majority of delegations, and it was to be feared that many countries, even among those which had no dependent territories and had enlightened views on human rights, would still be unable to vote for it. Brazil could not support it and had therefore been obliged to abstain in the vote in the Working Party. He regretted that that abstention was not mentioned in the Working Party's report.

11. As for the protocol the Brazilian delegation had proposed,¹ its main purpose had been to find a way out of the impasse to which article 1 had led, and it involved no contradiction of substance to that article. However, if the new text met with general approval, his delegation would withdraw its proposal, which would then be unnecessary.

12. Mr. URQUIA (El Salvador) said that the abstention of Brazil had not been mentioned because there had been no roll-call vote in the Working Party.

13. Mr. MOROZOV (Union of Soviet Socialist Republics) asked the Chairman of the Working Party why the majority of the Working Party had decided to delete the words "and all nations" from paragraph 1.

14. His delegation felt that the original text, which had included the words "all nations", better expressed the fundamental principle of the right to self-determination.

15. It was very important to find out whether the majority of the Working Party considered that they had used the word "peoples" in the broad sense, that is to say, including nations and ethnic groups, as had been the intention of the old text prepared by the Commission on Human Rights.

16. Mr. URQUIA (El Salvador) said that the Working Party had tried to meet the objections raised in the Committee to the use of the expression "all peoples and all nations"; it had therefore decided to state the idea in the broadest possible terms. The delegations which had been in favour of retaining the words "and all nations" had argued that those words had passed into United Nations usage. The others had pointed out, however, that the two terms were used quite differently in the Charter; for example, while

the preamble began with the words "We the peoples...", which implied that the representatives at San Francisco were speaking on behalf of the peoples of their countries rather than on behalf of their States and Governments, Article 1 referred to "friendly relations among nations", obviously meaning States, or political groups already having a national and political personality. Thus, the term "peoples" was the more comprehensive of the two, and included the groups mentioned by the USSR representative.

17. Mr. PAZHWAQ (Afghanistan) pointed out that in paragraph 1 of the Working Party's text the words "right to self-determination" were used, whereas the original wording had been the "right of self-determination". He asked whether the relative merits of the two prepositions had been discussed in the Working Party, or whether a drafting error had occurred.

18. Mrs. TSALDARIS (Greece) said that the Spanish text, which used the words *derecho de* was definitive. The discrepancy in the English text was due to an error.

19. Mr. D'SOUZA (India) said that he had been under the impression that the expression "right to" was preferable to "right of". He asked the opinion of English-speaking representatives on the matter.

20. Mr. HOARE (United Kingdom) said that both expressions were correct, but that "right to" was used throughout the draft covenants.

21. Mr. URQUIA (El Salvador) thought that since the original Spanish text of the paragraph used the words *derecho de*, the English translation should be "right of". Moreover, the Working Party had been anxious to retain the original text where possible. He therefore suggested that the English text should be amended accordingly.

It was so decided.

22. Mr. BAROODY (Saudi Arabia) considered that the Working Party's text of article 1 was a great improvement over the original, and that its lucidity and comprehensiveness were a credit to the Third Committee. The representative of El Salvador had clearly explained that the word "peoples" covered all the groups which the Commission on Human Rights had had in mind when it had drafted the original article. The fears that had been expressed with regard to nationalization of foreign interests without compensation should be completely dispelled by the wording of paragraph 2. Finally, paragraph 3 affirmed the duties of States having responsibility for the administration of Non-Self-Governing and Trust Territories, leaving no loop-holes and referring specifically to the provisions of the United Nations Charter.

23. The time had come for the Third Committee to take action on the new draft. He hoped that representatives would not spend too much time discussing such slight imperfections as might still exist in the text.

24. Mr. JEVREMOVIC (Yugoslavia) called attention to a difference between the English and French texts of paragraph 3. The English "States... having responsibility for the administration" implied the assumption of authority, while the French *Etats... qui sont chargés de l'administration* implied that authority had been conferred on the States concerned. He asked which was the authoritative text.

25. Mrs. TSALDARIS (Greece) said that the English and French texts had been taken from the draft

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).

submitted by the Commission on Human Rights (E/2573, annex I).

26. Mr. JEVREMOVIC (Yugoslavia) thought that the discrepancy had been less important in the original text, which had referred to all States, including those having responsibility for various territories. Now that the reference was only to States having such responsibility the difference was more significant.

27. Mr. HOARE (United Kingdom) thought that the French text must be incorrect, as the wording was taken from Article 73 of the Charter. In English, Article 73 began with the words "Members of the United Nations which have or assume responsibilities for the administration..." and the French text was *Les Membres des Nations Unies qui ont ou qui assument la responsabilité d'administrer*.

28. The Chairman suggested that the Secretariat should be asked to bring the French text into line with the wording of the Charter.

It was so decided.

29. Mr. AZKOUL (Lebanon) congratulated the Working Party on the work it had done. He wondered, however, whether the Working Party had given any thought to the relation of article 1 to the other provisions of the draft covenants, in particular article 2. The text of article 1 had been suggested to the Commission on Human Rights by the General Assembly (resolution 545 (VI)), and was therefore not organically linked with all the other articles. The question arose whether article 2, a general provision stating the obligations of States with regard to the rights enunciated in the draft covenants, applied to article 1. If it did not, article 1 was no more than a declaration of principle, imposing no obligations on the signatory States. If it did, several difficulties arose. Article 2 of the draft Covenant on Economic, Social and Cultural Rights (E/2573, annex I) provided for the progressive realization of the rights recognized in the covenant; he wondered whether the right of self-determination would also have to be realized progressively rather than immediately. Article 2 of the draft Covenant on Civil and Political Rights (E/2573, annex I), of course, provided for immediate application; but it spoke of ensuring the various rights to "all individuals"; and that hardly fitted the case of article 1, which proclaimed a right of peoples.

30. Mr. URQUIA (El Salvador) said that the Working Party had taken the view that later provisions must conform to earlier ones, and not the reverse. It could not, in drafting the text of article 1, be guided by the provisions of article 2, because that article had not yet been adopted and its final form was therefore not known. If the need for co-ordination arose, it was article 2 that would have to be amended.

31. He did not agree with the Lebanese representative that article 1 as it stood was a mere declaration

of principle. Many other articles in the draft covenants were couched in the same declaratory form; the obligation to ensure the realization of the rights enunciated was contained in article 2, and neither the Commission on Human Rights nor the Economic and Social Council had considered it necessary to repeat that obligation in every single article. Article 1 would be as binding on signatory States as every other provision of the draft covenants.

32. Mr. AZKOUL (Lebanon) said that the question how article 2 would affect article 1 was perfectly legitimate because article 2 was a general provision applying to all the other articles of the draft covenants. Before the Third Committee voted on article 1, it should consider, for example, whether in the draft Covenant on Economic, Social and Cultural Rights that article would be given progressive or immediate application, and whether in the draft Covenant on Civil and Political Rights some drafting changes might not be necessary to make sure that the article was in conformity with the language of article 2. The danger to be avoided was the adoption of article 1 in such a form that article 2 would not apply to it, so that it would remain a mere statement of principle.

33. Mr. PAZHWAK (Afghanistan) said it was clear from its wording that article 2 of the draft Covenant on Economic, Social and Cultural Rights would apply to article 1. He saw some force in the Lebanese representative's objection where the draft Covenant on Civil and Political Rights was concerned, but thought that the point should be raised during the discussion of article 2 of that text.

34. Mr. AZKOUL (Lebanon) replied that precisely because article 2 of the draft Covenant on Economic, Social and Cultural Rights applied to article 1, the inference might be drawn that the right of self-determination set forth in that draft covenant was subject to the progressive realization clause. That was a very serious matter. Only the provision relating to the Non-Self-Governing and Trust Territories should be progressively applied; in all other cases the right of self-determination should be implemented immediately. To postpone its realization in such cases would be a step backwards, and the Committee must therefore be careful to draw the necessary distinction.

35. Mr. PAZHWAK (Afghanistan) remarked that if, when the Committee was considering article 2 of the draft Covenant on Economic, Social and Cultural Rights, the Lebanese representative proposed the deletion of the word "progressively", he himself would be the first to vote for the amendment. Nevertheless, the proper time to raise the point would be during the discussion of article 2 rather than article 1.

The meeting rose at 12.45 p.m.