



C O N T E N T S

Agenda item 28:

Draft International Covenants on Human Rights
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Chairman: Mr. Omar LOUTFI (Egypt).

AGENDA ITEM 28

**Draft International Covenants on Human Rights
(E/2573, annexes I, II 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) (con-
tinued)**

GENERAL DISCUSSION (continued)

Article 1 (continued)

1. Mr. ASIROGLU (Turkey) recalled that during the numerous discussions which the competent United Nations organs had devoted to the item before the Third Committee, the Turkish delegation had always stressed the deep attachment of the Turkish people and Government to the principle of the self-determination of peoples. Having been often obliged, in the course of its history, to fight and to shed the blood of its sons to safeguard its existence and defend its supreme rights, Turkey had adopted the principles of the self-determination of peoples, of the sovereignty and equality of nations and of territorial integrity, as the very basis of its traditional policy. It was in accordance with that tradition, based on principles of justice and equity, that the Turkish delegation at the Asian-African Conference at Bandung had, together with other delegations, pressed for a general and universal conception of self-determination.

2. Passing to article 1 of the draft International Covenants on Human Rights (E/2573, annex I), he noted that the purpose of that paragraph was to lay down a rule of law for applying the principle of the self-determination of peoples and that the other two paragraphs dealt with specific aspects of that principle. The inclusion of that article in an international instrument prepared by the United Nations would not only provide the Organization with a guiding principle that would be useful for its future work, but would also doubtless have far-reaching effects in the field of international politics. Accordingly, before reaching a decision, the Third Committee should make sure that the article in question would further the ends for which it had been conceived and could not in any way be perverted for the benefit of selfish interests incompatible with the principles and purposes set forth in the

United Nations Charter. Unless accompanied by adequate safeguards, political and juridical concepts might lead to serious abuses, as evidenced by Hitler's expansionism, the purpose of which had been to subject peoples in the name of self-determination.

3. It might well be asked whether the embodiment of the principle of self-determination in the Charter was a reason for including it in the draft covenants. In his delegation's opinion, such reasoning would be erroneous. The Charter was a harmonious juridical system. It was the culmination of efforts to strike a balance among the fundamental aspects of the main problems confronting the United Nations. It was an international instrument made up of interdependent parts, and any course would be unwise that was designed to take out of their context principles which the authors of the Charter had taken pains to preserve from abuses by establishing a complete juridical and political system.

4. Certain delegations had cited precedents from other fields of activity of the United Nations to show that there was no reason for not including article 1 in the covenants, even in the obviously incomplete and vague form in which it stood, leaving it for other competent organs later to study the measures to be adopted to ensure that it should be applied fairly. The principle involved was destined to play an essential part in international relations. There was no doubt that it had political aspects and that its application in the past had led to flagrant abuses. Accordingly, to codify that principle in an incomplete and vague form could only lead to confusion in a world which was already torn too much by anxiety.

5. When dealing with legal texts intended to have force of law, it was dangerous to include, in incomplete and ambiguous terms, fundamental principles set forth in other instruments. To do so might sometimes lead to results quite contrary to the purposes intended. Article 1, paragraph 3, was a typical example. As everyone knew, the principle there set forth appeared, in one form or another, in the constitutions of most countries. It was undeniably one of the attributes of national sovereignty, and therefore its interpretation and the application of the regulations derived from it were matters within the domestic jurisdiction of States. That principle was applied by each country according to its own constitutional rules and would only be weakened if reformulated in vague and ambiguous terms.

6. After carefully studying the text of article 1 and listening with interest to the statements of the representatives who had so far taken part in the discussion, his delegation doubted whether the inclusion of that article in the covenants could serve the purposes intended, and it was accordingly unable to agree to the inclusion of the article.

7. Mr. QUENTIN-BAXTER (New Zealand) said that he would refrain from making a set speech on self-determination, a subject on which his Government's attitude was already well known. He recalled, however, that, from the outset, his delegation had expressed doubt about the advisability and the possibility of formulating the right of self-determination. Although New Zealand most assuredly had the highest respect for what it considered to be one of the great guiding principles of human society, his delegation had felt that there was much to be said for making a start on less controversial ground, so that some covenant might be completed without undue delay. That prospect had become less likely as the dispute had continued in the Committee. Generally speaking, the initial enthusiasm had evaporated, and the attitude adopted by the United States of America had been a serious blow to the objective of universality which it had been hoped to achieve. In addition, there had sometimes been very partisan positions on colonial questions, and that had added to the already great difficulties to be overcome.

8. Nevertheless, the current discussion had to some extent enabled the various delegations to come closer together and to discern more clearly the real motives underlying the conflicting arguments. Admittedly, the problems were still unsolved and the die might already have been cast, but, in view of the statements made and the importance of the decision to be reached, some summation of its position by each delegation was warranted.

9. Some representatives, who had clearly brought the question into a colonial context, proposed to solve it by a majority vote. Although such a solution was, of course, possible, it might prove disastrous in the sense that, having been obtained at the sacrifice of universality, it would prevent the observance of human rights from becoming a reality for all people in all countries. The question was how the colonial Powers would accept draft covenants which would be like weapons turned against them. In those circumstances, the colonies would obviously be deprived of the benefits which the covenants could have secured for them. That inevitable consequence showed how futile it was to approach the problem in a violently anticolonialist frame of mind. The Saudi Arabian representative had drawn the Committee's attention at the previous meeting to the responsibilities falling upon the great Powers. Such responsibilities fell upon all Powers great and small. The principle of self-determination knew no frontiers. It was aimed at human bondage and human subjection everywhere. Despite the principle set forth in the existing text of article 1, sovereignty was as transitory as any other human institution. Frontiers changed, often as a direct result of the application of the principle, but sometimes in contradiction with it. In any event, the principle of self-determination was involved; and, if the General Assembly could agree to formulate that principle as a right, the proposed Human Rights Committee might be confronted with problems of the same magnitude as those with which the Security Council had to deal. The problems of minorities or colonies would not be the only ones. It should be remembered that some nations owed their existence to their secession from the metropolitan territory of their mother country, while others had disappeared as nations. Thought should therefore be given to all the possible conse-

quences of the decision pending, and if self-determination was intended to be recognized as a right, the right should be commensurate with the principle and should include the right of secession.

10. It was generally recognized that article 1 raised certain difficulties as regards both the spirit and the letter. The very ambiguity and vagueness of the question were reflected in a form of wording which deserved the severe criticism levelled against it by the representatives of the United Kingdom (642nd meeting), Belgium (643rd meeting) and Pakistan (646th meeting). However, the Commission on Human Rights should not be blamed; it had merely carried out its instructions. The text which it had drafted merely reflected the Third Committee's own resolutions.

11. He did not question the value of the concepts and ideals underlying the text, but considered it dangerous to include them in a provision of a legal instrument. The dangers inherent in paragraph 3 had been widely recognized; but those inherent in paragraphs 1 and 2 were not less formidable.

12. The New Zealand delegation's objections were not mere formalities or technicalities. Whether self-determination was regarded as a right or as a principle was not really important. If it was a right, it was certainly not like other rights, for, unless debased, it could not be exercised by everyone, everywhere and at all times; in other words, it could not be absolute.

13. The Guatemalan representative had said that the principle should be counter-balanced by being related, for example, to the principle of peace. In the same spirit, the Salvadorian representative had referred to the recent plebiscite in the Saar to show that the right of self-determination did not give rise to the difficulties attributed to it if it was exercised in the proper conditions. All that amounted to saying that the practical eventualities of politics must be taken into account; the New Zealand delegation agreed with that idea. Nevertheless, in the text before the Committee the right was represented in an absolute form. That raised a problem which could not be solved by amendment, since it required careful study by skilled experts.

14. The United Nations Charter contained a delicate balance between the rights of the individual and those of States; but the precepts of the Charter were for the guidance of United Nations organs, which dealt with particular cases on their merits. The covenants, on the other hand, would purport to lay down a general rule, automatically and unconditionally applicable to all cases. Some speakers had attempted to dismiss or diminish the difficulties by holding that the article had a limited application or that it had no practical significance for a unitary State. That would lead back to the old partisan attitude which opposed one group of States to another.

15. It had even been claimed that the effect of the article was to reinforce national sovereignty; but that was not the purpose of an instrument devoted to individual rights, and, as the representative of Pakistan had pointed out, it was not the effect of the existing text. In legal theory, also, it was recognized that the establishment of a right of self-determination would detract from national sovereignty and involve a right of secession.

16. In one sense the acceptance of any treaty obligation involved a voluntary limitation of sovereignty. That was especially true of the covenants, as they

made it incumbent upon States to give an account of the way in which they managed their internal affairs. Moreover, it was not open to individual States to interpret the text as they wished. In case of dispute, some judicial body, such as the International Court of Justice, would have to settle the dispute, and some countries would probably be surprised at the Court's interpretation of those texts.

17. The New Zealand delegation had tried to point out the difficulties which, in its opinion, were connected with article 1. It understood the attitude of delegations which, although aware of those difficulties and unable to find a way of overcoming them, considered that self-determination should be included in the draft covenants as a right. There was perhaps a conflict between heart and mind. Nevertheless, the New Zealand delegation expected such delegations to show a spirit of understanding equal to its own. It was prepared to accept the majority decision made with a full knowledge of the issues — even if that decision should preclude its own and other countries from becoming parties to the covenants. If, however, in view of the complexity of the article and the difficulties resulting from its drafting, the Committee were to decide that, although the debate had produced many constructive arguments, the problem could not be solved for the time being and the decision would have to be postponed, then the New Zealand delegation would whole-heartedly subscribe to those views.

18. Mr. RODRIGUEZ FABREGAT (Uruguay) recalled that his delegation had on various occasions stated the reasons why Uruguay had always bent its efforts in the United Nations towards achieving the application of the right of peoples to self-determination. That right, which had engaged the attention of the authors of the United Nations Charter and of the Universal Declaration of Human Rights, had also been considered at various conferences of the American States, at which concrete provisions on the subject had been adopted.

19. Those opposed to the inclusion of article 1 in the draft covenants were not to be regarded as opposed to the right of self-determination, and their arguments for deleting the article were far from convincing. Some of the objections to paragraphs 1 and 2 had been based on political considerations. Others were based on a fear of abuses and erroneous interpretations. The Belgian representative, for example, had asked who would undertake to interpret the will of a nation. The reply to that question was to be found in history. Throughout the centuries the will to freedom had enabled many peoples to affirm their political and social sovereignty, often at the cost of heroic struggle. Political considerations should not be invoked in opposition to a movement which had been growing in strength since the end of the First World War. To delete article 1, as the Australian, Netherlands and United Kingdom delegations proposed (A/2910/Add.2, 3 and 1), would be tantamount to eliminating the substance of the covenants and sacrificing peoples that were still dependent.

20. Paragraph 3 of article 1, setting forth the right of economic self-determination, had also given rise to objections. As the fear had been expressed by some that that provision might be improperly applied, there was reason to state clearly that the paragraph did not sanction arbitrary expropriation. In any case, permanent sovereignty was not equivalent to ownership

or exclusive utilization. He recalled that when Uruguay had decided to nationalize its public services of a social character, it had first of all paid fair compensation to the foreign companies owning those services, and had thus been able to affirm the principle of State sovereignty in the field of industry without resorting to violence or committing any injustice.

21. The Uruguayan delegation was in favour of retaining article 1. It considered that the United Nations should reaffirm the fundamental right of peoples to self-determination and thus satisfy the legitimate claims of millions of human beings. He reserved the right to give his delegation's views on amendments to article 1.

22. Mrs. VARGAS (Costa Rica) said that her delegation regarded self-determination as a right, to the exercise of which Costa Rica owed its existence. The Charter of the United Nations proclaimed the right of peoples to self-determination not only as a basis for peaceful relations among nations, but also as a right which must be respected by States administering Non-Self-Governing or Trust Territories. She recalled the provisions of Articles 73 b and 76 b of the Charter, which, in her delegation's opinion, constituted express declarations of the right of self-determination and obliged the administering Powers to take into account the freely-expressed wishes of the peoples in carrying out their mission of guiding the Territories towards self-government.

23. The right of self-determination was pre-eminently a human right, since it could not be exercised through a Government or a representative organ, but pertained exclusively to each of the individuals who comprised a people. It was the sum of individual wills that constituted the will of a people. Costa Rica was prepared to fulfil the obligations which it had contracted by signing the Charter. Those obligations fell into two different categories: on the one hand, there were the reciprocal obligations between free and sovereign States, laid down in the provisions of the Preamble and of Articles 1 to 72; on the other hand, there were the obligations of those States towards peoples who had not yet achieved independence, laid down in Articles 73 to 91.

24. The Costa Rican delegation, desiring to promote the success of the Third Committee's work, wished to make a suggestion, which it would propose formally if the idea met with sufficient support. She felt that it was essential to take into account not only the right of self-determination itself but also the scope and effect of that right. A third covenant might therefore be contemplated, containing the following provisions: affirmation of the right of peoples to self-determination; the scope of that right; safeguards; measures of implementation; measures to be taken in the event of violation; consequences relating to the Trusteeship System and to matters falling within the competence of the Economic and Social Council and the Security Council.

25. In addition to that suggestion, her delegation wished to make a few comments on the text of article 1 as it stood. Those comments restated certain suggestions that had already been made, and the Costa Rican delegation was prepared to submit them as a formal proposal. The words "and all nations" in paragraph 1 should be deleted. A different wording should be found so as to express the right of peoples to promote their economic, social and cultural development

in place of the reference to economic, social and cultural status, which was unsatisfactory. The word "namely" should be deleted, as it implied a definition by enumeration, whereas the definition was in fact incomplete.

26. Paragraph 3, which logically followed paragraph 1, should be inserted before paragraph 2. The concept of permanent sovereignty set out in the first sentence of that paragraph should be deleted so as to avoid any confusion with the attributes of the State as such. The second sentence should merely state that in no case might a people be deprived of its own means of subsistence; the question of any rights that might be claimed by other States should be the subject of a separate provision couched in more comprehensive and precise terms.

27. Her delegation had no comments to make on paragraph 2.

28. Mr. AZKOUL (Lebanon) said that the Committee was discussing the question of self-determination more thoroughly than it had ever done before. Nevertheless, although the discussion was very interesting, it was also very disturbing, because it clearly revealed the uncertainty surrounding certain aspects of the right of peoples to self-determination and showed how difficult it would be for delegations, kept apart by two different lines of thought, to reach agreement. It therefore seemed all the more useful to examine the situation objectively. He felt that the wording of article 1 should be analysed first and then an attempt made to discover the intentions of its authors and afterwards to evaluate the article in the light of those intentions.

29. He emphasized the fundamental importance of the first part of the first paragraph of article 1, which proclaimed the principle that all peoples and all nations should have the right of self-determination. There was no doubt as to the meaning of those words. The principle they proclaimed was general and universal in scope and therefore presented dangers to which the Committee should give attention. As it related to people in different kinds of situations, its application would require a different approach, depending on the circumstances, and that would often be impossible within the limited framework of the procedure laid down in the draft covenants.

30. In support of that argument he proposed six categories of cases in which the principle of self-determination would be applicable; first, people already constituted as a sovereign and independent State; secondly, people belonging to a State which no longer existed; thirdly, people living under a dictatorial régime; fourthly, people living in a sovereign and independent State but wishing to form a new State or to associate themselves with another country; fifthly, people living in a State which was in principle independent and sovereign but in fact dependent on another State; and sixthly, people living in a Non-Self-Governing Territory. In each of those cases the application of the principle raised serious problems which, to a large extent, went beyond the competence of the proposed Human Rights Committee. They related specifically to international peace and security, the wish of a people to re-establish itself as a State, the limits of the domestic sovereignty of a State, respect for the aspirations of minorities, a genuine desire for independence, and the ability of a people

to become self-governing and to fulfil its international obligations.

31. The first part of paragraph 1 of article 1 might therefore be a source of very serious difficulties. Unlike the other rights enshrined in the draft covenants, the right of peoples to self-determination was stated in absolute terms and was subject to no limitations whatsoever. He pointed out that the principle was proclaimed independently of any more imperative considerations such as international order or world peace.

32. Continuing his analysis of article 1, he commented on the second part of paragraph 1 and pointed out that it might give rise to unfortunate and even dangerous interpretations. With respect to cultural status, it must be recognized that every people had the right to adopt and preserve the culture which it believed to be its own, but the danger was that such a declaration of principle might be regarded as an invitation to exclusiveness and isolation in a world in which, as a result of increasing and more extensive contacts between nations, cultural factors were becoming increasingly fused. A provision such as that contained in paragraph 1 would provide justification for a policy which, like nazism, was based on racism, or, like Zionism, on the historical mission of a people.

33. He concluded his analysis of article 1 by commenting upon paragraph 2, to which he took no exception, and on paragraph 3, which he felt might be used to justify certain attacks on international treaties or agreements. Inasmuch as the covenants would have binding force, it might seem rather surprising that provisions as difficult to apply as those embodied in article 1 should appear in the drafts before the Committee.

34. He then proceeded to analyse the intentions of the authors of article 1. He noted that originally the advocates of the principle of self-determination had wanted to gain recognition for the right of peoples to self-determination in the specific case of the Non-Self-Governing Territories; it was only later that the idea had been expanded and made applicable to other categories of people. By referring to the right of peoples to determine their political, economic, social and cultural status, the authors of the text had wanted to give expression to the principle of non-intervention in the internal affairs of States. It had also been their intention that the obligation set out in paragraph 2 should be limited to Powers administering Non-Self-Governing Territories. Lastly, by devoting a paragraph to the right of permanent sovereignty over natural wealth and resources, they had wished to proclaim the principle that one country should not exploit the resources of another.

35. In view of the intentions of its authors, the draft text was somewhat inconsistent, and its scope much broader than had been planned. Great wisdom had been shown in the endeavour to limit the application of the right of peoples to self-determination and to make a distinction between the category of Non-Self-Governing Territories and the other categories of people to whom it would apply. That distinction was completely justified. It was based on the Charter of the United Nations, which contained special provisions relating to Non-Self-Governing Territories. Moreover, it was not incompatible with the universality of the Declaration of Human Rights, for although a document such as the Declaration must by its nature be drawn up in the most general terms possible, some

provisions of instruments such as the covenants would for practical reasons understandably apply to specific groups of persons. Such a distinction appeared, moreover, to be quite reasonable. A study of the categories which he had specified would show that the people in the first five would presumably benefit, in one way or another, from the obligations contained in the covenants. Only the people of Non-Self-Governing Territories would be unable to benefit from them, even if the covenants were signed by the administering Power, for the territorial clause contained in the covenants might not be retained in the final draft. Moreover, even if an administering Power signed without reservations, some provisions might be inapplicable for various legal reasons. The most usual reason would be that the covenants had been designed for independent and sovereign States, and their application to Non-Self-Governing Territories where the legal situation and the relations between the governing and the governed were different would be difficult, if not impossible. He cited, as an example, articles 19 and 23 of the draft Covenant on Civil and Political Rights.

36. There were other reasons which in his view justified a distinction between the people of Non-Self-Governing Territories and other people who might feel that they were entitled to benefit from the right to self-determination. He noted that the question of the right of peoples to self-determination called for a particularly urgent solution in the case of the Non-Self-Governing Territories, as political tension there was becoming increasingly grave. He also pointed out that the inhabitants of Non-Self-Governing Territories

were the only ones who made their views known to the United Nations. Furthermore, United Nations action in those Territories was likely to be effective because the administering Powers were States with liberal traditions and respected their international obligations.

37. It therefore seemed that the authors of article 1 had been right when they had originally proposed to limit the scope of that provision, but a satisfactory formulation had yet to be found. His delegation, for its part, was prepared to give most careful consideration to any text which would embody the principle of self-determination and reflect the original intentions of the authors of article 1. If no agreement could be reached at the current session of the General Assembly, it would agree to the question being referred once again to Governments. Its only desire in any event was to speed up the Committee's work as much as possible and to help to bring about the adoption of a generally acceptable text.

38. Mr. PAZHWAK (Afghanistan) regretted that the Lebanese representative had, in connexion with article 1, referred to the intentions of its authors, one of which was Afghanistan. In order to avoid any possibility of misunderstanding, he reserved the right of his delegation to give an explanation at a later time.

39. The CHAIRMAN declared the list of speakers closed and said that he would accord the right of reply in accordance with article 116 of the rules of procedure.

The meeting rose at 1.20 p.m.