



**CONTENTS**

	<i>Page</i>
Agenda item 31:	
Draft International Covenants on Human Rights ( <i>continued</i> )	
Article 8 of the draft Covenant on Economic, Social and Cultural Rights ( <i>continued</i> ) .....	211

*Chairman:* Mr. Hermod LANNUNG (Denmark) .

**AGENDA ITEM 31**

**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 6, A/2929, A/3077, A/C.3/L.460, A/3149, A/C.3/L.528, A/C.3/L.532, A/C.3/L.547, A/C.3/L.550, A/C.3/L.552/Rev.1, A/C.3/L.553 to 555) (*continued*)**

ARTICLE 8 OF THE DRAFT COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (E/2573, annex I A) (*continued*)

1. Mr. MENDES DE ALMEIDA (Brazil) said that under the Brazilian Constitution of 1937, the strike had been regarded as an anti-social and harmful practice incompatible with the higher interests of the community. Even at that time, however, strikes had been permitted under the law except in the case of civil servants in public services considered fundamental by the Minister of Labour.

2. The 1956 Constitution, which was in force, had abolished all such restrictions on the right to strike, granted freedom to form professional associations and trade unions and made provision for the system of collective labour-agreements. Article 159 of that Constitution, which had been cited by the Peruvian representative (719th meeting), recognized the right to strike once all legal methods for the settlement of a dispute between employers and employees had been exhausted. Moreover, properly registered trade unions represented the general interests of the various occupational groups and were empowered to enter into collective agreements.

3. The Brazilian delegation would accordingly vote in favour of the text proposed in the revised three-Power amendments (A/C.3/L.552/Rev.1), which it regarded as being in harmony with existing Brazilian law and as an improvement on the original text of article 8 of the draft Covenant (E/2573, annex I A).

4. Mr. PAZHWAK (Afghanistan) said he would have preferred the text of article 8 to remain as drafted by the Commission on Human Rights (E/2573, Annex I A). He recognized, however, that some of the amendments proposed would improve the article, and he took at face value the efforts which had been made to that end. The Afghan delegation would vote in favour of the amendments submitted by the Netherlands and the United Kingdom (A/C.3/L.550 and A/C.3/L.555)

and the Canadian amendment (A/C.3/L.553). If the amendments submitted by the United Kingdom and the Netherlands were not adopted, he would not support the text proposed in the revised three-Power amendments (A/C.3/L.552/Rev.1) except for the provision in paragraph 1 (d) concerning the right to strike. He considered the Soviet amendment (A/C.3/L.447) incompatible with the purpose of article 8. He was opposed to the idea which was at the basis of that amendment and which had been reproduced in paragraph 1 (c) of the text in the revised three-Power amendments. He would accordingly vote against that idea in whatever form it might be presented.

5. It would be well for the original text of article 8 to be put to the vote first, as it would probably receive the support of most delegations.

6. Mr. HUMPHREY (Secretariat) recalled that at the previous meeting, the Belgian delegation had asked the Secretariat to elaborate on the statement in the annotations on the draft Covenant that article 8 was not intended to govern the rights of employers (A/2929, chap. VIII, para. 17). The summary records showed that, when it had drafted article 8, the Commission on Human Rights had not intended it to govern the rights of employers.

7. Mr. CASTAÑEDA (Mexico) said he would vote in favour of the revised three-Power amendments.

8. He wished to make some observations concerning the right to strike. Some delegations had stated that it was preferable not to include that right in article 8 because the strike was the last resort in labour disputes. The Mexican delegation saw no reason why that right should not be mentioned in the Covenant. In international relations the collective measures which had taken the place of the old-style sanctions were also a last resort as was evident from the Charter of the United Nations. Furthermore, the value of the machinery for preserving peace depended on the effectiveness of that last resort, and the same applied to trade-union freedoms. The argument advanced against inclusion of the right to strike in the Covenant was therefore not convincing.

9. Due note had been taken of the Chilean representative's observation that it would be somewhat inappropriate to mention the right without being more specific, since according to the text proposed in the revised three-Power amendments, the right should be exercised in conformity with the laws of the particular country. If the Chilean representative pressed for a version stating that the right could be exercised only when all other methods of conciliation had been exhausted, the Mexican delegation would accept that suggestion.

10. With regard to paragraph 2 of the three-Power text, he felt that the provision concerning legislation was unrealistic. Some legislation might well impair the stipulated rights, and the question arose whether such legislation was lawful or not. The stipulation that the

parties to a labour dispute should first try other methods before resorting to a strike placed a restriction on the right to strike, but such a restriction was justified. If, on the other hand, it was decided that when the workers had submitted their claims they must wait several years before striking, such a decision would seriously compromise that right, for its very nature would be altered. The words "the effect of which is to impair" in paragraph 2 should therefore be replaced by the words "the effect of which is to alter the nature of", for that wording would conform more closely to the terms of article 4 of the draft Covenant.

11. The expression "to apply the law in such a manner" had no precise legal meaning. The rights in question could be impaired in several ways: by measures adopted by the legislative and executive power, and also by measures adopted arbitrarily. To obviate recourse to measures of the third kind, the Mexican delegation suggested that the words "to apply the law in such a manner" should be replaced by the words "to adopt other measures". If that suggestion was not accepted, he would not press for a vote on it and would nevertheless vote for the text proposed in the revised amendments as a whole.

12. Mr. CHAUDHURI (Pakistan) said that, with some reservations, his delegation accepted the idea underlying the Soviet amendment (A/C.3/L.547). He asked whether the Soviet delegation had withdrawn its formal amendment in view of the fact that the idea embodied in it had been incorporated in paragraph 1 (c) of the revised three-Power text.

13. The Pakistan delegation would support the amendment submitted by the Netherlands and the United Kingdom (A/C.3/L.550). The provisions of the text proposed for paragraph 2 in that amendment were entirely in keeping with the Constitution of Pakistan. As to paragraph 3, Pakistan was one of the countries which had ratified the International Labour Convention of 1948, which should be mentioned in article 8.

14. The text proposed in the three-Power amendments (A/C.3/L.552/Rev.1) embodied two rights of vital importance: the right to form and join trade unions and the right to strike. While the Covenant was principally concerned with the individual, the individual could not protect his rights and interests by himself but only in association with others. Accordingly, if the aim set forth in article 8 was to be achieved, trade unions must be given the necessary freedom of action. That freedom should, however, be subject to certain limitations, which were adequately stated both in the amendment submitted by the Netherlands and the United Kingdom and in paragraph 1 (c) of the three-Power text.

15. Turning to paragraph 1 (d) of the three-Power text, concerning the right to strike, he emphasized that that right was of vital importance both to the individual and to trade unions. That right could not, however, be exercised except as a last resort, when all other methods of settling a dispute, and specifically conciliation and arbitration, had been exhausted. The right to strike was a reality which could not be disregarded and would remain a necessity until working conditions became thoroughly democratic. He disagreed with the United Kingdom delegation's view that the strike was a primitive device. The methods used by employers were, as everyone knew, sometimes crude and ugly, and the workers must be given some means of self-defence. The strike was comparable to a painful but necessary surgical operation. It should not be forgotten that Professor

Harold Laski, the eminent British authority, had in his various works strenuously defended the right to strike. The Pakistan delegation would accordingly support paragraph 1 (d) of the text in the revised amendments. On the other hand, his delegation did not see what purpose was served by paragraph 2 of that text and felt that it should not be retained. It would support the Canadian amendment (A/C.3/L.554).

16. It would be desirable for the text in the amendment submitted by the Netherlands and the United Kingdom and the three-Power text to be combined in a single text, which might be acceptable to a great many delegations.

17. Mr. MOROZOV (Union of Soviet Socialist Republics) said that if the original text of article 8 (E/2573, annex I A) was voted upon, the Soviet delegation would maintain its amendment (A/C.3/L.547). If, however, the revised three-Power text (A/C.3/L.552/Rev.1) was voted upon, it would not press for a vote on its own amendment because that amendment was taken into account in the revised text.

18. He asked that the first part of paragraph 1 (c) of the text proposed in the three-Power amendments, namely, the phrase reading "the right of trade unions to function freely" should be voted upon separately. For the reasons previously indicated (719th meeting), his delegation would vote in favour of the first part of that sub-paragraph and against the second part.

19. Mr. PETRZELKA (Czechoslovakia) said that his country attached very great importance to the right to form and join trade unions. Article 25 of the Czechoslovak Constitution guaranteed for all workers the right to join the Unified Trade Union, which played a major role in formulating the country's economic and social policy.

20. In view of the principles on which the draft International Covenants on Human Rights were based, his delegation considered that article 8 should be so drafted as to ensure absolute freedom of action for trade unions. The article should not be merely a declaration of workers' rights but should ensure the full exercise of those rights in practice. He would vote in favour of the Soviet amendment (A/C.3/L.547), which met that requirement and was also in accord with the principles stated in articles 2 and 4 of the draft Covenant. He was on the whole in favour of the text proposed in the three-Power amendments (A/C.3/L.552/Rev.1) but could not accept the second part of paragraph 1 (c) which imposed limitations on the free exercise of trade-union rights. He was likewise unable to support the United Kingdom and Netherlands amendments (A/C.3/L.555) to the revised three-Power text in view of their restrictive nature. He would vote against paragraph 2 of the text proposed by the Netherlands and the United Kingdom (A/C.3/L.550) in view of the restrictions which it imposed on the right to form and join trade unions, particularly in the case of civil servants. He would also vote against paragraph 3 of that text since he saw no need to mention specifically the 1948 Convention. He felt that the Canadian amendment (A/C.3/L.554) was unnecessary and therefore he would not support it.

21. Mr. KNOX (Denmark) recalled that his delegation was not convinced of the usefulness of the Covenants. They stated rights which had already been proclaimed in the Universal Declaration of Human Rights, and their adoption might hamper the specialized agencies in their work. At any event, in the case of article

8, it would be preferable to adopt the text prepared by the Commission on Human Rights (E/2573, annex I A) since it had the merit of being drafted in general terms. If the Committee was to go into detail concerning trade-union rights, it should do the same in the case of all the other articles of the two draft Covenants, with the result that there would be a considerable waste of time.

22. Turning to the three-Power amendments (A/C.3/L.552/Rev.1) and the Netherlands and United Kingdom sub-amendments to them (A/C.3/L.555), he said that he favoured limiting paragraph 1 (a) of the three-Power text to the first part of the sentence, up to and including the phrase "and join trade unions". However, if the entire paragraph was adopted, the Canadian amendment (A/C.3/L.554) should be retained. His delegation would vote in favour of including the sentence contained in point 1 of the amendments submitted by the Netherlands and the United Kingdom (A/C.3/L.555).

23. He approved of paragraphs 1 (b) and 1 (c), of the three-Power text (A/C.3/L.552/Rev.1) and would not object to voting for paragraph 1 (d), which endorsed the right to strike—a right recognized in Denmark for over half a century—but provided for legislative limitations. Such limitations could legitimately include measures taken by a parliament to settle a serious labour conflict which had already arisen or was about to arise.

24. His delegation considered that, although they did no harm, the two paragraphs proposed by the Netherlands and the United Kingdom in point 3 of their amendments (A/C.3/L.555) were not strictly necessary. It would abstain on the first of those paragraphs and vote in favour of the second. It was firmly opposed, however, to paragraph 2 of the text proposed in the three-Power amendments (A/C.3/L.552/Rev.1). It was obvious that a State which undertook to assume certain obligations would not take any action contrary to those obligations. There was no need for a specific statement to that effect. In any event, it was difficult to see how that clause could prevent a State from ignoring any provision of the Covenant if it so desired.

25. Mr. HAMILTON (Australia) said that, on the whole, Australia supported the text prepared by the Commission on Human Rights (E/2573, annex I A), although it also favoured the amendment presented by the Netherlands and the United Kingdom (A/C.3/L.550), which would have the effect of bringing article 8 more into conformity with article 21 of the draft Covenant on Civil and Political Rights (E/2573, annex I B). He had some reservations, however, regarding the phrase "or of the administration of the State" in paragraph 2 of the text in the amendment. It seemed neither necessary nor desirable to adopt such a broad phrase, which would make it possible to limit the rights of all categories of civil servants in trade-union matters.

26. The Soviet amendment (A/C.3/L.547) was unacceptable since article 8 dealt, not with the rights that must be granted to trade unions, but with those which individuals should be able to claim. Moreover, the text proposed in the Soviet amendment was very vague. It provided that the State should guarantee to trade unions the free exercise of their functions but did not indicate what those functions were. To be of any value, such a guarantee should be accompanied by a definition. There were accordingly two alternatives: there could

be either no definition, and the guarantee would then be devoid of meaning, or else a definition could be given at a later stage. States would not wish to adopt such a purposeless course as the former or such a dangerous course as the latter.

27. Commenting on the three-Power amendments (A/C.3/L.552/Rev.1), he noted that point 1 of the amendments was intended mainly to reorganize the form of article 8. The phrase "the States Parties to the Covenant undertake to ensure" no longer related only to one right, but to four rights. In view of the importance of the proposed change, his delegation asked that the Committee should vote separately on the deletion of the words "the free exercise of the" and on the addition of the colon and "(a)" after the word "ensure". Those amendments might be criticized on the ground that they eliminated all references to the "free exercise" of the right to form trade unions. He was, however, rather inclined to approve that deletion, particularly since, in the interest of the trade unions themselves, the State sometimes required such bodies to have a minimum initial membership.

28. Point 2 of the three-Power amendments called for the deletion of the words "local, national and international". Such a deletion would be unfortunate, as those words clarified the nature of the organizations which individuals could form or join. The insertion of the word "promotion" was proposed in point 3 of the amendments but that hardly seemed necessary, since the protection of the rights of individuals automatically implied their promotion. Furthermore, such an addition might be construed as an endorsement of the political role of trade unions.

29. Point 4 of the three-Power amendments called for the addition of three new sub-paragraphs and one new paragraph.

30. The Australian delegation objected to the proposed paragraph 1 (b) for two reasons: first, article 8 should deal with the right of individuals and not of trade unions; and, secondly, if article 8 mentioned any one of the rights which trade unions could exercise, it would become necessary to list all of the important rights which they could properly claim in order to avoid the implication that they were insignificant. Such an enumeration would seriously complicate the Committee's task.

31. Paragraph 1 (c) seemed equally unsatisfactory. In the first place, it was hardly logical to speak in the same sentence of the right of trade unions to function freely and of the restrictions to which their activities remained subject. Furthermore, Governments could hardly undertake, in practice, to ensure "the right of trade unions to function freely", as the obstacles impeding the freedom of action of trade unions were not necessarily created by the State or easily removable by it. Moreover, any excessive interference by the public authorities could have distressing consequences, for the trade unions might become instruments of the State and thus lose their independence. The arguments he had advanced against the USSR amendment (A/C.3/L.547) were equally applicable to paragraph 1 (c) of the three-Power text (A/C.3/L.552/Rev.1).

32. With reference to paragraph 1 (d) of that text, he pointed out that the word "strike" was not always uniformly construed. Since, in any case, paragraph 1 (d) referred to a collective right and not to an individual right, its inclusion in the Covenant seemed inap-

appropriate. Secondly, the statement that the right to strike must be "exercised in conformity with the laws of the particular country" involved the danger that States might through legislation suppress the right to strike. The right to strike would thus depend on the discretion of the State. That would give the impression that the right to strike was not in fact a right but a mere privilege which the State could grant or withdraw at its pleasure. Finally, the inclusion of the right to strike alongside of the right to form and join trade unions tended to distort the true concept of trade unionism. It was now generally accepted that a primary objective of trade unions was to avoid strike action except as a last resort after all attempts at conciliation had failed. Thus, to give prominence to the right to strike, as was suggested in the proposed text, could not be reconciled with modern practice.

33. With reference to paragraph 2 of the three-Power text (A/C.3/L.552/Rev.1), he pointed out that a State which undertook to ensure a right was automatically bound not to impair that right. The clause was consequently unnecessary and unacceptable.

34. The Australian delegation would support the amendment proposed by Canada (A/C.3/L.553) to the original text.

35. As to the Netherlands and the United Kingdom sub-amendments (A/C.3/L.555), their effect was to improve the three-Power text (A/C.3/L.552/Rev.1) but not to eliminate the provisions which the Australian delegation found objectionable. Therefore, even if those changes were approved, the Australian delegation would still regard almost all of the three-Power amendments as unsatisfactory.

36. Mr. DIAZ CASANUEVA (Chile) said that although some delegations might consider that article 8 should apply only to workers, that did not emerge clearly from the text. The term "everyone" was extremely wide and could apply equally well to employers and to employees. The ambiguity should be removed.

37. One of the principal difficulties arose from the inherent difference between the term "trade union" and the corresponding words in other languages, such, for example, as Spanish. A "trade union" could apparently consist only of workers, while a *syndicat* could also be an association of employers. The Third Committee should decide on the scope which it wished to give to article 8. If that article was to apply solely to employees, the word "everyone" should be replaced by "every worker". If it was intended to cover employers as well, the correct expression would be "every worker and employer". Another solution, which would have the same result, might be to amplify the English text by adding after the words "trade unions" a term applicable to employers' organizations. In any event, the Committee should dispel all doubt.

38. Mr. BRENA (Uruguay) said that, before replying to the various comments on the three-Power amendments (A/C.3/L.552/Rev.1), he wished to make a few general observations.

39. In the first place, the Third Committee's task was not merely to endorse what had been accomplished, with admirable skill, by the experts of the Commission on Human Rights. Under rule 100 of the rules of procedure of the General Assembly, the Committee must complete the consideration of items referred to it by the Assembly. It was only natural, therefore, that in

the course of such consideration it should try to improve the texts submitted to it.

40. He recalled that the three-Power amendments were the outcome of a compromise. The sponsors had tried, in a spirit of co-operation, to comply with all the suggestions which had been made. They were now perfectly willing to take into account the further remarks made by several representatives on the revised version of the joint amendments. In particular, the changes proposed by the delegations of Greece, France and Mexico would be taken into consideration.

41. He agreed that the term "everyone" could be interpreted in various ways. The joint sponsors had retained it so as not to depart excessively from the text prepared by the Commission on Human Rights. Furthermore, that term appeared in article 21 of the draft Covenant on Civil and Political Rights (E/2573, annex I B) and in article 23, paragraph 4, of the Universal Declaration of Human Rights. At the current stage, a fresh debate on the exact meaning of that term would be inadvisable and might considerably delay the adoption of article 8.

42. Replying to the various criticisms of the text proposed in the three-Power amendments (A/C.3/L.552/Rev.1), he stated the reasons which had induced the joint sponsors to change the original wording. They had felt that, in its original form, article 8 was not a sufficiently clear statement of trade-union rights. Trade unions must not only protect but also promote the economic and social interests of their members. As to the right to strike, it was a natural corollary of the right to form and join trade unions. In order to exercise any real influence, trade unions must be able to exert pressure on the private undertaking or the State. They could not do that without the necessary weapon, namely, the right to strike.

43. He disagreed with the contention that the three-Power text would open the door to trade-union tyranny. Recognition of trade-union rights was neither more nor less dangerous than recognition of the right to form political parties.

44. He pointed out, for the benefit of the Australian representative in particular, that the draft Covenant on Civil and Political Rights in many cases considered rights from the standpoint of the general community and did not relate solely to individual rights. There was no need to go beyond articles 1 and 2 to find examples of that fact.

45. With regard to the right to strike, it was quite obviously a last resort to be used only after all other methods of conciliation had failed. The sponsors of the amendments had merely wished to give expression to a right that was sometimes misunderstood.

46. The Philippine representative had said that he preferred the original text and that, in view of the existence of article 4, limitations were out of place in article 8. Mr. Brena pointed out, however, that there were many articles in both Covenants providing for specific limitations. A general limitation did not, therefore, preclude specific limitations.

47. The sponsors of the revised text were prepared to accept the suggestions made by Mexico and France, for they were anxious to satisfy everyone, provided the unity of the article was not lost as a result.

48. To meet the points made by the Australian representative, they were prepared to amend the text proposed for paragraph 2 to read:



"It shall be unlawful to adopt any measures the effect of which would be to impair the nature or exercise of the rights stipulated in this article."

49. The CHAIRMAN suggested, on the point raised by the Chilean representative, that the Rapporteur might be invited, if such was the feeling of the Committee, to state in the committee's report on agenda item 31 that article 8 did not include employers.

50. Mr. HOARE (United Kingdom) was against including a statement of that kind in the Committee's report. In his view, the task of interpreting the article and defining its scope should be left to the States which ratified the Covenant in the light of the meaning of its terms in their own law. If it was desired to give as wide an interpretation as some delegations suggested, that could only be done by making the article refer, as was the case with article 21 of the draft Covenant on Civil and Political Rights (E/2573, annex I B), to the right to freedom of association.

51. Mr. EUSTATHIADES (Greece) thanked the sponsors of the revised text (A/C.3/L.552/Rev.1) for having taken account of his delegation's comments. The Greek delegation would therefore support paragraphs 1 (a) and 1 (b) of the proposed text as well as the first part of paragraph 1 (c), but not the second part, which it regarded as coming within the scope of general clauses. It would therefore have to ask that that sub-paragraph should be voted on section by section. It would vote in favour of paragraph 1 (d), and even those who had expressed doubts concerning it should find it possible to do the same, since the right to strike was obviously exercised only after conciliation had failed and then within the limits set by the laws of each country.

52. He would be unable to support paragraph 2 of the proposed text but paid a tribute to the spirit of compromise of the sponsors, who had striven, as with the second part of paragraph 1 (c), to reconcile points of view which were unfortunately irreconcilable. Paragraph 2 repeated the idea expressed in paragraph 3 of the text proposed in the Netherlands and United Kingdom amendment (A/C.3/L.550) but without mentioning the International Labour Convention of 1948. The result was a clause which had little meaning in the legal sense and might even be dangerous in view of the fact that its absence from the other articles might be interpreted to mean that it did not apply to them. His delegation would therefore vote against the paragraph. For those who preferred its retention, he would suggest the following wording:

"It shall be unlawful to enact any legislation or adopt any measure the effect of which is to impair the existence of the rights stipulated in this article."

53. As to the scope of the article, he supported the suggestion by the Chairman that the Committee's view with regard to the applicability or non-applicability of article 8 to employers might be stated in the report.

54. In conclusion, he requested that the first paragraph of the text proposed in point 3 of the sub-amend-

ments submitted by the Netherlands and the United Kingdom (A/C.3/L.555) should be put to the vote in parts so as to permit a vote in favour of the first part of the paragraph up to and including the word "police".

55. Mr. DELHAYE (Belgium), referring to the matter of defining the scope of article 8, said that the Belgian delegation was not satisfied with the Chairman's suggestion that the Committee's report should state that the article did not apply in a particular respect. A possible solution might be to insert the words "worker or employer" in brackets after the words "everyone" in paragraph 1 (a) of the revised text (A/C.3/L.552/Rev.1).

56. Mr. MACCHIA (Italy) thought the problem was not so much one of defining the scope of article 8 as of harmonizing the texts in the various languages. The English expression "trade union" applied to workers only, but the same apparently was not true of the French and Spanish equivalents. It would be necessary to determine what text was to serve as the basis and then make the necessary adjustments in the others.

57. Mr. MOROZOV (Union of Soviet Socialist Republics) was unable to accept the Belgian amendment, which would substantially alter the sense of the article. In his view, the only possible interpretation was that of the Commission on Human Rights.

58. Mr. DIAZ CASANUEVA (Chile) asked whether the United Kingdom representative, who had taken part in the Commission's work, would give his opinion.

59. Mr. HOARE (United Kingdom) considered that the difficulty was due, not to the term "everyone", which was as wide as could be wished, but, as had been stated, to the fact that the term "trade union" had a limited sense in English. He did not think it would be used in the United Kingdom to describe a body of employers, with whom, indeed, the idea of the right to strike could scarcely be associated.

60. Mr. DELHAYE (Belgium) was sorry that all those problems had not been solved sooner. He was in any event certain that in various International Labour Conventions the French word "*syndicat*" also related to employers.

61. Mr. THIERRY (France) cited article 2 of the International Labour Convention of 1948—mentioned in the United Kingdom amendment—as showing that the Convention related to employers as well as employees. In France, the term "*syndicat*" was also applied to associations of employers.

62. Mr. AYALA MERCADO (Bolivia) thought it unnecessary to define what was meant by the word "everyone", since it would be interpreted in accordance with the legislation of the country concerned.

63. Mr. HOARE (United Kingdom), noting that the delegations did not yet seem ready to vote, proposed that the meeting should rise.

*It was so decided.*

The meeting rose at 6 p.m.