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**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, A/C.3/L.554) (*continued*)**

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

1. Mr. BRENA (Uruguay) said that, as Chairman of the Working Group set up at the previous meeting, he was sorry to announce that it had not been possible, despite the conciliatory attitude adopted by the authors of the various amendments to article 8 of the draft Covenant (E/2573, annex I A), to reach agreement on a compromise text. The differences of opinion had been on points of principle and not merely on points of form. They had borne primarily on the conditions under which trade-union rights could be exercised, the guarantees to be afforded and the right to strike.

2. As the attempt to reach a compromise had failed, the delegations of Bolivia, Peru and Uruguay had decided to redraft their amendments and submit a new text (A/C.3/L.552/Rev.1) taking into account the various suggestions that had been made in the Committee and in the Working Group.

3. Mr. HOARE (United Kingdom) said that, while the delegations of Uruguay and Peru had been most conciliatory and had agreed to forgo certain of their own proposals, the delegations that had been represented on the Working Group had been unable to modify their position on certain fundamental points. A number of delegations had therefore been unable to accept that part of the amendment proposed by the Netherlands and the United Kingdom (A/C.3/L.550) which sought to provide in terms for the permissible range of restrictions which could be placed on the exercise of trade-union rights. He for his part had been unable to support certain passages in the three-Power amendments (A/C.3/L.552) to which he had objected at the previous meeting.

4. Mr. EUSTATHIADES (Greece), commenting on the amendments proposed to article 8, said that the Soviet Union proposal (A/C.3/L.547), the purpose

of which was to safeguard a right which was not formulated in the text prepared by the Commission on Human Rights, namely the right of trade unions to the free exercise of their functions, was a useful addition and merited approval; it was, moreover, in conformity with the International Labour Convention of 1948, which contained provisions concerning the exercise of trade-union activities.

5. With regard to the amendments submitted jointly by Bolivia, Peru and Uruguay (A/C.3/L.552), the expression "the broadest possible trade-union rights" was not without ambiguity and might be interpreted in a way that ran directly counter to the author's intentions. It would accordingly seem better to redraft that passage in such a way as to avoid any misunderstanding. Point 2 of the amendments, which should be read in conjunction with point 4, seemed very opportune and the Greek delegation was prepared to support it. The addition of the word "promotion" was a particularly welcome improvement. Certain drafting changes would however be desirable. As no one could form a trade union by himself, the wording of the French text of article 8, which recognized the right of *toute personne de former avec d'autres des syndicats*, should be retained but if the three-Power amendment was adopted on that point it would be better to use the plural form *toutes personnes* in the French text. It would also be better, in the French text, to say that the individual had the right to *s'affilier à des syndicats de son choix*, not, as proposed in the three-Power text, *au syndicat de la préférence*. He found the amendment proposed in point 3 satisfactory but would like to suggest a slight change of form. The word *quelconque* did not appear to be necessary in the French text; it could either be deleted or the words *une organisation syndicale internationale quelconque* replaced by *toute organisation syndicale internationale*. His delegation had no objection in principle to the addition of a paragraph recognizing the right to strike.

6. Turning to the amendment proposed jointly by the Netherlands and the United Kingdom (A/C.3/L.550), he acknowledged that the wording of paragraph 2 of the proposed text was more precise than that appearing in article 4 of the draft Covenant. It did not refer only to "the general welfare in a democratic society" but also to national security, public order and the rights and freedoms of others. It was none the less a tenable view, as the Soviet Union representative had said, that article 4 was adequate. In any event, it was necessary to avoid coupling all the articles in part III of the Covenant with provisions similar to those that appeared in the text proposed for paragraph 2 in the amendment submitted by the Netherlands and the United Kingdom. It would be better to add a specific provision to the text of article 4 itself. The second sentence of paragraph 2 was not entirely satisfactory. In his view, the reference to "members of . . . the administration of the State" was not appropriate. Moreover, in countries where a very large sector of the



economy was nationalized, there were very many workers who might fall into that category and whose freedom to form trade unions might in that way suffer restrictions. Accordingly, he requested that during the voting on paragraph 2 of the text proposed in the amendment, the first sentence, the second sentence and the words "or of the administration of the State" should form the subject of separate votes. Paragraph 3 of the text proposed in the amendment was probably not strictly necessary in law, for naturally, the Covenant could have no effect on the legal obligations which States had contracted under the International Labour Convention of 1948. If the Committee attached importance to the proposed addition, however, the dashes should be deleted from the French text.

7. Mr. TSAI (China) recalled that article 8, relating to trade-union rights, had been very thoroughly discussed by the Commission on Human Rights. As the discussion had disclosed profound differences of view, the Commission had decided to submit a text of a general nature which might be acceptable to the majority. Because it had been so difficult to draft article 8, and because further delay was undesirable, he thought the best course would be to adopt the text in its existing form. While not opposed to the addition of certain specific provisions, he thought it unlikely that agreement would be reached on an article containing excessively elaborate provisions departing substantially from the original text. In considering the proposed amendments, the Committee should weigh not only the question whether they were desirable in themselves but also the question whether they could win majority support.

8. In the Commission on Human Rights the right to form trade unions had not been regarded by all delegations as a fundamental right. Some had treated it as but one manifestation of the freedom of association proclaimed in article 21 of the draft Covenant on Civil and Political Rights (E/2573, annex I B). All delegations had, however, agreed that it was a most important right to be dealt with in a separate article in the Covenant on Economic, Social and Cultural Rights. The Commission had then debated whether the text should specify the ingredients of the right to form trade unions. Some delegations had proposed that the right to strike and the right of trade unions to join an international organization should be expressly mentioned. After long debate, the Commission had rejected those proposals, and it was hardly advisable to reopen the debate in the Committee. It would be wrong to give prominence to particular aspects of the right to form trade unions or to particular ways of ensuring the free exercise of trade-union activities; indeed, public opinion would misconstrue the Committee's motives in giving prominence to some and understressing others.

9. Mr. THIERRY (France), replying to a question raised at a previous meeting, said that French law distinguished between freedom of association and freedom to form trade unions; the former was the broader of the two freedoms, for the sole purpose of trade-unionism was to defend the interests of the trade. Before the Second World War the case-law of the Conseil d'Etat had conceded to public servants the right to form associations only. Since the enactment of the Constitution of 1946 and of the legislation governing public servants, the situation had altered and public servants now had the right to form trade unions, which played a far from negligible role in the administration.

10. The relevant French law was based on two principles: the right of individuals to form trade unions, and the freedom to join the trade union of one's choice. From that point of view, article 8, if interpreted in the light of article 21 of the draft Covenant on Civil and Political Rights, appeared to be satisfactory. Besides, the texts so carefully prepared by the Commission on Human Rights should be tampered with as little as possible, for they represented a balance between several schools of thought and any amendment might disturb that balance.

11. With regard to the amendment submitted by the Netherlands and the United Kingdom (A/C.3/L.550), he said that trade-union rights should not be treated differently in the two Covenants. That would be paradoxical. The object of paragraph 2 of the text proposed in the amendment was to avoid any such patent discordance. As its purpose was not to restrict freedom to form trade unions but the State's right to curtail such freedom, it appeared to be acceptable. However, the reference to "the administration of the State" seemed to imply an unwarranted mistrust of public officials. Paragraph 3 of the text proposed in the amendment would be an additional safeguard; its adoption would forestall any subsequent conflict between the obligations arising out of the Covenant and those arising out of the International Labour Convention of 1948.

12. Turning to the three-Power amendments (A/C.3/L.552), he said that the change proposed in point 1 of the amendments was not absolutely necessary, since the Commission's text was sufficiently general in nature to permit the formation of any type of trade union. He approved of the word "promotion" in the text proposed in point 2 of the amendments. The change proposed in point 3 of the amendments was an improvement over the drafting of the original text, for only national organizations, not individuals, were capable of affiliating themselves to an international trade-union organization; he therefore approved of the proposed change.

13. The idea behind the Soviet Union amendment (A/C.3/L.547) was most interesting, but he thought it was covered by the original text of article 8. Accordingly, the amendment was not indispensable.

14. In conclusion he said that his delegation was in principle in favour of maintaining the texts in the form in which the Commission on Human Rights had drafted them, but could accept any amendments which improved their wording.

15. Mr. CURRIE (Canada) said that his delegation had initially had some doubts regarding the usefulness of article 8. There was a convention concerning freedom of association and protection of the right to organize: the International Labour Convention of 1948. Furthermore, the right to form trade unions was included in the right of association stated in article 21 of the draft Covenant on Civil and Political Rights. Since the two Covenants were parallel and complementary instruments which would be opened for signature at the same time, the Canadian delegation had considered it hardly necessary to mention one aspect of the freedom of association specifically in one of the Covenants when the matter was dealt with more fully in the other Covenant. Because, however, the right to form trade unions had very important economic and social consequences, his delegation had changed its view. Still, it could not accept article 8 in its original form, mainly because that article, which



imposed on States an absolute obligation to ensure the free exercise of a right, did not mention the limitations to which the right could by law be subjected. It therefore welcomed the amendment proposed by the Netherlands and the United Kingdom (A/C.3/L.550). The Canadian delegation had first thought that the simplest solution would be to add to the existing text of article 8, as slightly amended, a sentence taken from article 21 of the draft Covenant on Civil and Political Rights: "This article shall not prevent the imposition of lawful restrictions on the exercise of this right by members of the armed forces or of the police." However, it would willingly accept the wording proposed by the Netherlands and the United Kingdom and would vote in favour of the two paragraphs which they proposed for addition to article 8.

16. The original text of article 8 suffered from yet another defect. It stated that everyone had the right to join trade unions "of his choice"—a phrase that might imply that anyone had the right to join any trade union, whether or not he fulfilled the conditions governing membership thereof, and that it would be the duty of the State to ensure that he was not denied that right. Obviously, that was an inadmissible implication, and that was why the Canadian delegation had proposed an amendment (A/C.3/L.553) involving the insertion, after the word "choice", of the phrase: "subject only to the rules of the organization concerned". The same phrase actually occurred in the International Labour Convention of 1948.

17. If the Committee adopted the Canadian amendment and an amendment on the lines of that proposed by the United Kingdom and the Netherlands, then the Canadian delegation would be able to vote in favour of the entire article.

18. His delegation had presented a sub-amendment (A/C.3/L.554) to the three-Power amendments (A/C.3/L.552), which was similar to its own amendment (A/C.3/L.553), although that by no means signified that it would fully agree to all the proposed changes. The three Powers had since presented a revised text, which he had not yet had time to study. In any event, the Canadian delegation would prefer the Committee to adopt the original text with the Canadian amendment and the amendment proposed by the Netherlands and the United Kingdom. It would not support the Soviet amendment (A/C.3/L.547), which dealt with the rights of the trade unions and not with the subject of the Covenant, which was the rights of the individual.

19. Mr. AZKOUL (Lebanon) said that he was extremely interested in the item and had followed the debate from the very beginning. The purpose of the Covenants was to protect the individual and to impose on States, which were only morally bound by the Universal Declaration of Human Rights, specific legal obligations.

20. He feared that, by adopting too many amendments to the original text of article 8 (E/2573, annex I A), the Third Committee might disturb the delicate balance achieved by the Commission on Human Rights. At the risk of repeating what others had said before him, he would therefore like to refer again to certain general ideas which had guided the Commission in its work. The Covenants were two very different instruments. The Covenant on Civil and Political Rights required States to ensure, immediately and unconditionally, the exercise of all the rights stipulated therein. The position was not the same, however, in the case of the

Covenant on Economic, Social and Cultural Rights, since the degree to which those rights were exercisable obviously depended on the particular country's state of development. The Covenant took that circumstance into account, in that it required States to achieve the realization of those rights "progressively". Consequently, article 4, which dealt with limitations, should be drafted in more general and less legal terms than the corresponding article of the Covenant on Civil and Political Rights.

21. Article 2 referred to the "full realization of the rights recognized in this Covenant". The Commission on Human Rights had chosen the word "recognized" intentionally. It was used in all but three of the articles of the Covenant on Economic, Social and Cultural Rights; the three exceptions were article 8, article 14, paragraph 3, and article 16, paragraph 3, which provided that the States "undertake". The reason was that the Commission had considered the three rights referred to in those articles to be in a separate category, since their exercise was in no way connected with economic and social conditions in the country. The question whether the general language of articles 2 and 4 was applicable to those articles had not been considered by the Commission, presumably owing to the pressure of time, and he was glad that the delegations of the Netherlands and of the United Kingdom had rectified the omission by presenting an amendment (A/C.3/L.550) specifying the only restrictions permissible on the exercise of the right stated in article 8. The text they proposed was the same as that in article 21 of the draft Covenant on Civil and Political Rights, which in his view was the right text.

22. On the other hand, he considered the revised three-Power text (A/C.3/L.552/Rev.1) inadequate since it provided, in paragraph 1 (c), that the right of trade unions to function freely would be subject to no restrictions other than those required "for the protection of the rights and freedoms of others". That text was not realistic. He was sure that States could not accept the article if it did not also mention public order and the security of the State.

23. There was another idea which had influenced the Commission's deliberations. Having considered the matter carefully, the Commission had decided that the Covenant should refer only to those rights which the conscience of humanity conceded to the individual at the moment. The Commission had imposed the limitation intentionally and had deliberately omitted to deal with the rights of groups and associations. It seemed therefore that the existing text of article 8 would suffice, with the addition of the text proposed by the Netherlands and the United Kingdom relating to restrictions. The article proposed by Bolivia, Peru and Uruguay in their amendments (A/C.3/L.552/Rev.1) was very largely concerned with the rights and activities of trade unions as social organizations; the individual was eclipsed, which was wholly inconsistent with the original concept of the Covenant. The same comment applied to the amendment proposed by the Soviet Union (A/C.3/L.547).

24. Without expressing any view on the substance, he stated that he considered that the Canadian amendment (A/C.3/L.553), which was intended merely to rectify an omission and to render an obligation more feasible, could usefully be discussed by the Committee. He did not feel the same way, however, about the amendments which extended the scope of the Covenant, as laid down



by the Commission on Human Rights, and which were liable to lead the Committee on to very dangerous ground.

25. Mr. BEAUFORT (Netherlands) wished to comment briefly on the right to strike. His delegation recognized that right but believed that it was qualified and could only be exercised at a less advanced stage of human society and in the last resort. In that respect, a strike was comparable to war: a State could only resort to war in self-defence and after all means of seeking a peaceful settlement had been exhausted. A strike, like war, was both unnatural and undesirable, and could only be accepted at a certain stage of social evolution. In the nineteenth century, the condition of the working classes had been barely better than that of slaves in ancient times. That state of affairs had changed under the influence of religious and moral ideas and thanks to the action of trade unions, which had originally been an instrument of class struggle. The situation had since undergone a marked change and, in many countries, associations of employers and employees had become instruments of co-operation working principally for the welfare of society as a whole. Such associations bound men together, in a new social order, according to the diverse functions which they exercised in society. The position of the Netherlands delegation in accepting the right to strike should be understood in the light of those considerations.

26. Mr. TOWNSEND EZCURRA (Peru), presenting the revised three-Power amendments (A/C.3/L.552/Rev.1), said that the sponsors had tried to take into account the different views on article 8 expressed in the Third Committee, so as to make the text acceptable to the greatest possible number of delegations. They had followed the enumerative pattern used in other articles of the Covenant, first stating that a guarantee was being given and then itemizing the rights guaranteed.

27. In order to meet the objection of the United Kingdom representative, paragraph 1 of the new text mentioned four specific rights, each being the subject of a separate sub-paragraph. Paragraph 2 contained a protection clause similar to the text proposed for paragraph 3 in the amendments by the Netherlands and the United Kingdom (A/C.3/L.550), which followed the language of article 21 of the draft Covenant on Civil and Political Rights.

28. In the revised proposal, the rights were enumerated in a logical order. Paragraph 1 (a) reaffirmed the idea, contained in the original text of the Covenant (E/2573, annex I A), that everyone had the right to join trade unions of his choice; it also retained the point expressed in the original three-Power amendments (A/C.3/L.552) that the purpose of forming trade unions was the protection and promotion of the economic and social interests of the individual. The principle stated in paragraph 1 (b) had also been included in the original amendments, but in the new text it was expressed in clearer and more logical terms. Paragraph 1 (c) introduced the same guarantee as that mentioned in the USSR amendment (A/C.3/L.547), but it also contained certain features drawn from the amendment submitted by the Netherlands and the United Kingdom. He had pointed out at the 719th meeting that although the right to form trade unions was one of the public freedoms, the rights which derived from it could not be absolute; they were limited by the rights and freedoms of others. That notion

seemed preferable, by reason of its general character, to such concepts as external security and public order, which would tend to limit the scope of article 8.

29. The sponsors of the amendments had introduced the notion of the right to strike in paragraph 1 (d). It had been said that the right to strike should not be mentioned in the Covenant because strike action could not be taken, in relations between employers and workers, until all else had failed; that argument was not acceptable to the sponsors of the amendments. The right to strike, a logical consequence of trade-union freedom, was recognized by the legislation of many countries. In an ideal society, strikes would have no *raison d'être*, but in present-day society the right to strike had to be legally confirmed. There was nothing revolutionary in mentioning it in the draft Covenant on Economic, Social and Cultural Rights, since the draft Covenant on Civil and Political Rights referred to slavery and forced labour.

30. Mr. JARAMILLO ARRUBLA (Colombia), speaking of article 8, pointed out that one individual could not form a trade union, even though, subsequently, a union could consist of only one member. The legislation of many countries stipulated that a union could only be formed by a specified number of persons; under the Colombian Constitution, for example, that number was twenty-five. It might therefore be desirable to indicate in article 8 that the formation of a trade union required a group of persons.

31. The Colombian delegation attached great importance to the universal recognition of the right to form trade unions, which had been recognized for many years by the legislation in force in Colombia. His Government traditionally based its trade-union policy on a free and democratic trade-unionism, as opposed to a totalitarian one. It recognized, as did the Catholic Church, that freedom of association was a natural right of every human being, and believed, while always respecting the ideological beliefs of individuals, that the purpose of trade-unionism was to defend the interests of workers by remaining outside political parties. Consequently, the principle stated in article 8 was fully consistent with Colombian policy.

32. He pointed out that article 8 drew no distinction between the single union system and the multiple union system. That point should be clarified. In that connexion, he said that the Colombian Constitution did not recognize single unions except in the case of company unions and industrial unions.

33. With reference to the revised three-Power amendments (A/C.3/L.552/Rev.1), he said that the proposed text spelt out the idea contained in article 8. He nevertheless felt that paragraph 1 (b) would be improved if the words "or become affiliated to" were inserted between the word "establish" and the word "national". His delegation would also support paragraphs 1(c) and 1 (d). From the social point of view, a strike represented for workers a means of defending their interests when all else had failed; it was consequently proper to reaffirm the right to strike in the Covenant. In that connexion, he pointed out that the right to strike was recognized in Colombia in all cases except where public services were concerned. He would also support paragraph 2 of the revised text, which guaranteed respect for the rights stipulated.

34. Mr. DIAZ CASANUEVA (Chile) said that he would try to reconcile the various views which had



been expressed on article 8. It might be possible, for example, to merge paragraph 1 (c) of the revised three-Power amendments (A/C.3/L.552/Rev.1) with the amendment proposed by the Netherlands and the United Kingdom (A/C.3/L.550).

35. If the revised amendments were put to the vote, the Chilean delegation would ask for a separate vote on paragraphs 1 (a) and 1 (b). The delegations which opposed those two sub-paragraphs would thus be given an opportunity of expressing a preference for the original text of article 8, which many delegations seemed to support. Some representatives believed that the expression "undertake to ensure the free exercise" was preferable to the terms used in the three-Power draft; his own view was that it was absolutely necessary to stress the legal obligation of States to ensure the exercise of trade-union rights.

36. The Chilean delegation would agree to the inclusion of the right to strike; but he pointed out that the wording of paragraph 1 (d) of the three-Power text might imply that a strike did not necessarily have to be the last resort. He suggested, therefore, that the following words should be added: "after all attempts at conciliation have proved ineffective".

37. Mr. HOARE (United Kingdom) supported the amendment presented by Canada (A/C.3/L.553). His delegation intended to propose some amendments to the three-Power amendments and as those amendments would be very difficult to follow if formulated as sub-amendments to amendments of article 8, he would propose to submit them as amendments to the revised three-Power text (A/C.3/L.552/Rev.1).

The meeting rose at 1.10 p.m.