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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) (*continued*)

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

1. Mr. DIAZ CASANUEVA (Chile) said that article 8 was one of the most fundamental articles in the draft Covenant on Economic, Social and Cultural Rights (E/2573, annex I A), for the existence of workers' organizations was indispensable to co-operation in democratic countries, especially those with expanding economies. Some conflicts of interest between workers, employers and governmental agencies were inevitable, but fortunately appropriate legislation existed in most countries, and international regulations had been laid down in the International Labour Convention of 1948. Many countries had drawn a distinction between the rights of trade unions and their obligations, and that idea was essential to article 8. Trade-unionism was a concept open to widely different interpretations; to some Member States it meant pure trade-unionism, to others, a form of organization closely linked with other economic and political ideas. The question of political influence on trade-unionism had not been mentioned in the debate; but the Committee must not be afraid to discuss it, for trade-union rights were bound up with political rights. In Latin America political influence on the trade-union movement had had both beneficial and detrimental effects. In the Commission on Human Rights, at all events, the idea of trade-union autonomy and political independence had prevailed, and in the text that had emerged particular stress was laid on the economic and social interests of the workers themselves.

2. The amendments that had been presented exemplified the two predominant trends of thought. Some delegations wished to restrict the right of organization, others to eliminate all restrictions. The object of the amendment submitted by the Netherlands and the United Kingdom (A/C.3/L.550) seemed to be to allow for certain restrictions, along the lines of article 21

of the draft Covenant on Civil and Political Rights (E/2573, annex I B), whereas the three-Power amendments (A/C.3/L.552) provided for "the broadest possible trade-union rights". The Chilean delegation considered that it would be unwise to depart from the original text, which had been drawn up as a compromise between the opposing trends. While the constructive elements in the two amendments deserved consideration, it must be remembered that the Covenant must be so drafted as to be acceptable to the largest possible number of countries.

3. The majority in the Commission on Human Rights had supported the idea of giving sanction to the right to strike; Chile was in agreement with that principle, which was enshrined in its legislation. He would be prepared in general to support the three-Power amendments; he had however some doubts in his mind, especially with regard to point 1. The original article, which was based on the International Labour Convention of 1948, guaranteed the free exercise of the right of everyone to form and join trade unions. It might be argued that the protection of a freedom was not specific enough for a legal provision; however, the protection of a right, in contrast to a freedom, implied more far-reaching State action. In countries with predominantly agrarian economies, where there was little communication between workers and scant knowledge of the techniques of trade-union organization, there were obstacles to the full exercise of the right. In Chile, attempts had been made to give practical expression to the principle of freedom of association by training trade-union leaders, promoting the trade-union movement, propagating trade-union techniques and awakening the workers' awareness of their own rights. For those reasons, his delegation preferred the original text, which took those fundamental considerations into account. Point 1 of the three-Power amendments provided merely for ensuring the broadest possible trade-union rights; but it was impossible to decide what the restrictions on that freedom should be. His delegation was opposed to the expression "broadest possible". The International Labour Convention of 1948 rightly laid down that in exercising trade-union rights, workers, employers and organizations should be bound by national legislation, thus making it clear that legality was the necessary complement of a free trade-union movement. Viewed in that light, the State was the intermediary between two forces, the workers and the employers. Moreover, it must be borne in mind that article 8 was meant to apply not to workers alone, but to "every person"; it related to freedom of association in general, and not exclusively to freedom of trade-union organization. The object of the article was to provide a legal basis for the protection of employers and workers alike, and to enunciate both rights and obligations. Only on the basis of such a provision could the State legitimately prevent workers from striking, to the obvious detriment on their country and therefore to their own detriment. Freedom of trade-union rights

must be interpreted in terms of conciliation between the interests of workers and employers.

4. Moreover, the text proposed in the three-Power amendments did not begin with a definition of trade-union rights, which would have been the only justification for the all-embracing provision contained in the first sentence. Unlike the original article, the main purpose of which was the protection of the economic and social interests of everyone, it implied an advance authorization for activities going beyond the exercise of trade-union rights. Furthermore, the text proposed in those amendments was contradictory, for while it called for the broadest possible trade-union rights, it also introduced the idea of conformity with the law, in referring to the right to strike.

5. Turning to the amendment submitted by the Netherlands and the United Kingdom (A/C.3/L.550), Mr. Diaz Casanueva said that the text proposed for paragraph 2 was too detailed; an enumeration of restrictions seemed to be out of place in article 8. He had no specific objection to the last sentence of the paragraph, but there was some danger in placing restrictions on the exercise of the right of trade-union organization by members of State agencies; in countries where socialism had reached an advanced stage, and where most of the population were in the employ of the State, such a provision might have effects prejudicial to the development of free trade-union rights. The sponsors of the amendment should reflect on the general implications of their text. The substance of the text proposed in the amendment for paragraph 3 seemed to be unexceptionable, but he doubted the wisdom of including a reference to a convention drawn up by a specialized agency in a covenant on fundamental human rights. The text of such a covenant should be the fountain-head of all conventions on specific matters.

6. The idea of the USSR amendment (A/C.3/L.547) was implicit in the original article, and would in effect be retained if the three-Power amendments were adopted. However, in its attempt to complete the article the USSR delegation had made it somewhat ambiguous. Obstacles to the free exercise of the functions of trade unions did not result from State action alone; they might also be created by problems of economic underdevelopment. It was well known that trade-union development was less intensive in predominantly agricultural countries; in such countries, trade-union organization might be hampered by inadequate means of communication, poverty or ignorance; but provision for the removal of those obstacles was made in other articles of the draft Covenant.

7. He therefore considered that the original text should be retained, with the addition of the constructive elements contained in the three-Power amendments and in the amendment submitted by the Netherlands and the United Kingdom. A working group might perhaps be formed to agree on a compromise text.

8. Mr. CASTAÑEDA (Mexico) said that Mexico had been in the forefront of trade-union progress and that the Mexican delegation attached great importance to the question of trade-union rights.

9. The text proposed in the three-Power amendments (A/C.3/L.552) was an improvement on the original article, since in paragraph 1 it formulated the general objective. The distinction between guaranteeing rights and guaranteeing their exercise was a correct one; the Mexican delegation therefore felt that the first sentence

of the text proposed in the amendments should form a separate paragraph. The USSR amendment (A/C.3/L.547) could usefully be inserted after the second sentence of the text proposed in the three-Power amendments, to complement the description of the functions of trade unions. His delegation also approved of the third sentence, which made it clear that persons should be free not only to join trade unions but to form new organizations. He would vote for the text proposed in point 5 of the amendments; the right to strike was recognized in Mexico. However, he could not vote for the text proposed for paragraph 2 in the amendment submitted by the Netherlands and the United Kingdom (A/C.3/L.550).

10. To sum up, the Mexican delegation considered that the article should consist of a paragraph 1, comprising the first sentence of the text proposed in the three-Power amendments; a paragraph 2, comprising the second sentence of that text; a paragraph 3, comprising the USSR amendment and the third sentence of the text proposed in the three-Power amendments; a paragraph 4, comprising the text proposed for paragraph 2 in those amendments; and a paragraph 5, comprising the text proposed for paragraph 3 in the amendment submitted by the Netherlands and the United Kingdom.

11. Mrs. KOWALIKOWA (Poland) said that the right recognized in article 8 could be considered one of the most important achievements of the working people, and that it should be included in the draft Covenant. The article recognized the importance of the trade-union movement and paid a tribute to the part it played in national and international political, social and economic life.

12. The text proposed in the three-Power amendments (A/C.3/L.552) was more precise than the original text of the article. Its purpose was not only to ensure the right of everyone to form and join trade unions, but also to guarantee the broadest possible rights to trade unions already in existence. In addition, it laid down the right to strike—an important guarantee for all working people. The Polish delegation would therefore support it.

13. She agreed with the Soviet representative that the USSR amendment (A/C.3/L.547) would give more force to article 8. It was not sufficient to guarantee the right of trade-union organization, as was done in the text proposed in the three-Power amendments; unions must also be free to exercise their functions. Otherwise the right guaranteed to trade unions would remain theoretical, for in practice the right to existence did not always mean the right to function and act.

14. For reasons of form, the Polish delegation would vote against the text proposed in the amendment submitted by the Netherlands and the United Kingdom (A/C.3/L.550) for paragraph 2 of the article; it believed that general provisions should be inserted among the first articles of the Covenants and should apply to the Covenants as a whole. The restrictions specified in the amendment might well have the effect in some countries of converting the right into a mere semblance of reality. Her delegation had no substantial objections to the text proposed for paragraph 3, but it doubted whether it was necessary to refer in article 8 to one of the many International Labour Conventions in existence when that had not been done in articles 6 and 7. For reasons of clarity she felt that the reference

should be omitted, but her delegation would vote for that paragraph if it was put to the vote.

15. Mrs. GERLEIN DE FONNEGRA (Colombia) said she agreed with the Chilean representative that the three-Power amendments (A/C.3/L.552) were to some extent contradictory. She wondered whether the right to strike should be guaranteed without any limitations.

16. Mr. PEREZ MATOS (Venezuela) said that in principle his delegation had no objection to the three-Power amendments (A/C.3/L.552). With reference to the Chilean representative's observations on the text proposed in those amendments for paragraph 2 of the article, he pointed out that, under paragraph 1, States would be called upon to ensure the broadest possible trade-union rights. The right of association must be recognized as the fundamental principle and as the point of departure for trade-union rights. His delegation had no misgivings on the subject of recognizing the right to strike. The text was sufficiently clear; the right was to be exercised in conformity with the laws of each particular country.

17. The USSR amendment (A/C.3/L.547) was broadly in accord with the three-Power text, but from the legal point of view the latter was more concrete, specific and accurate.

18. The amendment submitted by the Netherlands and the United Kingdom would be more in place in article 21 of the draft Covenant on Civil and Political Rights.

19. In view of the divergent opinions which had been expressed, it might be well to adopt the Chilean representative's suggestion for the establishment of a working group.

20. Mr. HOARE (United Kingdom) wished to reply to some of the criticisms that had been levelled against the amendment submitted by the Netherlands and the United Kingdom (A/C.3/L.550). It was necessary to bear in mind the distinction that had been maintained between the structure of the draft Covenant on Economic, Social and Cultural Rights and that of the draft Covenant on Civil and Political Rights. The Commission on Human Rights had envisaged the latter as imposing immediate obligations on the signatory States. On the other hand, it had decided that economic and social rights could not be implemented in that way because the level at which they were realized in different countries depended on economic and social factors which were largely outside governmental control. It was because of the impossibility of laying down rigid standards that the words "with a view to achieving progressively the full realization of the rights recognized in this Covenant" had been included in article 2, paragraph 1, of the draft Covenant on Economic, Social and Cultural Rights. However, the Commission had decided that some of the rights in that Covenant should be the subject of an obligation which would be definite and immediate, and not progressive in character. Article 8 was such an article since it required States to "undertake to ensure" the right. That obligation was the same as the one in article 21 of the draft Covenant on Civil and Political Rights.

21. The Commission on Human Rights had discussed the draft Covenant on Civil and Political Rights before the draft Covenant on Economic, Social and Cultural Rights. Consequently, article 21 of the draft Covenant on Civil and Political Rights had been formulated first. The permissible restrictions on both articles should be

identical, and should be formulated in identical terms. The provisions of articles creating obligations in the same field in two instruments which should be submitted for signature at the same time should not be contradictory. The purpose of the amendment submitted by the Netherlands and the United Kingdom was to secure that conformity.

22. The first sentence of the text proposed in the amendment for paragraph 2 of the article specified limits within which restrictions on that right could be imposed by States. The Soviet representative had said that that sentence was unnecessary in view of the provisions of article 4. That was certainly arguable, if article 4 was adopted in its existing terms, but article 4 had not yet been discussed, and there was no guarantee that it would be included in the Covenant. When article 4 had been discussed in the Commission on Human Rights, it had been approved by a small majority. The Soviet representative's reference to article 4 was not at all reassuring, for the Soviet Union had supported the deletion of article 4 in the Commission on Human Rights. The first sentence of the text proposed for paragraph 2 in the amendment submitted by the Netherlands and the United Kingdom was therefore necessary because of the obligation imposed by that article as distinct from the other articles of the draft Covenant.

23. With reference to the second sentence of the text proposed for paragraph 2, the corresponding provision had been included in article 21 because no one had been satisfied that the general wording of the first sentence of that article was sufficient to cover the position of members of the armed forces or of the police. The second sentence in the amendment to article 8 had been proposed for the same reason; a reference to members of the State administration had been added, since, in their case also, some restriction on the exercise of the right was required.

24. With reference to the Soviet representative's remark that the proposed provision concerning persons employed by the State was incompatible with the International Labour Convention of 1948, he said that his Government had submitted its amendment in full knowledge of the Convention. The passage in that Convention dealing with members of the armed forces and the police seemed to him merely declaratory and there would be nothing contrary to the preceding general provisions of the Convention in the addition of a further category in the text under consideration, which was also declaratory.

25. Turning to the three-Power amendments (A/C.3/L.552), he pointed out that the first sentence of the amended text would have very little legal value; every Government would be free to decide for itself on the exact meaning of "the broadest possible trade-union rights", and would therefore be able to comply with the provision while restricting the exercise of those rights to any extent that domestic public opinion would allow. The sentence provided no guarantee of trade-union rights, and would certainly do nothing to promote them. The second sentence of the amended text differed little from the original, which he for his part preferred. He had the same objection to point 3 of the amendments as to the USSR amendment (A/C.3/L.547): the two texts went beyond the right of the individual to join trade unions—the right with which the draft Covenant was concerned—and dealt instead with the functioning of trade unions themselves. To

embark on that field would involve defining what a trade union was and what were its legitimate activities. Both texts failed to provide for any limitation of trade-union rights, which could conceivably be exercised at the expense of other groups or organizations. All in all, the suggestion was not a happy one.

26. The new paragraph proposed in the three-Power amendments (A/C.3/L.552, point 5) was also unacceptable, for it represented a rather primitive approach to trade-union rights. The right to strike was certainly an unquestioned trade-union right but it was exercised by trade unions only as a last resort, when the machinery of negotiation had failed; it would be wrong to emphasize only that ultimate weapon in the draft Covenant without mentioning all the other, less drastic but usually more successful, methods of settling disputes between labour and management which were employed in most countries today.

27. Mr. KNOX (Denmark) felt that the right guaranteed in article 8 should not be spelled out in too much detail, especially as all the rights in the Covenant on Economic, Social and Cultural Rights were to be implemented progressively, according to the stage of development reached by each Contracting State. He therefore favoured the original text of the article.

28. He supported the suggestion that the sponsors of the various amendments should try to draft a combined text for the Committee to consider.

29. Mr. MAHMUD (Ceylon) said that his Government was very conscious of the importance of trade-union rights, and had done so much to promote them that trade-union membership in Ceylon had tripled between 1950 and 1954. His Government felt strongly that civil servants—who had formed a number of trade unions in Ceylon—should not take an active part in political organizations and that it was essential to sound administration that their trade unions should remain non-political. He therefore supported the amendment submitted by the Netherlands and the United Kingdom (A/C.3/L.550), which covered that point, and would be able to vote for article 8 only if that amendment was adopted.

30. Mr. VLAHOV (Yugoslavia) stated that he had been ready to vote for article 8 as it stood. While he was in sympathy with the ideas contained in the three-Power amendments (A/C.3/L.552), their wording was too broad and vague, and in the final analysis each State would be free to interpret for itself what constituted "trade-union rights". He agreed with the United Kingdom representative that the right to strike was one of many rights enjoyed by trade unions and should not be singled out; moreover, the text proposed for paragraph 2 was so worded that any country would be able to do away with the right to strike altogether, simply by enacting appropriate legislation. He would, however, be able to vote for point 1 of the three-Power amendments if the USSR amendment (A/C.3/L.547) was added to it.

31. Turning to the amendment submitted by the Netherlands and the United Kingdom (A/C.3/L.550), he pointed out that the general limitation contained in article 4 made it unnecessary to include specific restrictions in every article. No such restrictions had been included in articles 6 and 7, which the Committee had

already adopted; and delegations which desired the inclusion of a limitative clause should press for the adoption of article 4. The second sentence of the proposed paragraph 2 was unacceptable. At a time when the differences between manual and intellectual workers were fast disappearing, it was unthinkable that the Covenant should encourage Governments to deprive civil servants of such trade-union rights as they had already won. While he had no strong objection to the proposed paragraph 3, he failed to see any real need for it.

32. Mr. TOWNSEND EZCURRA (Peru) formally proposed the establishment of a working group, composed of the sponsors of the various amendments, to prepare a consolidated text.

33. Mr. PAZHAWAK (Afghanistan) supported the proposal, and added that if it was accepted, the Committee should adjourn to allow the Working Group to meet at once.

34. Mr. DUMAS (Canada) announced that his delegation had submitted a brief amendment to article 8, which would be circulated shortly.¹

35. The CHAIRMAN put to the vote the proposal made by Peru and supported by Afghanistan.

The proposal was adopted by 38 votes to 8, with 12 abstentions.

36. Mr. AZKOUL (Lebanon) said that two or three delegations which had not submitted amendments and were satisfied with article 8 as it stood should be included in the Working Group in order to make it truly representative.

37. Mr. MOROZOV (Union of Soviet Socialist Republics) said that he had voted for the establishment of the Working Group on the understanding that it would be composed only of sponsors of amendments, who could be expected to agree readily on a combined text. The addition of representatives who were opposed to all amendments would merely lead to long and fruitless debate; he therefore hoped the Lebanese representative would not press his suggestion. All such representatives would be free to criticize and vote against the text produced by the Working Group.

38. Mr. AZKOUL (Lebanon) withdrew his suggestion, on the understanding that the Working Group would not officially represent the Committee as a whole.

39. The CHAIRMAN replied that while the Working Group was not representative of the Committee, it had been officially established by the Committee. It would be composed of representatives of the countries which had submitted amendments to article 8, including Canada.

40. Mr. EUSTATHIADES (Greece) suggested that the Working Group should meet immediately and submit a joint text at the next meeting.

41. Mr. DIAZ CASANUEVA (Chile) expressed the hope that Mr. Humphrey, Director of the Division of Human Rights, would put his great experience at the Working Group's disposal.

The meeting rose at 5.10 p.m.

¹ The amendment was subsequently circulated as document A/C.3/L.553.