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Chairman: Mrs. Aase LIONAES (Norway).

AGENDA ITEM 33

Draft International Covenants on Human Rights (A/2573, annexes I, II and III, A/2907 and Add.1-2, A/2910 and Add.1-6, A/2929, A/3077, A/C.3/L.460, A/3525, A/3588, A/3621, A/C.3/L.625-627) (continued)

ARTICLE 14 OF THE DRAFT COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (E/2573, annex I A, A/C.3/L.625) (continued)

1. Mr. MAHEU (United Nations Educational, Scientific and Cultural Organization) remarked, with reference to the Panamanian amendment (A/C.3/L.626) to paragraph 2 (a) of the Working Party's text of article 14 (A/C.3/L.625), that the English text did not need to be amended, since the use of the word "available" made it quite clear that primary education should be provided free only to those who wished to avail themselves of it in the public schools. Consequently, the Committee should merely bring the French and Spanish texts into line with the English; thus, the word "dispensé" in the French text might be replaced by "offert". Similarly, the words "permettre à" in the last sentence of paragraph 1 should be replaced by "mettre...à même" in order to correspond to the English term "enable".

2. He regretted that the Salvadorian representative would be unable to vote for the second and third sentences of paragraph 1, to which UNESCO attached great importance. It was not enough for States Parties to the Covenant to recognize the right to education; it should be specified that the type of education recognized was one which would dispose the pupils towards good and not towards evil.

3. The CHAIRMAN thought that the problems of language to which the UNESCO representative had drawn attention might be left to the Secretariat.

4. Mr. HASTAD (Sweden) said that the reference in paragraph 1 to the suppression of incitement to racial and other hatred was repetitious, as well as negatively phrased, and he would prefer it to be deleted. No educational system alone was capable of suppressing such incitement; the legislature and administrative authorities were responsible for that task.

5. He agreed with the previous speakers who had objected to the mention of the material conditions of the teaching staff in paragraph 2 (e). If that phrase was deleted, he would be able to vote for the rest of the

sub-paragraph, since in his view an adequate fellow-ship system was the best means of enabling indigent students to obtain higher education.

6. The stipulation in paragraph 4 that private schools should conform to minimum standards laid down by the State did not adequately safeguard the right of the State to prescribe other conditions. The only positive element of paragraph 4, the right to attend private schools, was already covered in paragraph 3. He would therefore vote against paragraph 4.

7. Miss FUJITA (Japan) observed that the Working Party had on the whole improved the text of article 14 and she would be able to support most of it. She would, however, abstain on paragraph 2 (e) for reasons given by earlier speakers. She supported the Canadian amendments (A/C.3/L.627) as reworded by the United Kingdom representative (785th meeting). She would prefer the words "right of parents" in paragraph 3 to be replaced by "liberty of parents", because in Japan the freedom of parents to ensure the education of their children in the religion of their choice, though established by practice, was not a specific legal right. Furthermore, the children themselves might have some say regarding their religious education, and it would be going too far to grant their parents an absolute right in the matter. For those reasons, even if the phrase "right of parents" should be adopted, her delegation would interpret it as signifying freedom of choice rather than an unconditional right.

8. She agreed with the representatives who had said that paragraph 4 was unnecessary.

9. Mr. CHAUDHURI (Pakistan) said that many of the changes introduced by the Working Party (A/C.3/L.625) were an improvement on the original text (E/2573, annex I A). He pointed out, however, that the provisions of paragraph 2 (b) and 2 (c) could be carried out only to the extent that each country's economic conditions would permit. He would vote against paragraph 2 (e) because in carrying out the preceding sub-paragraphs the details should be left to the Member States. The reference to moral education in paragraph 3 should be deleted, since morality could not be prescribed by law. He saw no need for paragraph 4, the substance of which was covered by the preceding text, but since he was not opposed to the idea it contained, he would abstain in the vote on it.

10. Mr. BEAUFORT (Netherlands) said that, while the provisions of paragraph 2 (e) were in themselves unexceptionable, the first was superfluous and the second incomplete, and the third was a repetition of what was already to be found in articles 7 and 12. He would therefore vote against that sub-paragraph.

11. Mr. ZEA HERNANDEZ (Colombia) stated that the original text of the article (E/2573, annex I A) and the Working Party's draft (A/C.3/L.625) were equally acceptable to his delegation. He would vote for the

Panamanian amendment (A/C.3/L.626), in the absence of which well-intentioned persons might find themselves unable to operate private schools while those with private ends to serve might be willing to operate such schools at a financial loss. Paragraph 4, to which there had been some objection, clearly consecrated freedom of education - which was fundamental - and he would therefore vote for it.

12. Mr. ROSSIDES (Greece) thought the Working Party's text (A/C.3/L.625) was on the whole an improvement on the original (E/2573, annex I A). He agreed with many speakers that the reference to the suppression of racial hatred in paragraph 1 should be deleted. Hatred was negative; it should be supplanted by goodwill, charity and love.

13. In order to eliminate a contradiction in paragraph 2 (c) to which the UNESCO representative had drawn attention at the preceding meeting, he suggested that the words "on the basis of capacity" should be replaced by "subject to the requirement of capacity".

14. He was in full agreement with the provisions of paragraphs 3 and 4. Paragraph 4 had been criticized on the grounds that it was both harmful and unnecessary - but those two objections were mutually exclusive and furthermore should also apply to paragraph 3, which dealt with the same matter. Yet no one had suggested the deletion of paragraph 3. In his view both paragraphs were necessary, if the parents' right to give their children an education conforming to their own convictions was to be protected, in particular in countries with totalitarian régimes and in the Non-Self-Governing Territories. Furthermore, freedom of education must mean freedom of private education as well, since private initiative in education frequently gave extremely valuable results.

15. Mr. MALITZA (Romania) observed that none of the speakers had objected to the substance of his delegation's amendment, which had been incorporated in the Working Party's text (A/C.3/L.625) as paragraph 2 (e), and that in fact many of them had stressed the appropriateness of the ideas. The amendment had, however, been criticized on the grounds that it was already contained in previous articles, that concrete provisions should not be inserted into an article setting forth principles and that the means of attaining the aims of the various articles should not be enumerated. It should be borne in mind that other articles adopted by the Committee already contained such enumerations and that fundamental education, referred to in paragraph 2 (d), was a means and not an aim. The development of the school system was not referred to in paragraphs 2 (a), 2 (b) and 2 (c), none of which specifically stated that more schools must be built; if the theory that no means of implementation must be mentioned was followed to its final implications, it might be stated that all the parts of paragraph 2 were implicit in the first statement in paragraph 1. The idea of material assistance to students through fellowships had been stressed in the Commission on Human Rights. Finally, with regard to the situation of teaching staff, he did not agree with those who considered that the provision was covered by the article on standards of living. Substance must not be sacrificed to form; by adopting paragraph 2 (e), the Committee would be recognizing generally accepted facts.

16. Mr. OSMAN (Morocco) said that the Working Party's text (A/C.3/L.625) had not upset the balance

of the original and was, generally speaking, satisfactory to his delegation. Nevertheless, the two paragraphs that had been introduced did not add anything new and made the text cumbersome. Paragraph 2 (e) was merely a repetition of the preceding sub-paragraphs and the reference to the situation of teaching staff was out of place; paragraph 4 was a corollary to paragraph 3 and was unnecessary, since if parents and guardians could choose schools under paragraph 3, the paragraph would be a dead letter unless schools could also be established. Furthermore, the matter fell within the domestic jurisdiction of States. Deletion could be justified on formal, and not on substantive, grounds.

17. Miss MacENTEE (Ireland) said that, although her delegation was sorry that some representatives could not vote in favour of its proposed paragraph 4, it felt that its action in raising the matter had been justified by the debates.

18. She observed that the United Kingdom and French representatives seemed to be unable to vote for paragraph 2 (e) because it was too concrete and detailed and for paragraph 4 because it was not concrete or detailed enough. The original text of the Irish amendment had contained no provisional clauses whatsoever, but her delegation had been persuaded to add one and also a reference to paragraph 1. It did not believe those additions to be strictly necessary and had made them only to establish the meaning of the paragraph beyond all reasonable doubt. Further provisional clauses would be confusing. Logically, the attitude of the United Kingdom and French delegations should make paragraph 3 equally unacceptable, since it contained no detailed stipulations. Their reservations even seemed to extend to paragraph 2, except in so far as their objections were met by paragraph 2 (e), which at least provided expressly that there should be schools. The Committee was faced with the old problem of reconciling the rights embodied in the Covenant with public order and morality and with the common good. She pointed out that machinery enabling States to ensure such reconciliation was provided in article 4, which recognized and delimited the right of States to subject the provisions of the Covenant to such limitations as might be determined by law for the purpose of promoting the general welfare.

19. Mr. MESSADI (Tunisia) recalled his delegation's earlier statement (783rd meeting) to the effect that the original article as a whole was generally acceptable and said that the Working Party's text (A/C.3/L.625) was in certain respects less satisfactory. He would be able to vote in favour of the new paragraph 1, however, as it was an improvement over the original, although the phrase "They agree that..." was weaker than "The States Parties to the Covenant... recognize ...", which expressed the definition of an aim.

20. The phrase "shall be made accessible to all, by every appropriate means, and in particular the progressive introduction of free education", in paragraphs 2 (b) and 2 (c), which had replaced the original "shall be made progressively free", tended to impose upon each signatory State, not only the obligation of making secondary and higher education progressively free, but also the much wider and more indefinite obligation of making such education accessible to all by every appropriate means. That would entail not only ensuring free education, but a considerable number of scholar-

ships, free school supplies and other expenditures which individuals could demand from the State, as a legal right. Some of the signatory States might be able to afford the expense and none would have any objections in principle; but many States would be unable, for practical reasons, to undertake such a vast obligation. Newly-established States like his own and under-developed countries had many obligations to meet in other sectors of national life; with a whole economic and social infrastructure to build up, with hundreds of hospitals to build and equip, thousands of primary schools to establish and dread diseases to combat, free secondary and higher education would in itself represent a considerable sacrifice for them. The advanced countries would in no way be prevented by the wording of the original sub-paragraphs from pursuing a more generous policy, while the new texts would make it practically impossible for less favourably situated countries to ratify the Covenant. Accordingly, the Tunisian delegation formally proposed that the original paragraphs 2 (b) and 2 (c) should be retained and appealed to delegations to take the situation of under-developed countries into account.

21. He would vote in favour of paragraph 3, with the French amendment (785th meeting) replacing the word "légitimes" by "légaux" in the French text and the Salvadorian amendment (785th meeting) replacing the word "right" by "liberty".

22. He could not, however, vote for paragraph 4, which he considered unnecessary since paragraph 3 covered private education. The adoption of the new paragraph would destroy the balance, established by paragraph 3, between the rights of States with regard to education and the limits of private initiative, to the advantage of the latter.

23. In conclusion, he asked for a separate vote on each of the paragraphs and on paragraphs 2 (b) and 2 (c). His delegation hoped that the resulting text would be such that it could vote in favour of it as a whole, otherwise it would have to abstain. To avoid any misunderstanding, however, he reiterated his delegation's support of the original article drafted by the Commission on Human Rights; that was the least that could be expected from a country, which had always shown an unflinching attachment to culture, which was a meeting-place of Eastern and Western culture, and where Arab-Islamic culture had flourished for over fourteen centuries. If the Tunisian delegation was obliged to abstain it would be abstaining on account of the new text, and not on account of the substance of the original article.

24. Mr. MASSOUD-ANSARI (Iran), speaking on a point of order, observed that there was a close connexion between paragraphs 2 (a) and article 15. The Committee might save time by considering the two articles together, especially since article 15 to some extent represented the means whereby effect could be given to the principles and aims set forth in article 14.

25. Mr. ROY (Haiti), speaking on a point of order, said that the Iranian representative should submit a formal proposal if he considered that articles 14 and 15 should be amalgamated.

26. Mr. MASSOUD-ANSARI (Iran) said that he had made a suggestion, not a formal proposal. There was a close connexion between articles 14 and 15 and the Committee should consider whether it might not wish to amalgamate them.

27. Mr. EL-FARRA (Syria) said that his delegation would vote against the last sentence of paragraph 1, from the words "to this end...". The special reference to suppression of incitement to hatred was unnecessary, as the provision was covered in other parts of the paragraph, and singling out racial hatred weakened the article. He would vote in favour of the Tunisian amendment, the Canadian amendment (A/C.3/L.627) and paragraph 2 (e). With regard to paragraph 3, he pointed out that the ultimate aim of parental responsibility was to safeguard the interests of the child; lack of reference to those interests was unfortunate. Paragraph 4 seemed to restate the guarantees in paragraph 3 and was therefore redundant; moreover, no part of the article could be construed in the manner described. He therefore could not vote in favour of the text.

28. Miss IMRU (Ethiopia) said she would support the Canadian amendment (A/C.3/L.627) because it improved the text and paragraph 2 (e) because it was in line with her Government's policy. In paragraph 3, she preferred the word "liberty" to the word "right", in view of the obligation in paragraph 1 to strengthen respect for human rights and fundamental freedoms. She would abstain from voting on paragraph 4 because, although Ethiopia had several private schools which did useful work, it had also had experience of schools set up for purposes other than education. For that reason, the matter should come under domestic legislation.

29. Mr. ROJAS (Venezuela) said he would vote against the last sentence of paragraph 1, because he was in favour of the more positive provisions of the paragraph, and in favour of the Panamanian amendment (A/C.3/L.626) to paragraph 2 (a). He would vote against paragraph 2 (c), as his country had conducted an unsuccessful experiment with free higher education. He would also vote against paragraph 2 (e), because it enumerated only three of the means of attaining the purposes of the article, and such enumeration could not be exhaustive. Finally, because of the great importance of the idea of freedom in education, he would vote in favour of paragraph 4, although the idea expressed in it was implicit in paragraph 3.

30. Mr. di BERNARDO (Italy) said that the principles enunciated in paragraphs 1 and 2 of the Working Party's text (A/C.3/L.625) were recognized by article 34 of the Italian Constitution and were put into effect by the Italian education laws. The aim of a sound education was to strengthen respect for human rights and to ensure the continuous development of the individual as a member of society.

31. His delegation would vote for the Working Party's text but it had some reservations. He agreed that the reference to the suppression of incitement to racial and other hatred might well be omitted from paragraph 1, as it was repetitious. It seemed unnecessary to single out racial hatred, when political, religious, class and other hatred were also causes of international tension. Such considerations, however, would not prevent him from voting for that paragraph.

32. He supported the Canadian amendments (A/C.3/L.627) to paragraph 2, as they greatly improved the wording. He would abstain on paragraph 2 (e), because the material conditions of the teaching staff were not relevant to article 14, which was concerned with the right of individuals to education.

33. Mr. SMALL (New Zealand) said that his delega-

tion preferred the original text of article 14 (E/2573, annex I A) to that of the Working Party (A/C.3/L.625) but, as the latter text reflected the views of so many delegations, his delegation would vote for it.

34. He welcomed the rewording of paragraph 1, which brought it more closely into line with article 26 of the Universal Declaration of Human Rights. However, he doubted the wisdom of including in that paragraph the statement that education should suppress all incitement to racial and other hatred, and would vote against it.

35. He welcomed the Canadian amendments (A/C.3/L.627) to paragraph 2 but he could not support the inclusion of paragraph 2 (e). The Covenant should be a succinct statement of basic obligations and paragraph 2 (e) was too detailed and out of place. At all events, the steps listed in that sub-paragraph were implicit in the preceding sub-paragraphs. Furthermore, those measures were more within the scope of the International Labour Organisation than of the Committee, as the French representative had pointed out (785th meeting).

36. He was happy to see that the word "liberty" had been replaced by "right", in paragraph 3 of the Working Party's text (A/C.3/L.625). It was clear from the discussion in the Committee that paragraph 3 did not lay on the State any obligation to finance private schools. The word "right" was therefore used there to strengthen the idea of freedom of choice.

37. Although he accepted the principle stated in paragraph 4, which was, indeed, applied in the New Zealand school system, he could not support it, as the full implications of a negative statement of that kind were difficult to define.

38. Mrs. AFNAN (Iraq) said that her delegation would have been satisfied with the original text of paragraph 1 but, in deference to the wishes of other delegations, was willing to accept the new text, including the last part, concerning racial hatred. However, in its existing form, the paragraph completely ignored the real aim of education, which was the development of the intellect.

39. She supported the Canadian amendment (A/C.3/L.627) to paragraph 2, which improved the text and made it clear that the right to education was one recognized by States and exercised by individuals. Although the Working Party had been at great pains to draft an acceptable text of paragraphs 2 (a), (b) and (c), she preferred the original version. The introduction of the words "by every appropriate means, and in particular the progressive introduction of free education", in paragraphs 2 (b) and (c), was unrealistic; education should be compulsory and free for all children up to a certain grade and those capable of benefiting from further education should be entitled to it as a right. How that was to be accomplished was a matter for each State to decide.

40. It was difficult to see why paragraph 2 (d) had been included. If the purpose to be achieved was the eradication of illiteracy, it had not yet been proved that fundamental education was the best method. That method had proved successful in some primitive communities but that did not necessarily mean that it was generally applicable. The notion was new and had not yet taken final form; in any case there were many pos-

sible methods. It should be discouraged as a method for teaching children.

41. She had been impressed by the Iranian representative's arguments connecting paragraph 2 (e) with article 15. She would not vote for the inclusion of that sub-paragraph in article 14 but would consider it more favourably if it were brought forward again in connexion with article 15.

42. Speaking of paragraph 3, she said that the expression "liberty of parents" was preferable to "right of parents", in the Working Party's text. She endorsed the Japanese representative's remarks on that point. As, unfortunately, parents did not always know best what to choose for their children, the rights of the child should be protected. The parents should be left free to choose the moral and religious education of their children but they should be prevented from depriving the child of other rights.

43. She would vote against paragraph 4, as she felt it was dangerous to recognize the right of bodies to establish and direct educational institutions. Governments should weigh their responsibilities in that respect very carefully.

44. Mr. TEJERA (Uruguay) said that the wording of the article mattered little, provided that the idea was clearly expressed. If the Committee continued to discuss drafting changes, it would be a long time before agreement was reached. Some changes were necessary, however, in order to clarify the meaning. In paragraph 1 of the Spanish text for instance, the words "la educación debe permitir que todas las personas participen" should read "la educación debe capacitar a todas las personas para participar", if it was to reflect the English text accurately. The words from "to this end it shall..." to the end of the paragraph should be deleted, as they added nothing.

45. In the Spanish text, paragraph 2 (a) should read "que la enseñanza primaria debe ser obligatoria y gratuita para todos", in order to bring it into line with the English text; and in paragraph 2 (b) the word "made" should be deleted. In the same sub-paragraphs the adjective "rapid" might be inserted before the word "introduction", as that would be a better reflection of reality. In his own country, for instance, such education was already free.

46. He supported paragraph 2 (c), which was in harmony with article 71 of the Uruguayan Constitution, and would support paragraph 2 (e), provided that the word "continuously" was deleted. The material conditions of the teaching staff were regulated by law in Uruguay and it would be unadvisable to include in the Covenant a provision on which an association of teachers could base a claim for continued improvement, even if the law of the country did not permit it.

47. In paragraph 3, he welcomed the use of the word "right" instead of "liberty". In order to avoid the danger, however, to which the Salvadorian representative had referred at the preceding meeting, namely, that parents might try to force the State to establish schools to give teaching in accordance with their own special views, the words "in such schools" should be added after the words "education of their children". It would then be clear that the teaching was to be given in schools other than those established by the public authorities.

48. Paragraph 4 would be acceptable if it was drafted in a slightly more flexible form. It should read:

"No part of this article shall be construed so as to interfere with any right individuals and bodies may have to establish and direct educational institutions in accordance with the laws of the country."

49. Mrs. de FIGUERES (Costa Rica) said that article 14 was of particular interest to her country, which had introduced free compulsory primary education in 1869. The text produced by the Working Party (A/C.3/L.625) was satisfactory, with a few drafting changes. She agreed with other speakers that the end of paragraph 1, containing the negative statement with regard to racial and other hatred, might be deleted. In paragraphs 2 (b) and (c), the word "made" might also be deleted. The wording of the last clause of those two sub-paragraphs did not seem very happy but she would not oppose it if other delegations did not object to it.

50. She supported the Canadian amendments (A/C.3/L.627) to paragraph 2. The Panamanian amendment (A/C.3/L.626) to paragraph 2 (a) was not necessary as far as the English text was concerned, but if the Spanish-speaking delegations felt that it improved the Spanish text, she would vote for it.

51. She sympathized with the Iraqi representative's remarks concerning the need to protect the rights of the child, but felt that the point was covered by the text of paragraph 3. The words "legal guardians" covered all persons who would be legally responsible for children if their parents were unfit to carry out their duties.

52. Mr. PACHECO (Brazil) said that the original text of article 14 (E/2573, annex I A), which clearly set out the purposes of a democratic education, was acceptable as it stood. The Working Party's text (A/C.3/L.625), however, was more complete and might be preferable for that reason. There was little difference in substance.

53. In Brazil, the principles laid down in article 14 were already in effect in the school system. The Constitution guaranteed that education should be available to all, that primary education should be compulsory and free and that secondary and higher education should be free in State educational establishments. The right to teach was also guaranteed by the Constitution.

54. Mr. TAMAYO (Bolivia) said that his delegation found the original text of article 14 (E/2573, annex I A) satisfactory. The right of individuals and bodies to establish and direct educational establishments should be formulated very carefully. In conjunction with the delegation of Peru, his delegation therefore submitted the following new text for paragraph 4: ^{1/}

"Private bodies and persons have the right to establish and direct educational institutions in accordance with the law on such matters in the States concerned and the principles laid down in this article."

The meeting rose at 12.55 p.m.

^{1/} The amendment was subsequently issued as document A/C.3/L.629.