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Chairman: Mrs. Aase LIONAES (Norway).

AGENDA ITEM 33

Draft International Covenants on Human Rights (E/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.633-634) (continued)

ARTICLE 16 OF THE DRAFT COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (E/2573, ANNEX I A) (continued)

1. Mrs. LEFLEROVA (Czechoslovakia) said she did not consider that point 1 of her delegation's amendments (A/C.3/L.633) restricted the scope of article 16 or jeopardized the freedom essential for creative activity. Moreover, it did not affect that freedom, which was protected by paragraph 3 of the article. The Czechoslovak delegation's sole purpose in proposing an express reference to peace and international co-operation in article 16 was to ensure that scientific and technical advancement should be used only for peaceful purposes and for the welfare of mankind. It was prompted further by the principles proclaimed both in Article 55 of the United Nations Charter and in the Constitution of the United Nations Educational, Scientific and Cultural Organization (UNESCO). By becoming Members of the United Nations, States had accepted those principles and they could not logically refuse to have them concretely applied in the Covenants on Human Rights. The United Kingdom representative had expressed surprise that the Czechoslovak delegation had not mentioned progress and democracy. She recognized their great importance also, but her delegation had not deemed it wise to refer to them, for fear that differences of interpretation would give rise to controversies. It was quite prepared, however, to complete its text by mentioning those two aims, if the Committee desired.

2. Contrary to the contention of the United Kingdom representative, the Czechoslovak delegation considered that the new paragraph 4 it proposed to add to article 16 was useful. The paragraph would give the text the necessary balance and would specify one of the most important aspects of the right proclaimed.

3. She would be glad to hear the opinions of representatives on the proposed text; her delegation would willingly consider any modification or addition which would help to express the ideas and render them acceptable to the Committee.

4. Mr. MAHEU (United Nations Educational, Scientific

and Cultural Organization) said that his organization did not regard the rights set forth in article 16 as any less important than those proclaimed in articles 14 and 15. However, the article under discussion differed considerably from the two preceding articles. It dealt with ideas which were still in the process of evolution, from both the legal and the philosophical points of view, whereas education was a notion already well-defined. Moreover, it dealt with matters in which the State, although playing a considerable part, could act only with great caution, since the very freedom of the human mind was involved. The Committee should therefore take care that that freedom was respected, if it did not wish to destroy what it sought to protect.

5. His organization had taken an active part in the drafting of article 16. At the sixth session of its General Conference, in 1951, it had authorized its Director-General to call a meeting of experts to analyse the philosophical and legal contents and the principal means of practical application of man's right "freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits". In their report to the seventh session of the General Conference (7C/PRG/10), the experts had clarified certain conceptions concerning cultural life and had expressed the hope that the work of definition would be continued. The report and the observations of the Executive Board of UNESCO and the resolutions adopted on the matter by the seventh session of the General Conference had been transmitted to the Commission on Human Rights (E/CN.4/684). The secretariat of UNESCO was currently analysing the reports it had received in pursuance of Economic and Social Council resolution 624 B (XXII). It had been struck by the large number and great interest of those reports and hoped to be able to communicate its observations on them in 1958.

6. His organization had already given its views on the draft Covenant on Economic, Social and Cultural Rights (E/CN.4/655/Add.4). It considered article 16 to be satisfactory on the whole, since it summarized the essence of cultural rights in a balanced and sufficiently general manner and could thus serve as an outline for subsequent action, both through conventions and practical measures. It believed, however, that it would be advisable to supplement the text by a provision concerning authors' rights, as the French representative to the Commission on Human Rights had proposed (A/2929, chap. VIII, para. 54).

7. The Czechoslovak representative had clearly stated her delegation's position and no doubts should remain as to the meaning of point 1 of her amendments (A/C.3/L.633). The text proposed in that amendment was not detrimental to creative freedom. In article I of its Constitution, UNESCO declared that education, science and culture were instruments of peace. Its action was based on the principle that by their very

nature, either they were free or they did not exist. There were other ways of working for peace, however, and it might therefore be advisable to broaden the scope of the Czechoslovak amendment by inserting the words "in particular" before the words "in the interest of". In that way States would not be tempted to adopt a dirigent policy and might, moreover, promote cultural and scientific activities which were not directly connected with peace.

8. The second part of the text of the new paragraph 4 proposed in point 2 of the Czechoslovak amendments was too technical for inclusion in the Covenant, especially in such a general article. Contacts between experts were useful for the development of international co-operation, but they represented only one method among many others. The last phrase of paragraph 4 was therefore not absolutely necessary. The first part of the paragraph merely repeated and emphasized the idea expressed in paragraph 1 of the amendment. The Czechoslovak text might be improved by amalgamating the first part of the new paragraph 4 proposed in point 2 with the text of paragraph 2 proposed in point 1.

9. In conclusion, he thought that the word "indispensable" used by the Commission on Human Rights in paragraph 3 of the article and the word "necessary" which had been proposed as a substitute for it were equally appropriate.

10. Mr. CHAUDHURI (Pakistan) said that he fully approved of article 16, since its substance was to a considerable extent incorporated in article 19 of his country's Constitution.

11. The right to culture was one of the most fundamental human rights. If no outside element, such as chauvinism or imperialism, deformed its real sense, culture exercised a profound and beneficial influence on every individual, every generation and every people; it enabled man to raise himself above the level of the beast and represented a structure of beliefs and customs uniting men in society.

12. The social, political and humanitarian aspects of culture were all equally important and, though distinct, were indissolubly connected. The right to culture in all its phases was a permanent right, since it represented the right of everyone to the free expression of his individuality. Inner freedom and artistic creation alike depended upon that right. The purpose of culture was to form the mind and the personality; it provided mankind with a stimulus and enabled it to advance. It was for all and for each one individually; that was why the Pakistani delegation attached great importance to article 16.

13. In order that countries where science had made little progress might attain the goals set forth in paragraph 1 (b) of the article, much greater efforts should be made, both national and international.

14. Science and culture could develop only in an atmosphere of complete freedom. The State should not therefore impose restrictions on scientific research or control creative activity, but on the contrary eliminate all obstacles. It was from that point of view that the Czechoslovak amendments (A/C.3/L.633) should be considered. The purpose of those amendments seemed to be to guide scientific research and creative activity towards a single goal which, though

praiseworthy, was too restricted, and to subject them to State control. The Pakistani delegation therefore could not support point 1 of the amendments. It could, however, support point 2, subject to certain changes. In particular, it would like the phrase "States Parties will encourage" to be replaced by "Endeavour shall be made by the States Parties for", which would, in his opinion, meet the valid legal objections raised by the United Kingdom representative (795th meeting).

15. Mrs. BILAI (Ukrainian Soviet Socialist Republic) attached great importance to article 16, which in her opinion was a logical extension of articles 14 and 15. Individuals could not take part in cultural life and enjoy the benefits of scientific progress unless they had received proper training. Culture would not cease to be the privilege of a minority until education was available to the masses. The goal of the Ukrainian Soviet Socialist Republic was to create a society in which material and spiritual conditions worthy of man prevailed. The progress made since the Revolution had been most impressive. In a country where in the past 75 per cent of the population had been illiterate, the masses now had true access to culture.

16. The delegation of the Ukrainian SSR would support article 16. It would vote in favour of the amendments submitted by Czechoslovakia (A/C.3/L.633) because it considered that science should serve mankind and not be used for destructive purposes, and that international co-operation was an important factor in the spiritual and material advancement of all mankind and of each nation in particular.

17. Mr. ROSSIDES (Greece) thanked the Czechoslovak representative for the explanation she had given and paid a tribute to the excellent intentions which had given rise to the amendments (A/C.3/L.633). Nevertheless, it was not the purpose of the article under consideration to bind the States to one another but rather to require each State to promote certain rights primarily of concern to individuals. Scientific progress could be used for peaceful purposes or for the destruction of mankind. To limit the freedom of the individual in his research or study would not alter that situation. It was in the possible application of scientific discoveries that the danger lay and that was not the concern of the individual but rather of the State. It was to be feared that any limitation adopted in principle in the interest of peace might finally endanger the rights of the individual, particularly since the State would be sole judge in the matter. With due regard to the nature of the Covenant on Economic, Social and Cultural Rights, he continued to believe that the amendment to paragraph 2 of article 16 proposed by the Czechoslovak delegation was useless and dangerous.

18. Mr. D'SOUZA (India) was prepared to support article 16 although he regretted that its rather vague and imprecise drafting might to some extent limit its scope. What the draft Covenant sought to do was to recognize the loftiest aspects of culture after defining the right to education and the measures designed to ensure the exercise of that right. Education and culture belonged to two domains which did not necessarily coincide. Culture was the expression of a civilization and a way of life; it was a heritage enjoyed by all men, including illiterates. The Mogul Emperor Akbar was uneducated yet he had greatly encouraged literature and the arts. Other examples

were Ranjit Singh in the Punjab and the Emperor Charlemagne in Europe. Strictly speaking, there could be no question of the right to culture because each person necessarily belonged to a given culture.

19. He thought therefore that paragraph 1 (a) of article 16 referred to culture in its most intellectual and organized aspects. That culture was acquired through the education provided in schools and universities; therefore article 14, which had been adopted by the Committee, already made provision for its encouragement.

20. Paragraph 1 (b) of article 16 related to an entirely different right: the right to enjoy the benefit of scientific progress and its applications. That was an essentially practical matter. Undoubtedly, scientific discoveries should benefit not only all individuals but also nations, regardless of their degree of development. Paragraph 1 (b) should therefore be maintained in its existing form.

21. The usefulness of paragraph 2 was obvious and the Indian delegation would vote in its favour.

22. In regard to paragraph 3, certainly scientific and cultural progress was conceivable only in a climate of freedom. The discussion had, however, shown that that freedom was threatened by certain dangers. The word "indispensable" was therefore essential and should be retained. Nevertheless the right of a Government to limit the freedom of scholars and artists, in the interest of public order and morality, must be recognized. Subject to that reservation, the Indian delegation would support paragraph 3.

23. Although full of praise for the intentions that lay behind the Czechoslovak amendments (A/C.3/L.633), he had a number of reservations. He did not consider it necessary to insert a reference in each article to the interests of peace and co-operation among nations, inasmuch as, by their very nature, culture and science contributed to international peace. Moreover, as the representative of Greece had shown, it was the responsibility of Governments and, if necessary, of the Disarmament Commission, to ensure that scientific progress should not be used for destructive purposes. Finally, to take a specific example, he asked whether concern for peace should lead nations to delete from their history books all reference to past wars or armed conflicts. The Indian delegation therefore reserved its position on point 1 of the Czechoslovak amendments.

24. On the other hand, point 2 of the amendments seemed acceptable to him, although it might be preferable to combine the substance of the proposed paragraph 4 with paragraph 1 (b) of the article.

25. Mr. GOMEZ ROBLEDO (Mexico) also considered that article 16 was extremely important because it related to intellectual rights which it was essential for the draft Covenant to guarantee. It would be dangerous to seek to limit those rights. The Mexican delegation could not therefore support point 1 of the Czechoslovak amendments (A/C.3/L.633) since in its view the right to culture was as important as the right to life; in one case as in the other, a reference to the need for maintaining peace and international co-operation might have the effect of permitting undesirable authoritarianism.

26. The Mexican delegation reserved its position on

point 2 of the Czechoslovak amendments and also on the Saudi Arabian amendment (A/C.3/L.634), which had just been circulated.

27. Mr. BRILLANTES (Philippines) noted that there was a steady progression from article 6 to article 16 in the draft Covenant on Economic, Social and Cultural Rights, with article 16 representing the culminating point since it dealt with the noblest rights that could be attributed to an individual. The Constitution of the Philippines encouraged scientific research and specifically provided for the granting of scholarships for study in the arts, science and literature. Accordingly, the Philippine delegation was prepared to support article 16 even as it stood.

28. The amendments submitted by Czechoslovakia (A/C.3/L.633) seemed neither necessary nor desirable. They duplicated resolution 1043 (XI), adopted by the General Assembly on the recommendation of the Third Committee, and far from strengthening article 16, they introduced, on the contrary, certain dangerous limitations.

29. In paragraph 3 of the article, the use of the word "indispensable" gave the impression that the State undertook only to respect a strict minimum of freedom necessary for scientific research and creative activity. He doubted that that would give creative activity much encouragement. Moreover, it was the State that would determine the degree of freedom considered indispensable. It was therefore possible that paragraph 3 might have the effect of limiting or nullifying the scope of paragraphs 1 and 2. Accordingly, the Philippines delegation requested a separate vote on the word "indispensable".

30. Miss LIN (China) said that she would vote for article 16, which guaranteed the freedom indispensable for scientific research and creative activity, recognized the right of everyone to enjoy the benefits of scientific progress and provided that States should take measures for the conservation, the development and the diffusion of science and culture.

31. The Czechoslovak amendments (A/C.3/L.633) were out of place in the article. In the interest of humanity itself, scientists and scholars should receive no instructions from outside and should trust their consciences as their only guide. To restrict their activity would be to impede progress. Furthermore, if point 1 of the Czechoslovak amendments was adopted, States would find themselves in a peculiar position: they would either have to interfere with the cultural and scientific activities of individuals, which most of them were reluctant to do, or run the risk of being charged with not carrying out the obligations they had assumed. She was opposed to point 2 of the Czechoslovak amendments, as it would impose additional obligations on States. She would therefore vote against the Czechoslovak amendments.

32. Mr. TACHIBANA (Japan) had no particular objection to article 16. The meaning of the words "the right ... to take part in cultural life" was not, however, clear. His views coincided with those of the representative of India. The words "take part" were suitable in the case of political or economic activities but not in the case of cultural life, which was an integral part of human life. If the intention had been to refer to the external aspects of culture, it might be preferable to replace the words "in cultural life"

by the words "in cultural activities", or to add the words "of the community", which were to be found in article 27, paragraph 1, of the Universal Declaration of Human Rights. Another solution might be to replace paragraph 1 (a) by the words "enjoy cultural life". He would like to have the views of English-speaking representatives and of the representative of UNESCO on that point.

33. He could not support point 1 of the Czechoslovak amendments (A/C.3/L.633). He did not doubt the Czechoslovak delegation's good intentions but he felt it was unnecessary to include such a provision in article 16, as a similar provision was to be found at the beginning of the draft Covenant. The Saudi Arabian amendment (A/C.3/L.634) somewhat improved the text of the new paragraph 4 proposed in the Czechoslovak amendments. The Japanese delegation could not, however, support it, for the reasons already explained by the United Kingdom representative (795th meeting).

34. Mr. JUVIGNY (France) said that he supported the substance of article 16 as drafted by the Commission on Human Rights although he found it somewhat inadequate.

35. He quite understood the ideal which had led to the amendments proposed by the Czechoslovak delegation (A/C.3/L.633). No one would deny that the maintenance of peace and the development of good relations between States and between their nationals were to be included among the aims of culture. Nevertheless, he did not think that the Czechoslovak delegation had followed the right method.

36. In point 1 of its amendments, the end was confused with the means, and philosophy with the law. In drafting article 16, the Committee should follow the example set in the UNESCO Constitution, in which there was a clear distinction between the purposes, which were proclaimed in the preamble, and the means, which were laid down in the operative articles. But, in point 1 of its amendments, the Czechoslovak delegation defined the means in terms of an almost exclusive criterion, the maintenance of peace. If that amendment were adopted, article 16 would lay heavy obligations on States and would impose on them duties and rights. He associated himself with the fears expressed by the representatives of Pakistan, Greece and India with regard to the possible restrictive effects of an article 16 thus amended. He wished to add a few examples to those given by the Indian representative: he asked whether the State should have banned the works of Wagner because of the violent passions which they engendered, and whether it should have restricted, or even banned, the circulation of the works of Nietzsche because of the influence of his philosophy on German racial theoreticians. There was also the aspect of positive constraint. A State might consider that it was its duty to direct literary or artistic activities towards a single goal, the maintenance of peace, and oblige sculptors and painters to express themselves only through allegories of friendship between peoples. It might be objected that paragraph 3 contained a safeguard against that, but it should not be forgotten that in many countries cultural activities were given State aid. In France, for instance, the grant for the first piece of creative work (*Aide à la première pièce*) was a way of assisting young authors. It was quite possible to imagine that,

in order to comply with paragraph 2 as amended by Czechoslovakia, a State might leave individuals perfectly free to create but decide to make no grants except for works which had been designed with only the maintenance of peace in view. In that case, the safeguard in paragraph 3 would be illusory. If the wording proposed by Czechoslovakia were incorporated in article 16, there would be a risk of reopening the eternal debate on art for art's sake or art for the masses. It would be presumptuous to imagine that the question could be settled by inserting a clause in a legal instrument. Furthermore, in such matters all criteria were necessarily subjective. It should not be forgotten that the Covenants contained applicatory and supervisory measures. He asked what criteria could be used to decide that a State had been right in restricting one form of culture but had acted wrongly in another case. Such a fluid reality could not be embodied in a legal text.

37. Point 2 of the Czechoslovak amendments, on the other hand, was linked in its origins to the concrete measures of application laid down in article I, paragraph 2, of the UNESCO Constitution. Of course, there was no question of including the substance of that paragraph in article 16, but he was not opposed to a text which would give the implementing procedure in synthesis. Although it could not be proved that listening to the symphonies of Beethoven produced peaceful feelings, an international festival, at which representatives of different countries could meet, could certainly help to bring the countries closer to each other by promoting better understanding. A definition of the purpose was out of place in article 16 but an implementing clause was not unacceptable.

38. It had been pointed out that article 16 did not contain the provision set forth in article 27, paragraph 2, of the Universal Declaration of Human Rights. The French delegation was still in favour of inserting a clause of that kind in article 16 and it hoped that the idea it had put forward in the Commission on Human Rights would be reintroduced by another delegation, so that it could vote for it.

39. Mr. KRAJEWSKI (Poland) regretted that the afternoon meeting had to be held in the General Assembly Hall, where the conditions were particularly unfavourable to the work of the Third Committee, largely because the statements were usually very short, lasting about ten minutes at the most. He was aware that lack of space was the reason but as four morning meetings and six afternoon meetings were scheduled, he suggested that the programme of meetings might be better balanced, so that the Third Committee did not have to meet in a hall which precluded any possibility of a real discussion.

40. The CHAIRMAN pointed out that no time limit had been set for statements on article 16.

41. Mrs. SHOHAM-SHARON (Israel) and Sir Samuel HOARE (United Kingdom) supported the Polish representative.

42. Mr. VAKIL (Secretary of the Committee) said that he was aware of all the disadvantages of the General Assembly Hall. He pointed out however that the arrangement of the order of meetings was not automatic but depended on the work of the various committees.

43. Mr. ROSSIDES (Greece) thought it would be de-

sirable to adopt for article 16 the procedure which had previously worked so well and to set a time limit for statements.

44. Mr. KRAJEWSKI (Poland) thought on the contrary that everyone should be allowed to state his views freely and fully on any article. He therefore opposed the Greek proposal.

45. The CHAIRMAN put to the vote the proposal of

the Greek representative that a time limit should be set for statements.

The Greek proposal was adopted by 17 votes to 10, with 34 abstentions.

46. Mr. ROY (Haiti) hoped that that decision would apply to all the articles of the draft Covenant.

The meeting rose at 1.15 p.m.