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Chairman: Mr. Omar LOUTFI (Egypt).

AGENDA ITEM 28

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 5, A/2929, A/2943, chapter VI, section I, A/C.3/L.460 and Corr.1, A/C.3/L.466, A/C.3/L.472) (*continued*)

GENERAL DISCUSSION (*continued*)

Article 1 (continued)

1. Mr. MARTIN (Canada) said that, as the Canadian Government had stated in its comments (E/CN.4/694/Add.6, para. 8) on article 1 of the draft International Covenants on Human Rights (E/2573, annex I), it considered self-determination to be a collective matter, which was out of place in an international instrument dealing with individual human rights. Although self-determination was an objective rather than a right, Canada attached the greatest importance to the fulfilment of its obligations under Article 1, paragraph 2, of the United Nations Charter.

2. The debates on self-determination in the United Nations had merely emphasized the divergencies of views and had not resulted in the universal approach which his Government considered essential to further progress. It would be wiser to attempt compromise solutions than for some delegations to insist on formulating a right which others could not accept.

3. In signing the Charter, all the Members of the United Nations had repudiated the idea that any human being or group should be held in political subjection or be the object of exploitation and had dedicated themselves to mutual service and assistance. It was therefore unhelpful to suggest that some Members of the Organization were not prepared to abide by the principles of the Charter. It should be assumed that the main difference was merely one of method, not of principle.

4. Through calm and friendly discussion, agreement could eventually be reached on the meaning of the terms "self-determination" and "peoples and nations". The very notion of who was entitled to self-determination, and what its exercise entailed, was still too vague for his Government to be able to declare its unreserved acceptance of self-determination.

5. Any attempt to implement the right of self-determination would raise specific difficulties. First, it must be

considered in relation to Article 2, paragraph 7, of the Charter. If the General Assembly were to determine when self-determination should be applied, intervention in domestic matters might be involved, in which case an amendment of the Charter might be required. Further, one of the purposes of the United Nations, as laid down in the Preamble to the Charter, was to promote respect for the obligations arising from treaties, and self-determination might have far-reaching effects on existing treaty arrangements; acquired rights under valid international treaties might also be affected. Moreover, Chapters XI and XII of the Charter recognized that certain peoples, in their own interest, needed the protection and support of other countries; and that in such matters "the particular circumstances of each territory and its peoples" must be taken into account. Finally, the provisions of Chapter XI implied that self-determination was not to be interpreted in such a way as to be inconsistent with the obligations and rights of the administering Powers. There were probably many other questions of equal importance. The Canadian Government was ready to play its part in finding practical solutions.

6. Canada had developed towards free and equal association between groups of widely different racial origins and cultural and religious backgrounds and it was therefore particularly conscious of the fact that it would be a serious matter if Member States became morally or legally bound to grant minority groups the right to determine their own institutions without regard to the wishes of the community as a whole. A premature formulation of principles might introduce an element of contention and rigidity into the field of self-determination, when the emphasis should be on specific cases and flexibility.

7. His delegation was prepared to study the subject further and to support any practical suggestion which would not involve contradictions with other Charter obligations and which appeared politically advisable. Canada sympathized with Governments which were anxious to define and implement the right of self-determination, but, because it was determined to live up to its obligations, it was not prepared to subscribe to broad and imprecise statements relating to hypothetical situations. It was fitting that the United Nations should help to solve the problem, but it should be remembered that the United Nations was based on the sovereign equality of all its Members, and that there could be no really effective action without the consent of all the parties concerned.

8. Mr. PEREZ DE ARCE (Chile) said that it was clear from the debates in the United Nations that the right of self-determination was in the same category as individual human rights; the one could not be exercised without the other. The community of nations was being invited to accede to the covenants, which included the

right of self-determination as a prerequisite of the exercise of all other rights. Loss of the power of self-determination entailed the loss of human rights, as recent experience had shown, and respect for human rights led inevitably to self-determination.

9. It might be that no covenants would be required if they were intended only for countries where human rights were freely exercised, but they were meant largely for countries where human rights were menaced or denied. Those countries knew that freedoms of all kinds could only be won, after a bitter struggle, in an atmosphere of free self-determination. Chile was therefore strongly of the opinion that the article on self-determination was an integral part of the covenants and could not be deleted.

10. When a decision had been taken on the crucial question whether article 1 should be included, the actual drafting of the article must be considered. Some delegations had made proposals which should be considered in the interests of clarity and precision, and the Argentine representative had suggested (643rd meeting) an addition to paragraph 3. The delegations of Chile, Ecuador and Peru would submit a further drafting amendment and were willing to consider any other constructive suggestions.

11. He felt that paragraph 3 had been misinterpreted. All it meant was that a country could not exercise the right of self-determination unless it were master of its own resources. There was no question of expropriation. Chile could not, in any event, support any proposal which involved a violation of the rights of property, which were enjoyed, under the Chilean Constitution, by nationals and foreigners alike. The important principle there was that self-determination must be based on economic independence. Self-determination would be an illusion in a country whose natural resources were controlled by another State, and it would be farcical to give a country political freedom while leaving the ownership of its resources in foreign hands.

12. Mr. NOSEK (Czechoslovakia) said that his delegation was convinced that the inclusion of an article on the right of self-determination in the covenants was essential if the covenants were to serve as effective instruments for the realization and development of human rights throughout the world. Those who opposed the inclusion of article 1 in the covenants argued that the right of self-determination was not an individual right, but a collective one; the Czechoslovak delegation could not agree with that interpretation, since recognition and observance of the right were prerequisites of the exercise of individual human rights. If a whole people was deprived of the free exercise of its political, economic, social and cultural rights, the exercise of those rights by individuals could only be illusory. Moreover, all the articles of the draft covenants were based on the principle of the absolute equality of all nations and races.

13. Recognition of the right represented the wish of the overwhelming majority of mankind and it was only just that that wish should be expressed in the covenants. The lessons of history, the changes that had taken place in the past few decades and the victorious struggle against all forms of national and social oppression could not be ignored. Fundamental changes had taken place in the minds and consciences of the peoples of colonial, semi-colonial and economically under-developed coun-

tries, who were struggling with ever-increasing determination for freedom and independence.

14. The defeat of fascism in the Second World War had given a strong impetus to national liberation movements throughout the world and the many Asian and African nations which had begun their independent development were already making important contributions to the cause of international peace and security. Czechoslovakia, which had solved the national problem by establishing equality for the Czech and Slovak peoples in full freedom and independence, felt deep sympathy with, and lent its moral support to, the struggle of other countries for national liberation.

15. Not only were recognition and observance of the right of self-determination vitally important to the peoples which had not yet acquired independence, but they also constituted a guarantee of the maintenance of international peace and security. The General Assembly had acknowledged that fact in its resolution 545 (VI), in which it stated that violation of the right had resulted in bloodshed and war in the past and was considered a continuous threat to peace.

16. The Charter unequivocally stated that the development of friendly relations among nations, based on respect for the principle of equal rights and self-determination of peoples, was one of the purposes of the United Nations; the principle was stated in Article 1 and in other provisions in which Member States undertook to observe it. It had been in pursuance of those provisions of the Charter that the General Assembly had taken the decision (resolution 545 (VI)) to include the article on self-determination in the covenants. Attempts to reverse that decision were inadmissible. Those who were opposed to the inclusion of the article used the argument that self-determination was a political principle, and not a right, as the Charter contained no specific reference to the right of self-determination. The argument was artificial, since the Charter, by declaring self-determination to be one of the purposes of the United Nations, recognized the right of peoples to self-determination, in accordance with international law, and bound all Members to observe the right.

17. The right of self-determination had been emphasized in such recent political documents as the Atlantic Charter, the Moscow Declaration, the Cairo Declaration and the Declaration of the Tenth Inter-American Conference held at Caracas. The General Assembly had explicitly recognized the right in a number of its resolutions. Moreover, the right had been reaffirmed as a sacred and inalienable right of all peoples in the Final *Communiqué* of the Asian-African Conference held at Bandung, which had greatly influenced the development of international relations.

18. The Czechoslovak delegation considered the wording of article 1 acceptable. Paragraph 1 accurately defined the right and paragraph 2 set forth the measures whereby it might be realized. The provisions of paragraph 3 were also important, for the exercise of the right was impossible unless the people concerned was able to dispose freely of its natural wealth and resources. Recent history showed that loss of economic independence necessarily led to loss of political independence. The provision was therefore in full conformity with the Charter and with contemporary international law.

19. The Czechoslovak delegation considered that the wording of the article could be improved, but, in a spirit of mutual understanding and co-operation and in order

to enable all delegations to vote for the inclusion of the article, it was prepared to vote for the text as it stood.

20. Mr. URQUIA (El Salvador) said that the traditional concepts held by philosophers, statesmen and jurists had not admitted that the subject of the defence of human rights could exceed the confines of domestic jurisdiction until, as a direct consequence of two world wars, reality had overcome tradition. The development of the concept of self-determination, in particular, had advanced considerably since, immediately after the First World War, a timid initial step had been taken towards internationalizing colonial territories, by inserting in the Covenant of the League of Nations a provision (Article 22, para. 4) that the wishes of certain communities must be a principal consideration in the selection of the Mandatory. Another important milestone had been the statement in the Atlantic Charter that no territorial changes should be made after the Second World War without ascertaining the freely expressed wishes of the peoples concerned, who should also be free to choose their own form of government. The principle of self-determination had then been proclaimed in Article 1, paragraph 2, and in Article 55 of the United Nations Charter and expressed in Chapters XI and XII, concerning Non-Self-Governing Territories and the International Trusteeship System. In its endeavours to secure the international protection of the human rights proclaimed in the Universal Declaration, the General Assembly, in resolution 637 A (VII), had singled out the right of peoples and nations to self-determination as a prerequisite of the full enjoyment of all fundamental human rights. There could be no doubt, therefore, that the principle of continuity which governed all human culture, juridical concepts and institutions applied to the work of the United Nations with regard to human rights and that it was impossible to turn back after the need to recognize the dignity of the human person had been affirmed to the whole world.

21. The argument that the right of self-determination was collective and not individual was unacceptable. The Declaration of the Rights of Man and of the Citizen proclaimed in France in 1789 was undeniably a document which dealt with individual rights, yet it included the right to resist oppression among its most important provisions; that right might be described as collective on the same grounds as the right of self-determination. The distinction could be misleading, since the so-called collective rights constituted the expression of individual will through collective methods. As all institutions and groups were at the service of individuals, individuals were subject to and benefited by the action of groups. Thus, the State constituted both a nation and a group of individuals. That concept was the very essence of the right of self-determination and was recognized in many countries, including France, Germany, the United Kingdom and the United States of America.

22. Furthermore, several other rights enunciated in various articles of the draft covenants might be described as collective by those who were opposed to the inclusion of article 1. For example, article 23 of the draft Covenant on Civil and Political Rights, concerning the right to elect and be elected, also entailed the expression of the will of individual electors by collective methods. There was no apparent difference between casting a vote for a national or local candidate and casting a vote in a plebiscite or a referendum. The people of the Saar had recently exercised the right of self-determination by means of a referendum; it could

hardly be denied that, by voting, those people had expressed their individual opinions on a matter concerning the community. The same considerations applied to such rights as the right of association, the right of assembly and trade-union rights. If the article on the right of self-determination were to be deleted on the ground that it was a collective right, the articles on those other rights should also be omitted.

23. The Swedish representative had said (641st meeting) that the covenants were intended to refer only to human rights which were covered by domestic legislation and could not be extended to such a question as self-determination, which fell exclusively within international jurisdiction. That argument seemed to be paradoxical. In order to implement the purposes of the Charter, the United Nations had to draw up covenants for the primary purpose of giving international expression to human rights and of consecrating them in international law, not in domestic legislation. The whole subject of human rights had therefore already exceeded the bounds of national law and was being considered on the international level also.

24. The United Kingdom representative had severely criticized (642nd meeting) the text of article 1 on several counts, saying in particular that the words "peoples" and "nations" in paragraph 1 were not defined and that the two concepts overlapped. To define the terms was no doubt desirable, but it was a task for an institute of political science and not for the General Assembly. The terms were not defined in the Charter either, yet all Member States had been able to interpret them satisfactorily. He was inclined to agree, however, that the word "peoples" alone would suffice. As the Afghan representative had pointed out (644th meeting), the paragraph applied to all peoples everywhere, and not merely to those inhabiting Non-Self-Governing and Trust Territories. For all those reasons the special reference to "nations" was superfluous. He also agreed with the United Kingdom representative that the closing part of the paragraph was not happily phrased, as a people could not very well determine its economic, social and cultural status; indeed, the reference to the determination of cultural status evoked notions of barriers that were wholly undesirable. The paragraph might perhaps speak of economic, social and cultural development; his delegation would welcome an amendment improving the text.

25. There had been no objections of substance to paragraph 2 of article 1, and indeed there could hardly be any, since under the Charter the Administering States had already assumed the obligation to guide the peoples of Non-Self-Governing and Trust Territories towards self-government or independence, either of which would mean exercise of the right to self-determination.

26. The provision in paragraph 3 was wholly justified, as a people which became an independent political entity must, to survive, exercise sovereignty over a certain territory and over the natural wealth and resources of that territory. Nevertheless, there was some justice in the objection that the provision might frighten foreign investors, thus hampering the economic development of the very territories involved, and he would therefore have no objection to a more moderate phrasing of paragraph 3, and perhaps the introduction of a reference to economic co-operation among nations in conditions of security, as stated in paragraph 1 of General Assembly resolution 626 (VII).

27. His delegation, eager to reach common ground, would be ready to consider suitable amendments to article 1. Unhappily, the delegations which had criticized that article had not proposed any such amendments. They had proposed the deletion of the text instead of seeking to improve it. Yet it was only if all Member States, large and small, made a sincere effort to reconcile their views that the draft covenants would become what they should be: universally acceptable and universally applicable.

28. Mr. MASSOUD ANSARI (Iran) said that, in its long history, his country had often suffered from the misapplication of the right of self-determination and was therefore particularly anxious that the relevant provision in the covenants should not give rise to similar misuse. After briefly outlining the evolution of the draft covenants in the United Nations he said that to delete article 1 would be tantamount to removing the cornerstone of the entire foundation which it had taken years of patient labour to erect. In any event, the General Assembly had settled that issue by its resolution 545 (VI), in which it had decided to insert such an article in the covenants.

29. His delegation was in favour of the inclusion of article 1, with certain reservations. It based its stand on the declaration in the Final *Communiqué* of the Asian-African Conference held at Bandung that the right of peoples to self-determination was a prerequisite of the full exercise of all human rights. Since the time of President Wilson, who had been the first to speak to the world of "self-determination", the right had been exercised so often and by so many that no possible doubt remained of its being indeed a right and not a vague academic principle. The many millions represented at the Bandung Conference were firmly determined to exercise it to its full extent. As the other rights set

forth in the draft covenants would represent rights in the legal sense of the word, he failed to see any valid legal reason for excluding a right that was a prerequisite of the enjoyment of all the rest.

30. Nevertheless, the enunciation of the right of self-determination should not be over-simplified, lest it become a tool in the hands of demagogues and seekers after power, and serve to incite anarchy and unrest. It was the duty of the United Nations not only to recognize the right, but to define it, state its component elements and provide for its application. The right should never be used to attack the legitimate sovereignty of independent nations over their traditional territories; the ultimate goal of self-determination being freedom, justice and peace, it should never be used by a dissident minority to undermine the political stability of an independent and democratic country or in any way to further aggression, sedition or subversion. Similarly, it should not be regarded as synonymous with secession; on the contrary, in a world longing for security, free exercise of the right of self-determination was far more likely to lead to the union of the people concerned with a larger entity.

31. With a view to avoiding over-simplification and improper application, his delegation suggested that a special committee of experts, jurists and historians should be set up to study the component elements, nature, scope and limits of the right.

32. As nothing could prevent eventual recognition of that fundamental and legitimate right, it was for the United Nations to take the initiative by proclaiming it to the world and ensuring that it should be applied in conformity with the principles of freedom, justice and peace.

The meeting rose at 12.50 p.m.