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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. Mrs. TSALDARIS (Greece) said that, as could be seen from the comments and amendments in the working paper (A/C.3/L.460 and Corr. 1) and from the current debate, article 1 of the draft International Covenants on Human Rights (E/2573, annex I) had given rise to profound disagreement. As Greece had taken an active part in earlier debates on the subject, it would come as no surprise to anyone that Greece regarded the right of peoples to self-determination as a prerequisite of the enjoyment of all other fundamental human rights and a corollary of the democratic principle of government with the consent of the governed. In the past, that principle had been applied only in sovereign States. For the peoples which were not yet self-governing, the will of the ruling Power was the law. It was for the United Nations to ensure that it should be universally observed by law, not by violence.

2. Faithful to its ancient democratic traditions, her country had done its full share in the United Nations to ensure the application of the right. Assertions to the contrary notwithstanding, according to the Charter of the United Nations it was a right and not a principle, for Articles 1 and 55 both mentioned expressly the peoples, *droit à disposer d'eux-mêmes*. The Charter was a multilateral treaty, carefully drafted with the help of distinguished jurists from the whole world, and its basic provisions had a clear legal meaning. Moreover, the Third Committee had in the past taken definite decisions on the right of self-determination, and all its work should certainly not go to waste. Supposing for a moment, absurd though it was, that the Charter had not consecrated the right, article 1 would fill a real gap and would be all the more necessary.

3. That the Member States had undertaken under the Charter to promote self-determination was clear

both from Article 1, in which self-determination was cited among the purposes and principles of the United Nations, and from Article 56, which stated that all Members pledged themselves — that is, assumed a specific legal obligation — to work for the achievement of the purposes set forth in Article 55, which, as she had said, included self-determination.

4. The right of self-determination was a right of ethnic and cultural groups which, owing to circumstances beyond their control, had been unable to achieve political independence. Many such groups were to be found in the colonies, which had been conquered by force or acquired through arbitrary or illegal dealings. Since 1945, hundreds of millions of people in that position had regained their independence. The movement was continuing and growing and it was for the United Nations to see to it that it followed the path of law and not that of violence.

5. Mr. Spaak, head of the Belgian delegation, had said in another connexion that the right of peoples to self-determination was the most important, the first, of all the human rights. In the draft covenants the provision relating to the right had been fittingly placed in the very first article. To exclude that provision would be to repudiate two centuries of human progress achieved at the cost of bitter sacrifice and to restore the conditions which prevailed before the French Revolution and before the proclamation of the Declaration of Independence at Philadelphia. She recalled the Atlantic Charter, which proclaimed the right of self-determination, as well as the Pacific Charter, which contained a statement of the right of self-determination and which the United States representative had said, at the ninth session, that the United States would continue to support. She could not but regret that those who proclaimed lofty principles did not always appear to feel obligated to put them into practice.

6. The fears of some representatives that the word "peoples" as used in article 1 would incite national minorities to separation were unfounded. Such minorities were within the jurisdiction of United Nations organs which saw to it that they received special protection from the State of which they formed a part; the issue of minorities should not be confused — indeed, the confusion at times seemed to be deliberate — with that of self-determination, which applied to national majorities living in their own territory but unable freely to determine their political status.

7. She hoped that her statement would allay the fears expressed earlier by the United Kingdom representative; but, if it did not, she wondered whether his Government would accept a text of article 1 more clearly precluding its application to colonial territories. She feared, however, that the reason for the United Kingdom Government's opposition to the article as it

stood was precisely that it applied first and foremost to the colonies, and the United Kingdom Government wanted to hold on to them at all costs.

8. It had also been claimed that self-determination, being a collective right, had no place in covenants reserved for individual human rights. But man, according to the ancient Greeks, was a social animal. The need for individual rights arose solely because he lived in a community with other men. Individual and collective rights alike were thus social rights; furthermore, it was wrong to say that self-determination was the only collective right in the draft covenants. They included provisions on the right of free assembly, the right to vote and trade-union rights; those rights, like the right of self-determination, were exercised individually and applied collectively. In recognizing a people's right freely to choose its government, the right of every citizen to vote was thereby acknowledged; consequently, it would be strange to argue that it was not an individual right.

9. She referred to the observations of the representatives of Belgium (643rd meeting) and the Netherlands (642nd meeting) with regard to the right of self-determination and its external and internal aspects and with regard to the will of a people to express itself in a democratic manner. But the right could be applied internally only by a people living in complete freedom, not by an outside authority, and plebiscites and free elections were the best guarantees of democratic application. The Belgian representative had referred to the possible abuse of article 1 by totalitarian régimes and had cited the case of Hitler, who had invoked the right of peoples to self-determination in order to dismember Europe. Several countries represented on the Committee, including Greece, which had fought against two dictatorships, had sacrificed themselves to defend against Hitler the principle of self-determination which was now being challenged.

10. While recognizing the compelling moral force of what he chose to call the "principle" of self-determination, the United Kingdom representative had questioned the willingness of States to submit possible disputes to an independent international organ such as the Human Rights Committee. She reserved the right to state her position on the establishment and functions of that committee when the relevant articles were discussed. The United Kingdom representative had also criticized the wording of article 1; she would welcome any amendments that would improve the text without altering the spirit of the article.

11. Objections had been made to the reference to "cultural status" in paragraph 1. Each country had its own culture, which it wished to preserve; but there was certainly no intention of erecting barriers between the various cultures. Each separate culture was part of the heritage of all mankind.

12. Particularly serious objections had been raised to paragraph 3. Yet the sovereignty of a people over its natural wealth and resources was the corollary of free determination by that people of its political, economic, social and cultural status. It had come to be generally recognized that freedom was not a purely political notion and that true political independence was impossible without economic independence. To recognize one without the other was to give a distorted and partial picture of the right of self-determination. Thus, it was inconceivable that a colonial territory should be accorded independence but not the right of

sovereignty over its natural resources. Such sovereignty did not mean disregard of economic obligations; on the contrary, only a people that was master of its own resources could guarantee the respect of such obligations. It should be noted, in particular, that the need of under-developed countries for economic assistance and investments from abroad was not in conflict with their economic independence; but instead of being exploited, they would be freely collaborating with advanced countries with a view to promoting their economic development.

13. Self-determination had a direct bearing on the maintenance of peace. Greece believed that a true and lasting peace could be achieved only through the application of the rights and principles set forth in the Charter, and not by depriving peoples of their freedom. Violence could only breed violence, for men always and everywhere resisted oppression. Foreign rule could be imposed by a strong administration and military forces, but it could not enslave the mind and subjugate the soul. Violence might result in death; it could not bring about peace. The events of North Africa or Cyprus clearly demonstrated that fact. In that connexion, her delegation deeply regretted that the General Assembly had decided not to include in its agenda the question of Cyprus — a question of vital international concern — and had thus assumed onerous responsibilities with respect to the possibly tragic consequences of that decision. Wherever people were denied the right of self-determination, a barricade was raised and an armed front was opened.

14. The wise course for the United Nations to take was to prevent outbreaks of violence on the part of subject peoples by recognizing their right of self-determination as enunciated in article 1 of the draft covenants. The peoples would then be able to achieve their wishes by legal means. That way was perhaps slow, but it was sure, and knowing that it was open to them the peoples would have patience. Unhappily, imperialism was not yet dead; but the United Nations must not compromise with it. The very purpose of the United Nations was to achieve universal freedom, for man could not be happy unless he was free.

15. Article 1 of the draft covenants contained the raw material for the making of a better world. If all delegations accepted the premise that all nations and all human beings who lived in subjection had the right to be free, agreement on the actual wording of the article would not be long in coming. It was for each delegation to decide where it stood on that basic issue.

16. She would vote against all amendments proposing the deletion of article 1.

17. Sir Percy SPENDER (Australia) said that the proposal for the deletion of article 1 from the two draft covenants involved the re-examination of the article itself and of its underlying concepts and purposes. It was obviously impossible to adopt an article without being certain what it meant and what its adoption would entail. One of the Australian delegation's basic objections to the article was that its language was obscure and in some places even contradictory; another was that its implications constituted a threat to many of the established Member States of the United Nations.

18. While there could be no doubt that a deep division existed between those who supported and those who were opposed to article 1, it was quite misleading

to suggest that opposing the inclusion of the article in the draft covenants was tantamount to opposing the principle of self-determination. Australia owed its presence in the United Nations to evolution from a completely dependent colonial status to completely independent nationhood and approach the question of self-determination with sympathetic understanding. Other opponents of article 1 had also stressed that they were not opposed to the principle of self-determination, which their history had taught them to value highly, but that the concept was difficult to define and impossible to set forth in legal terms.

19. The Committee had to decide, first, whether the concept of self-determination was a political and moral principle or a right in the same sense as the others enunciated in the draft covenants; secondly, whether the principle or right was correctly defined in article 1; and thirdly, whether the definition, even if valid, was acceptable for inclusion in a legally binding covenant. The Australian delegation's reply to all those questions was in the negative.

20. It was by no means clear what was meant by self-determination, for representatives all thought of it in terms of specific historical, cultural and religious backgrounds. It was therefore especially important not to take definitions for granted and not to diminish the considerable common ground which existed by reading more into the principle than was generally acceptable. The principle of self-determination was wisely expressed in broad terms in Article 1 of the Charter, which set forth the purposes of the United Nations. Self-determination was mentioned in only one other article of the Charter, Article 55, which dealt with international economic and social co-operation. Both the articles referred to "the principle of equal rights and self-determination of peoples" and drew a distinction between self-determination and the aggregate referred to as human rights. That distinction was borne out in the records of the discussions of the San Francisco Conference. Furthermore, the argument that self-determination was a condition for the enjoyment of human rights was not upheld by reference to the Charter or by the fact that no mention was made of self-determination in the Universal Declaration of Human Rights.

21. The Committee would subsequently have to consider, under item 29 of the agenda of the General Assembly, certain proposals concerning the implementation of the so-called right of self-determination, including a proposal that the whole concept needed further study. Moreover, the Secretary-General had made a statement (633rd meeting) in which he had expressed some doubts and made certain suggestions with regard to the question. In dealing with an issue of such far-reaching importance, the Committee must be careful not to hurry into decisions which it might later regret.

22. The wording of paragraph 1 of article 1 gave rise to the question what was meant by "peoples" and "nations". Apart from the widely differing concepts of those terms, there seemed to be some confusion of thought behind the linking of the two words as though they were complementary terms. It was clear that the words represented different concepts; a people was not necessarily a nation and a nation was not necessarily one people. The Ukrainian representative had referred to the large number of peoples grouped together in the USSR; on the other hand, before the Second

World War the German people had not been confined to Germany, but had been found in communities of varying sizes in many European countries. The Committee would hardly endorse the view that those German minorities had been entitled to exercise the right of self-determination and thus to disrupt and dismember the countries in which they had lived.

23. Paragraph 2 of the article should be considered in the light of the premise that the scope and content of a right must be capable of expression in terms which were certain or which could be rendered certain in application. Paragraph 2, however, assigned responsibility to States, and not to peoples or nations, although the responsibility of the State was owed to people. That provision seemed to imply that States adhering to the covenants must promote, as well as recognize, the right of any peoples within their territories to determine their political, economic, social and cultural status, without regard to the effect of their decisions on the remaining members of the State who composed the majority. It might be contended that the intention of the paragraph was to secure respect for the basic rights of minorities. However, the text did not state that minorities should have equal rights with majorities within a State; instead, it had the effect of allowing any minority freely to determine its own status.

24. It might be assumed that the intention of the authors in drafting paragraph 3 had been to imply that the economic policies of no country should be dominated, directly or indirectly, from an outside source. That was a generally accepted principle, but it must be borne in mind that the economies of all countries were daily becoming more interdependent and that Member States had pledged themselves, under the Charter of the United Nations and by their participation in the economic work of the United Nations, to promote international economic co-operation. Paragraph 3 was open to dangerous interpretations and many interested groups had expressed concern lest its terms might discourage investment in countries particularly needing capital. The effect of adopting such a text would be contrary to the economic interests of many of the countries which supported the inclusion of the article and seemed illogical at a time when United Nations organs were discussing methods of promoting the development of under-developed countries.

25. With regard to the measures of implementation of the Covenant on Civil and Political Rights, great harm might be done if a State involved in a territorial or other dispute were to complain that another State was not permitting a minority group to exercise the right of self-determination. Under article 40, the State against which the complaint was made would have to afford the complaining State an explanation, including "references to domestic procedures and remedies taken or pending, or available in the matter". Moreover, under article 48, the States parties to the covenant had to submit reports annually to the Human Rights Committee on measures taken to meet their obligations under article 1, that is, to promote the so-called right of self-determination.

26. The Netherlands representative had spoken (642nd meeting) of the internal and external aspects of self-determination. As regards the former, it was difficult indeed to determine whether or not the life of a given nation or people was governed by the prin-

ciple. It would seem to be contrary to the intentions of those who supported article 1 to take the word of the Government concerned in that respect. The necessary criteria might, however, be found in the substantive articles of the draft Covenant on Civil and Political Rights. Articles 6, 7, 8, 9, 16, 17 and 20, for example, seemed to provide a more logical standard for measuring the extent of "internal" self-determination than the simple claim that the exercise of the right of self-determination was a prerequisite of the enjoyment of other rights. The people of a society which condoned slavery or forced labour, or which denied the right of recognition as a person before the law or the right of peaceful assembly, could hardly be said to be exercising self-determination.

27. Those questions had not been given adequate consideration in the Third Committee. Although there was much common ground on the question and the great majority of the Committee was genuinely concerned with promoting self-determination, there was a considerable body of opinion which held that the cause of the principle would not be best served by the inclusion of article 1 in the covenants. There was nothing to be gained by pressing for the inclusion of the article regardless of opposition; the covenants must provide a means of safeguarding and promoting human rights and must therefore be generally acceptable. The debate had shown an encouraging spirit of goodwill and co-operation and a growing realization that the part must not be allowed to become the enemy of the whole. Most important of all, there seemed to be a tendency to understand that, whatever views might be held on the principle or right of self-determination, the wording of article 1 was unsatisfactory and dangerous. The wisest course, therefore, was to delete the article and to consider the whole question more thoroughly.

28. Mr. VELA (Guatemala) recalled that substantive questions, such as the question whether self-determination was a right or a principle, had been raised by various delegations. The United Kingdom and Australian representatives had drawn attention to the fact that self-determination did not appear in the Universal Declaration of Human Rights but had been included in the draft covenants at the instance of certain delegations. The records of the debates in the United Nations bodies in which the question had been discussed showed that the inclusion had been decided on only after lengthy debate and mature reflection. The General Assembly had decided as early as 1950 that other rights should be added to the draft covenants, and in resolution 545 (VI) it had given definite instructions that the draft covenants should include an article on the right of all peoples and nations to self-determination, and had subsequently made further recommendations on the same subject, including measures of implementation. The General Assembly had not taken a hasty decision and the Committee should ponder well before going against its instructions.

29. Australia, the Netherlands and the United Kingdom had submitted a proposal (A/2910/Add.2, 3 and 1) for the deletion of article 1 on the grounds that it dealt with a political principle the application of which involved political issues. In the opinion of the United Kingdom Government, the principle of self-determination might have to be subordinated to equally important principles, such as the maintenance of peace. The converse could also be true at times, but temporary

subordination of one principle to another did not invalidate the subordinated principle. In any event, the instinctive desire of a people to affirm itself could not be disregarded. As had been pointed out in a recent newspaper article, the United Nations was not merely a mechanism, it was the embodiment of human aspirations.

30. The United Kingdom had also commented that the assertion of self-determination as an unqualified right would not only do nothing to assist in the solution of the political problems, but would have far-reaching political consequences for many States and not merely for those administering Non-Self-Governing Territories. That was perhaps an unduly pessimistic view. The moral force of such an assertion might be slight in some cases, but in others it would have an enormous influence in helping to maintain peace.

31. There was general agreement on the acceptability of the principle, but difficulties would arise when the time came to apply it. The Danish representative had pointed out (644th meeting) that the text of paragraph 3 as it stood might be an obstacle to international co-operation.

32. It had been said that article 1 was contrary to the spirit of the United Nations Charter, but both draft covenants included an article which expressly stated that nothing in them should be interpreted as impairing the provisions of the Charter.

33. There were three stages between the establishment of the principle of self-determination and the application of the right. The first had terminated with the formulation of the principle in the Charter. The second stage would be completed when article 1 was approved in a final and satisfactory form. The third stage would involve the establishment of a favourable atmosphere for the application of the right and studies such as the one proposed by the Iranian representative (645th meeting). The Commission on Human Rights and the Economic and Social Council had already proposed the establishment of commissions to consider different aspects of self-determination and a similar proposal had been made by the Secretary-General (633rd meeting), who had said that a declaration on the self-determination of peoples prepared by such a body might help in finding a way out of the political impasse in which the draft covenants found themselves.

34. It could not be said that an impasse had been reached at the current stage, when a universally accepted principle was merely being reaffirmed and given legal form, but there was a danger of its being reached during the next stage, when the methods of securing respect for the right of self-determination and of settling specific cases would be under discussion.

35. The current difficulties could be solved if delegations did not adopt rigid positions and were willing to accept compromise proposals. His delegation would welcome concrete suggestions for improving the article from the delegations which had criticized it in its existing form. The Argentine representative had already suggested (643rd meeting) the addition of a new sentence to paragraph 3 in order to remove all anxiety as to the effect of article 1 on the rights of property. That fear was quite unfounded so far as his own country was concerned, as private property was protected under the Constitution, but he was willing to consider any new text which would banish

all cause for alarm. The Salvadorian representative had emphasized (645th meeting) the need for definitions, but it was not usual to include definitions in laws, and he felt they should therefore be omitted from the covenants also.

36. The importance of self-determination should be emphasized by the inclusion of an article in both covenants but it should be recognized in advance that circumstances would condition cases. The important thing was to agree on a text which would have the support of a large majority of delegations and would contribute to world peace by ensuring universal respect for human rights.

37. Mr. JEVREMOVIC (Yugoslavia) considered that the question before the Committee was the general one whether the right of self-determination could be included in the draft covenants and whether it was in fact a human right; the question of the wording of the text to be adopted therefore did not arise.

38. The Yugoslav delegation considered that an article on the right of self-determination should be included in the draft covenants because it was an essential condition for the full enjoyment of all other human rights. While it could not be asserted that the exercise of the right of self-determination in itself meant that all the other rights were being exercised, it was only through enjoyment of that right that a people could achieve maturity and the full exercise of other human rights.

39. His delegation could not agree with the argument that the article should not be included because the right of self-determination was not an individual right. Although it was a collective right, it had individual aspects. No community could exercise rights if its members were not allowed to decide the fate of the community.

40. Some of the representatives who were against the inclusion of the article had referred to the difficulties which might arise from the absence of criteria for determining which groups constituted peoples, as opposed to national minorities or other similar communities. Difficulties of the same kind had been raised with regard to determining the exact time when a people should acquire national independence. Those and other legalistic arguments did not seem to be valid. It must be borne in mind that such problems did not have to be solved finally in the covenants and that the inclusion of article 1 had but a limited purpose. The real value of its inclusion lay in the consequent recognition of the right of every individual to take part in action relating to the status of his people.

41. No legalistic argument could refute the fact that the peoples of the European countries which had been occupied during the Second World War had been entitled not only to demand, but to fight for, their right to decide their own fate. In claiming the right for itself, Yugoslavia could not deny it to others.

42. His delegation was fully aware of the great complexity of the various legal aspects of the right. Nevertheless, that consideration did not closely affect the draft covenants. If the inclusion of the article were approached from the point of view that every individual had the right to decide the status of his people, the whole problem became quite simple.

43. Obviously, the text of article 1, as of the other articles, was open to criticism. The Yugoslav delega-

tion was prepared to consider any amendments that might be submitted to improve the wording.

44. He could not share the view that the inclusion of article 1 would lead to an aggravation of the international situation. World events had forced the question of self-determination on to the Committee's agenda. To ignore the fact that millions of human beings were claiming their right to decide their own fate could in no way serve to eliminate the obstacles which prevented the establishment of friendly relations between all the peoples of the world. If his delegation believed that the inclusion of the article would aggravate the international situation, it would be the first to oppose its inclusion.

45. The Yugoslav delegation would therefore vote for the inclusion of article 1 and against the proposal to delete the article.

46. Mr. LOPEZ VILLAMIL (Honduras) said that there should have been a draft covenant on the rights and duties of States as well as the draft covenants on human rights in order to avoid confusion between rights which belonged to different categories. The opinion of the Sixth Committee might have been sought on that point.

47. Turning to the text of article 1, he pointed out that paragraph 1 was sociological in character and referred to components of States, but not to States themselves. Various delegations had raised the question of the concepts of "peoples", "nations" and "sovereignty".

48. It had been stated that sovereignty resided in the people, but that was not entirely true so long as the State did not possess the means of enforcing its laws internally and did not have legal existence on the international plane. The people were the source of power, exercising real sovereignty when organized as a State, but they were only potentially a source of power if they were not self-governing.

49. Power and sovereignty should not be confused. Sovereignty was vested in the State itself and not in the people in a modern democratic State which could be considered as a whole, comprising a people and a territory bound by law.

50. Many delegations had raised the question of the right of secession in connexion with self-determination, and other delegations had said that self-determination was a principle and not a right. Such discussions were not fruitful; a principle became a right when it was given legal force in an appropriate instrument, which was what the Committee was trying to do.

51. Paragraphs 1 and 2 of article 1 were acceptable in their existing form. Although paragraph 3 should have been included in a separate draft covenant, his delegation would support its inclusion in the draft covenants, as it was in conformity with General Assembly resolution 545 (VI), and it formulated a right which would ensure the economic independence of States.

52. His delegation attached great importance to the establishment of the principles enshrined in article 1, as they strengthened the independence of States on the international plane. The Latin American countries had struggled to establish the right of non-intervention, which had finally been clearly formulated at the Sixth International Conference of American States, and they knew how much they had benefited from that formulation. The same would be true of the

right of self-determination. Some delegations had expressed alarm at paragraph 3, fearing that it would be invoked to sanction expropriation. In his opinion, that danger could exist only if the legislation of the countries concerned authorized expropriation without compensation. However, he would support any amendments to the text of paragraph 3 which, without altering the substance, would allay the anxiety it had aroused.

53. He would vote for the inclusion of the entire article in the draft covenants.

54. Mr. VELANDO (Peru) said that his delegation was in favour of the inclusion of an article on the right of self-determination in the draft covenants because it was a fundamental human right. The enunciation of the right in international instruments would not be prejudicial to the sovereignty of States, as

some representatives had claimed. That consideration applied, in particular, to paragraph 3 of article 1.

55. The United States representative had said (646th meeting) that the provisions of that paragraph had caused alarm in financial circles and had caused particular concern among prospective investors. There seemed to be some anxiety that the terms of the paragraph might give rise to expropriation without due compensation and arbitrary treatment of foreign investors. In order to dispel those fears, it would be advisable to add to the paragraph a reference to the economic interdependence of countries and to international co-operation for economic development. Confidence must be re-established by stipulating guarantees for the foreign capital which the under-developed countries so badly needed.

The meeting rose at 12.50 p.m.