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Chairman: Mr. Omar LOUTFI (Egypt).

AGENDA ITEM 28

**Draft International Covenants on Human Rights
(E/2573, annex I, A/C.3/L.489 and Corr.1 and
2, A/C.3/L.495/Rev.1, A/C.3/L.498 and Corr.
2, A/C.3/L.499) (continued)**

**REPORT OF THE WORKING PARTY ON ARTICLE 1
(A/C.3/L.489 and Corr.1 and 2) (continued)**

1. Mr. NAJAR (Israel) said that he wished to recall some of the ideas he had expressed earlier concerning article 1 of the draft International Covenants on Human Rights. His delegation thought that there was an unsound element in the debate on the drafting of the article, because the true problem was not one of drafting. The real point at issue was whether at the current stage of political thinking in the different countries it was or was not possible to conclude an international agreement designed to supplement the Charter of the United Nations and to regulate the right of peoples to self-determination. If there was a sincere desire to reach a compromise solution, article 1 would have to be examined simultaneously with measures for its realization. A right obviously had to be defined with precision, the more so because the provisions for its exercise were rigorous. Furthermore, the discussion must not continue indefinitely, for otherwise there might be no way of avoiding a certain bitterness within the Committee and an unfavourable reaction on the part of public opinion.
2. It was time for delegations to weigh their responsibilities. An attempt must be made to discover whether or not there was a majority which would accept the inclusion in the covenants of an article on the right of peoples to self-determination even though some States would thereby be prevented from signing the instruments. If such a majority did not exist, the vote on article 1 would have to be postponed.
3. Assuming that the majority of the Committee were favourable to the inclusion in the covenants of an article on the right of peoples to self-determination, there would still be the problem of ascertaining how that right should be defined. It must not be forgotten in that connexion that the vote on article 1 was subject to the vote on the draft covenants as a whole and that a provision already adopted could always be re-examined so that it might be improved or recast. With particular regard to the drafting, the Working Party's

text (A/C.3/L.489 and Corr.1 and 2) did not appear to be free of shortcomings, even though it was the result of a serious effort, the high quality of which he was pleased to commend. A legal instrument embodying a right must of necessity comprise three elements: a definition of the right; a description of the beneficiaries or subjects of the right; and a definition of those upon whom the contemplated obligations were incumbent. The new text, however, did not meet those requirements. It was thus apparent that in any attempt to define the beneficiaries of the right of peoples to self-determination, a diversity of concepts would make itself felt. Clearly, such a lack of unanimity could only render more difficult the application of provisions such as those of paragraph 2, on the right of peoples to dispose of their natural resources. There was no indication whether the peoples in question were already independent or had not yet achieved independence.

4. There were also other weaknesses in the new text. The second sentence of paragraph 1 was in the present tense and seemed merely to sanction a *de facto* situation, whereas its authors had intended to look towards the future by proclaiming a dynamic principle. Paragraph 3 involved a problem which had been discussed for many years, namely, whether the United Nations Charter in Chapters XI and XII did or did not recognize the right of peoples to self-determination. That difficulty had emerged very clearly two years previously with regard to the case of Puerto Rico. At that time the administering Powers had shown a common and very clearly defined attitude; they considered that the General Assembly could not determine the constitutional status of a Non-Self-Governing Territory. The problem was therefore a serious one fraught with the danger of causing some States to oppose the Charter and the accomplishments of the General Assembly. The reference in the paragraph in question to the provisions of the Charter solved nothing, because the meaning of those provisions was the specific point which States disagreed.

5. In the circumstances, the Committee had a choice between two definite solutions: either the drafting of a complete article—which would require still more time—or an immediate decision on a text limited to the affirmation of the right of peoples to self-determination. Despite the decision taken at the 655th meeting, there was no need to vote for an article on self-determination at the current session because what was involved was a procedural decision, which could be reversed. Moreover, there was no text before the Committee which from the legal point of view was sufficiently satisfactory not to give rise to numerous criticisms. If, however, in view of the force of the movement for the emancipation of peoples, the Committee felt it had to adopt a text as soon as possible,

it should probably confine itself to a declaration of principle and for that purpose retain the first sentence of the new draft article. In that case, the emphasis should be placed on the individual aspect of the right of peoples to self-determination, because the central position appertaining to the human person in the debates of the Third Committee must never be forgotten. He would therefore suggest that the words "based on the inherent dignity of all the members of the human family" should be added to the sentence as it stood in the new draft. He also asked that when paragraph 1 was put to the vote the first sentence should be voted upon separately. In conclusion, he thought that the Committee might content itself with a brief text, because when it came to consider article 48 of the draft Covenant on Civil and Political Rights (E/2573, annex I), on implementation, it would still have time to return to the article on the right of peoples to self-determination and recast it in a more precise form.

6. Mr. AZKOUL (Lebanon) spoke in support of the revised amendments (A/C.3/L.498/Corr.2) which his delegation was proposing jointly with the delegation of Pakistan to the draft article 1 prepared by the Working Party (A/C.3/L.489 and Corr.1 and 2). It was important for the Committee to draft a text that would give the least possible ground for criticism. The more justifiable the text was, the more easily the delegations favouring the inclusion of article 1 in the covenants could rally the large majority which they desired and without which their success would only be illusory. As the delegations opposed to the inclusion of the right of peoples to self-determination in the covenants knew that the Committee would in any case adopt a text on the matter, they would be much better advised to accept a draft that was less controversial than that of the Working Party. He therefore urged the representatives of all countries to consider the two documents in a spirit of understanding from which a compromise might result.

7. Most of the objections raised against the draft prepared by the Commission on Human Rights (E/2573, annex I) applied to the new text. With regard, however, to paragraph 1, its first sentence reproduced the first part of the earlier text almost word for word, and thus the criticisms levelled against the new text also applied to the former text. The words "political status" had, moreover, been retained. It was unfortunate that the right of peoples freely to determine their destiny had thus been recognized without any restrictions. That would be the only one of the rights set out in the covenants to be proclaimed in the absolute; all the others were, as was natural, subject to certain restrictions. There was no reason for making an exception in the case of the right of peoples to self-determination. By adopting a text like that proposed by the Working Party, the Committee would risk giving a legal weapon to countries setting up a political régime, such, for example, as a régime of the Nazi or fascist type, constituting a threat to international peace and security. That was certainly not what the authors of the new draft had intended.

8. Paragraph 2 of the text had already been the object of a number of criticisms. The effect of the last sentence, however, had not been brought out sufficiently clearly. It seemed to imply that a people could be deprived of its natural wealth and resources as

long as its means of subsistence remained untouched. It was hardly likely that that was what the authors had had in mind.

9. Paragraph 3 was the only one which imposed a legal obligation on certain States. The delegations of Lebanon and Pakistan had retained it because it would be more logical and would assume quite a different sense if it were included in article 1 in the amended form of that article which those delegations proposed.

10. The most serious aspect of the matter was that the Committee was discussing the article independently of the instruments of which it was to form part. The two covenants contained a general article, article 2, which defined the obligations the States would have to assume with regard to the realization of the different rights, including the right of peoples to self-determination, and it must be remembered that that realization, which was to be progressive in the case of the Covenant on Economic, Social and Cultural Rights, was to be immediate in the case of the Covenant on Civil and Political Rights. The States which signed the two instruments could not possibly ensure respect for the right of peoples to self-determination at once progressively and immediately. That was a contradiction which had to be resolved. It had been suggested that article 1 should be accepted as it stood and that article 2 of each of the covenants should be amended at the appropriate time. A wiser and possibly simpler course would be to amend article 1 at once.

11. To avoid the contradiction, the Committee could of course decide that article 2 would not apply to article 1, but that would leave an article of three paragraphs of which only the last contained a specific obligation. Another possibility would be to opt for article 2 of the draft Covenant on Economic, Social and Cultural Rights, in other words for progressive realization, but that would be contrary to justice and to the wishes of many delegations. To opt for immediate realization would lead to other difficulties, because it was recognized that there were cases in which it was not possible for the right of peoples to self-determination to be exercised immediately.

12. In his delegation's opinion, the only possible solution was to draft article 1 in such a manner that it was self-sufficient and clearly defined the obligations which the two covenants were intended to impose on States. That was one of the chief reasons why his delegation had submitted an amendment jointly with the delegation of Pakistan.

13. The joint text consisted of two paragraphs, the first imposing a well-defined obligation on States parties to the covenants and the second imposing a specific obligation on States administering Non-Self-Governing or Trust Territories. He would like to convince the Committee of the advantages of that text. Paragraph 1, which was the most disputed paragraph, upheld the principle of the right of peoples to self-determination; it represented a middle course, which would make it possible to avoid most of the problems raised by the texts proposed by the Commission on Human Rights (E/2573, annex I) and by the Working Party (A/C.3/L.489 and Corr.1 and 2). In fact, paragraph 1 of each of those texts called for a definition of the terms "peoples" and "self-determination"; as those texts were drafted, any "people", even if it advanced no claims, would have to be granted the

right of self-determination by the State concerned. The joint text imposed the obligation, not of respecting the right, but of upholding the principle whenever it was applicable and compatible with other valid principles, such as international peace and security, the security of a State and respect for human rights. In other words, while a direct obligation was imposed, a State could invoke other binding obligations. The text proposed by Lebanon and Pakistan therefore had the advantage of subjecting the exercise of the right of peoples to self-determination to certain restrictions which the international community could accept. The States parties to the covenant would have to uphold the principle of self-determination, but in so doing would not cease to uphold other valid principles of equal importance. The question who was to decide on the validity of those principles might admittedly be a source of difficulty, but similar difficulties of interpretation would arise in connexion with other rights mentioned in the covenants, for example, article 4 of the draft Covenant on Economic, Social and Cultural Rights, and article 18, paragraph 3, of the draft Covenant of Civil and Political Rights.

14. Turning to paragraph 2 of the joint text, he stated that if the text placed States administering Non-Self-Governing and Trust Territories in a separate category, that distinction was in the interests of the administering Powers themselves. In view of the special status of the Territories they administered, which was recognized in the Charter, paragraph 2 required them to apply the principle of self-determination not immediately, but gradually. That was the meaning of the words "promote the realization". Moreover, those States were asked to promote the realization of the right of self-determination "in conformity with the provisions of the United Nations Charter"—a legal instrument that they had already accepted. That phrase referred not solely to Chapters XI and XII of the Charter, nor even to Article 1, which dealt with the principle of the right of self-determination, but to the Charter as a whole.

15. He realized that Chapters XI and XII of the Charter, which dealt with Non-Self-Governing and Trust Territories, contained no explicit mention of the right of self-determination, but the obligation of the Powers concerned to respect that right was clearly implicit in both the spirit and the letter of those chapters. Moreover, those Powers had always said that they were striving to promote that right. It might be contended that there was no point in repeating something that was already in the Charter. He realized that the text of paragraph 2 of the joint proposal went further than the Charter. It should not be forgotten that the Charter contained a provision—Article 2, paragraph 7—relating to matters essentially within the domestic jurisdiction of States, and that Chapter XI was couched in rather special terms, because it was a declaration by States concerning the interpretation they placed on their responsibilities; paragraph 2 of the joint proposal would give every signatory State the right to intervene if it considered that an administering Power was not promoting the realization of the right of self-determination.

16. It might also be asked why consideration had been given only to the problem of Non-Self-Governing and Trust Territories. The answer was, in the opinion of his delegation, that that was the most concrete problem, the one on which the strongest feelings had

been expressed, and the only one with which all mankind would be concerned if the conflict between East and West came to an end and the spirit of the Geneva Conference prevailed.

17. He hoped that the delegations that wished to break the deadlock confronting the Committee would be willing to consider a text which, while far from perfect, provided a solution to many of the difficulties to which attention had been drawn. As, however, its sole purpose was to facilitate the Committee's work, his delegation was prepared to withdraw its amendment, if any delegation put forward sufficiently convincing arguments against it.

18. Mr. HAKIM (Syria) wished to comment on some of the criticisms that had been brought against the text proposed by the Working Party (A/C.3/L.489 and Corr.1 and 2) and to give a brief account of his delegation's position regarding the revised amendments submitted by Lebanon and Pakistan (A/C.3/L.498/Corr.2).

19. The Danish representative had criticized the Working Party's text on the ground that it merely repeated the provisions of the Charter. He had complained that paragraph 1 of the proposed article was too vague and was incomplete, that paragraph 2 was full of obscurities, that the article would mainly apply to colonial territories, because the text emphasized the obligations of colonial Powers; and that the text as a whole was not drafted in the proper legal form and was unrealistic.

20. He pointed out that the main provision of the article, which was that "all peoples have the right to self-determination", had already been accepted by the delegations present, and it was therefore pointless to create difficulties by raising the question how the word "peoples" should be construed. The covenants on human rights should contain timeless principles on which a sound society could be built. So long as some peoples held others in bondage, in whatever form, there could be no true peace. International economic co-operation was essential, but it should be based on the principle of the mutual interest of the parties concerned.

21. The Working Party's text had also been criticized by the Belgian delegation. According to the Belgian representative, it accentuated all the shortcomings of the original text and might lead to the loss of democratic freedoms. For his part, he could see no shortcoming in it; it inspired him only with optimism and the hope that the fresh breath of freedom would soon be felt throughout the world.

22. He did not believe there was any point in trying to win over the United Kingdom representative. That representative's attitude was perfectly clear; no text, no solution could win his support, because his delegation was opposed to the right to self-determination. Self-determination connoted freedom—a concept that the United Kingdom applied in its own case but which it wished to deny to others. In view of the many criticisms the United Kingdom representative had levelled against the text of article 1, he might reasonably have been expected to submit a positive proposal but all that he had done had been to propose the deletion of the article.

23. His delegation would vote against the amendments submitted jointly by Lebanon and Pakistan because it felt that they could only serve the cause of

imperialism, which his delegation strove in the Committee to combat.

24. His delegation had joined the Working Party in all good faith and quite prepared to compromise. In that spirit it had studied the positions of the various delegations that had taken part in the general discussion and it continued to support the text prepared by the Working Party. In that connexion his delegation wished to pay a tribute to Mr. Urquía, the Chairman of the Working Party, for his valuable assistance.

25. Mr. VELA (Guatemala) also wished to congratulate the Working Party on the work it had accomplished. Starting from the divergent points of view expressed during the general discussion, it had tried to reconcile the various concepts. It had submitted a version of article 1 which, without affecting the principle or neglecting the earlier General Assembly resolutions, was an honourable compromise between those differing points of view, even though it did not satisfy those who openly or indirectly opposed the recognition of the right of peoples to determine freely their political institutions, to preserve their true cultural values and to dispose freely of their natural resources in order to develop their economies and attain a decent standard of living on the basis of the broadest international co-operation.

26. He was representing his country in the General Assembly for the first time and had been much impressed by the knowledge and parliamentary skill of the representatives of the other Member States in the Third Committee; however, he was bound in all honesty to say that he had been surprised to hear questions raised concerning the meaning of the words "peoples", "self-determination" and "means of subsistence". In his opinion those questions revealed a fear of the true meaning of those words. A possible answer for those who showed such great interest in definitions was that when the time came for the implementation of the covenants, there would be no lack of specialists, including legal experts, to determine how the principles should be applied in specific cases. Furthermore, the words "self-determination of peoples" were also used in Article 1, paragraph 2, of the Charter without any definition, which showed that the signatories understood the meaning of the phrase perfectly well. The Working Party, merely proclaimed, in paragraph 1 of its text, the consequences of a principle that had already been recognized as a right of peoples, and drew the inevitable conclusion that peoples should freely determine their political status and pursue their development in all spheres.

27. Article 1 concerned peoples which had not yet attained a full measure of self-government and sought to enable them to determine their political status. In that connexion, paragraph 3 of the proposed text had been criticized on the ground that it discriminated against colonial and administering Powers. Actually that discrimination—if indeed it was discrimination—also occurred in the Charter, the authors and signatories of which had had to deal with realities, according to Articles 73 and 76 of the Charter. Those articles might well serve for the interpretation of article 1, paragraph 3, of the covenants, when the time came for the application of the provisions of that paragraph, which provided that States having responsibility for the administration of Non-Self-Governing

Territories should promote the realization of the right of self-determination in such Territories "in conformity with the provisions of the United Nations Charter". In that connexion his delegation supported the Yugoslav amendments (A/C.3/L.495/Rev.1) designed to correct the discriminatory tendency of paragraph 3 which the United Kingdom representative had criticized, and calling for the insertion of the words "and shall respect that right" after the word "self-determination". With regard to the latter amendment, however, it considered that it would be more logical to reverse the order of the two clauses in the final text.

28. Turning to paragraph 2 of the Working Party's text (A/C.3/L.489 and Corr.1 and 2), which Lebanon and Pakistan proposed should be deleted, he thought that there had been good reason for the objections expressed by the Argentine, United States, Peruvian, Ecuadorian and Chilean delegations regarding the terms of paragraph 3 of the original text (E/2573, annex I) of that article, from which the idea had been taken. The idea of the permanent sovereignty of peoples over their natural wealth and resources, envisaged as an unlimited right, was not clear; moreover, the concept of "means of subsistence" which the peoples must be free to dispose of despite "any rights that may be claimed by other States" was too broad. His delegation had said that it would welcome any amendment that would clarify those two ideas, and it was pleased to note that the Working Party had borne its preoccupations in mind, for paragraph 2 of its draft article safeguarded the interests of investors and of States that assisted economically underdeveloped countries. The new text did not contain any vague terms that might lead to misinterpretation. The deletion of the words "permanent sovereignty" was particularly wise because they might cause difficulty in the case of peoples which were not yet self-governing. That right was now limited in a way that was both fair and legally sound. It was to be exercised without prejudice to any obligations arising out of international law. In that way, legitimately acquired rights were amply safeguarded, whether they related to the private property of aliens or of nationals, or were rights determined by treaty, agreement or contract. The paragraph also provided for the respect of obligations arising out of international economic co-operation. The Working Party had thereby wished to allay the justified fears of delegations that the vagueness of the terms or their wide interpretation might result in a loss of confidence and lessen the benefits of that co-operation, which was an active form of international solidarity.

29. His delegation believed it was wise to state the exceptions in that general form because any enumeration might entail serious omissions and would give rise to restrictive interpretations. Accordingly, it felt that article 1, paragraph 2, should be adopted in the form in which it was drafted by the Working Party. In accordance with the interpretation given by the Working Party and accepted by the Committee, countries whose laws did not offer sufficient safeguards for foreign investments and international economic co-operation could state that fact in reservations made at the time of signature.

The meeting rose at 12.55 p.m.