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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.479/Rev.1, A/C.3/
L.489 and Corr.1 and 2, A/C.3/L.495/Rev.2,
A/C.3/L.498 and Corr.2, A/C.3/L.499) (con-
tinued)**

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

1. The CHAIRMAN observed that the Committee's agenda was still very heavy and urged representatives to be brief.
2. Mr. PAZHAWAK (Afghanistan) said that after the Lebanese and Pakistan representatives' latest statements (673rd and 674th meetings), some explanations were required from his delegation. When the joint amendment had been presented in its original form (A/C.3/L.481), the Afghan delegation had been the first to raise objections and point out the dangers to which it exposed the draft covenants. Later, the Working Party had been set up. It had examined the joint amendment, together with the other proposals placed before the Committee, but fortunately it had not thought it worthwhile to incorporate the provisions of the amendment in the article it had prepared (A/C.3/L.489 and Corr.1 and 2).
3. Though it had been presented in a new form (A/C.3/L.498/Corr.2), the joint amendment was still unacceptable because the dangers inherent in it remained. In the first place, if the amendment were accepted, the Working Party's text would become a mere statement; that possibility had already been discussed at length, and he would merely refer the authors of the amendment to the Egyptian representative's forceful arguments against it (651st meeting). In the second place, the joint amendment again raised the question whether self-determination was a right or a principle, though the majority had decided that it was a right. Lastly, the provisions of the amendment were such as to make part I of the draft covenants (E/2573, annex I) a useless addition to the preamble.
4. The Lebanese representative had appealed for a non-partisan attitude in the matter and for an approach uninfluenced by special political considerations. The Afghan delegation itself had clearly stated that, so far

as the draft covenants on human rights were concerned, it regarded the question of self-determination as an essentially humanitarian matter having nothing to do with political considerations. Self-determination was a fundamental human right and the Afghan delegation would like to see it granted not only to some countries, but to all. In that connexion, the United Kingdom representative had rightly criticized the amendment on the grounds that it reduced the whole question to a colonial affair, whereas it concerned all mankind.

5. The Lebanese representative had claimed that the joint amendment had the advantage of raising fewer objections than the text drafted by the Working Party. Actually, neither the supporters nor the opponents of an article on self-determination were prepared to accept the joint amendment, however praiseworthy its authors' intentions might have been.

6. Lastly, he was glad that the Lebanese representative had explained that the authors of the amendment had not intended to support either of the two contentions. In other words, although they protested their attachment to the "right" of self-determination, they did not wish to join those who defended the right as such. The defenders of the right would only see the more clearly all the bad effects to be feared from an amendment which ran counter to the opinion of the majority.

7. Furthermore, if it was only a principle that was at stake, the joint amendment would be superfluous, since the principle was already proclaimed in the Charter of the United Nations. It was essential for the text in the draft covenants to be more than a statement of principle: it must concern the recognition of, and respect for, a right that was valid for all.

8. Referring to the amendment submitted by his delegation (A/C.3/L.499), he said he wished its fate to be linked with that of the joint amendment, whether by a vote, by withdrawal, or by acceptance of both texts without a vote.

9. The Afghan delegation would support the article proposed by the Working Party. If, however, the joint amendment was not put to the vote, it would propose the insertion of the word "shall" between the words "they" and "freely" in paragraph 1 of the article proposed by the Working Party.

10. His delegation could accept and would vote for the Yugoslav amendment.

11. Mr. JEVREMOVIC (Yugoslavia) called attention to the revised text of the Yugoslav amendment (A/C.3/L.495/Rev.2) to paragraph 3 of the Working Party's text (A/C.3/L.489 and Corr.1 and 2) and thanked the delegations which had supported the Yugoslav suggestion. He was particularly grateful to the representative of El Salvador for having made

suggestions (670th meeting) which had helped his delegation to improve its original proposal. On the other hand, he was sorry he could not comply with the appeal of those who had suggested the withdrawal of the Yugoslav amendment. The amendment had not been presented gratuitously. It was in accordance with the attitude Yugoslavia had consistently adopted in all United Nations organs dealing with the question of the right of self-determination; the Yugoslav delegation had always stressed the importance of what was, in its opinion, one of the fundamental human rights. It was not long since Yugoslavia had been engaged in a passionate struggle to secure the exercise of the right and it could not deny to others what it had demanded for itself. His country was therefore of the opinion that the right in question should belong to all men and that the obligation to see that it could be exercised should rest upon all the signatory States. Either it was really a human right and should consequently find a place in the draft covenants, or it was a right which belonged only to part of mankind, and in that case the opponents of the article would be right. The Yugoslav delegation itself supported the former view.

12. The purpose of his delegation's amendment was to make the essential logical connexion between paragraphs 1 and 3 of the Working Party's text. It was based on the principle that the obligations of States should be proportionate to the rights for which respect was to be ensured. It was hard to see how "all" peoples could enjoy the right of self-determination if only one class of signatory States was under an obligation to ensure the exercise of the right. In order for the right proclaimed in paragraph 1 to belong to all peoples, it was therefore necessary for the obligation stipulated in paragraph 3 to be incumbent on all States. That was the object of the Yugoslav amendment, which had the advantage of taking the universal and permanent nature of the covenants into account without thereby in any way reducing the obligations of States which administered Non-Self-Governing Territories at a time when the colonial system had outlived its day.

13. The Yugoslav amendment reflected a traditional attitude which had often been displayed in United Nations organs and which the best qualified representatives of Yugoslavia had expressed in statements they had made either alone or together with foreign statesmen.

14. With reference to the Guatemalan representative's suggestion (673rd meeting), he wondered whether there was not an appreciable difference between the English text and the French and Spanish texts of the Yugoslav amendment. However that might be, he explained, in order to avoid all possible confusion, that the English text was nearest to what his delegation had in mind and he believed that, if faithfully translated, it would give the Guatemalan representative complete satisfaction.

15. Mr. ABDEL-GHANI (Egypt) observed that one of the principal objections to paragraph 1 of article 1 of the text proposed by the Commission on Human Rights (E/2573, annex I) and of the amended text drafted by the Working Party (A/C.3/L.489 and Corr.1 and 2) was that it was a mere statement, which should not be included in a treaty with binding force. In the opinion of the United Kingdom representative, it was a descriptive paragraph which would impose no

obligation on the States parties to the covenants, and Lebanon and Pakistan seemed to have proposed their amendment with that objection in mind. Actually, the effort had been completely unnecessary, for the paragraph in question was in accordance with the method generally used in drafting the articles relating to other rights enunciated in the draft covenants. As could be seen from articles 9, 18 and 22 of the draft Covenant on Civil and Political Rights (E/2573, annex I), for example, the method was to state the basis of the right in question in the first paragraph and to analyse its elements and various aspects in the following paragraphs. That was the method employed, both in the text prepared by the Commission on Human Rights and in the Working Party's text. It was not surprising therefore that paragraph 1 should proclaim the right of self-determination in the form which had been criticized, since the other paragraphs explained the scope of the right and the obligations it entailed. In his opinion, that was the most logical way of drafting the article, and the representatives of Lebanon and Pakistan had been unable either explicitly to proclaim the right, or properly to define the responsibility of States, because they had not adopted that method.

16. While he did not doubt the good intentions of the authors of the joint amendment (A/C.3/L.498/Corr.2), by trying to do too much and satisfy everybody, they had ended by satisfying no one. In any event, the Egyptian delegation would vote against the amendment for two reasons: first, because it did not contain, either expressly or implicitly, an affirmation of self-determination as a right which could be claimed by the peoples; and, secondly, because it imposed obligations with respect to self-determination only on States parties to the covenants, although all Member States had already assumed the obligation to affirm the principle of self-determination when signing the Charter. The amendment would therefore tend to weaken the force of an obligation expressed in the Charter.

17. Referring to the arguments put forward by the delegations which opposed the insertion of the article on the right of self-determination on the grounds that it might result in the word "peoples" being applied to ethnic, religious or linguistic minorities, he was surprised that those delegations had forgotten the existence of article 25 of the draft Covenant on Civil and Political Rights, which dealt specifically with minorities and their rights under the covenant. The United States representative, in commenting on paragraph 2 of the Working Party's text, had enumerated some eighteen categories of minorities, and one might have imagined that the world consisted of nothing but minorities. However, article 25 of the draft Covenant on Civil and Political Rights mentioned only three well-defined categories, which under the covenant were guaranteed the right to enjoy their own culture, to practise their own religion, and to use their own language. The covenant did not grant the right to self-determination to those categories, so that the Pakistan representative had no reason to fear that the inhabitants of San Francisco's Chinatown or the German-speaking inhabitants of some part of London could claim the right to independent status under article 1. Moreover, even supposing that a minority wished to be recognized as a separate people, the question of the admissibility of its claim would obviously have to be discussed and settled in the light of the measures of implementation.

Surely the machinery provided for that purpose was not so inefficient as to allow minorities to claim a status to which they were not entitled.

18. Turning to paragraph 2 of the Working Party's draft article, he noted that in a spirit of conciliation a number of limitations and restrictions had been inserted into the text prepared by the Commission on Human Rights. In so far as they constituted mere clarifications, they were acceptable. They were, however, unnecessary, as the right of peoples to dispose of their natural resources had never authorized arbitrary confiscation or expropriation or justified the breach of freely negotiated agreements.

19. The United States delegation had agreed that in view of those modifications the text of paragraph 2 was somewhat reassuring, but it had still had misgivings concerning the possible repercussions of such a text on international economic co-operation and the economic development of the under-developed countries. There seemed, however, to be no reason to think that the provisions of that paragraph would be an obstacle to the flow of foreign capital or to economic co-operation between States. As a matter of fact, international co-operation was more likely to be hampered by the absence of such provisions, since people would wonder why there were none. It must not be forgotten that economic self-determination and political self-determination went hand in hand. The Egyptian delegation would therefore vote in favour of keeping paragraph 2, without deducing from that provision any sanction of confiscation or expropriation without adequate compensation. Moreover, he believed that that provision could not be interpreted as hindering in any way the flow of foreign capital and the necessary international co-operation in the economic field.

20. He was surprised at the United Kingdom representative's criticism of the expression "means of subsistence"; he had said that it was difficult enough to define in the case of individuals, and practically incomprehensible in the case of peoples or nations. The expression nevertheless was not new. It had frequently been used by the classic English economists, who had applied it both to individuals and to communities. He quoted several relevant passages from Malthus given in chapter III, paragraph 19, of the report *The Determinants and Consequences of Population Trends* (ST/SOA/Ser.A/17).¹

21. The Egyptian delegation would vote in favour of the draft which the Working Party had prepared after careful and thorough study. It would be unfortunate if the Committee were to put off the vote on article 1 of the draft covenants or ask another United Nations body to submit it to further examination. The time had come for the Committee to take a decision if it was to avoid a great loss of prestige in the eyes of the public.

22. Mr. AZKOUL (Lebanon) said he would like to clarify various points in the speech he had made at the 673rd meeting, since apparently not all delegations had grasped his intention. There should be no mistake with regard to the motives which had led the Lebanese and Pakistan delegations to call for the deletion of paragraph 2 of the Working Party's text (A/C.3/L.489 and Corr.1 and 2). Lebanon and Pakistan were in no way opposed to the recognition of the right of

peoples to dispose of their natural resources. They merely wished to avoid the adoption by the Committee of a text which might endanger international economic co-operation. From that point of view, the new draft did not seem satisfactory, but the authors of the joint amendment (A/C.3/L.498/Corr.2) would not object to a text which provided safeguards against that danger.

23. To avoid any misunderstanding, he outlined the main reasons which had led the Lebanese and Pakistan delegations to put forward their amendment. The text of article 1 drafted by the Working Party was faulty because, except in the special circumstances referred to in paragraph 3, it did not set forth clearly the obligations to be assumed by States, and it did not provide restrictions of any kind on the right it laid down.

24. He drew the attention of the Committee first of all to what seemed to him the main defect in the text under consideration, namely, the failure to specify the extent of the obligations upon States, and the consequent need to refer to article 2 of the two draft covenants in order to become clear on that point. Article 2 of the draft Covenant on Economic, Social and Cultural Rights provided for the progressive implementation of those rights, whereas article 2 of the draft Covenant on Civil and Political Rights provided for immediate implementation. He asked what, in that case, was to be the connexion between article 1, which was common to both draft covenants, and the two versions of article 2. It was conceivable that in both instruments, the application of article 1 would be governed by article 2. If that were so, an impossible situation would arise, for a State signing both covenants would have to ensure respect for the rights of peoples to self-determination both progressively and immediately. If, on the other hand, the application of article 1 was made dependent on article 2 of the draft Covenant on Economic, Social and Cultural Rights, the progressive principle would then apply, even in cases where a people ought clearly to be granted the right to decide on their future immediately. If, however, the implementation of article 1 was governed by the provisions of article 2 of the draft Covenant on Civil and Political Rights, article 1 would in that case be applicable immediately. That arrangement also entailed some danger, for it was generally agreed that considerations would occasionally arise which would prevent the immediate realization of the right of a people to self-determination. The only solution, therefore, was to sever all connexion between article 1 and the two versions of article 2 of the draft covenants, to allow article 1 to stand alone, and to set forth in article 1 the obligations to be imposed on States in regard to self-determination. That was why the Lebanese and Pakistan delegations had submitted amendments which would make it possible for article 1 to be independent. Paragraph 1 as proposed by them referred to the obligations incumbent on all signatory States, and paragraph 2 set forth the obligations which more particularly affected States administering Non-Self-Governing and Trust Territories.

25. Some delegations—those of Egypt and El Salvador, for example—had argued that paragraph 1 of the new draft actually did not involve an obligation. They drew a parallel between that text and those articles which, while unquestionably imposing obliga-

¹ United Nations publication, Sales No.: 1953.XIII.3.

tions on States, began with a declaration of principle. The analogy did not appear altogether valid since the articles laying down rights were subject, in respect of their implementation, to article 2 of the covenant in which they appeared. That could not be so in the case of article 1, as he had just shown. Again, delegations had implicitly recognized that paragraph 1 did not involve any obligation inasmuch as they had decided in favour of the Yugoslav amendment (A/C.3/L.495/Rev.2), which was avowedly intended to make certain obligations applicable to "all" States. As it stood, paragraph 1 of the Working Party's draft could only constitute a statement of principle, and in that respect it might, contrary to what the Syrian representative maintained, be said to be far more favourable to imperialist aims than the amended text.

26. The second fault in the new text, in the view of the Lebanese delegation, was that it proclaimed the right of peoples to self-determination in the absolute, without restriction. Nevertheless, everyone agreed that it was legitimate to make the exercise of rights, however sacred, subject to reasonable limitations, as article 29, paragraph 2, of the Universal Declaration of Human Rights itself recognized.

27. It was to take account of those two overriding factors—the need to impose an obligation upon States, and the need to make the self-determination of peoples subject to acceptable limitations—that Lebanon and Pakistan had deemed it advisable to include the word "principle" in paragraph 1. It would be wrong to assume from that that they regarded self-determination as a principle and not a right. Actually, that form of wording obliged States to support the principle wherever it was applicable; in other words, it imposed on them a definite legal obligation but at the same time enabled them to take into consideration other principles recognized by the international community.

28. The amendments submitted by Lebanon and Pakistan thus gave greater harmony to the Working Party's text, which imposed specific obligations on certain States only. The amendments had the further virtue of making any definition of the concepts "peoples" and "self-determination" superfluous.

29. The Yugoslav amendment (A/C.3/L.495/Rev.2) embodied a serious contradiction. The notion implied in the expression "promote the realization of the right of self-determination" was that of progressive achievement. On the other hand, the expression "respect that right" implied immediate application. If the change were adopted, States would be placed in an impossible situation, because they would be required to carry out two contradictory obligations simultaneously.

30. In conclusion, he stated that the aim of the sponsors of the joint amendment had been to simplify the work of the Committee by proposing a text which would be subject to the least possible controversy. The Committee's report would bear witness to the sincere and continuing efforts which they had been making. If, however, the proposed amendment was not favourably received, the sponsors would not insist on having it put to the vote.

31. Mr. ASIROGLU (Turkey) recalled that, during the general debate on article 1 as proposed by the Commission on Human Rights (E/2573, annex I), he had expressed certain doubts including that article in its original form. He had said that political and legal

concepts might lend themselves to the most serious abuses unless they were accompanied by a system of adequate safeguards. Before voting on article 1, the Committee ought, in his view, to be certain that that article would promote the objectives it had been designed to serve and could not be used on behalf of interests contrary to the purposes and principles enunciated in the Charter.

32. His doubts had not been dispelled by the Working Party's text. His delegation still believed that where legal texts designed to have the force of law were concerned, it was dangerous to insert into them, in incomplete terms, certain basic principles enunciated in the Charter. It would be unwise to separate from their context principles which the authors of the Charter had specifically endeavoured to protect from abuses through the operation of a compact political and juridical system.

33. The amendments submitted by Lebanon and Pakistan and by Yugoslavia did not solve the problem, and the differences of opinion which had come to light in the Committee with regard to the scope of self-determination had merely confirmed the Turkish delegation's fears.

34. When a State was called upon to assume a commitment, it must know in advance the exact extent of the commitment; otherwise, it would have great difficulty in binding itself by means of a contractual obligation.

35. For those reasons, the Turkish delegation, despite its profound attachment to self-determination, would be unable to vote for article 1.

36. Mr. HOOD (Australia) said that he would like, in reply to a remark made at the preceding meeting by the representative of El Salvador, to explain briefly the situation in the island of Nauru. The Salvadorian representative had said that the phosphate deposits constituted the sole wealth of Nauru and that their exploitation to the point of exhaustion would remove from the people their only natural resource and they would be obliged to abandon the island in less than fifty years' time.

37. That opinion was not shared by the Trusteeship Council, which had discussed the matter at its sixteenth session. He invited the Salvadorian representative to refer to the Council's report covering the period from 17 July 1954 to 22 July 1955 (A/2933),² as well as to the records of the meetings³ and specifically to the statement made by the Australian representative on 15 June 1955.⁴ The phosphate deposits were admittedly becoming gradually exhausted, but they constituted the main wealth of the island, which in any case was unsuited to agriculture, and their rational working was in the interests of the inhabitants, as was shown by the relatively high standard of living of the Nauruans. The Phosphates Commission supplied all the necessary capital and paid substantial sums to the inhabitants in the form of rents and royalties. The Administering Authority was endeavouring to teach new trades to the Nauruans against the day when they would no longer be able to rely on the profits of the phosphates industry. Besides, it was

² *Official Records of the General Assembly, Tenth Session, Supplement No. 4.*

³ *Official Records of the Trusteeship Council, Fourteenth Session, 612th to 616th meetings.*

⁴ *Ibid.*, 616th meeting.

by no means certain as yet that they would be obliged to leave the island when the deposits were exhausted.

38. Turning to the question of article 1, he felt obliged to state that the Committee appeared to be further away than ever from any agreement on self-determination. The Australian delegation had already expressed (669th meeting) its criticism of the text proposed by the Working Party. The criticism which it could level at the amendments would be equally grave. It wondered, in view of the serious differences of opinion which had come to light, what purpose could be served by taking a vote. His delegation was doubtless not alone in thinking that a preferable course would be to adopt the Danish proposal (A/C.3/L.479/Rev.1) to postpone any decision pending constructive observations by Governments on article 1.

39. Mrs. RÖSSEL (Sweden) thought it would not be necessary to re-state the position of her delegation in detail. The Swedish delegation strongly supported the principle of self-determination. It nevertheless felt that an article on self-determination was out of place in a covenant on individual rights deriving from domestic legislation and that if included, it could only cause needless confusion. Moreover, an article of that kind should obviously be drafted in terms acceptable to legal experts and leave no room for ambiguity, but that was hardly true of the text before the Committee.

40. The Swedish delegation had favoured the idea of a working party but considered that the time limit given to the Working Party had been too short and the terms of reference too narrow. In particular, it regretted that the Working Party had not thought fit to take into account the suggestions submitted to it by Denmark and Sweden.

41. The Working Party's text (A/C.3/L.489 and Corr.1 and 2) raised problems of interpretation. She asked, for example, what was meant by the words "all peoples". The Working Party had not solved the problem by deleting the word "nations" and stating the notion in the widest possible terms.

42. The Salvadorian representative, in a reply to the representative of the USSR, had stated (668th meeting) that the word "peoples", which had been selected because it was the broader term, certainly included ethnic groups. The representatives of El Salvador and Syria had voted in the Working Party for the same text, but had each placed a different interpretation upon it, the Syrian representative having regarded the word "peoples" as applying to peoples that had not attained their sovereignty because they were still subject to foreign yoke (672nd meeting). She asked how it was possible to speak of obligations arising out of international law in the case of peoples that had not yet attained sovereignty.

43. The members of the Committee clearly could not proceed to vote on a text that was to have mandatory force before they had reached agreement on the meaning of its terms. The Swedish and Danish delegations had been charged with lacking a spirit of co-operation. She wished in turn to appeal to the spirit of co-operation of her fellow Committee members and to ask them to consider the draft resolution proposed by Denmark (A/C.3/L.479/Rev.1) according to which

the General Assembly would decide not to proceed at the current session to a vote on a text of article 1 and would request the Secretary-General to invite the Governments of Member States and of non-members of the United Nations to submit observations, amendments or proposals for consideration by the Assembly at its eleventh session.

44. Mrs. LOPEZ (Colombia) wished to commend the efforts of the Working Party, whose text (A/C.3/L.489 and Corr.1 and 2) undoubtedly represented some progress. Unfortunately, a few difficulties still remained.

45. The Colombian delegation would, if paragraph 1 were put to the vote separately, be obliged to abstain, on account of the difficulties of interpretation to which it gave rise. With regard to paragraph 2, the insertion of the phrase "without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law" represented considerable progress. Nevertheless, the text did not entirely satisfy the Colombian delegation, which would abstain when that paragraph was put to the vote, but would not vote against it, in order not to place any obstacle in the way of its adoption. She would support paragraph 3, with the amendments proposed by Yugoslavia (A/C.3/L.495/Rev.2), and would vote in favour of the article as a whole, since it enunciated a principle which had always been defended by the Colombian delegation. She would support the amendment submitted by Lebanon and Pakistan (A/C.3/L.498/Corr.2) if it were put to the vote.

46. She was also prepared to vote in favour of the Danish draft resolution (A/C.3/L.479/Rev.1), as she considered that the text of article 1 was still capable of improvement.

47. Mr. LANNUNG (Denmark) said that he had intended to give a supplementary reply to the Salvadorian representative on the subject of the Working Party's terms of reference, but that he no longer needed to do so, since the Swedish representative had spoken in almost the same terms as he would have used himself.

48. Mr. HAKIM (Syria) repeated that in voting in the Working Party for the words "all peoples" and "all nations", he had acted in a spirit of conciliation. The Swedish representative had mentioned the manner in which he (Mr. Hakim) interpreted the word "peoples". Under Article 2, paragraph 7, of the Charter, the United Nations was not authorized to intervene in matters essentially within the domestic jurisdiction of any State, and that was why the Syrian delegation interpreted the word "peoples" as applying to peoples who had not attained sovereignty.

49. Despite the brilliant speech by the representative of Lebanon, he still preferred the Working Party's text, which was in line with the attitude adopted by the Syrian delegation at the Asian-African Conference held at Bandung. He asked the Lebanese representative not to complicate the Committee's task and requested the authors of the joint amendment to accede to the wishes of the Iraqi representative, who had requested them to withdraw their amendment.

The meeting rose at 1.10 p.m.