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CONTENTS

Chairman: **Mr. Omar LOUTFI (Egypt).**

In the absence of the Chairman, Miss Bernardino (Dominican Republic), Vice-Chairman, took the Chair.

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, A/C.3/L.483, A/C.3/L.484/Rev.1) (*continued*)

Organization of the work of the Working Party on Article 1

1. The CHAIRMAN stated that the Working Party which had been set up to revise article 1 had met that morning. Mr. Urquía (El Salvador) had been elected Chairman and Mrs. Tsaldaris (Greece) Rapporteur.

2. Mr. URQUIA (El Salvador) said that he was conscious of the honour done his country in the appointment of its representative first as a member and then as Chairman of the Working Party. Speaking in the latter capacity, he recalled that the Working Party had been requested to consider article 1 "in the light of the amendments proposed and of the comments and suggestions made" (A/C.3/L.477/Rev.1) and to submit a text to the Committee. A point had already arisen in connexion with the amendments and with the comments and suggestions of the various delegations: he had noticed that among the amendments was one submitted by Chile, Ecuador and Peru (A/C.3/L.476), which had not been formally presented by its sponsors or discussed by the Committee; in addition, although the comments and suggestions of delegations could of course be found in the summary records, it was possible that, in view of the concise nature of the records, some points in the statements might have had to be omitted. The Working Party had consequently asked him to invite the sponsors of the joint amendment to come and present their text to it on the afternoon of Friday, 11 November, either all together or through the good offices of one of their number. He had also been asked to urge any delegations that would like to explain their comments or suggestions more fully for the benefit of the Working Party to send a note to that effect to the secretary of the Working Party through the Secretary of the Committee, not later than midday on Friday, 11 November.

Article 2 of the draft Covenant on Economic, Social and Cultural Rights (E/2573, annex I) (*continued*)

3. Mr. LANNUNG (Denmark) pointed out that according to article 2 of the draft Covenant on Civil and Political Rights, States parties to the covenant would undertake to respect and to ensure to all individuals within their territory and subject to their jurisdiction the rights recognized in the covenant, "without distinction of any kind", such as race, colour, sex, language, etc., and that, according to article 2 of the draft Covenant on Economic, Social and Cultural Rights, States would undertake to guarantee that the rights enunciated in the covenant would be exercised without distinction of any kind, such as race, colour, sex, language, etc. His delegation felt that those lists of the various possible grounds for discrimination should be extended to include discrimination directed against persons who belonged to a national minority. It often happened that, as a result of a change in the position of a frontier, national minorities came into existence on one side or the other or on both sides of the new frontier; the people who belonged to such national groups were sometimes the victims of discriminatory measures, when they were looking for work, for instance, or when they applied for posts in the civil services, or tendered for a contract, or in connexion with housing, land distribution and other matters. In many cases, although they were loyal citizens of the countries in which they were living, such people were not treated on an equal footing with those who made up the majority of the population. It was with the object of preventing such unfortunate situations that the Danish delegation was proposing that the words "membership of a national minority" should be inserted in the relevant paragraph of article 2 of each of the draft covenants, after the words "national or social origin".

4. He pointed out that the sponsors of the Convention for the Protection of Human Rights and Fundamental Freedoms adopted by the Council of Europe had thought it advisable to include the words he had just suggested in a text that was similar to that part of paragraph 2; the Consultative Assembly of the Council of Europe had, if he was not mistaken, adopted them unanimously.

5. It might be argued that the existing text of article 2 was sufficiently broad to cover such situations as he was envisaging; however, apart from the fact that there could be no certainty about that, the Danish delegation felt that it would be well to take the European convention as a model on that point, at least in order to make quite sure that the people he had mentioned would be guaranteed against discrimination of any kind. Furthermore, if, as was to be hoped, the covenants on human rights came into force in the very near future, that should not mean that, because

they would replace the European convention for the States parties to the latter, certain protective measures already well established in European practice would have to be given up.

6. It might also be objected that article 25 of the draft Covenant on Civil and Political Rights already guaranteed certain rights to persons belonging to ethnic, religious or linguistic minorities. That article was undoubtedly very valuable in itself and should be maintained. It did not, however, protect national minorities against discrimination in the circumstances to which he had referred and its existence in one of the covenants did not obviate the need for a provision designed to protect those who were liable to be victims of discriminatory measures because of their membership of a national minority.

7. For those reasons the Danish delegation, supported by the delegations of Costa Rica, Norway and Sweden, was formally submitting an amendment (A/C.3/L.484/Rev.1) to article 2, paragraph 2, of the draft Covenant on Economic, Social and Cultural Rights and to article 2, paragraph 1, of the draft Covenant on Civil and Political Rights.

8. Mr. MOROZOV (Union of Soviet Socialist Republics), speaking on a point of order, asked for some particulars in connexion with the Russian text of the amendment the Danish representative had just proposed. He wondered whether, as the Danish representative had just declared, that amendment was designed to protect persons belonging to a national minority against the discriminatory measures to which they might be subjected by reason of that fact, or whether, on the contrary, it was designed to protect persons in one country who maintained contact with minorities in another. If the latter were the case, it might involve certain considerations that his delegation would be obliged to deal with, not under a point of order, but separately and at the appropriate time. If his first interpretation was correct, however, as it appeared to be from the Danish representative's statement, it was merely a question of language and his delegation would ask the Secretariat to make the necessary changes in the Russian translation. He was not in a position to comment on the merits of the English version, of which the Russian text appeared to be a direct translation, but he was under the impression that the French text, which used the word *appartenance*, better expressed what he took to be the intention of the sponsors of the amendment.

9. Mr. LANNUNG (Denmark) thanked the USSR representative for drawing the Committee's attention to a point of some importance. He assured him that the sole object of the amendment was to protect persons who were members of a national minority and were subjected to discriminatory measures for that reason. Although the English and French texts of the convention adopted by the Council of Europe were both authentic, it was the French text which more clearly expressed the intention of the sponsors of the amendment.

10. Mr. MOROZOV (Union of Soviet Socialist Republics) thanked the representative of Denmark for his explanation. The Russian translation of the amendment was apparently at fault and he asked the Secretariat to make the necessary correction.

11. The CHAIRMAN said that the Secretariat would do what was needed.

12. Mr. AZKOUL (Lebanon) noted that there was a serious difference of opinion among the members of the Committee in regard to article 2. Paragraphs 1 and 2 both imposed an obligation on the signatory States, but the commitment under paragraph 1 was conditional and depended upon factors outside their control, such as international co-operation, available resources and progressive action, whereas the undertaking under paragraph 2 was subject to no conditions and depended exclusively upon the will of the States. Some delegations had criticized paragraph 2 for that reason and had mentioned a number of difficulties to which it might give rise; they were ready to support the Netherlands amendment (A/2910/Add.3), which would eliminate the unconditional and immediate nature of the obligation deriving from paragraph 2.

13. It was useful in that connexion to recall the circumstances in which the Commission on Human Rights had adopted the existing text of article 2.[1] The initial draft of that article had included, as a separate paragraph, a non-discrimination clause which constituted a recognition of principle and not a legally binding commitment. Some had felt that the obligation imposed on States was too slight; the non-discrimination clause had therefore been merged with paragraph 1 and had thus come within the compass of the conditional commitment that paragraph provided. It was then that the Lebanese delegation had proposed the text of the article as it appeared in the draft covenant, which, as the USSR representative had so ably explained (656th meeting), imposed an obligation on States to ensure, at each stage in the progressive realization of a right, that the benefit thereof would extend equally to all. The French delegation had proposed a wording whereby the undertaking to guarantee the exercise of the various rights, without distinction of any kind, would be replaced by the obligation to take the necessary steps to ensure the exercise of those rights: the Belgian delegation had proposed a similar amendment. Lebanon had accepted the French amendment and it was only because the Polish delegation had reverted to the original text proposed by the Lebanese delegation that the Commission on Human Rights had adopted it, seven members voting against it. The brief review he had given showed that the French and Belgian delegations, and perhaps others too, would have been able to agree to a formula close to that proposed by the Lebanese delegation; similarly it should now be possible to find a compromise formula.

14. The proponents of article 2, as it appeared in the draft covenant, considered that at the current stage of human development the obligation to eliminate all discrimination could not be conditional. The problem therefore was to find a means of taking into account the individual cases which caused difficulties. It was interesting to note that all the examples quoted were cases of legitimate discrimination, such as the difference made between nationals and alien visitors as regards the right to work and between legitimate and illegitimate children. There was a difference in kind between such individual cases and those coming within the purview of paragraph 2. Efforts should therefore be made to find a new wording which would take those considerations into account, or else the existing text should be retained in the hope that no State would be censured for particular cases resulting, not from

[1] *Official Records of the Economic and Social Council, Fourteenth Session, Supplement No. 4*, para. 109.

bad faith, but from social and economic conditions. It was inadmissible, in any event, to abandon the general principle of non-discrimination because of a few individual cases, which, moreover, could be covered by means of specific reservations. Indeed, he was sure that the majority would recognize the need for a reservation clause, provided that adequate guarantees were given against abuse and false interpretations. There were two possible methods: the adoption of a general clause, or the inclusion of specific provisions for each of the articles which might require them. The Lebanese delegation had not yet decided which method it would favour.

15. Mr. GONZALEZ CAMACHO (El Salvador) said his delegation considered it important that article 2 should impose upon States the obligation to guarantee non-discrimination in the exercise of the rights enunciated in the covenants, an obligation which the Netherlands amendment (A/2910/Add.3) unfortunately did away with. The Salvadorian delegation based its attitude on the principles of constitutional law by virtue of which it was the duty of the State to ensure for its nationals a life worthy of human dignity and to guarantee them the exercise of social and individual rights. He read out an article from the Salvadorian Constitution showing that the State had become the active defender of social justice. His delegation therefore favoured the inclusion of paragraph 2 but was ready, in a spirit of compromise, to accept any reasonable suggestion which would make it possible for the covenant to be signed by the greatest possible number of States. It considered, however, that no country should make its acceptance of the covenants conditional upon the absence of a provision obliging them to guarantee the exercise of human rights.

16. Some delegations properly considered that there were a number of rights which could not be granted equally to nationals of a State and to foreigners. In his view, while no distinction could be made between foreigners and nationals in respect of certain rights, such as the right to freedom or to life, it was quite another matter when it came to a right such as the right to work or to political rights in general. It would be easy to take that fact into consideration by adding to article 6 of the draft Covenant on Economic, Social and Cultural Rights the words "without prejudice to the advantages granted by States to their nationals" or some similar formula; it could also be stated that political rights could be exercised only by citizens. Such considerations did not, however, justify the deletion of national origin from the motives for discrimination set forth in article 2. Nationality, which was a legal relationship, must not be confused with national origin, which was a factual circumstance. Even if a person changed his nationality several times, he always remained a native of a single country; it was in that sense that the expression "national origin" should be understood. He admitted, however, that it was an expression which might lead to confusion and his delegation would therefore welcome any amendment that would make it clearer.

17. Mr. JEVREMOVIC (Yugoslavia) recalled that his delegation had already voiced objections to paragraph 1 of article 2 which, in its view, did not lay down the obligations of States with sufficient precision. A clause worded in such general terms was not satisfactory, for while it might be agreed in certain cases that the exercise of a right should be progressively realized, in others it must be guaranteed as soon as the covenants came into force. Such was the case of the right to form trade unions, for example. Yugoslavia, however, would not oppose the adoption of that paragraph if the other delegations were in favour of it.

18. As certain delegations had already pointed out, the Netherlands amendment (A/2910/Add.3), calling for the fusion of paragraphs 1 and 2 was not simply a modification of form. It considerably weakened the scope of the obligations to be assumed by the States in regard to the elimination of discriminatory measures. In view of the importance which Yugoslavia attached to the principle of non-discrimination, it could not agree to such a text. He had not been convinced by the arguments put forward against the immediate abolition of discriminatory measures. Natural, and as a rule temporary, distinctions undoubtedly existed in the treatment of individuals, but they did not constitute discrimination in the strict sense. In addition, there would appear to be no good reasons why the Committee should refuse, in a covenant of a universal nature, to uphold the concept of non-discrimination held by a great number of European countries in the Convention for the Protection of Human Rights and Fundamental Freedoms.

19. He would therefore vote against the Pakistani amendment (A/C.3/L.483); it proposed a reservation clause that was pointless, since paragraph 2 in no way hindered the application of the inevitable and natural distinctions between individuals. It did not, for example, prevent States from refusing aliens the right to vote; it prohibited only measures which were genuinely discriminatory.

20. With regard to the United Kingdom amendment (A/2910/Add.1), he felt that it differed from the existing text only in form; however, if the change it proposed would allay the fears of the United Kingdom delegation, his country would be prepared to vote for it.

21. Lastly, his delegation was prepared to vote in favour of the joint amendment (A/C.3/L.484/Rev.1), which strengthened the position of the minorities, in whose fate his Government had always taken the greatest interest.

22. Mr. HOARE (United Kingdom) said that the Yugoslav representative's view that the United Kingdom amendment was essentially one of form was correct.

23. His delegation would be quite favourable to the changes contemplated by the Costa Rican, Danish, Norwegian and Swedish representatives (A/C.3/L.484/Rev.1), as the United Kingdom also had signed and ratified the Convention for the Protection of Human Rights and Fundamental Freedoms. The only points he would wish to consider further were whether the amendment was really necessary, in view of the reference to "national origin" in the text, and whether the English text of the amendment should not be brought more into line with the French.

24. He thought that the representative of Lebanon had not recalled completely the circumstances in which the Commission on Human Rights had finally decided on the text of article 2 as it stood in the text before the Committee. In point of fact, the adoption of that text—which was the original Lebanese draft reintroduced by the Polish delegation—had caused consternation among many of the Commission's members;

it was solely in order to limit the danger inherent in that text that the French representative had hastily submitted an amendment which, he felt sure, the French representative, if he were present, would now regard as inadequate. It was difficult to reach a compromise formula when, as in the case in point, there was a sharp division between two lines of thought. According to some States, distinctions in the exercise of the rights should vanish as soon as the covenants came into effect; according to others, the immediate elimination of all distinctions was bound to lead to serious difficulties wherever the rights were not yet fully realized. His delegation had not failed to consider the possibility of distinguishing between two types of discrimination: some—those least tolerable to the human conscience—to be abolished immediately, and others to be eliminated progressively. It had come to the conclusion, however, that that distinction was impracticable. It seemed that the Third Committee could choose between two solutions only: it could adopt article 2 as it stood or else the Netherlands amendment (A/2910/Add.3). There had been some confusion in the discussion because the Committee had not yet examined the rights in part III of the draft covenants. Thus, reference had been made to the right to vote. That right did not appear in part III of the draft Covenant on Economic, Social and Cultural Rights; and in the draft Covenant on Civil and Political Rights it was limited (article 22) to citizens. The representative of El Salvador had said that nationality and national origin were not the same thing. That was true, but a difference in nationality involved a difference in national origin, and distinctions based on nationality were also necessarily distinctions based on national origin. There were many other examples, besides those he had already given, of inevitable distinctions in the exercise of certain rights which would be prohibited by paragraph 2 of the article. Thus where the right to health was imperfectly realized, for example where no national health service existed, there would be a distinction in its exercise dependent on the means of the individual and that was a distinction based on property.

25. According to the Lebanese representative, it would be preferable to establish the principle that the exercise of the rights laid down in the covenants would be guaranteed without distinction of any kind rather than to bring the notion of progressiveness into play. The representative of Lebanon felt that the signatory States could not be accused of violating the article in question when the distinctions they applied were admissible and in force in almost all States. That was far too vague and uncertain an interpretation of article 2 to be accepted. The United Kingdom would not be able to sign a covenant which left in such doubt the interpretation of one of its fundamental provisions.

26. The Lebanese representative had argued strongly against the admissibility of the idea of progressiveness in relation to the elimination of discrimination. But even as regards the worst kinds of discrimination—the use of which all would condemn—if it was true, as had been concluded by the recent conference of non-governmental organizations at Geneva, that they had their roots in prejudice which could be eliminated only by a process of education, the Netherlands amendment was consistent with that conception. It was no small advantage of the Netherlands proposal that the obligation regarding the progressive abolition of discrimination would be brought under the provisions of articles 17 and 18 of the draft Covenant on Economic, Social and Cultural Rights, by which States would be required to submit reports on the progress they had made.

27. Mr. NAJAR (Israel) said that, in his delegation's opinion, article 2 was perfectly acceptable as it stood. His delegation was therefore prepared to vote in its favour if no other text of equal value likely to secure a greater number of the votes were proposed to the Committee.

28. Part II of the draft covenants grouped articles which proclaimed fundamental principles of a general kind and which could to some extent be regarded as constitutional provisions. It was in relation to them that the other parts of the covenants should be interpreted and it would be unwise to reduce their scope. He wished to make some observations on that subject which he hoped would help to overcome the reluctance some had expressed in regard to article 2 of the draft Covenant on Economic, Social and Cultural Rights.

29. He pointed out, first, that it was advisable to consider each article in the light of the draft as a whole. No article was sufficient in itself, and no article, therefore, should be considered by itself. That was a comment he had already made in connexion with article 1, but it applied with equal force to article 2. By way of illustration he recalled the case of article 2, paragraph 1, of the United Nations Charter: that paragraph, which proclaimed the principle of the sovereign equality of Member States, had been acceptable to the permanent members of the Security Council because they had taken into account the other provisions expressly recognizing their special status.

30. He would also point out that it was possible for the Committee to attach to the articles in part III the exceptions which it felt to be necessary. That would certainly be preferable to reducing the scope of the principles enunciated in article 2. He stressed in that connexion that not all rights were contemplated in the same manner in the draft covenants. Some were proclaimed more categorically than others; thus, article 8, on trade-union rights, was more imperative than article 13 or article 14; the provisions on implementation, despite their fundamental importance, were drafted in even more moderate terms. Just as it was perfectly possible to admit that rights were not all formulated with the same degree of strictness, so it was possible to regard the rights proclaimed in the covenants as being subject to various exceptions. Those exceptions would reflect the diversity of the economic, social and cultural conditions which the different States had to take into account. That was a sounder method than that of reservations.

31. He was thus prompted to comment on the amendment proposed by the delegation of Pakistan (A/C.3/L.483). He did not intend to deal at length, for the time being, with the all-important problem of reservations, nor to express an opinion on whether they were theoretically sound. He wished to state, however, that if the Committee adopted for the other provisions of the covenant the formula proposed by the representative of Pakistan in connexion with article 2, it would be bringing into being a text that had no precedent. There had never before been a case in which a reservation clause had been included in all the articles of an international convention. It would be unacceptable to introduce a reservation into such an important declaration of principle as article 2, and it would be dangerous

to attach such a clause to all the provisions of the covenant. If that were done, one might even wonder what undertakings the States would in fact be assuming. The Advisory Opinion given by the International Court of Justice on 28 May 1951 on reservations to the Convention on the Prevention and Punishment of the Crime of Genocide[2] should not be overlooked. The Court had specifically stated that, to be valid, reservations would have to be consistent with the object and purpose of the convention. They must not be such that the States formulating them were, in fact, absolved from all obligation.

32. That being so, he hoped that the delegation of Pakistan would not maintain its amendment to article 2. It would be unwise for the Committee to attach a reservation clause to each article in the draft covenant, as it might end by drawing up a text that would have no legal value. That would be a dangerous path to follow.

The meeting rose at 5.15 p.m.

[2] *Reservations to the Convention on Genocide, Advisory Opinion: I.C.J. Reports 1951*, p. 15.

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