



C O N T E N T S

Agenda item 28:

Draft International Covenants on Human Rights
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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, annex I, A/C.3/L.489 and Corr.1 and
2, A/C.3/L.495, A/C.3/L.496, A/C.3/L.497)
(continued)**

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

1. The CHAIRMAN invited the Committee to continue its discussion of the procedural proposal by El Salvador (A/C.3/L.496) and the Afghan amendments to it (A/C.3/L.497). She appealed to all delegations to approach the debate in the spirit of serenity which the subject deserved.

2. Mr. AZKOUL (Lebanon) agreed with the representative of El Salvador that, in order to give direction to its work, the Committee should take a decision making it clear that the question of the inclusion in the draft covenants of an article on self-determination had been settled and that accordingly only the actual text of the article could properly be discussed.

3. While he agreed in principle with the Afghan amendments (A/C.3/L.497), he did not think that the Committee should commit itself to the adoption of a text regardless of whether it was good or bad. Every effort should be made to adopt a text at the current session but the text must be satisfactory. He therefore proposed that the words "for adoption" in point 2 of the Afghan amendments should be replaced by the words "with a view to adoption".

4. Mr. MASSOUD-ANSARI (Iran) felt that the Committee was wasting precious time on an unnecessary procedural discussion. That an article on self-determination should be included in the draft covenants had already been decided by the General Assembly and the decision had been reaffirmed by the Committee itself when it had set up the Working Party on Article 1 (655th meeting). The Committee should concentrate its efforts on evolving an acceptable text of the article, using the Working Party's draft (A/C.3/L.489 and Corr.1 and 2) as a basis.

5. Mr. URQUIA (El Salvador) explained that he had moved his proposal in order to facilitate the Committee's work, since a number of delegations had made lengthy statements on points clearly outside the scope of the current discussion. There was, however, a simpler way of achieving the same purpose. If the Chairman would declare out of order any speaker who argued that the article should not be included in the draft covenants or should be placed in a separate instrument or referred to another organ for discussion, he would withdraw his proposal, provided that the Afghan representative withdrew his amendments to it. Further discussion should then be confined to the Working Party's text of article 1.

6. Mr. PAZHWAK (Afghanistan) said that, in deference to the Salvadorian representative's wishes, he would withdraw his amendments. If delegations persisted in discussing matters no longer before the Committee, new procedural proposals could be introduced.

7. The CHAIRMAN accordingly ruled that the Committee should continue its debate on the Working Party's draft of article 1 (A/C.3/L.489 and Corr.1 and 2).

8. Mr. MASSOUD-ANSARI (Iran) said that his delegation had abstained from voting on the proposal to set up a working party, because it considered that a committee of experts would be best qualified to draft an unequivocal text of article 1. Nevertheless, it felt obliged to congratulate the Working Party on its draft, which was more moderate than the original and more in conformity with the Charter of the United Nations.

9. He had no formal objections to paragraph 1 but maintained his position on the substance of the text, which was still open to misinterpretation; he would therefore abstain in the vote on it. He would vote in favour of paragraph 2 because it restated the main provisions of General Assembly resolution 626 (VII), in the preparation of which his delegation had taken an active part, and of paragraph 3, which stressed the need for the international application of the right of self-determination. He could not, however, vote in favour of the Yugoslav amendment (A/C.3/L.495), since the idea it embodied was already stated in paragraph 1 and the repetition would only make for confusion.

10. Mr. HOARE (United Kingdom) said that, out of courtesy to the Working Party and in recognition of the difficulty of its task, all members of the Committee should give careful and objective consideration to the text that had been submitted. His objections to the draft must not be interpreted as criticism of the Working Party itself or of the efforts which it had made.

11. The first sentence in paragraph 1 differed from the original text (E/2573, annex I) in that it used the present tense instead of the future, because the majority of the Working Party regarded the right of self-determination as inherent and not created by the covenants. There were precedents for the use of the present tense in other articles of the draft covenants. Although that introduced no substantive change, the new wording was more declaratory in form than the previous wording. The representative of El Salvador had, however, rightly stated that the purpose of the sentence was to create a general and juridical obligation; that was consistent with the wording of some important articles of the draft covenants. Since article 2 of both covenants laid obligations on States in respect of the rights recognized in the covenants and the first sentence of paragraph 1 constituted the recognition of a right, he agreed that the provisions of article 2 would be applicable to the right of self-determination as expressed in that sentence. He had objected to the previous text that a juridical obligation in such vague and general terms would present great dangers to very many States. He would not repeat again what he had said previously (642nd and 652nd meetings) regarding secession, minority claims, irredentist movements and frontier disputes, the final decision on which would still rest with the proposed Human Rights Committee. He would merely say that the new text made no attempt to meet any of those difficulties and dangers and therefore constituted no improvement in that respect.

12. The second sentence of paragraph 1 had been improved, in the sense that various forms of status were no longer described as part of the essence of self-determination. The substance of the sentence, however, was still unsatisfactory. It was strange, in a juridical instrument, for a paragraph to begin by stating a legal obligation and to continue with a purely descriptive passage, giving an enumeration of the activities pursued by peoples in the exercise of the right. Moreover, the enumeration was incomplete, for it omitted such activities as treaty relations, international co-operation and membership of international organizations. Such surplusage in drafting could not be regarded as a satisfactory approach to the preparation of a legal text.

13. The sense in which the word "peoples" was used in paragraph 2 differed from its meaning in paragraph 1, where it obviously denoted groups which were not yet independent and sovereign. If that meaning were applied to paragraph 2, the statement in that paragraph was untrue, since ability to dispose of natural wealth and resources was dependent on full control and power. The representative of Honduras had rightly drawn a distinction between the people as the source of power and the State as the only organ capable of exercising power. Thus, the mere fact that a people was dependent precluded it from disposing freely of its natural wealth. If the provision was intended to refer to sovereign States representing peoples, that should be stated explicitly; the use of the word "peoples" in that connexion was both confusing and incorrect.

14. The phrase "for their own ends" in the English language implied that the ends in view were nefarious or purely selfish and, consequently, that the peoples would be pursuing activities contrary to the interests of others. The phrase "without prejudice to any obligations arising out of international economic co-opera-

tion", which had been inserted to allay certain fears, was intelligible enough, but its qualification by the words "based upon the principle of mutual benefit" made its meaning completely uncertain. The principle of mutual benefit was a concept open to so many interpretations that it might provide an escape clause, enabling States to evade those obligations.

15. Although the last sentence of the paragraph was slightly improved by truncation, it was still puzzling, since the term "means of subsistence" was unexplained. It was difficult to give the term a precise meaning, even with regard to individuals; and the general sense of the term in its application to individuals could not be applied to States. Moreover, it was difficult to conceive how or by what agency a people could be deprived of its means of subsistence. If a sovereign State was meant, it was evident that such a State could not be deprived of what was vital to its existence as a State except by an invasion of its sovereignty, and that was prohibited by the Charter of the United Nations. He therefore failed to understand the meaning of the provision. Moreover, the mysterious over-riding principle stated in the last sentence seemed to be open to the dangerous interpretation of removing the limitations imposed in the preceding sentences.

16. In view of the history of United Nations work on the right of self-determination, he was surprised at the form in which the Working Party had seen fit to draft paragraph 3. In 1952, the General Assembly had adopted resolution 637 (VII), which set forth the alleged duties of Member States responsible for the administration of Non-Self-Governing and Trust Territories in such flagrantly discriminatory terms that several delegations, including his own, had been obliged to declare that they would pay no attention whatsoever to the resolution. Nevertheless, despite the fact that under its terms of reference the Working Party's task was to seek conciliation between different views, a discriminatory provision, imposing an obligation specific and separate from the general obligation stated in paragraph 1, had been placed on administering Powers in paragraph 3.

17. The relationship of the article to the structure of the draft covenants must also be borne in mind. In accordance with article 2 of the draft Covenants on Economic, Social and Cultural Rights (E/2573, annex I), all the rights recognized in that covenant were subject to progressive implementation, unless, as the Afghan representative had suggested, an exception were made for the right of self-determination; therefore nothing would be gained by including paragraph 3 in that covenant, since the word "promote" connoted progressive implementation. On the other hand, an article on self-determination in the Covenant on Civil and Political Rights would be subject to the general obligation of immediate application. Thus the paragraph was clearly pointless. Moreover, the words "in conformity with the . . . Charter" implied that the promotion of the right in the Territories was enjoined by the Charter; that was not the case, since there was no mention of self-determination in the chapters on Non-Self-Governing and Trust Territories. If the Charter were interpreted as enjoining the promotion of the right, paragraph 3 would be unnecessary, since all Member States were already bound by the Charter.

18. His delegation did not consider that the Working Party's text (A/C.3/L.489 and Corr.1 and 2) was an improvement on the draft submitted by the Commission

on Human Rights (E/2573, annex I). Indeed, it feared that the new draft was open to even more dangerous interpretations.

19. Mr. NUÑEZ (Costa Rica) withdrew the Costa Rican amendment (A/C.3/L.480/Rev.1) to article 1 of the original text (E/2573, annex I).

20. He supported the Yugoslav amendment (A/C.3/L.495) to the Working Party's text (A/C.3/L.489 and Corr.1 and 2) since it removed the discriminatory character of paragraph 3, to which the United Kingdom representative had objected.

21. With regard to the Working Party's text, he thought that the Committee should give due consideration to the fact that the Australian representative had stated categorically at the preceding meeting that his delegation could not vote for article 1 in its revised form, and that the United Kingdom representative, too, had criticized the text at the current meeting. While understanding the objections of those two representatives, he felt that any text which was subjected to such searching and critical analysis would be found wanting. If the same spirit had been evident at the San Francisco Conference, the text of the Charter might still be under discussion. It was surely better to accept a fairly good text than to strive endlessly for a perfect one. The Working Party's text, as amended by Yugoslavia, was satisfactory and the time had come for the Committee to consider it and the amendments to it with a view to taking a final vote.

22. The United Kingdom representative had objected to the second sentence of paragraph 1 on the grounds that it omitted many fields in which the right of self-determination could be exercised. It was not intended, however, to constitute a complete list and he himself could not see what major fields were not covered by it.

23. The Working Party had wisely decided to delete any reference to sovereignty from paragraph 2, in view of the numerous objections to its inclusion in the original text. The new text mentioned "peoples": that was quite appropriate, for, as the representative of Honduras had pointed out, the people were the source of power in a State; they acted through their Government, which exercised the power vested in it, *inter alia*, to control the country's natural resources. The United Kingdom representative's fears that such control might be exercised for selfish ends were unfounded: the phrase "for their own ends" had no derogatory meaning, in his opinion, and the use to be made of the natural wealth and resources was to be limited by international obligations arising out of economic co-operation, based upon the principle of mutual benefit, and international law. There was no need to define such obligations; although the General Assembly had decided that they included co-operation for the development of the under-developed countries, that fact need not be mentioned in the text. The industrialized countries' interest in such development was covered by the words "based upon the principle of mutual benefit".

24. Furthermore, the new text eliminated the danger, to which some representatives had drawn attention, that the right of self-determination might be invoked to justify violence on the part of separatist groups or expropriation without compensation by Governments. The inclusion of a reference to international law, which all Members of the United Nations had bound themselves to respect, precluded any such possibility.

25. Mrs. LORD (United States of America) said that her delegation had intervened (646th meeting) in the debate on article 1 only to point out certain repercussions which paragraph 3 of the original text (E/2573, annex I) might have. It had welcomed the proposal to establish a working party, for it had felt that there was considerable understanding of the complex issues facing the Committee. Unfortunately, the narrow terms of reference it had been given had precluded the Working Party from considering any alternatives but amendments to the original text; that had not been the intention of the sponsors of the proposal.

26. The Working Party had done its best to carry out its task but many difficulties remained to be solved, as was demonstrated by the fact that two of its members had abstained in the vote on the new text and all had reserved the right to defend their views in the Third Committee and the General Assembly (A/C.3/L.489 and Corr.1 and 2, para. 6).

27. Her delegation's three basic objections to the original paragraph 3 had not been met by the new paragraph 2. First, the applicability and extent of self-determination remained undefined; secondly, although no one denied the principle, an affirmation of the sovereignty of States over their own natural wealth and resources was out of place in an article on self-determination; thirdly, the wording of the paragraph might still be interpreted as justifying expropriation without prompt, adequate and effective compensation.

28. Most of the comments made by representatives regarding the original paragraph 3 had referred to the third point, which the Working Party had tried to meet by including in its text the words "without prejudice to any obligations arising out of international co-operation, based upon the principle of mutual benefit, and international law". In doing so, it had had in mind the effect of the paragraph on international economic co-operation and the flow of private capital. Although the new text was an improvement on the original, it was not sufficiently clear and straight forward. Referring as it did to "peoples" and "a people", without defining the concept, it did not remove the doubts regarding the applicability and extent of self-determination. It was clear from the debate that "a people" did not mean all the inhabitants of one State, but rather ethnic, linguistic or national groups. If that explanation were applied to paragraph 2, it might mean that such groups within a State could refuse to trade with other groups. The Committee had not decided what a "people" really was nor had it analysed its failure to do so. That point needed further consideration.

29. Her doubts still remained whether the sovereignty of a State over its resources belonged in an article on self-determination. Self-determination implied primarily the right of self-government and political freedom. She did not feel that the Committee was sufficiently aware of the crucial importance of political freedom as an aspect of self-determination. The new paragraph 1 was not explicit on that point. Without the right freely to determine its political status, a people could not exercise any other form of self-determination. It had been suggested that, for the purposes of the covenants, self-determination should be regarded as applying only to the Non-Self-Governing Territories. She could not accept that suggestion, for the obligations of all States in that respect should be identical.

30. Moreover, the new text was not sufficiently clear to banish fears with regard to expropriation or the impairment of legal and property rights. Most businessmen preferred to invest in their own country and when considering investment abroad they had to take into account a number of considerations, including the safety of their investment and the political and investment climate. The Government of a democratic country such as the United States could do little to influence the international flow of private capital, since it had no control over the investment of private funds. The Governments of the capital-importing countries could do far more in that direction. If there was a general desire to promote the flow of private capital to underdeveloped areas, as had been indicated, paragraph 2 should be drafted to specify clearly that it was not intended to justify expropriation without prompt, adequate and effective compensation. Every State had the right to control its natural wealth and resources according to the wishes of its people, provided that the obligation to make prompt payment of just compensation for the taking of property or the extinguishment of legal rights was recognized. Any such compensation should be in an effectively realizable form and should represent the full equivalent of the legal rights extinguished. The new text did not, however, make that clear: the words "without prejudice to any obligations" might mean that certain factors were not excluded rather than that they were included. She assumed that "international economic co-operation" included both governmental and private co-operation, but that was not clear from the wording. Lastly, the phrases "for their own ends" and "based upon the principle of mutual benefit" were redundant.

31. The second sentence of paragraph 2 was even more ambiguous. The words "in no case" implied that the principle was intended to be absolute. It was difficult to see what difference there was between "natural wealth and resources" and "means of subsistence", or what resources were included under the latter term.

32. It was of the greatest importance to Governments which proposed to assume the obligations laid down in paragraph 2, and also to private traders in both

capital-importing and capital-exporting countries, that there should be no such ambiguity. Further consideration should therefore be given to amendments along the lines of the proposal the Argentine delegation had submitted to the Working Party. Paragraph 2 might be more acceptable if it were so re-drafted that its statement of the economic consequences of self-determination also included references to international agreements and to legal rights, including property rights of nationals and foreigners.

33. It was obvious that more time than was available at the current session would be required to accommodate all points of view. It would therefore be advisable to leave the Committee time to consider paragraph 2 further. She would accordingly support the Danish proposal (A/C.3/L.479) if it were put to the vote. If the Committee preferred to vote on the Working Party's text (A/C.3/L.489 and Corr.1 and 2), the United States would abstain on paragraphs 1 and 3, and vote against paragraph 2.

34. Mr. URQUIA (El Salvador) supported the Yugoslav amendments (A/C.3/L.495) but asked whether the Yugoslav representative agree to a further amendment of paragraph 3 — the insertion of the words "and respect" between the words "promote" and "the realization".

35. He had listened with great interest to the various criticisms of the Working Party's text, in particular those voiced by the United Kingdom, the United States and the Australian delegations. His own delegation's position on article 1 was anything but rigid and he therefore urged the opponents of the article to propose amendments to it or to submit a new text which was acceptable to them. His delegation would be delighted to give such proposals sympathetic consideration.

36. Mr. BAROODY (Saudi Arabia) associated himself with that invitation.

37. The CHAIRMAN suggested that all amendments to the Working Party's text should be submitted not later than 6 p.m. on 25 November 1955.

It was so decided.

The meeting rose at 1.15 p.m.