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Chairman: Mr. Omar LOUTFI (Egypt).

AGENDA ITEM 28

Draft International Covenants on Human Rights (E/2573, annexes I, II and III, A/2907 and Add. 1 and 2, A/2910 and Add.1 to 5, A/2929, A/2943, chapter VI, section I, A/C.3/L.460 and Corr.1, A/C.3/L.466, A/C.3/L.467, A/C.3/L.468, A/C.3/L.469, A/C.3/L.470/Rev.1) (continued)

PROCEDURE FOR CONSIDERATION OF THE DRAFT COVENANTS (concluded)

1. Mr. LANNUNG (Denmark) pointed out that the aim of his delegation's proposal (A/C.3/L.469) was not to avoid discussion of article 1 of the draft covenants (E/2573, annex I); on the contrary, it left the Committee free to take up that article at any time it thought suitable. Furthermore, his delegation would be prepared to propose that the Committee should limit the discussion of part III of the draft covenants in advance by setting aside a specific time or a specific number of meetings for it. In that way the Committee would meet the desire of the Indian and other delegations for a period of reflection without prejudicing in any way the discussion of article 1.

2. Mrs. TSALDARIS (Greece) and Mr. SEPULVEDA (Chile) asked that their countries be added to the list of sponsors of the joint proposal (A/C.3/L.470/Rev.1).

3. Mr. RODRIGUEZ FABREGAT (Uruguay) was glad that the representatives of Costa Rica and El Salvador had decided to present a joint text containing clear and comprehensive proposals. The procedure they proposed was logical and respected the logical order of consideration of the various parts of the draft covenants. The Danish proposal (A/C.3/L.469), on the other hand, did not take that logical order into account and was therefore unacceptable. The United Kingdom representative was not consistent. He had invoked two diametrically opposite arguments against beginning with the preamble: first, that the preamble was non-controversial and could be speedily adopted; and then that its consideration might be a lengthy and complicated matter in view of the proposal that it should include part of the existing text of article 1.

4. The draft covenants had been very carefully prepared; the General Assembly, the Third Committee, the Economic and Social Council and the Commission on Human Rights had all helped to draft them. Each article, each sentence and each word had been carefully weighed. The work was thus the result of mature consideration. The preamble stated essential principles which would come, after centuries of struggle and sacrifice, to crown the hopes that had dawned ten years previously at the San Francisco Conference and would be the United Nations answer to man's search for progress and justice. The representatives of the 60 nations gathered together in the Committee must not fail in their duty.

5. The Committee could unhesitatingly begin by considering the preamble and then proceed to article 1, amending it if necessary. His delegation would vote in favour of the joint proposal (A/C.3/L.470/Rev.), which advocated that solution.

6. Mr. PAZHAWAK (Afghanistan) submitted three amendments to the Saudi Arabian draft resolution (A/C.3/L.468). He proposed, first of all, that the first two paragraphs of the preamble should be deleted; secondly, that the following paragraph should be added before the existing operative paragraph: "Decides to discuss the preamble first"; and thirdly, that the words "to consider part I of the draft covenants first" in the existing operative paragraph should be replaced by the words "to continue with part I of the draft covenants".

7. Mr. FERNANDEZ ESCALANTE (Argentina) said that he was in favour of the Danish representative's solution on the understanding that by beginning with the articles in part III of the draft covenants (E/2573, annex I) the Committee did not imply that it attached less importance to parts I and II and would not study them at the appropriate time. It seemed wise not to begin with part I in view of the differences of opinion that had arisen in the Committee and in view of the Secretary-General's statement.

8. It was better to begin by studying the fundamental rights of the individual, such as the right to work and the right to health, in part III, rather than the collective rights of peoples and nations in part I. Work on the draft covenants had been going on for several years; far from being prejudicial, a slight delay might contribute to the success of the Committee's work if it made a wider degree of agreement possible and thereby ensured a greater number of ratifications.

9. Mr. HIMIOB (Venezuela) thought that there were no grounds for invoking the last paragraph of General Assembly resolution 833 (IX) in support of the joint proposal (A/C.3/L.470/Rev. 1) as the words "article by article" obviously did not mean that the Committee must begin with article 1; they were followed by the phrase "in an agreed order", which made it quite clear

that it was for the Committee to decide in what order it should consider the articles.

10. He agreed with the opinion expressed by the United Kingdom representative (633rd meeting) that the preamble should be considered after the body of the text, with which it should be in keeping, particularly in length and importance. Accordingly, he could not support point 1 of the joint proposal. Nor could he support point 2; consideration of part I of the draft covenants would inevitably lead to prolonged discussion. On the other hand, part III of both draft covenants dealt with specific and important questions, such as the right to life, the right to work, freedom of association, and the right to social security, subjects deserving of first place in the discussion and on which the members of the Committee could reach agreement. He therefore supported the Danish proposal (A/C.3/L.469).

11. Mr. GILSON (Belgium) was astonished that after three days' discussion the Committee had not yet decided on the order in which it would consider the two draft covenants. There were, however, certain fundamental considerations by which the Committee should be guided and which should convince it not to begin its work with the preamble and part I.

12. It seemed inadvisable to begin consideration of the draft covenants with the preamble. The content of the preamble depended upon the content of the substantive articles. It was possible that the provisions in the texts would not all be adopted as they stood; it was also possible that during the discussion a place would be made for certain ideas which were not at the moment in the draft covenants, such as the idea of the interdependence of the various rights. It would be premature to vote on the preamble until the Committee had voted on the substantive articles.

13. The representative of India had asked at a previous meeting (634th meeting) that the Committee should not discuss article 1 immediately, so that his delegation would have time to consult the Indian Government on it. It was the inalienable right of delegations to consult their Governments and the Committee would be showing courtesy in granting the Indian representative the time he needed and postponing consideration of article 1 to a later date.

14. Lastly, he noted that some delegations seemed to have forgotten the importance — in his view the fundamental importance — of the articles making up part III of the two draft covenants. The purpose of those provisions was to protect individuals, and their significance should not be underestimated.

15. He felt that the Committee could, without any inconvenience, begin consideration of the draft covenants with part III, as Denmark had proposed (A/C.3/L.469). By adopting that method, the Committee would give delegations which wanted to do so time to consult their Governments; and it would still be able to begin consideration of the preamble and part I when it thought the time was ripe. He urged the members of the Committee to listen to reason rather than passion, and to begin the discussion of the covenants with a conciliatory gesture.

16. Mr. ROY (Haiti) thought delegations had had full opportunity to explain their views, and that a prolongation of the discussion would probably not bring out any new factors. He therefore moved the closure of the debate under rule 118 of the rules of procedure.

17. The CHAIRMAN put the Haitian motion to the vote.

The motion was adopted by 28 votes to 3, with 20 abstentions.

18. Mr. D'SOUZA (India), on a point of order, wished to explain the position of his delegation with regard to part I of the draft covenants. It was not because it thought that article 1 was ambiguous that the Indian delegation did not want the Committee to begin consideration of the draft covenants with it; the reason was that on a question of such importance it wished to get in touch with its Government and ask for instructions. The consultation would not take long, very probably not longer than the time needed for discussion of the preamble. He would therefore support the Saudi Arabian proposal (A/C.3/L.468), as amended by Afghanistan, whereby the Committee would study the preamble of the draft covenants first.

19. Mr. URQUIA (El Salvador) recalled that, if the usual procedure was adopted, the Committee would have to vote first on the Saudi Arabian proposal (A/C.3/L.468) and on the Afghan amendments to that proposal; it would then have to vote on the Danish proposal (A/C.3/L.469) and the amendments to it proposed by Afghanistan (A/C.3/L.471); lastly, it would have to vote on the joint proposal (A/C.3/L.470/Rev. 1).

20. On behalf of the co-sponsors, he asked the Committee not to vote on the proposals in the order of their submission but to decide to put the joint proposal to the vote first, in accordance with rule 132 of the rules of procedure.

21. Mr. BAROODY (Saudi Arabia), supported by Mr. PAZHAWAK (Afghanistan), said he had no objection to the Committee's voting first on the joint proposal, which was not very different in substance from his own.

22. The CHAIRMAN put the motion of El Salvador to the vote.

The motion was adopted by 32 votes to 13, with 8 abstentions.

23. Mr. CHENG (China) asked to be allowed to explain his vote on the joint proposal before the voting, in accordance with rule 129 of the rules of procedure.

24. Mr. URQUIA (El Salvador), Mr. BAROODY (Saudi Arabia), and Mr. PAZHAWAK (Afghanistan) said that they were anxious to speed up the work of the Committee and wanted the various proposals to be voted on as soon as possible; they thought that it would therefore be better for the Chinese representative to give his explanation after the voting.

25. Mr. ROY (Haiti) recalled that, according to the rules of procedure, the Chairman could allow the members of the Committee to explain their votes either before or after the voting. The decision lay with him. He hoped that the Chairman would ask delegations to explain their votes after the voting.

26. Mr. HOARE (United Kingdom), Mr. AZKOUL (Lebanon), and Mr. NUÑEZ (Costa Rica) insisted on the importance of free speech for delegations. There seemed to be no valid reason to refuse the Chinese representative an opportunity of expressing his point of view at that stage in the discussion.

27. After an exchange of views in which Mr. CHENG (China), Mr. URQUIA (El Salvador), Mr. PAZHAWAK (Afghanistan), Mr. BAROODY (Saudi

Arabia), Mr. HOARE (United Kingdom), Mr. ROY (Haiti), Mr. AZKOUL (Lebanon), and Mr. NUÑEZ (Costa Rica) took part, the CHAIRMAN decided to authorize the Chinese representative to speak before the voting, and asked him to set forth the position of his delegation as briefly as possible.

28. Mr. CHENG (China) said that his delegation's vote on the proposals before the Committee would be determined by a number of considerations. The Committee proposed to study all the items on its agenda; to adopt the greatest possible number of articles of the draft covenants and to discuss and adopt article 1; however, it would have only a few meetings in which to complete that considerable task. According to the joint proposal, the Committee would discuss, first, the preambles of both drafts, next, the operative parts which were common to and similar in both drafts, beginning with part I and continuing with the other parts in order, and, finally, the remaining articles in their present order in the two drafts. His main objection to that proposal was that it provided no time limit for the study of each part of the draft covenants. In fact, if the joint proposal were accepted, the Committee would be obliged to adopt both draft covenants in a very short time, which would, to say the least, be rather risky. Furthermore, a decision to begin discussion of the draft covenants with a study of their preambles would not in any way prevent a premature discussion of article 1, for, apart from the obvious connexion between that article and the preamble, there was nothing to stop any delegation from proposing, as Brazil had done at the ninth session of the General Assembly¹, that article 1 should be included in the preamble.

29. Again, even if the joint proposal were adopted, several different elements would still enter into the discussion. Article 1, which was implicit in the preamble, would be retained in the draft covenants and delegations would still be able to propose the insertion in the preamble of fresh provisions on the right of self-determination of peoples and nations. In the latter connexion three ideas might be taken up: that of a separate covenant bearing on the right; that of a declaration on the right which might tend towards a convention, and that of a declaration along the lines recommended by the Secretary-General.

30. The proposal submitted by Denmark had the same drawback as the joint proposal: it did not provide for any time limit, and, as the Committee only had some sixty meetings in which to deal with the whole of its agenda, it might run into very serious difficulties if it adopted the proposal.

31. For the reasons he had just given, his delegation would vote against the joint proposal (A/C.3/L.470/Rev. 1) and would abstain in the vote on the Danish proposal (A/C.3/L.469).

32. The CHAIRMAN put the joint proposal (A/C.3/L.470/Rev.1) to the vote.

At the request of the representative of Saudi Arabia a vote was taken by roll-call.

Egypt, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Egypt, El Salvador, Ethiopia, Greece, Guatemala, Haiti, Honduras, India, Indonesia, Iran,

Iraq, Lebanon, Mexico, Nicaragua, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Saudi Arabia, Syria, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Uruguay, Yemen, Yugoslavia, Afghanistan, Bolivia, Burma, Byelorussian Soviet Socialist Republic, Chile, Costa Rica, Czechoslovakia, Dominican Republic, Ecuador.

Against: Israel, Luxembourg, Netherlands, New Zealand, Norway, Sweden, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela, Argentina, Australia, Belgium, Brazil, Canada, China, Colombia, Denmark.

Abstaining: Thailand, Union of South Africa, Cuba.

The proposal was adopted by 36 votes to 18, with 3 abstentions.

33. The CHAIRMAN observed that there was now no need to vote on either the Saudi Arabian proposal (A/C.3/L.468) or the Danish proposal (A/C.3/L.469).

34. Mr. PEDERSEN (United States of America) stated that, in voting against the joint proposal, his delegation has been prompted by reasons which were at once simple and practical. It has felt that article 1 should be discussed just before item 29 of the agenda, since that would have made for an easy transition from item 28. The United States delegation saw no objection to discussing the right of self-determination of peoples; it simply felt that the discussion of article 1 between items 28 and 29 of the agenda would have made it possible directly to link the two connected questions. It could be seen, for example, that paragraph 3 of article 1 was virtually identical with draft resolution I transmitted by the Economic and Social Council (resolution 586 D (XX)), which was to be considered under agenda item 29. In any case, the United States delegation thought that the Secretary-General's suggestions regarding that article were very important and it had been anxious to have time to study them. In that connexion, his delegation was grateful to the Secretary-General for his initiative in the matter and it wished to uphold his right to have expressed his views.

35. Mr. COATON (Union of South Africa) said that the explanation he was about to give of his delegation's vote followed naturally from the procedural decision the Committee had just taken. The task the Commission on Human Rights had undertaken nearly ten years before was nearing its end. After a first reading, which had taken the form of a lengthy general debate, the Third Committee was about to consider the draft covenants for a second time, article by article, in the order agreed upon. In other words, it was about to pass from the general to the specific, to what might be called the semi-final stage, with the objective of "adoption at the earliest possible date", and the South African delegation wished, there and then, to explain its position with respect both to the draft covenants themselves and to the procedure for their adoption.

36. While it was true that some of the articles as drafted appeared to be unexceptionable in principle and might, with certain amendments, be incorporated in an international instrument capable of international implementation, it would obviously be idle and quite unrealistic to disregard the other side of the picture; and all delegations were aware of what was on the other side of the picture. His delegation had, at the ninth session of the General Assembly, witnessed the conflicts of ideals, hopes and aspirations to which the

¹ Official Records of the General Assembly, Ninth Session, Annexes, agenda item 58, document A/C.3/L.412 (incorporated in A/2808 and Corr.1, para. 41).

draft covenants had given rise. It had seen signs of them again at the current session and felt obliged to say that, in its opinion, the fundamental differences between the positions of the various delegations represented in the Committee were such as to rule out any possibility of unanimity on the matter for years to come. Without unanimity the covenants must obviously lose all force and effect. Indeed, if the debates on the subject had served any purpose, it was that of showing once again how diverse were the elements constituting human society and how difficult it was to translate distant goals into practical reality by the simple expedient of drafting universal instruments for which the present-day world was not yet fully ripe.

37. The South African delegation had no intention either of calling in question what had already been done with regard to the drafting of the covenants or of impeding the work which might still confront the Committee in that connexion. It merely wished to say that, in its opinion, the covenants did not appear to be a feasible proposition for the foreseeable future. Having expressed its views unambiguously on that subject, it would leave the field to those who sincerely believed that they could contribute to the execution of that undertaking. While the South African delegation would continue to follow the future course of the work with interest, it would refrain from active participation in any further discussion of the draft covenants. It would similarly take no active part in the redrafting of the covenants and would abstain on all articles as and when they came up for adoption.

38. Mr. NAJAR (Israel) explained that his delegation had voted against the joint proposal, but that its vote did not represent any definite position of principle with regard to the questions treated in the draft covenants. The Israel delegation doubted the practical wisdom of the Committee's decision on the procedure to be followed. The division of opinion in the Committee appeared to him to arise from a fundamental misunderstanding of the task the General Assembly had entrusted to it. The Third Committee was engaged in an important legal work, for which it could hardly be said to be well prepared. The aim was not to persuade the majority of members to vote for one resolution rather than for another, or to discuss any definite political problem and win a victory by means of a vote; what was required was to draw up a final text of an international instrument that would obtain the greatest possible number of accessions, since the instrument would be valueless if Governments decided not to sign it or if parliaments did not ratify it. The Committee's task was therefore to negotiate and the aim to be achieved was the success of the negotiation in progress. Accordingly, the Israel delegation thought that it would have been wiser to refer the question to a special international conference such as that which had drawn up the international Convention relating to the Status of Refugees, which had already come into force. However, the task had been entrusted to the Third Committee by

the General Assembly and the Committee was naturally obliged to perform it. If, however, the articles of the draft covenant were regarded as so many subjects of negotiation, obviously the Committee was not obliged, in case of very obvious disagreement, to take a premature decision or vote on a given article, especially when it was always possible to take it up again at a more appropriate time. That was the elementary technique to be followed in any negotiation where there was a serious desire for success. It was not therefore advisable to bind the Committee in advance to such a strict plan of work.

39. The Israel delegation earnestly wished to see the conclusion of international treaties guaranteeing human rights and would therefore have liked the Committee to use the technique of negotiation rather than follow parliamentary practice.

40. He emphasized that, in his opinion, the Secretary-General had been strictly within his competence in making suggestions with a view to rescuing the question of the covenants on human rights from the impasse they had reached. His suggestions were of the greatest importance. Obviously, Member States would form their own opinion on them, but they should at least study them with the attention they deserved.

41. In that connexion he had been surprised to hear certain representatives protest against the Secretary-General's action, thus revealing a misconception of the extent of his powers under the United Nations Charter. The Secretary-General was the only international official who was empowered on his own initiative to call a meeting of the Security Council to deal with questions concerning international peace; it was absurd to suggest that he had no right to draw the Third Committee's attention to dangers which in his view threatened the covenants on human rights as well as the Organization itself.

42. Some of the comments that had been made on the Secretary-General's statement were regrettably ill-judged and the Third Committee, while naturally remaining master of its own decisions, should be grateful to the Secretary-General for having communicated his views to it.

43. Mr. WALL (Canada) explained that his delegation had voted against the joint proposal because in its view the most reasonable course to follow, after the long procedural debate that had taken place, would be temporarily to postpone consideration of the preamble and article 1 of the draft covenants and to return to them at a more opportune time. The Canadian delegation was of the opinion that the best way for the Committee to undertake the detailed discussion of the draft covenants and to progress in its work would be for it to begin by discussing part III of the drafts, as the representative of Denmark had proposed.

The meeting rose at 6 p.m.