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Chairman: Mr. Nemi Chandra KASLIWAL
(India).

AGENDA ITEM 43

Draft International Covenants on Human Rights (A/2907 and Add.1-2, A/2910 and Add.1-6, A/2929, A/5144, E/2573, annexes I-III, A/C.3/L.978, A/C.3/L.1017, A/C.3/L.1024/Rev.1, A/C.3/L.1026/Rev.2, A/C.3/L.1027/Rev.3, A/C.3/L.1028/Rev.1, A/C.3/L.1030, A/C.3/L.1032, A/C.3/L.1046/Rev.2, A/C.3/L.1052) (continued)

GENERAL PROVISIONS: ARTICLES 2 TO 5 (continued)

1. Mr. WHITE (Australia) said that his delegation, while fully endorsing the objective of article 2, paragraph 2 of the draft Covenant on Economic, Social and Cultural Rights (E/2573, annex 1 A), which was to prevent any kind of discrimination in the exercise of the rights set forth in the Covenant, had some difficulty with the word "guarantee". Some of the rights in question could not be directly guaranteed by the State. For example, in his country conditions of employment were governed not only by law but also by management-labour negotiations carried out directly or through trade organizations, and by decisions of arbitration tribunals. As the Government was unable to interfere in the proceedings of the tribunals, for instance, it could not "guarantee" the exercise of the rights at issue, although it could try to encourage respect for them. It was for that reason that his delegation had abstained in the vote on articles 6 and 7 of the draft Covenant.

2. He would vote against the amendment of Indonesia and Burma (A/C.3/L.1027/Rev.3) which, irrespective of the sponsors' intentions, derogated from the principles now stated in the draft Covenant. He would also vote against the five-Power amendment (A/C.3/L.1046/Rev.2), believing that it had no place in the draft Covenant and that the underlying idea was already covered in the original text. He would be able, however, to support the amendments proposed orally by the Saudi Arabian representative (1204th meeting).

3. Mr. HERNDL (Austria) proposed first to state his delegation's position on the amendments now before the Committee. He would vote for the revised United Kingdom amendment (A/C.3/L.1026/Rev.2), which

was well founded and made the text clearer by specifying that States could, in the fulfilment of their commitments under the Covenant, apply all methods they deemed appropriate within the bounds of their domestic law, without being obligated to employ legislative means. What mattered in the last analysis was not the use of a particular procedure but the effective application of the Covenant, whether by legislative, administrative or other measures.

4. He would also vote for the three-Power amendment (A/C.3/L.1028/Rev.1), which offered the clear advantages already mentioned by several representatives. What was to be prohibited, above all, was discrimination—a subtle nuance perhaps, but a very important one. In addition, most international instruments dealing with comparable matters referred, in English, to "discrimination" and not to "distinction". While the substitution of the former term for the latter seemed less necessary in French, the two texts ought to agree.

5. He regretted that the Belgian delegation had withdrawn its amendment (A/C.3/L.1030), for it had stated a useful reservation which might have facilitated the implementation of the Covenant without imposing any restrictions. Indeed, the protective measures at issue had proved necessary and were employed almost everywhere in the world. Nevertheless, the use of the word "discrimination" might be sufficient to meet the point raised in the Belgian amendment.

6. His delegation would vote against the amendment of Indonesia and Burma and the five-Power amendment. The former might create an imbalance in part II of the draft Covenant by granting to the State the discretionary power to exclude certain persons from the enjoyment of fundamental rights. The use of the word "discrimination" gave the State sufficient latitude; it precluded arbitrary action while allowing for legitimate distinctions. The five-Power amendment sought to make the meaning of the term "international co-operation" more explicit, but he did not think it suitable in an instrument designed to safeguard the rights of individuals to refer to international assistance, which pertained only to relations between States.

7. Lastly, he recalled that his delegation thought article 3 superfluous in view of the provisions of article 2, paragraph 2. A legal instrument should always be concise, and it would be better to delete article 3. Nevertheless, understanding the, as it were, "sentimental" view of many delegations, his delegation would not vote against article 3; in fact, it shared the feelings of those delegations, and women in Austria enjoyed complete equality, as stipulated in article 7 of the constitution.

8. Mrs. DEMBINSKA (Poland) appreciated the great importance of the amendment of Indonesia and Burma

for the developing countries. To make it acceptable to the majority of the Committee, she suggested that it should be altered to read: "Developing countries, with due regard for human rights and their national economy, may determine to what extent they will guarantee the economic rights recognized in this Covenant to non-nationals".

9. Article 2, although excellent in other respects, did not allow for the fact that in their present economic situation—for which they themselves were not responsible—developing countries would have even more difficulty than the developed countries in implementing, even progressively, the provisions of the Covenant, and that the same obligations could not therefore be imposed upon them from the outset. The amendment had no discriminatory aim but simply emphasized that with respect to economic and social development the first concern of States must be the needs of their nationals.

10. The CHAIRMAN, summing up the situation, noted that the Committee had before it two amendments to article 2, paragraph 1—one submitted by the five-Powers (A/C.3/L.1046/Rev.2) and the other by the United Kingdom (A/C.3/L.1026/Rev.2)—and two amendments to paragraph 2—one submitted by Nigeria (A/C.3/L.1052) and the other by the three Powers (A/C.3/L.1028/Rev.1). Lastly, the Indonesian and Burmese delegations had proposed the addition to article 2 of a new paragraph (A/C.3/L.1027/Rev.3), which had just been amended orally by the Polish representative.

11. Mr. MAAMOURI (Tunisia) said he had the impression that the aim of both the Nigerian amendment and the amendment of Indonesia and Burma was to limit the commitment which States would accept by subscribing to article 2, with a view to fostering general welfare and social justice. His delegation favoured such an idea, but would like it to be formulated in a way that was clear and not too openly discriminatory. That was why it could not support the text proposed by Indonesia and Burma. It might perhaps be possible to bring that text in line with the Nigerian amendment, which did not seem to be open to the same criticism.

12. Mr. BOUQUIN (France) again stated that he would have no difficulty in voting for the United Kingdom amendment, although on the point involved he was perfectly satisfied with the original text. In the case of the five-Power amendment, like the representative of Brazil, he failed to see why recent world developments should make it necessary to modify the original text of article 2. Multilateral assistance could not be mandatory; in any case, the choice of the word "assistance" was not a very happy one, and there was an increasing trend in the United Nations to use the expression "technical co-operation". That being so, the word "co-operation" adequately rendered the idea expressed in the five-Power amendment and the French delegation endorsed the Saudi Arabian representative's remarks on that subject.

13. With regard to the three-Power amendment, the opinion which he had expressed earlier had been confirmed by the fact that during the debate the various delegations which had supported the amendment had used diametrically opposite arguments, some claiming that the word "discrimination" had a narrower meaning than the word "distinction", while others maintained the contrary. He did not know which of

those two contradictory interpretations was the right one; personally he preferred the word "distinction", which appeared in the Universal Declaration of Human Rights, and he would therefore be unable to vote for the three-Power amendment.

14. As the Tunisian representative had just emphasized, the amendments of Nigeria and of Indonesia and Burma were based on the same idea. The idea expressed in the first part of the Nigerian amendment could be said to have inspired the whole of the draft Covenant and it was therefore inappropriate to include it in article 2, particularly in a somewhat restrictive form. As regards the second part, he failed to see its value since in his view respecting a right was the same as guaranteeing it. He regretted the reappearance in a slightly different form of the distinction between the attribution of rights and their exercise, which had been the subject of one amendment that happily had since been withdrawn.

15. The amendment of Indonesia and Burma also contained a restriction and, like the representative of Brazil, he was against that proposal, which amounted to incorporating a discriminatory clause in a text devoted to non-discrimination. Furthermore, if such an amendment was adopted, there would be a serious problem from the point of view of harmonizing the covenants with other conventions now in force; neither the UNESCO convention against discrimination in education,^{1/} nor the ILO convention concerning discrimination in respect of employment and occupation^{2/} contained such a restriction. He fully understood the difficulties of the developing countries, but it was precisely in order to take account of those difficulties that the idea of progressive implementation had been introduced into article 2. His delegation saw no need to go any further.

16. The sub-amendment proposed orally by Poland made the proposal of Indonesia and Burma even worse; while toning down the main idea, it introduced a new concept, namely, a distinction between underdeveloped and developed countries. The value of including such a distinction in a general convention—for the covenant was nothing other than a convention of vast scope—was open to serious doubt. Was such a distinction really in the interests of the insufficiently developed countries? And what would be the criterion for deciding whether or not a country was insufficiently developed? The primary concern of the French delegation was that the Covenants should be both universal and effective. The amendment of Indonesia and Burma and the Polish sub-amendment, without adding anything to the original text from the viewpoint of effectiveness, detracted from its universality. He was therefore unable to support them.

17. Mr. SANI (Nigeria) explained that the sole purpose of his delegation's amendment was to reserve to each Government the right to adopt the economic and social measures needed to promote the general welfare of the people. There was no intention of deleting the second part of article 2, paragraph 2.

18. U KHIN MAUNG PYU (Burma) accepted the proposed Polish sub-amendment to the amendment proposed by his delegation and that of Indonesia. He

^{1/} See UNESCO, General Conference, Eleventh Session, Paris 1960, Resolutions, section B.

^{2/} See International Labour Office, Official Bulletin, vol. XLI, 1958, No. 2, Convention 111.

asked that the new paragraph 3, as thus amended, should be put to the vote before paragraph 2 of article 2, since his delegation would be unable to vote for the latter unless the new paragraph was adopted.

Mr. Albuquerque Mello (Brazil), Vice-Chairman, took the Chair.

19. Miss NASSER (Jordan) considered that the amendment submitted by Indonesia and Burma was very valuable, since in many developing countries there were substantial minorities of non-nationals who refused to take the citizenship of those countries but continued to enjoy rights denied to the nationals themselves. She therefore proposed the following compromise text to replace the existing wording of that amendment: "Each State Party shall guarantee to non-nationals the enjoyment of the economic rights enunciated in this Covenant to the extent that this does not prejudice its national economy."^{3/}

20. Mr. GHORBAL (United Arab Republic) thanked the representatives of Venezuela and Algeria for the very convincing arguments they had advanced (1204th meeting) in support of the five-Power amendment. Replying to the representative of the United Kingdom, who considered that the Third Committee should not take up problems for which another Committee of the General Assembly was responsible, he remarked that the draft Covenant under consideration concerned, in particular, economic rights, so that the amendment in question was fully justified. Furthermore, the functions of bodies which formed part of one whole could not be limited arbitrarily.

21. The developing countries, particularly those of Africa and Asia, were confronted with a thorny problem: while lacking capital, they had an over-abundance of labour. The five-Power amendment took into account the scarcity of capital while the amendment of Indonesia and Burma related to the over-abundance of labour, and sought to safeguard the economic rights

of the nationals of developing countries. Some delegations had opposed that text by arguing, not without reason, that it stressed the sovereignty of States, whereas the purpose of the draft International Covenants on Human Rights was to protect the rights of the individual. In that respect he considered that the sub-amendment proposed by the representative of Jordan should receive general support, since its effect would be to guarantee the benefits of the rights enunciated in the draft Covenant to the populations of the developing countries, while safeguarding the national economies of those countries. The Jordanian proposal was also preferable to the Polish sub-amendment from the point of view of form. Neither of the draft Covenants as so far drawn up established a distinction between the developing countries and the developed countries; such a distinction would be justified in a draft resolution, for example, but not in an international instrument which would be of universal scope and application. He therefore urged delegations to give the Jordanian representative's sub-amendment the close attention it deserved.

Mr. Kasliwal (India) resumed the Chair.

22. Mr. IDRIS (Indonesia), speaking on a point of order, moved a suspension of the meeting in accordance with rule 119 of the rules of procedure of the General Assembly.

The motion to suspend the meeting was adopted by 68 votes to none, with 8 abstentions.

The meeting was suspended at 12.5 p.m. and resumed at 12.25 p.m.

23. Mr. SANI (Nigeria) withdrew point 2 of his amendment (A/C.3/L.1052).

24. Mrs. TREE (United States of America), speaking on a point of order, moved the adjournment of the meeting under rule 119 of the rules of procedure.

The motion for adjournment was adopted by 40 votes to none, with 26 abstentions.

The meeting rose at 12.30 p.m.

^{3/} Subsequently circulated as document A/C.3/L.1053.