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Chairman: Mr. Salvador P. LOPEZ (Philippines).

AGENDA ITEM 35

Draft International Covenants on Human Rights (E/2573, annexes I-III, A/2907 and Add.1-2, A/2910 and Add.1-6, A/2929, A/4789 and Corr.1, A/C.3/L.903, A/C.3/L.935 and Rev.1, A/C.3/L.936 and Rev.1, A/C.3/L.938) (continued)

ARTICLE 21 OF THE DRAFT COVENANT ON CIVIL AND POLITICAL RIGHTS (E/2573, ANNEX I B) (continued)

1. Mrs. TREE (United States of America) said that her delegation had from the beginning been ready to support the text of article 21 as drafted by the Commission on Human Rights.

2. The representative of the Ukrainian SSR had stated that the purpose of his delegation's revised amendment (A/C.3/L.935/Rev.1) was to bring article 21 into line with article 8 of the draft Covenant on Economic, Social and Cultural Rights (A/C.3/L.903). It was the USSR representative, however, who at the eleventh session of the General Assembly (724th meeting), when the latter article had been under discussion, had pointed out that the scope of the two articles was quite different. That was indeed the case, for while article 21 dealt with the right of an individual to join associations, including trade unions, article 8 dealt rather with the rights of trade unions themselves. Her delegation consequently felt, with many other delegations in the Committee, that it was inappropriate to transpose the language of article 8 of the draft Covenant on Economic, Social and Cultural Rights into article 21 of the draft Covenant under discussion.

3. Textually, the new two-Power amendment (A/C.3/L.936/Rev.1) represented an improvement, but she believed that the sentence was not really necessary, in view of the wording of the first sentence of paragraph 2 and the exceptions it allowed.

4. She was unable to support the Belgian proposal (1086th meeting) for the deletion of paragraph 3 of article 21 because that would, by inference, restrict the scope of the article.

5. Mr. ZADOR (Hungary) remarked that his delegation approved of the text of article 21 as it stood. Hungary attached importance to the principles embodied in it, for they found their echo in its own

Constitution which guaranteed, as separate rights, the right of association and the right to form and participate in trade unions. Moreover, as with other rights, it guaranteed their implementation by ensuring that the funds and facilities required for the purpose would be made available. The latter provision he considered as important as the statement of the right itself.

6. His delegation believed that the Ukrainian amendment strengthened paragraph 1 of the draft article and would vote for it, as for the article as a whole. Some had objected to the Ukrainian amendment on the ground that it constituted a mere repetition of provisions from article 8 of the draft Covenant on Economic, Social and Cultural Rights, but there was actually a great difference between the two draft Covenants, as was clear from the fact that article 21 began, "Everyone shall have the right..." whereas article 8 opened with the words "The States Parties to the present Covenant..."

7. The inclusion of a reference to the right of trade unions to function without interference was also an important aspect of the Ukrainian amendment, for there were countries where persons believed to belong to certain parties or organizations were prohibited by law from participating in the leadership of trade unions, although such prohibition could not be justified on grounds of public safety or public order.

8. Mr. DIAZ CASANUEVA (Chile) said that his delegation accepted article 21 as an affirmation of the right to freedom of association, although it was not entirely satisfied with the structure of the article, which should first have made a clear declaration of the fundamental right and only in subsequent paragraphs referred to the various forms which the expression of that right might take.

9. In fact, paragraph 1 began with a timid statement of the general right, only to pass on at once to the subject which appeared to obsess the authors, namely, trade unions, which, after all, represented only one type of association; there were associations of many other types—political, religious, scientific, philanthropic, and others. The article as it now stood was thus unbalanced.

10. At the same time his delegation recognized the importance of trade unions in present-day society; trade union rights were fully protected under Chile's Constitution and Labour Code. He would, however, point out that trade union rights were most effectively protected, not in article 21 of the present draft Covenant nor in article 8 of the draft Covenant on Economic, Social and Cultural Rights, but in the instruments of the International Labour Organisation (ILO) which, incidentally, fully recognized the right of affiliation to international organizations of workers

and employers, seeing it as an expression of solidarity which overpassed frontiers. It was a fact that most national trade unions were affiliated to the International Confederation of Free Trade Unions, the World Federation of Trade Unions or the International Federation of Christian Trade Unions, although there was no doubt that there were countries where affiliation to an international organization was prohibited. He would therefore warn the Committee to be very careful in drafting the relevant articles lest it should leave loopholes which might undo the precious achievements of the ILO.

11. His delegation could not agree to the Ukrainian proposal that parts of article 8 of the draft Covenant on Economic, Social and Cultural Rights should be reproduced in the present article, not because it did not agree with that delegation on the substance of the matter, but for purely technical reasons. The assurance that the Ukrainian delegation sought was already to be found in three places—the aforesaid article 8, paragraph 1 of article 21 of the present draft Covenant, and article 4 of the Freedom of Association and Protection of the Right to Organize Convention, 1948, adopted by the International Labour Conference;^{1/} there was no need to include it a fourth time. As a compromise, the Ukrainian delegation might perhaps agree to withdraw its amendment on the understanding that the Belgian representative withdrew her suggestion for the deletion of paragraph 3, in which the Convention of the International Labour Conference was mentioned.

12. With reference to the two-Power amendment, he believed that the Spanish text, also, could be read ambiguously and would therefore urge the adoption of the Colombian representative's suggestion that the words "por los miembros..." should be replaced by the words "cuando se trate de los miembros...", in order to make the true meaning of the text entirely clear.

13. The CHAIRMAN announced for the convenience of Spanish-speaking delegations that the Spanish text of the revised two-Power amendment to be put to the vote would be identical with that in the amendment as originally submitted (A/C.3/L.936), except that the words "cuando se trate de" would be substituted for the word "por".

14. Mrs. COCEA-BREDICEANU (Romania) stated that her delegation was fully in agreement with the principles set forth in article 21, which both affirmed the right to freedom of association and provided certain guarantees regarding its exercise. Nevertheless the article would have been more realistic had it been broader in scope. The grouping of individuals in associations was characteristic of modern times, and it was a fact that many associations of various kinds were not confined within national boundaries, but extended through many countries.

15. Article 8 of the draft Covenant on Economic, Social and Cultural Rights quite correctly recognized the right of trade unions to function both at the national and at the international level. Article 21 of the present draft, however, while recognizing the right of individuals to associate freely with each other and in particular to form trade unions, made no mention of the exercise of that right at the inter-

national level. That was a gap which the Ukrainian delegation, in its amendment, sought to fill. The two articles were basically similar and it was only natural that the two texts should be made consistent with each other, lest the impression should be given that they were in contradiction.

16. She would therefore vote for the Ukrainian amendment.

17. Mr. BOUMAHDI (Morocco) said that his delegation considered that the rights affirmed in article 21 were very important; Morocco's charter of public freedoms, issued in 1958, expressly guaranteed their exercise in his country. Morocco's legislation was liberal with regard to associations of all kinds, whether national or foreign. Trade unions were developing freely, and with every guarantee, for his country recognized their importance to a healthy economic and political life. The Moroccan people had participated in June 1961 in the establishment of the confederation of trade unions of African workers.

18. Morocco recognized that the right to freedom of association could be limited only with reference to the rights of others and the fundamental interests of the State. His delegation thus found that the text of article 21 as it stood was entirely in harmony with its views and its national legislation, and would vote for it. It would support amendments only if they represented a real improvement on the original text.

19. Mr. DENNIS (Liberia) endorsed the affirmation of principle in article 21, together with the statement of guarantees for the right enunciated, and the necessary restrictions on its exercise. The right in question was provided for and protected by the laws of Liberia. He had not found the two-Power drafting amendment necessary but could accept it. He was not opposed to the substance of the Ukrainian amendment, but considered it inappropriate in the context of article 21 and would not vote for it. He would abstain in the separate votes asked for on parts of the article, for reasons he would explain later.

20. While the Committee was busy spelling out a great number of rights of various kinds to be enjoyed by individuals of all creeds and colours, he could not help thinking that the most fundamental right of all, the right to live, was not yet assured to human beings all over the world. Unless that right were guaranteed first, all secondary rights would be useless.

21. Mr. BAROODY (Saudi Arabia) felt compelled to remind the Committee that the division of human rights into two separate lists enshrined in two distinct Covenants was entirely artificial. The decision so to divide them had been taken, some ten years earlier, solely in order to accommodate certain delegations. The two sets of rights were in fact one: they concerned man in relation to his fellow men, man in society. They were thus all both collective and individual, and the two draft Covenants were closely interdependent.

22. The original text of article 21 was good so far as it went, but a strong argument in favour of the Ukrainian amendment was that the Third Committee had accepted a similar formulation in article 8 of the draft Covenant on Economic, Social and Cultural Rights; however, the consensus was against the amendment because, it seemed, the Committee did not want the concept of international trade-union organizations introduced into article 21. He believed that the Committee was behind the times and that the

^{1/} International Labour Conference, *Conventions and Recommendations, 1919-1949* (Geneva, International Labour Office, 1949), Convention No. 87 (1948).

draft Covenants, when completed, would be antiquated and would have to be revised. He hoped that, if the Ukrainian amendment was defeated, its sponsor would endeavour to introduce it as a separate article at that stage.

23. The deletion of the second sentence of paragraph 2 might be dangerous to States perhaps not so advanced as Sweden, and he could not support the three-Power amendment (A/C.3/L.938). In order to expedite the work of the Committee, he would vote in favour of the original text of article 21 and the two-Power amendment, and would abstain on the Ukrainian amendment if it was not withdrawn.

24. Mr. CHAMMAS (Lebanon) said that the two-Power amendment was very satisfactory to his delegation. Much had been said concerning the meaning and scope of article 21, but any legal text was inevitably open to various interpretations; the form of article 21 was perfect from the point of view of the enunciation of principles, and he would vote for the article.

25. Mr. PEREZ QUESADA (Argentina) expressed satisfaction with the text of article 21 as drafted by the Commission on Human Rights; he was particularly gratified that the principles set forth in paragraph 1 were fully in conformity with Argentine legislation, under which the right to freedom of association included the right not to belong to any association.

26. He had been more impressed by the arguments against the Ukrainian amendment than by those supporting it. Trade unions owed their existence to the exercise of the right to freedom of association, which was protected by paragraph 1, but their right to form international organizations was outside the scope of that right and was protected by article 8 of the draft Covenant on Economic, Social and Cultural Rights and by article 5 of the Freedom of Association and Protection of the Right to Organize Convention, 1948. The original text, therefore, adequately recognized the importance of trade-union rights. He agreed with the representatives of Australia and Brazil (1087th meeting) that the second sentence of the Ukrainian amendment might be interpreted as conflicting with the restrictions mentioned in the first sentence of paragraph 2, and it might diminish the authority which Governments must logically be allowed to exercise over both national and international trade-union organizations.

27. Mr. DEDEI (Albania) believed that article 21 included a reference to a basic right which was necessary for the defence of workers everywhere. In some countries, that right was either not recognized or restricted, especially vis-à-vis progressive forces working for the maintenance of peace and the defence of human rights. Under colonial administration, Albanian workers had been deprived of that right, but they were now able to organize themselves on a voluntary basis. There were now organizations of a social, cultural and scientific nature in Albania. Furthermore, trade unions had a wide field of competence, covering the protection of the interests of the workers and participation in the drafting of legislation concerning wages, working and living conditions, and the like.

28. The original text of article 21 was useful, but it would be improved by the incorporation of the Ukrainian amendment, which affirmed the right to form

national trade-union federations and international trade-union organizations. He would not add to the replies already given to those delegations which opposed the amendment, especially since the latter had not revealed their true motives, but he would vote for that text.

29. Mr. TEKLE (Ethiopia) thought that the original text of article 21 was clear and specific and therefore acceptable. In paragraph 1, the emphasis was on the individual and not on the association; adoption of the Ukrainian amendment would submerge the fundamental character of the article. On the other hand, it was difficult to raise any valid objection to that amendment so long as the words "for the protection of his interests" were retained, since ultimately it was the trade union which protected the interests of its members and, in that context, the comments made by the Yugoslav representative (1087th meeting) became valid. He would therefore abstain on the Ukrainian amendment.

30. Paragraph 2 contained all necessary limitations of a general character, and he did not understand the concern of those who had drafted the clause relating to restrictions on members of the armed forces and of the police, since the reference to national security would cover all such cases. If the second sentence of the paragraph was retained, the emphasis must be on the exercise of the right and not on the subject of the right, as it now appeared to be through the inversion adopted for purely linguistic purposes in the revised two-Power amendment. He would not oppose that amendment, but might abstain in the voting.

31. He had no strong feelings regarding paragraph 3, but on the whole favoured its deletion. The Parties to a convention were bound by its terms and a reference to the Freedom of Association and Protection of the Right to Organize Convention, 1948, was out of place in article 21.

32. Miss GRİÑAN (Cuba) said that the provisions of the Cuban Trade Unions Organization Act, adopted in August 1961, sufficiently explained her delegation's support for paragraphs 1 and 2 of the article under discussion and for the Ukrainian amendment.

33. Where paragraph 3 was concerned, Cuba had signed and ratified the Freedom of Association and Protection of the Right to Organize Convention, 1948, and felt that a reference to it in article 21 was not inappropriate.

34. Mr. MOID (Pakistan) thought that the second sentence of paragraph 2 spelt out a very important provision and should not be deleted, as proposed in the three-Power amendment.

35. He welcomed the revised two-Power amendment, but there was still room for improvement, not only in the clarity of the wording, but also in enlarging the scope of the provision, perhaps by reproducing the text of article 8, paragraph 2 of the draft Covenant on Economic, Social and Cultural Rights. His delegation felt that the right to abstain from joining any association was implicit in paragraph 1 and he was glad that the representative of Somalia had withdrawn his amendment (A/C.3/L.937).

36. In view of the clarification given by the ILO representative (1087th meeting), he would not support the Belgian suggestion that paragraph 3 should be deleted.

37. Since there was a significant difference between the two draft Covenants as regards the obligations assumed by States, article 21 could not be identical with article 8 and, the Ukrainian amendment being not altogether necessary, he could not support it.

38. The tenor of the article as drafted was entirely satisfactory, and he would vote in its favour, subject to any further attempts to remove the ambiguity in the second sentence of paragraph 2.

39. Mrs. AFNAN (Iraq) said that the Committee's desire to expedite its work must not lead it to adopt any text without making a serious attempt to improve it. Even amendments which were rejected or withdrawn contributed to the elaboration of the Covenants by bringing about a confrontation of ideas, and the records of the Committee's debates would also serve as a guide to national legislators and jurists in interpreting their provisions.

40. Her delegation supported the right to freedom of association embodied in article 21 and agreed that the main emphasis should be on the individual. However, certain individual rights could be exercised only in a collectivity and it must be recognized that the right to freedom of association was not purely individual. That was why a special mention had been made of trade unions and, such mention having been made, there could be no objection of principle to the Ukrainian amendment. Those delegations which opposed the amendment on the grounds that it would upset the balance of the article would have done better to oppose the inclusion of a special mention of trade unions during the drafting of the original text.

41. She saw no reason to differentiate between individual and collective rights in article 21, and would therefore support the first sentence of the Ukrainian amendment. She could not, however, support the second sentence, not because the right mentioned there ought not to be safeguarded, but because the article dealt with associations of all kinds and, therefore, either the right of each category to function without interference should be guaranteed, or a general formula should be adopted.

42. She was not in favour of the deletion of the second sentence of paragraph 2, and would vote for the revised two-Power amendment. Finally, it might be desirable, as in other similar cases, to add the words "ordre public" in parentheses after the words "public order" in the English text of paragraph 2.

43. Mr. SZLEPER (Poland) remarked that a favourable vote on the Ukrainian amendment would be justified by the very fact that the objections raised by various delegations were in direct contradiction with each other. The main reason why he would vote for the amendment, however, was that none of the objections was valid.

44. Some delegations claimed that article 21 dealt with the right of individuals to freedom of association and not with the collective rights of trade unions, although they recognized that trade-union rights were implicit in paragraph 1. He fully endorsed the Saudi Arabian representative's remarks concerning individual and collective rights, and he would remind the Committee that a number of articles in the present draft Covenant dealt at some length with collective rights. If, furthermore, the rights of trade unions were implicit in the paragraph there should be no objection to making them explicit.

45. Another group of delegations denied that trade-union rights were implied in paragraph 1 and opposed the Ukrainian amendment in principle. But many of those delegations had voted for article 8 of the draft Covenant on Economic, Social and Cultural Rights; their position on the inclusion of the same provisions in the present instrument, which would be open to separate signature, could be interpreted at best as illogical and at worst as inimical to trade-union freedom.

46. A third group of delegations had taken the position that they had no trade-union problems in their countries and could not therefore support additional references to the matter in the present draft Covenant. But as had repeatedly been pointed out, the draft Covenant was to serve for many years to come, and some day those countries might need precisely such a text as was now before the Committee in the Ukrainian amendment.

47. His delegation would, in addition, vote in favour of paragraph 3 which seemed entirely appropriate, and against the retention of the second sentence of paragraph 2 which seemed unnecessary.

48. Mr. ZULOAGA (Venezuela) observed that his delegation endorsed freedom of association in its broadest sense—not only in relation to trade unions but also in relation to the numerous other organizations which individuals formed and joined to protect their interests or further their ideas. His country's Constitution contained a very concise provision on the matter, and in his view the draft Covenant should also be brief and general. The ideal article 21 would read simply: "Everyone shall have the right to freedom of association with others". The reference to trade unions had no doubt been introduced to emphasize the increasing importance of such organizations in modern society, a fact he could hardly deny. He doubted, however, that that consideration outweighed the arguments in favour of a general provision.

49. He would vote for the deletion of paragraph 3, which his delegation regarded as superfluous, and he would be guided in other voting by the considerations he had stated. The ambiguity in the second sentence of paragraph 2 might in his view be dispelled simply by adding the word "special" before "lawful restrictions".

50. Mrs. FEKINI (Libya) agreed with the view that article 21 need not necessarily be identical in structure with article 8 of the draft Covenant on Economic, Social and Cultural Rights. Consequently, she would abstain on the Ukrainian amendment, which seemed inappropriate in article 21.

51. Paragraph 3 also seemed unnecessary, as article 5 of the draft Covenant adequately covered the matter; she would accordingly abstain on that paragraph.

52. The final version of the second sentence of paragraph 2 was by far the best and she would vote for it.

53. Lady TWEEDSMUIR (United Kingdom) explained that she would vote against the revised Ukrainian amendment since it was open to the same objections as the original Ukrainian text (A/C.3/L.935).

54. Regarding the proposal to delete the second sentence of paragraph 2, the argument that the restrictions in that sentence were covered by "public order" in the previous sentence would be convincing

if the Committee was now drafting article 21. But to remove the sentence when it was already part of the article as drafted might be subsequently viewed as a negation of the principle involved.

55. For the same reason, her delegation would support the retention of paragraph 3.

56. Mr. WAN MUSTAPHA (Federation of Malaya) said that the second sentence of paragraph 2 related to an entirely different matter from that covered by the first sentence. The first sentence stated a restriction on the public as a whole, whereas the second sentence stated a special restriction on certain categories of the population. If the second sentence was deleted, those categories would be subject to the very same restrictions as the population at large, which was not the intention of the drafters.

57. Mr. BRONNIKOV (Byelorussian Soviet Socialist Republic) noted that the Committee as a whole agreed that article 21 should refer to the right to form and join trade unions even though article 8 of the draft Covenant on Economic, Social and Cultural Rights already dealt with trade unions in some detail. The Committee's position was quite understandable in view of the enormous role played by such organizations in protecting the interests of workers. But by the same token, there should be no objection to including the very important provisions set out in the Ukrainian amendment. Indeed, if the right to form national and international trade unions was stated in one draft Covenant and not in the other, there would be a danger of misinterpretation of the Committee's position on the question. The Committee could not ignore the existence of international labour organizations which represented many millions of workers and were recognized by such important international agencies as the ILO.

58. Mrs. TSIMBOUKIS (Greece) explained that she had co-sponsored the amendment to delete the second sentence of paragraph 2 in a desire to maintain uniformity in the draft Covenants. In discussing previous articles, the Committee had agreed not to include detailed enumerations and to state only general limitations. Moreover, the detailed limitations stated in article 21 had not been incorporated in article 20, where they would have equally applied. The retention of the second sentence of paragraph 2 was clearly unnecessary because of the general restrictions stated in the preceding sentence, and it would be out of keeping with articles already adopted.

59. The CHAIRMAN invited the Committee to vote on article 21.

60. Mrs. AFNAN (Iraq) asked for a separate vote on the second sentence of the Ukrainian amendment.

The second sentence of the Ukrainian amendment (A/C.3/L.935/Rev.1) was rejected by 33 votes to 14, with 28 abstentions.

At the request of the Ukrainian representative, a vote was taken by roll-call on the first sentence of the Ukrainian amendment.

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

In favour: Poland, Romania, Tunisia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Yugoslavia, Albania, Bulgaria, Byelorussian Soviet Socialist Republic, Cuba, Czechoslovakia, Ghana, Guinea, Hungary, Iraq, Mali.

Against: Netherlands, New Zealand, Norway, Pakistan, Panama, Peru, Philippines, Portugal, Sweden, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela, Argentina, Australia, Belgium, Brazil, Canada, China, Colombia, Cyprus, Denmark, Dominican Republic, Ecuador, Federation of Malaya, Finland, France, Greece, Iceland, Iran, Ireland, Israel, Italy, Japan, Lebanon.

Abstaining: Nigeria, Saudi Arabia, Somalia, Thailand, Togo, United Arab Republic, Upper Volta, Afghanistan, Austria, Bolivia, Burma, Cambodia, Central African Republic, Ceylon, Chad, Chile, Congo (Leopoldville), Ethiopia, Haiti, India, Indonesia, Libya, Mexico, Morocco, Nepal.

The first sentence of the Ukrainian amendment was rejected by 36 votes to 16, with 25 abstentions.

Paragraph 1 was adopted unanimously.

61. The CHAIRMAN noted that in voting on paragraph 2 it would be unnecessary to vote on point 2 of the Ukrainian amendment since it no longer applied.

The three-Power proposal to delete the second sentence of paragraph 2 (A/C.3/L.938) was rejected by 39 votes to 21, with 18 abstentions.

The two-Power drafting amendment (A/C.3/L.936/Rev.1) was adopted by 51 votes to none, with 24 abstentions.

Paragraph 2, as amended, was adopted by 71 votes to none, with 5 abstentions.

Paragraph 3 was adopted by 54 votes to 7, with 16 abstentions.

Article 21 as a whole, as amended, was adopted by 74 votes to none, with 2 abstentions.

The meeting rose at 6.35 p.m.