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Chairman: Mrs. Halima EMBAREK WARZAZI
(Morocco).

AGENDA ITEM 62

Draft International Covenants on Human Rights
(continued)

FINAL CLAUSES OF THE DRAFT COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (continued) (A/2929, CHAP. X; A/5702 AND ADD.1, A/6342, ANNEX II.A, PART V; A/C.3/L.1353/REV.1, A/C.3/L.1359, A/C.3/L.1368 AND ADD.1, A/C.3/L.1370, A/C.3/L.1372, A/C.3/L.1374, A/C.3/L.1375, A/C.3/L.1377)

1. The CHAIRMAN invited the Committee to vote on article 27 of the draft Covenant on Economic, Social and Cultural Rights (A/6342, annex II.A, part V).

Article 27 was adopted by 72 votes to none, with 3 abstentions.

2. Mr. OSBORN (Australia) explained that he had abstained in the vote because the article would make it more difficult for Australia, a federal State, to become a party to the Covenant. The Australian Government was responsible for the conduct of international negotiations leading to the formulation of treaties, but the implementation of instruments to which the Australian Government might wish to accede required the consent and action of the state governments when it related to economic and social matters. That entailed problems of consultation and sometimes difficult legislative issues. A federal clause such as had been discussed in the Third Committee and elsewhere in the past would have made it possible for the Australian Government to accept obligations under the Covenant within the limits of its authority without awaiting the consent of the state governments. He recognized that the General Assembly had not been able to accept a formulation which took account of the problems he had mentioned and he wished simply to point out to the Committee the practical difficulties which Australia would face as a result.

3. The CHAIRMAN invited the Committee to consider article 28 of the draft Covenant on Economic,

Social and Cultural Rights (A/6342, annex II.A, part V) and the amendments to that article submitted by the Ukrainian Soviet Socialist Republic (A/C.3/L.1359) and by Algeria, Guinea, Lebanon, Mali, Mauritania, Morocco, Syria and the United Republic of Tanzania (A/C.3/L.1368 and Add.1).

4. Mrs. DMITRUK (Ukrainian Soviet Socialist Republic), introducing her delegation's amendment (A/C.3/L.1359), which called for the deletion of article 28, said that a clause prescribing the extension of the Covenant's provisions to the colonies of States parties was unnecessary and offered nothing to the colonial peoples. It was impossible for any people to enjoy the rights set forth in the Covenant so long as it remained subject to colonial rule. The best way of guaranteeing those rights was to put an end to colonialism, as demanded by General Assembly resolution 1514 (XV). The acceptance of article 28 would be harmful, for it would justify the perpetuation of the colonial system. It should be clearly recognized that compliance with the Covenant and maintenance of colonial rule were incompatible and that to secure compliance such rule must be abolished.

5. Mrs. OULD DADDAH (Mauritania), introducing the amendment in documents A/C.3/L.1368 and Add.1, which would attach to article 28 a proviso that action under that article must not limit or delay the right of dependent peoples to self-determination and independence, agreed with the Ukrainian representative that the notion of colonialism was incompatible with that of human rights but said that the facts of international life had to be taken into account. There still existed Non-Self-Governing, Trust and colonial Territories, and the former colonial countries in particular could not allow them to be forgotten. Dependent peoples should be guaranteed all possible rights under human rights instruments, but it must be understood that the extension of such rights could not serve as a pretext for the maintenance of the status quo. The amendment was aimed at the rapid elimination of all forms of colonialism and the full enjoyment of the rights prescribed in the Covenant.

6. She asked that an answer to the following question be requested of the Legal Counsel: In the absence of article 28, would a State party be automatically bound to apply the Covenant's provisions to its colonies?

7. The CHAIRMAN said that an answer to that question would be given by the Legal Counsel later in the meeting.

8. Mr. MIRZA (Pakistan) said that with the great decrease in the number of dependent territories, article 28 might not now have its former significance.

He would prefer to see it deleted because it might detract from the importance that was attached to the economic, social and cultural rights of peoples under the Trusteeship System, colonial domination and alien subjugation. Those rights should be guaranteed not by the Covenant but by the Trusteeship Council and the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples. With respect more particularly to the rights of peoples under colonial and alien subjugation, he considered that such subjugation was illegal and that any reference to it in the Covenant might tend to imply recognition of it.

9. Mr. N'GALLI-MARSALA (Congo, Brazzaville) insisted that article 28 had no place in the draft Covenant and that its retention would represent a concession to the racist Powers which pursued policies of discrimination, segregation and annexation. He would support the Ukrainian proposal to delete the article.

10. Mr. GROS ESPIELL (Uruguay) said that he would vote against the Ukrainian proposal. His delegation agreed with others that colonialism was in opposition to human rights, but it was precisely for that reason that it wished to have explicit obligations imposed on colonial Powers. Article 28 did that while making no concessions to colonialism. He believed that the obligation stated in the article would still exist even if the article itself was deleted. The obligation would be emphasized, however, by the retention of the article. Before voting, however, he would listen with interest to the Legal Counsel.

11. Mr. PAOLINI (France) said that he had not expected article 28 to be called in question, because it had been inserted in order to avoid any "colonial clause" under which a State could become a party without undertaking obligations with respect to its colonial territories. Article 28, on the other hand, bound a party to apply the Covenant's provisions to any territory under its jurisdiction. Adoption of the Ukrainian proposal would result in something quite different from what the great majority of delegations wished. The right of self-determination, for instance, was provided for in article 1 of the draft Covenant; he wondered whether the Committee preferred not to have that right, and others, extended to dependent territories. He would support the present draft article with the addition proposed in documents A/C.3/L.1368 and Add.1.

12. Mr. NASINOVSKY (Union of Soviet Socialist Republics) said that the inclusion of article 28, a "colonial clause", in an instrument drafted in the latter half of the twentieth century would be a complete anachronism. No such clause had been included in the International Convention on the Elimination of All Forms of Racial Discrimination, and its appearance in the Covenant would directly contradict article 1, which stated that all peoples had the right of self-determination. The action envisaged under article 28 was bound to perpetuate the colonial system and to detract from the efforts being made by the United Nations in pursuance of General Assembly resolution 1514 (XV). The competent United Nations organs must resolve the problem of human rights in colonial

territories by ensuring the speedy liquidation of colonialism. The provision in article 28 was all the more unjustified as the Covenant would, it was hoped, greatly outlive the last remnants of the colonial system. He would accordingly support the article's deletion.

13. Mr. GILLET (Belgium) pointed out to the USSR representative that, as the French representative had just observed, article 28 was not the "colonial clause" but the very opposite of it, for the "colonial clause" enabled colonial Powers not to extend the application of treaty provisions to their territories. His delegation did not attach great importance to article 28 and hoped that the reply to the Mauritanian representative's question might soon be given so that the Committee could act on the article.

14. Mr. LEVI RUFFINELLI (Paraguay) observed that the difference in the Committee was not over the need to eliminate colonialism but over the possibility that article 28 might be interpreted as justifying colonialism's perpetuation. He did not think that the article could be so interpreted. In fact, by meeting a real situation, it should help to bring colonialism's end closer. The need to promote human rights in colonial territories remained, regardless of the number of colonies in the past and at present. So long as a single colony still existed, the rights of its inhabitants must be protected. He supported article 28 and the amendment in documents A/C.3/L.1368 and Add.1.

15. Mr. AKPO (Togo) said that pending the Legal Counsel's reply he tended to favour the retention of article 28 as a complement of article 1, paragraph 1, of the draft Covenant. The obligation to extend the provisions of the Covenant to dependent territories should be made explicit so as to avoid any ambiguity about the duty of colonial Powers to prepare dependent peoples for independence.

16. Mrs. SEKANINOVA-ČAKRTOVA (Czechoslovakia) said that, in her delegation's view, the Covenant should contain no provision which might contribute to the perpetuation of the colonial system. After the adoption of the Declaration on the Granting of Independence to Colonial Countries and Peoples, the inclusion of the territorial application clause in an international instrument was indeed an anachronism. Her delegation felt that the whole question was governed by the general principle of international law under which the States parties to an international instrument were obliged to apply all its provisions to the territories under their jurisdiction. That principle had been accepted in respect of the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, and the International Convention on the Elimination of All Forms of Racial Discrimination. In the case of both Conventions the General Assembly had by a large majority decided not to include the territorial application clause.

17. Mrs. RAMAHOLIMIHASO (Madagascar) considered that the automatic application of the provisions of the Covenant to the peoples of the Non-Self-Governing and Trust Territories, as called for in article 28, would contribute to the realization of the principles enunciated in chapters XI and XII of the United Nations Charter. At the same time, her delega-

tion did not wish the inclusion of a territorial clause to seem to give legal sanction to the continuance of the colonial system. Accordingly, she would support the amendment in documents A/C.3/L.1368 and Add.1, which would eliminate any possible ambiguity in that regard, and, if that amendment was rejected, she would vote in favour of the Ukrainian amendment (A/C.3/L.1359).

18. Mr. A. A. MOHAMMED (Nigeria) observed that there was no need for the inclusion of article 28 in the Covenant. A proposal for the inclusion of a similar provision in the International Convention on the Elimination of All Forms of Racial Discrimination had been rejected at the twentieth session by both the Third Committee and the General Assembly. It was true that colonialism did exist, but its very existence was in fact illegal. In view of the provisions of Articles 73 and 75 of the Charter, and of article 1, paragraph 3, and article 25 of the Covenant under discussion, article 28, either in its present form or amended as proposed, had no place in the Covenant because it would recognize the existence of colonialism and create the impression that that phenomenon must remain a fact of life for some time to come. His delegation could not accept that view. Moreover, it would be most unwise to include in a Covenant which was designed to endure a provision intended to cover a temporary situation.

19. Mr. YASSEEN (Iraq) said that his delegation could not support article 28 as drafted by the Commission on Human Rights because it implied recognition not only of a status which legally existed no longer but also of a right on the part of some to govern others, which had been conclusively repudiated by the Declaration on the Granting of Independence to Colonial Countries and Peoples. If some peoples continued to be subject to the domination of others, there was no reason to give juridical recognition to such deplorable situations. His delegation would therefore vote in favour of the Ukrainian amendment (A/C.3/L.1359).

20. Mr. N'GALLI-MARSALA (Congo, Brazzaville) observed that the Third Committee should not, by the insertion of a clause in the Covenant, afford certain countries a screen behind which they could conceal their actions.

21. Mr. DAS (Malaysia) said that article 28 simply recognized the fact that Non-Self-Governing, Trust and colonial Territories still existed and it imposed on the metropolitan Powers the obligation to carry out the duties incumbent upon them under the Covenant. He supported the retention of the article.

22. Mrs. OULD DADDAH (Mauritania) said that her delegation was strongly opposed to colonialism but was also realistic; while it did not wish to give any legal status to colonialism, it had to recognize that colonialism continued to exist. She had joined in sponsoring the amendment in documents A/C.3/L.1368 and Add.1 because she feared that the Committee would reject the Ukrainian amendment (A/C.3/L.1359) and adopt article 28 as it stood. She continued to support the amendment in documents A/C.3/L.1368 and Add.1.

23. Mr. ROSENNE (Israel) said that he would support the Ukrainian amendment and, if that amendment

was rejected, would support the amendment in documents A/C.3/L.1368 and Add.1. The deletion of article 28 was, he thought, the better and legally sounder course because, under recognized principles of international law, the territorial application of a treaty extended to the entire territory of each party unless a different intention appeared from the treaty or was otherwise established. That had been the conclusion reached by the International Law Commission in drafting article 25, "Application of treaties to territory", of its draft articles on the law of treaties.^{1/} Furthermore, the deletion of the article would be consistent with United Nations policy in regard to decolonization.

24. Mr. NAÑAGAS (Philippines) said that article 28 with the additional sentence proposed in documents A/C.3/L.1368 and Add.1 explicitly extended to the dependent peoples the rights recognized under the Covenant and at the same time affirmed their right to self-government or independence without delay. Thus the article so amended no more constituted juridical recognition of the status of countries under colonial rule than the International Convention on the Elimination of All Forms of Racial Discrimination sanctioned the existence of racial discrimination; on the contrary, both merely recognized the existence of a temporary evil which must be eliminated.

25. Mr. BECK (Hungary) disagreed with the Belgian representative's contention that article 28 was the reverse of a colonial clause; on the contrary, article 28 was merely the most modern version of the colonial clause, because, by obliging the Parties having colonial Territories to implement the Covenant, it implicitly recognized their right to maintain those territories in colonial status. If article 28 was deleted, as the Ukrainian amendment proposed, the metropolitan Powers would still be obliged to extend the rights guaranteed under the Covenant to the peoples of their dependent territories. He would therefore vote in favour of that amendment and, if the amendment was rejected, in favour of the amendment in documents A/C.3/L.1368 and Add.1. Although his delegation was compelled to recognize that there would unfortunately continue to be colonial territories for some time to come, their existence did not mean that the Covenant should recognize any right to maintain those territories in dependent or colonial status.

26. Mr. HANABLIA (Tunisia) considered that, from a legal standpoint, article 28 supplemented and expanded article 1. While it was true that colonialism was disappearing, it had not yet disappeared and the few remaining dependent territories should not escape the application of the Covenant. However, without the restriction provided by the amendment in documents A/C.3/L.1368 and Add.1, the article would be dangerous because it tacitly acknowledged the principle of colonialism and because, as at present worded, it might imply that States which did not apply the provisions of the Covenant in their own territory would not be obliged to apply them in their dependent territories.

^{1/} See Official Records of the General Assembly, Twenty-first Session, Supplement No. 9, pp. 44-45.

27. Mr. SAMBIRA (Burundi) supported the Ukrainian amendment (A/C.3/L.1359). If that amendment was rejected, his delegation would vote in favour of the amendment in documents A/C.3/L.1368 and Add.1.

28. Mr. AMIRMOKRI (Iran) was opposed to article 28 which had the effect of recognizing colonialism. At the same time, he shared the Mauritanian representative's fear that, if the Ukrainian proposal to delete the article was defeated, the Committee might find itself left with the text as it stood. Since his delegation was concerned to improve the text of the Covenant and to hasten the liberation of all dependent people, it would vote in favour of the Ukrainian amendment and, if that amendment was defeated, it would vote for the amendment to article 28 proposed in documents A/C.3/L.1368 and Add.1.

29. Mr. ATASSI (Syria), speaking on behalf of the sponsors of the amendment in documents A/C.3/L.1368 and Add.1, said that the amendment had been submitted in order to improve the text of article 28 adopted by the Commission on Human Rights in the event that article was retained. Since, however, that article served no useful purpose and was a survival of colonialism, they would prefer its deletion and would consequently support the Ukrainian amendment (A/C.3/L.1359). If that amendment was adopted, they would withdraw their own; but if it was rejected, they would press their amendment to the vote.

30. The CHAIRMAN asked whether the Committee was prepared to vote on the Ukrainian amendment (A/C.3/L.1359).

31. Mrs. MALECELA (United Republic of Tanzania) said that before voting she would like to hear the Legal Counsel's answer to the Mauritanian representative's question.

32. Mr. RESICH (Poland) recalled that, during the preparation of the International Convention on the Elimination of All Forms of Racial Discrimination, his delegation had proposed the deletion of the colonial clause. That proposal had been accepted by the Committee and endorsed by the General Assembly. Article 28 implicitly endorsed the existence of colonialism. Its inclusion in the Covenant was incompatible with the accepted rules of international law. He referred, in that connexion, to McNair's statement in his *Law of Treaties* that it was a general rule of international law that the provisions of a treaty applied to the territory of the contracting party as a whole, both metropolitan and, where such territory existed, non-metropolitan.^{2/} Since that principle would apply to the instrument under discussion, article 28 should be deleted.

The meeting was suspended at 12.15 p.m. and resumed at 12.35 p.m.

33. Mr. STAVROPOULOS (Legal Counsel) wished answer the Mauritanian representative's question whether, in the absence of a territorial application clause such as was contained in article 28, a State, on becoming a party to the Covenant, would be automatically bound to apply the provisions of the Covenant to all its territories.

34. He referred, in answering that question, to the practice followed in that respect by the Third Committee and by the Secretary-General as depositary of multilateral agreements concluded under United Nations auspices. During the discussions in the Committee at the second session of the General Assembly on the transfer to the United Nations of the functions and powers exercised by the League of Nations under the 1921 Convention for the Suppression of the Traffic in Women and Children, the 1933 Convention for the Suppression of the Traffic in Women of Full Age and the 1923 Convention for the Suppression of the Circulation of and Traffic in Obscene Publications, each of which contained a territorial application clause, it had been proposed that the relevant clauses should be deleted. Those clauses permitted the acceding States to exclude from the application of the Conventions any or all of their territories, whereas article 28 of the draft Covenant provided for its application to all territories. Those who had favoured deletion of the clauses he had mentioned had pointed out that the Conventions in question were of humanitarian character and should therefore be applied as widely as possible, while States having responsibility for the external affairs of non-metropolitan territories had argued *inter alia* that some of those territories enjoyed local autonomy and self-government, and that their consent had to be secured in advance. The Third Committee (63rd meeting) had recommended the deletion of the territorial clause from the Conventions in question and its recommendation had been adopted by the General Assembly on 20 October 1947 (resolution 126 (II)).

35. Turning to the practice followed by the Secretary-General, he recalled that, in the case of the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946 (resolution 22 (I)), and the Convention on the Privileges and Immunities of the Specialized Agencies, adopted by the General Assembly on 21 November 1947 (resolution 179 (II)), the Secretary-General had, as a matter of principle, taken the position that, in view of their nature, those Conventions should be regarded as applying to the territories for whose international relations the acceding States were responsible; that, indeed, appeared to be in accordance with the practice followed by the States parties to those conventions.

36. It appeared therefore that, in principle, the absence of a territorial application clause from a treaty laid upon States which became parties to it an obligation to apply it to their non-metropolitan territories. However, the nature of the treaty and the intention of the negotiating States had to be taken into account.

37. The practice of the Secretariat had recently been confirmed by the International Law Commission, which had given final approval in 1966 to draft articles on the law of treaties. Article 25 of that draft provided the following:

"Unless a different intention appears from the treaty or is otherwise established, the application of a treaty extends to the entire territory of each party."^{3/}

^{2/} See Lord McNair, *Law of Treaties* (1961), pp. 116-117.

^{3/} See Official Records of the General Assembly, Twenty-first Session, Supplement No. 9, p. 44.

The Commission's commentary on that article stated in paragraph (2):

"State practice, the jurisprudence of international tribunals and the writings of jurists appear to support the view that a treaty is to be presumed to apply to all the territory of each party unless it otherwise appears from the treaty. Accordingly, it is this rule which is formulated in the present article."^{4/}

38. The answer to the Mauritanian representative's question therefore was that, in the absence of a territorial clause, a State on becoming a party to the Covenant would be bound in principle to apply the provisions of the Covenant to all its territories.

39. Mrs. OULD DADDAH (Mauritania) thanked the Legal Counsel for his opinion and said that it had made the position abundantly clear. Her delegation would vote in favour of the Ukrainian amendment (A/C.3/L.1359) which called for the deletion of article 28. If that amendment was defeated, her delegation, for its part, would press the amendment in documents A/C.3/L.1368 and Add.1.

40. The CHAIRMAN invited the Committee to vote on the amendment submitted by the Ukrainian SSR (A/C.3/L.1359).

At the request of the representative of the Congo (Brazzaville), the vote was taken by roll-call.

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

In favour: Nicaragua, Nigeria, Norway, Pakistan, Panama, Peru, Poland, Romania, Rwanda, Saudi Arabia, Senegal, Sierra Leone, Somalia, Sudan, Sweden, Syria, Thailand, Tunisia, Turkey, Uganda,

Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Upper Volta, Yugoslavia, Zambia, Afghanistan, Algeria, Argentina, Australia, Austria, Belgium, Bolivia, Brazil, Bulgaria, Burundi, Byelorussian Soviet Socialist Republic, Cameroon, Canada, Central African Republic, Ceylon, Chad, Chile, Colombia, Congo (Brazzaville), Congo (Democratic Republic of), Costa Rica, Cuba, Cyprus, Czechoslovakia, Dahomey, Denmark, Dominican Republic, Ecuador, El Salvador, Ethiopia, Finland, Gabon, Ghana, Greece, Guatemala, Guinea, Honduras, Hungary, Iceland, India, Indonesia, Iran, Iraq, Ireland, Israel, Italy, Ivory Coast, Jamaica, Japan, Kenya, Kuwait, Lebanon, Liberia, Libya, Madagascar, Malaysia, Mali, Mauritania, Mexico, Mongolia, Morocco, Netherlands, New Zealand.

Against: None.

Abstaining: Niger, Paraguay, Philippines, Portugal, Spain, Togo, Uruguay, Venezuela, China, France.

The amendment of the Ukrainian Soviet Socialist Republic was adopted by 92 votes to none, with 10 abstentions.

41. Mr. EGAS (Chile), speaking in explanation of his delegation's vote, said that he wished to prevent any future misinterpretation of the motives underlying the decision just taken by the Committee. In his view the Committee had deleted article 28 in order to make it clear that no human beings anywhere, even those who had not yet achieved independent status, should be left unprotected by the provisions of the Covenant.

The meeting rose at 1.10 p.m.

^{4/} *Ibid.*, p. 45.