

United Nations GENERAL ASSEMBLY

SEVENTEENTH SESSION

Official Records



THIRD COMMITTEE, 1204th
MEETING

Thursday, 6 December 1962,
at 3.15 p.m.

NEW YORK

CONTENTS

Agenda item 43:

Draft International Covenants on Human Rights
(continued)

General provisions: articles 2 to 5 (con-
tinued)..... 345

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.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.1046/Rev.1) (continued)

GENERAL PROVISIONS: ARTICLES 2 TO 5 (con-
tinued)

1. Mr. IDRIS (Indonesia) introduced the third revised text of his delegation's amendment to article 2 of the draft Covenant on Economic, Social and Cultural Rights (A/C.3/L.1027/Rev.3) which the delegation of Burma was co-sponsoring and which, he believed, removed the main objections to the previous revision.

2. The new text recognized the principle that non-nationals were entitled to enjoy the same economic rights as the nationals of a State; it was only the extent of such enjoyment that could be limited by the State. It was a flexible provision that covered the practices of all States; it was also strictly limited in scope in that it concerned only the economic rights of foreigners.

3. Such a provision was needed, however, for the simple reason that economic rights had been combined with social and cultural rights in a single instrument. In that connexion he recalled that the original intention had been to cover all human rights in one covenant but that, for practical reasons, it had been decided to separate the civil and political from the economic, social and cultural rights. Even then the separation was not a perfect one, as could be seen from the fact that article 23 of the draft Covenant on Civil and Political Rights—concerning the right to participation in public affairs—applied specifically to citizens only, whereas all other rights enunciated in that Covenant were to be enjoyed by everyone.

4. There had thus been no need to include any reservation in article 2 of that draft Covenant, since the only limitation required had already been written into article 23. That was not the case with article 2 of the draft Covenant on Economic, Social and Cultural

Rights, however, because in practice many countries, and the developing countries in particular, could not afford to give the same economic rights to aliens as to their own citizens. Hence the need in article 2 for a special reservation in regard to economic rights.

5. It would be wrong to think that the proposed new paragraph would give States a completely free hand. In today's interdependent world any State concerned for the development of its economy would inevitably have to think twice before taking any unjustified discriminatory measures against foreigners. The provision was designed solely to fill in a gap in the draft Covenant on Economic, Social and Cultural Rights.

6. U KHIN MAUNG PYU (Burma) stressed the importance of the amendment of Indonesia and Burma for developing countries like his own. Burma had attained its political independence and a semblance of control over its economy, but the tools for the development of that economy, which should rightly have been handed over with political independence, were still in other hands. The sole purpose of the amendment was to ensure that those tools were returned to their rightful owners, the developing countries, since the draft Covenant as it stood would perpetuate the existing unnatural position of the nationals of those countries, while non-nationals would go on enjoying the economic privileges they had retained.

7. Mrs. REFSLUND THOMSEN (Denmark) supported the United Kingdom amendment (A/C.3/L.1026/Rev.2), which was a realistic one. On the other hand, she had serious doubts regarding the desirability of the five-Power amendment (A/C.3/L.1046/Rev.1). While fully understanding the need of the developing countries for economic and technical assistance, she felt that it would be wrong to specify such assistance in too much detail and preferred the original text, which was much broader in scope.

8. She endorsed the proposal in the three-Power amendment (A/C.3/L.1028/Rev.1) to replace the word "distinction" by the word "discrimination" in paragraph 2 of article 2, since it was not clear from the present wording of that paragraph whether differential treatment of nationals and non-nationals in such matters as old age pensions and the right to work would be permitted. In that connexion, it had to be remembered that differentiation was not discrimination, as had emerged clearly from the discussion on article 24 of the draft Covenant on Civil and Political Rights during the sixteenth session. Moreover, in United Nations terminology, discrimination differed from distinction and had indeed already been used in articles 10 and 24 of that draft Covenant.

9. On the other hand, she could not support the Belgian amendment (A/C.3/L.1030), since many forms of discrimination against women were disguised as

protection. Women were not asking for protection, but for equal rights, in practice as well as in theory. In any case, the purpose of the amendment was adequately covered by article 4.

10. She would also vote against the amendment of Indonesia and Burma since it would be most inappropriate to include in a covenant on human rights a provision which would allow discrimination—unjustified differential treatment—against aliens.

11. Mrs. CATTAROSI (Uruguay) said that her delegation had co-sponsored the five-Power amendment because the imperative of the present age was economic development. It was an imperative for both the developed and the developing countries, which had to live and work together, and that fact should be reflected in the draft Covenant. The text of the amendment could doubtless be improved, but she hoped that delegations would realize its importance and give it their support.

12. Mrs. MANTZOULINOS (Greece) remarked that she would have preferred to retain article 2 as it was. However, she could accept the United Kingdom amendment because, while stressing legislative measures, it left open the possibility of alternative means of realizing the human rights set forth in the draft Covenant. On the other hand, she could not support the amendment of Indonesia and Burma since it went against the spirit of universality of the Universal Declaration of Human Rights which the draft Covenant was designed to implement. Limitations on the rights of foreigners could be dealt with in bilateral or multilateral agreements, but had no place in the covenant.

13. She would vote for the three-Power amendment, since the term "discrimination" was both broader and clearer than "distinction", as was evident from the definitions of the word contained in the UNESCO convention and recommendation against discrimination in education^{1/} and the ILO convention concerning discrimination in respect of employment and occupation.^{2/}

14. The five-Power amendment did not meet with her delegation's approval. The Commission on Human Rights had wisely produced a concise text of article 2 which recognized that the implementation of the human rights enunciated was a progressive task and would take a considerable time. That was to be done first through the individual action of States in using their available resources to the maximum, and then with the co-operation of the international community. The term "international co-operation" was broad enough to cover every form of international assistance and it would be wrong to specify the details of such assistance in an international covenant on human rights. Developing countries like her own had no right to demand financial assistance through such an instrument; they could ask for it, but not claim it. In any case, such assistance could not be regarded as a *sine qua non* for the progressive achievement of human rights and she had not been convinced by the arguments of the Chilean representative (1203rd meeting) that the amendment applied to an economic human right. Was the developing countries' claim to

such assistance to be based on the principle of the equality of States or on the grounds of charity? Assistance must always be on a voluntary basis for both donor and receiver. For all those reasons she would vote against the five-Power amendment.

15. She would also vote against the Belgian amendment, which was superfluous since the safeguards it attempted to provide were already contained in another international instrument, namely, the ILO Convention concerning discrimination in respect of employment and occupation.

16. Mr. SHARP (New Zealand) preferred the first revision of the United Kingdom amendment (A/C.3/L.1026/Rev.1), in which the word "particularly" was omitted, since in his country most rights were enjoyed without the need for legislative measures. However, since the latest revision (A/C.3/L.1026/Rev.2) seemed to meet the wishes of most delegations, he was prepared to support it.

17. In his view, the amendment of Indonesia and Burma would derogate too basically from the universal enjoyment of the rights which the draft Covenant was designed to promote and leave too much discretion to Governments. His delegation would therefore vote against it.

18. On the other hand, his delegation was prepared to accept the three-Power amendment, since the word "discrimination" covered the objectionable type of distinction implied in the present context. Moreover, acceptance of that amendment would remove some of the grounds for the Belgian amendment, which his delegation was reluctant to accept since it contained an implication of inferiority or weakness that would be resented by women.

19. In his view, the five-Power amendment was out of place. His own country, a small one of limited resources, had been developed through the unremitting toil and Spartan life of its people and it was solely due to those efforts that it was now in a position to give a measure of assistance to less fortunate countries. Moreover, that assistance was given and accepted in the spirit of true friendship, with no discussion of rights or obligations, which was the only way of maintaining the spirit of true international co-operation. In article 2, therefore, it would be preferable to retain the realistic concept of international co-operation rather than to introduce financial considerations supposedly based on rights and obligations. For those reasons his delegation would vote against the five-Power amendment.

20. Mr. DE SANTIAGO LOPEZ (Mexico) felt that the five-Power proposal was so broad that it could in the end defeat its own purposes, namely, the political and social development of the under-developed countries. He agreed with the representative of Chile that one of the major obstacles to the economic development of many parts of Latin America was the relative scarcity of capital. However, economic development had to be based above all on the rational and efficient use of a country's own resources and on the hard work of its people; international economic assistance could only be supplementary and was mainly a means of counter-acting economic maladjustments arising from external causes. Obviously, many problems encountered by developing countries could not be resolved without international co-operation, but the kind of co-operation required went far beyond the financial and technical assistance mentioned in the

^{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 III.

five-Power amendment. What was needed, for instance, was permanent international machinery for preventing sudden and excessive fluctuations in the prices of primary commodities, which could be disastrous for the developing countries, and the elimination of the imbalance between the prices those countries received for their primary commodities and the prices they had to pay for manufactured goods.

21. The draft Covenant was a political, not a technical, instrument, whereas the proposed amendment covered only one of the technical phases of economic development. In its draft of article 2, the Commission on Human Rights had wisely left it to each State to determine what international co-operation it required and on what terms. The Mexican delegation therefore believed that the text of that article should be left as it was. International co-operation was necessary for everyone, but it had to be based on full respect for the sovereignty of the nation which received it and had freely accepted it. Sovereignty in international economic relations was no mere abstraction, but the basis for any rational progress and international solidarity.

22. Mrs. ROUSSEAU (Mali), replying to the Greek representative's comments on the five-Power amendment, said that Mali did not ask for charity, but expected international technical co-operation in overcoming the difficulties resulting from the systematic plundering of their wealth under colonialism. If Greece was in a different position, that was due to the extremely large international assistance it had received, which she was glad was no longer needed.

23. Mrs. MANTZOULINOS (Greece) pointed out that she had referred to her own country as a developing one, thus making no differentiation; she had also said that Greece did not want assistance as a matter of charity.

24. Mr. ZULOAGA (Venezuela) noted that there appeared to have been some misunderstanding—even by the representative of the sister Latin American country of Mexico—of the argument advanced by the Chilean representative, who had certainly not spoken of charity. On the other hand, the latter had emphasized that international assistance from highly developed to under-developed countries was useful to both parties—an assertion with which he could not entirely agree, particularly in the case of countries dependent upon a single commodity. The miraculous recovery of Europe as a result of the Marshall Plan had shown that assistance from one highly developed country to others, which had been devastated by war but possessed large numbers of skilled technicians, could be successful. However, as the Chilean representative himself had said, purely financial assistance to countries with semi-colonial economies—such as most of the Latin American and all the African countries—could be rendered useless by a slight decline in the price, for instance, of coffee from Brazil, petroleum from Venezuela or tin from Bolivia.

25. Whereas financial assistance alone could become a boomerang, technical assistance could be of benefit both to the donor country and to the recipient country. Venezuela had at one time endeavoured to develop a diamond industry, but it had proved impossible to obtain the services of independent technicians because the industry had been completely controlled by the United Kingdom, which had acquired tremendous technical experience through the investment of risk

capital. Happily, since then, United Nations programmes of technical assistance had made expert knowledge available to the developing countries.

26. In the light of the foregoing, the text of article 2 appeared vague, if not meaningless, in comparison with the other articles of the draft Covenant. He suggested that the substitution of the word "economic" for "financial" in the five-Power amendment might remove any suggestion of charity and dispel some misgivings, especially those of the Mexican representative. Perhaps the last phrase might also be reversed to read "especially technical and economic", thus placing the emphasis on technical assistance.

27. Mr. BAROODY (Saudi Arabia) said that his criticism of the five-Power amendment (1203rd meeting) had been based primarily on the use of the word "with", which might allow any Government to blame its failures on the inadequacy of international assistance. He therefore formally proposed, as a sub-amendment, the replacement of that word in the revised version of the five-Power amendment by the word "through".

28. Despite the Venezuelan representative's argument concerning "semi-colonialism", he still believed that under-developed countries, including his own, should in the future depend more on their own efforts than they had done hitherto, because the taxpayers of the donor countries might at any time force their Governments to discontinue assistance owing to economic crises at home. The revised amendment was worse than the original, in that it placed the emphasis on financial and technical, to the exclusion of social and cultural, co-operation, although the draft Covenant was concerned with those aspects of life also. A broader wording was needed, and if it was thought desirable to incorporate the Chilean representative's idea, there might be some merit in retaining the word "assistance", but without specifying what kind of assistance. He suggested, therefore, that the words "especially financial and technical" should be deleted from the revised amendment; if that was unacceptable to the sponsors, he would request a separate vote on those words.

29. Mr. GORIS (Belgium) noted that the three-Power amendment would probably be adopted. Since his delegation believed that that would cover its own amendment at least in part, and since most women members of the Committee appeared to oppose the latter, his delegation had decided to withdraw it. He trusted, however, that the statements made by his delegation on the subject would not be forgotten.

30. Mr. DIAZ CASANUEVA (Chile) was concerned at the extent to which the five-Power amendment had been misunderstood. Thus, the Greek representative had accused the sponsors of asking for international "charity"—a word which was outmoded in both private and public life. Even countries which had recently emerged from colonialism and consequently lacked the past glory of other States were too proud to attempt surreptitiously to introduce into the text of article 2 of the draft Covenant a formula aimed at obtaining money from the wealthier countries.

31. Nor were there any grounds for fearing that the sponsors of the amendment favoured international assistance and co-operation as a means of promoting political ties between the donor and the recipient countries. He could not understand why the representative of Mexico, a country whose outlook was

identical with that of Chile, opposed the amendment. The Mexican representative had acknowledged the need for international assistance and co-operation— for without it development, as the term was currently understood, was impossible—and he had gone deeply into the question of national sovereignty, which was of concern to all Latin American countries. He himself entirely agreed that it was for the developing country alone to determine the desirability and the terms of international assistance; but the idea that each country should be self-sufficient was an anachronism in modern times, when even the great Powers needed the co-operation of others.

32. He emphasized that the sponsors understood the words "assistance" and "co-operation" in the very broadest sense, as going far beyond financial aid; it was for that reason that they had agreed to use the word "especially" in the revised amendment, but for historical and other reasons they had felt it necessary to emphasize the economic aspect. They would be glad to replace the word "financial" by "economic", as suggested by the representative of Venezuela. The basic purpose of their amendment was to bring up to date and make more precise the wording of article 2, paragraph 2.

33. He had no objection to the Saudi Arabian representative's formal proposal, since there was little difference in Spanish between the words "through" and "with". His delegation could not agree, however, to delete the last part of the amendment.

34. Mr. RIOS (Panama) observed that his country supported any measures designed to promote the enjoyment of human rights, which were both recognized in its constitution and respected by its Government in the conduct of affairs. On the whole, he found the text of article 2 of the draft Covenant satisfactory. The word "progressively" had been criticized by some representatives, who were justifiably impatient; nevertheless, that word was in keeping with the purpose of the draft Covenant, which was to inspire in each State constant and dynamic concern to achieve better living conditions for all human beings under its jurisdiction, however slowly and laboriously it might have to proceed in the face of social and political difficulties and even deep-rooted customs and traditions. He was glad, therefore, that the Costa Rican delegation had withdrawn its amendment (A/C.3/L.1025).

35. He supported the three-Power amendment since he could not accept so absolute a phrase as "without distinction". What the Panamanian constitution prohibited was "discrimination"—a word which evoked the idea of injustice, prejudice and anything that offended human dignity and was practised by dominant groups against defenceless minorities. In that connexion, the idea of "race" was a fallacy in the light of modern research, and the word should not be used in a United Nations document.

36. He would vote for the five-Power amendment, despite some misgivings. It was true that the under-developed countries needed technical and financial assistance and co-operation from the highly developed States, but the words "through international co-operation" in the original text were perhaps sufficiently clear. It was natural for a great Power to want something in return for its help, and the greatest caution should always be exercised by the recipient country.

37. He also supported the United Kingdom amendment now that it incorporated the sub-amendment of Ghana, and he would abstain on the amendment of Indonesia and Burma, the full purport of which he did not quite understand.

38. Miss MARTINEZ BONILLA (Dominican Republic) endorsed the three-Power amendment, as revised, and suggested, for the Spanish text at least, the use of the phrase "sin discriminación alguna por motivos" used in the original amendment.

39. Mr. ALBUQUERQUE MELLO (Brazil), referring to the last two versions of what was now the amendment of Indonesia and Burma (A/C.3/L.1027/Rev.2 and Rev.3), found them to be a step backward in relation to what had already been achieved in human rights. Recent efforts had been aimed at placing those rights under international auspices, rather than considering them as coming within the exclusive competence of States. That trend was in keeping with modern conceptions and constituted a most important contribution to world peace. Therefore, to give the State the right to decide "in the exercise of its sovereignty" to whom it would guarantee the rights in question meant that the fate of those rights was again to be left entirely in the hands of the State. His delegation would accordingly vote against the amendment of Indonesia and Burma.

40. Nor could his delegation accept the five-Power amendment. He did not believe that the concept of international co-operation had changed so much since the drafting of the Covenants under consideration that a modification of the original text was necessary. The economic and technical aspects of such co-operation were already clearly expressed in Chapters IX and X of the United Nations Charter. Moreover, the document on which the Committee was working was of a universal character and should be valid for developed and under-developed countries alike. To stress financial and technical co-operation would be to neglect the importance which other forms of co-operation might have for some countries. In addition, the insertion of a reference to financial and technical co-operation could not achieve the desired end since the initiation of such co-operation was outside the sphere of the Third Committee; it was for other bodies to recommend the forms of co-operation that should be adopted in economic matters. Lastly, he did not feel the same confidence as the Chilean representative in certain international programmes of financial and technical co-operation, which usually took the form of aid programmes that did not stimulate real economic development, or at least not in the short run. He would accordingly vote to maintain the words "international co-operation" in article 2.

41. Mr. MARSHALL (Liberia) said that his delegation would vote in favour of the United Kingdom amendment and of the amendment of Indonesia and Burma. He also endorsed the three-Power amendment, as he believed that the use of the word "discrimination" would strengthen the article. Distinction did not necessarily involve discrimination, and he cited as examples the valid distinctions made between children and adults, and women and men. Lastly, the five-Power amendment had been improved by the suggestions just accepted by the sponsors, and he would vote for it.

42. Miss WACHUKU (Nigeria) agreed with those representatives who wished to make sure that, if and when their Governments acceded to the draft Cove-

nants, they would be in a position to adopt such measures as they deemed necessary to promote the general welfare of their people, with due regard for fundamental human rights. Her delegation was preparing an amendment to that effect.^{3/}

43. Mr. PANTOJA (Colombia), speaking as a co-sponsor of the five-Power amendment, associated himself with the Chilean representative's statement, which should have cleared up any remaining misunderstandings. It was his firm belief that international economic co-operation did not detract from the absolute freedom and independence of the countries concerned.

44. Mr. WAHLUND (Sweden) said that his position with regard to article 2 coincided with that of the Danish representative; he would accordingly abstain on the five-Power amendment.

45. Regarding article 3, he recalled that the Swedish delegation in the Commission on Human Rights had favoured the deletion of the article for the reason that it duplicated the anti-discrimination clause in article 2. After hearing the debate in the Third Committee, however, his delegation had reconsidered its position. The sad fact was that men and women did not universally enjoy equal rights, despite the formal recognition of the principle of equal rights in many countries. The psychological effect of article 3 might be more important than the fact that it in some respects repeated article 2; it was not completely redundant, however, for the elimination of discrimination against women was not identical with the guarantee of equality between men and women.

46. Sir Douglas GLOVER (United Kingdom) found it incomprehensible that the Committee should consider introducing into article 2 a restrictive clause such as that proposed in the amendment of Indonesia and Burma, while at the same time it considered strengthening the universality of the article by employing the word "discrimination", as suggested in the three-Power amendment. His delegation would vote against the former and in favour of the latter amendment.

47. He was still opposed to the five-Power amendment. There was a tendency among delegations to regard the Committee and the General Assembly as one, but in fact to raise questions of economic and technical co-operation in the Third Committee was to usurp the powers of another Committee of the General Assembly. In the separate vote on the amendment, therefore, he would vote against the words "especially technical and economic".

48. Mr. BELAUNDE MOREYRA (Peru) stated that he would vote in favour of the three-Power and five-Power amendments, both of which he believed would clarify and strengthen article 2. He would vote against the amendment of Indonesia and Burma, since he could not conceive of a State denying to aliens any of the rights recognized in the draft Covenant. Although he fully understood the motives of the sponsors, the new paragraph they proposed would authorize all kinds of discrimination, including some to which they themselves would clearly object. Moreover, the proper place for their proposal was article 4 or 5, and not the article on non-discrimination.

49. Mrs. TREE (United States of America) stated, with reference to the five-Power amendment, that

her Government vigorously supported all efforts to co-operate with the world's developing nations. Its record in extending assistance through international co-operation to all countries spoke for itself. Her delegation held that the words "international co-operation" in the original text of article 2, paragraph 1 adequately covered all forms of international assistance. The addition of qualifying phrases could only limit the range of possible co-operative activities. If the amendment came to a vote, she would have to vote against it, although she could support the Saudi Arabian representative's suggestion.

50. She also considered the proposal of Indonesia and Burma to be too restrictive, and would vote against it. Indeed, she hoped that the introduction of amendments restricting human rights did not represent a trend in the Committee. She would, lastly, vote for the United Kingdom and three-Power amendments.

51. Mr. BARBOZA (Argentina) thanked those delegations which had supported the three-Power amendment, and particularly the Greek representative, who had mentioned two international instruments which confirmed the sponsors' interpretation of the word "discrimination". He also accepted the drafting suggestion made by the representative of the Dominican Republic. The word "discrimination" had come to mean unfair distinction in both legal terminology and everyday speech. That was particularly fortunate, since the Committee hoped that the covenants would be read and understood by the public at large as well as by legal experts.

52. Mr. BEN MEBAREK (Algeria) expressed full support for the five-Power amendment. Algeria, having just emerged from a protracted war which had made havoc of its economic, social and cultural institutions, was today rebuilding them through its own efforts and means; it had no wish to complain or to make demands, however justified in so doing it might be. Nations that were or had been colonized did not go begging, but called for the restoration of their rights and property. When they spoke of assistance and technical and economic co-operation they viewed them as a two-way venture; indeed, the highly developed countries depended on the less developed nations for their very existence. Technical and economic factors were clearly, today, the prime mover of co-operation in all fields. The amendment, which made that vital point clear, deserved the Committee's acceptance.

53. He also endorsed the amendment of Indonesia and Burma which, while recognizing all human rights, sought to ensure that the preservation of past privileges did not jeopardize the legitimate rights of nationals.

54. Miss GRIÑAN (Cuba) observed that the Chilean representative had asserted that all outside aid received by Latin America had come from the United States. At the present meeting the United States representative had said that her country supported all efforts to co-operate with the developing nations. The Cuban delegation could no longer refrain from replying. Revolutionary Cuba, which was an integral part of Latin America, had received nothing but aggression from the United States in its struggle to free itself from national and foreign monopolies which it regarded as absolutely incompatible with the economic and social development of an underdeveloped nation. Indeed, it would very much like to

^{3/} Subsequently circulated as document A/C.3/L.1052.

see wording to that effect included in the draft Covenant. Revolutionary Cuba existed thanks only to the extraordinary effort and sacrifice of its Government and people and to the generous aid of the socialist countries.

55. Mr. DIAZ CASANUEVA (Chile) said that he had not made any assertion such as that ascribed to him by the Cuban representative.

The meeting rose at 6.10 p.m.