

the objections voiced by some States in the 1950s when the war in Korea was being waged. Those States had not been able to accept, for example, subparagraph (d) because what they had wanted at that time was not freedom of information but freedom of propaganda and indoctrination. With reference to article 7 (*ibid.*), he said that the world could not afford to continue without some kind of machinery to protect freedom of information.

6. He recalled that references had repeatedly been made to the three actions characteristic of the press in presenting information: slanting, silencing, or scissoring so as to exclude certain elements. The Americans had perhaps been right when they had affirmed that only States which had taken over the organs of the press could control information; however, that did not justify

licence in the countries of the so-called free world, which, in fact, enslaved and demoralized. The United States had always asserted that it was necessary to safeguard the free flow of information, without any kind of interference by Governments. Perhaps, then, an International Court of Ethics for the Press could be established which would favour the dissemination of information, would control information and would be guided by a code worked out by the international press associations.

7. Finally, he expressed the hope that at the next session priority would be given to the item, so that the Convention on Freedom of Information could be completed, since only one or two substantive articles remained to be considered.

The meeting rose at 1.20 p.m.

2047th meeting

Monday, 3 December 1973, at 3.10 p.m.

Chairman: Mr. Yahya MAHMASSANI (Lebanon).

A/C.3/SR.2047

AGENDA ITEM 64

Freedom of information (*concluded*) (A/8340, A/9076):

- (a) Draft Declaration on Freedom of Information;
- (b) Draft Convention on Freedom of Information

1. Mr. VELA (Guatemala), referring to the draft Declaration on Freedom of Information (A/8340, annex VI), recalled that that freedom was already clearly affirmed in the Universal Declaration of Human Rights. That was why the second preambular paragraph of the draft was the most important. Freedom of opinion and freedom of expression were moral necessities which could not be restricted. He wondered why the last preambular paragraph mentioned books, for freedom of expression in respect of books should be greater than in respect of all other means of expression.

2. Article 5 of the draft Declaration could hardly be construed as confirming the intention to reaffirm and defend freedom of information. The article stipulated "the rights and freedoms proclaimed [in articles 1 to 4] above should be universally recognized and respected, and may in no case be exercised contrary to the purposes and principles of the United Nations". It was true that the principles of the United Nations were universal and must be respected at all times and in all places. But article 5 also mentioned the various limitations which could be placed on those rights and freedoms to meet such requirements as those relating to national security, public order and morality. Such concepts were often subjective; the press, for example, had often been censored for reasons of morality. No one was in a position to judge what constituted "general welfare in a democratic society", except Governments which sought to muzzle the mass media.

3. The draft Convention (*ibid.*, annexes I and II) also reflected the paternalistic attitude of the Third Commit-

tee and, moreover, presented difficulties for his delegation. As the representative of Saudi Arabia had pointed out at the preceding meeting, the second sentence of article 2, paragraph 1, contained reservations which were unobjectionable, but which had nothing to do with the dissemination of information, a public service provided by private enterprises. That was the only way in which the information media could escape State control over information, but it obviously did not preclude the possibility that a State itself might disseminate information. In article 5, it was stated that "each Contracting State shall encourage the establishment and functioning . . . of one or more non-official organizations". It would be better to say that States should not prevent the establishment or functioning of non-official organizations, for article 7 made it clear that all rights belonged to States and that the Convention could not limit them in any way. Article 7 also stated that a State could take measures it deemed necessary to protect its national news enterprises. But protect them from what? Such protection could give those national enterprises some advantages over independent enterprises, but it could also take the form of direct or indirect restrictive measures, designed, for example, to prevent the waste of public funds.

4. He believed the texts of the draft Convention and the draft Declaration should be studied in depth and that they should, perhaps, be reworded so as to modify their scope. While it might be desirable to give States sufficient freedom to enable them to counteract propaganda, false reports and incitement to hatred, that could lead to abuses and enable States or other pressure groups to oppose freedom of information, which would be counterproductive. That might perhaps be attributed to the fact that freedom of opinion was also mentioned in the draft Convention. Information must be as objective as possible. As had been stated at an earlier session, the most important thing was to educate those who received and transmitted information, be-

cause every day one found that some news items were given differing interpretations. Whatever the defects and the inadequacies of freedom of information, a better informed public would be better able to decide whether to accept or reject the news it received. The Third Committee should, therefore, ensure that that freedom was supported and defended, as the authors of the drafts had intended.

5. Mr. KLIESING (Federal Republic of Germany), read out article 19 of the Universal Declaration of Human Rights, which dealt with freedom of opinion and expression, and recalled that the principle of law embodied in that article had been incorporated in article 19 of the International Covenant on Civil and Political Rights. Freedom of information was thus a universal principle of international law.

6. Freedom of communication was of crucial importance to man and was one of his fundamental rights, for, without it, he could not fully develop his personality, and without free access to sources of information his judgement deteriorated. Protection of the individual thus required that freedom of opinion and information should be guaranteed. That freedom was also a prerequisite for democracy, which presupposed the existence of citizens capable of making their own judgements, contributing to the formation of public opinion and participating in the life of the community.

7. Above all, nations wanted peace, and the safeguarding of that peace presupposed mutual trust. Only free exchange of opinions and information could create such trust and eliminate the prejudices which had been the cause of so much suffering. Article 5 of the Constitution of the Federal Republic of Germany guaranteed not only freedom of opinion but also the right to inform oneself from generally accessible sources of information. Anyone who felt those rights had been violated by the public authorities could take the matter to the courts. Any restriction on freedom of information testified to a lack of assurance; any policy based on the idea that those who thought too much were dangerous could hardly inspire confidence. Accordingly, his delegation energetically supported all efforts by the United Nations to safeguard freedom of information on a universal scale. The main question was how that goal could be achieved with the minimum of delay.

8. The fact that the United Nations had been dealing with that question since 1946 without any substantial progress showed the extent of the difficulties involved. They were also apparent at the European Conference on Security and Co-operation, which was also dealing with the question, it being a major factor for security and co-operation. The United Nations Conference on Freedom of Information had submitted a draft convention as early as 1948. The Third Committee had discussed a second draft for several years and had then left it in abeyance for a decade. Although the first four articles had been adopted by the Third Committee many years earlier (A/8340, annex I), there was no prospect of completing a convention during the current year. It would thus be more expedient to concentrate on the draft Declaration adopted by the Economic and Social Council (*ibid.*, annex VI), which contained all the essential points. In his view, it was particularly important to define the role of the mass media and to ensure they had a large measure of freedom, since it was now only

through the press and other media that comprehensive information could be obtained.

9. He agreed with other delegations that the text of the draft Declaration could still be improved, but it was important to make progress towards guaranteeing human rights. If, therefore, the text of the draft Declaration could serve as a basis of agreement, his delegation would support its adoption.

10. Mr. BUCKLEY (United States of America) congratulated the representatives of Guatemala and the Federal Republic of Germany on their analysis of the subject. He said that there was a basic difference between the declaration and the convention, which was a tangle of legal complexities which no one apparently wished to unravel, at least at the current session. It should be emphasized, with regard to the latter text, that nations had always sought, by envisaging exceptions and expressing reservations, to neutralize certain human rights. That was why the United States Government had rather lost interest in the draft convention, knowing how States tended to evade the obligations laid down in the preamble. In those circumstances, his Government did not recommend continuing the study of the draft Convention in its current form, although it was willing to participate in any efforts to produce a text which accorded with the declared goals.

11. The draft Declaration was different because it was normative. Its wording hardly lent itself to the stylistic discussions to which the Third Committee devoted so much time. The essential points were contained in the second, third, fourth and fifth preambular paragraphs. One's impression on reading them was that any mention of specific measures would be superfluous and that it would be sufficient merely to follow up those paragraphs with the phrase: "The General Assembly therefore urges all nations of the world to act accordingly."

12. With regard to the Saudi Arabian representative's references, at the preceding meeting, to pornography and licence, perhaps that representative felt a need to protect his people from the licence which often attempted to travel under freedom of information. Members of the Committee were not concerned with such obvious distinctions. With regard to the dictum that truth made men free, that gave societies seeking inexpensive means of depriving people of freedom a good case for withholding the truth.

13. In view of the mandate of those organs which dealt with human rights, even if they would not, could not or should not specify how they intended to protect such rights, they should nevertheless uphold human rights—foremost of which was the right to freedom of information—knowing the truth would not make man free but give him an opportunity knowingly to accept or reject information. The Third Committee's discussions were given widespread publicity, and the scepticism with which they were received could perhaps be explained by the fact that in 1973 that organ was calling for the acceptance of truisms already formulated in 1960. As to what societies could or could not do at particular stages of their development, in view of their various priorities, he failed to see how that could prevent members of the Committee from speaking unanimously on some of the principles which justified the existence of the United Nations. If members of the Committee spoke and engaged in a dialogue, it was because they hoped their work would become known. How could

that happen without freedom of information? The members of the Committee behaved as if they were reluctant to record their solidarity with a basic declaration. Accordingly, he appealed to the Committee to give the draft declaration the enthusiastic backing that would reassure the peoples of the world.

14. Mr. NENEMAN (Poland) observed that the Committee was resuming its consideration of the item on freedom of information at a crucial period in the general world situation. There were currently great hopes of establishing peaceful relations among peoples and States, as well as all-round international co-operation. The state of relations in the field of information reflected the state of political relations, and the contents, methods and forms of information represented a testing ground for those relations. Accordingly, it was important for the purpose of achieving *rapprochement* between peoples that information should become more extensive and more unbiased. It was therefore necessary to eliminate all that was reminiscent of the cold war and to prevent the free exchange of information from becoming tantamount to a free exchange of misinformation. In his delegation's view, what should be dealt with was not so much the actual form of exchange of information as the content and objectives of related activities.

15. Having said that, he wished to concentrate on two problems. Firstly, his delegation was profoundly convinced that the détente in international relations must be accompanied by a growth of confidence and mutual respect between States. If they wished to coexist with partners having different views and philosophies, Governments should recognize and respect those differences. Information should therefore be objective and be aimed at bringing people closer together.

16. The fundamental principle governing the exchange of information should be non-interference in the internal affairs of any country. In the view of his delegation, it was the exclusive prerogative of a sovereign country and its institutions to inform public opinion on internal matters. As far as international relations were concerned, the State was responsible for all information coming out of its territory, whether disseminated by State or private institutions. Unfortunately, that principle was not always observed in practice. He recalled, for instance, that his country had been subjected to hostile propaganda within the framework of a psychological war conducted by the so-called Radio Free Europe and other stations outside Poland's borders. That state of affairs was totally incompatible with the current spirit of détente, since it created an atmosphere of distrust in international relations.

17. The second problem concerned the interpretation of the very notion of freedom of information about other countries. His delegation was convinced that each country had the right to comment on all events occurring in the world of today, including events taking place in other countries. A controversial approach to those matters should be seen as a natural result of the political and ideological differences between States. Naturally, every State was fully entitled to disseminate its own principles of government and to report its own internal affairs in the way which it deemed most appropriate. However, information concerning other countries could not be used as a means of interference in their domestic affairs.

18. Freedom of information was not an abstract notion, but was part and parcel of a given social system and its stage of development. The fact that in one country individuals had the freedom to preach a doctrine whereas in other countries that freedom was exercised by the State did not mean that there was no freedom in the latter countries.

19. Consequently, the United Nations should take account, in its documents, of the various concepts of freedom of information based on different ideological systems, different value systems and different social objectives, just as it respected differences between the political and social systems of States by granting the same rights to all of them.

20. Similarly, the United Nations should not accept in any form the right to disseminate ideas aimed at undermining fundamental human rights and peace among nations. He observed that, without full awareness of those two important aspects of the question, there could be no progress on that complex and important matter.

21. Lord GAINFORD (United Kingdom) said he welcomed the opportunity for an exchange of views on the important subject under consideration, although no draft resolution had been tabled on the item.

22. It was perhaps over-simplifying matters to say that there were two opposite views on freedom of information. On the one hand there were those who felt that information should be truly free and truly available to every individual, from whatever source he or she might choose. On the other hand there were those who thought that information was a dangerous substance whose dissemination must be strictly controlled.

23. That restrictive attitude was often justified by reference to the sovereignty of States and the public interest. However, that view could not go unchallenged. That was not to deny the importance of the sovereignty of States but rather to recognize that there could be a conflict of interests between the sovereignty of States and the basic human rights of the individuals of a State. One of the great achievements of the United Nations since its inception had been the adoption of a corpus of international instruments recognizing the basic human rights of individuals.

24. Article 19 of the Universal Declaration of Human Rights stated: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers." That idea was further elaborated in article 19 of the International Covenant on Civil and Political Rights. It was true that paragraph 3 of the latter article recognized that that right might be subject to certain restrictions, to ensure respect of the rights or reputations of others and the protection of national security or of public order (*ordre public*), or of public health or morals. Nevertheless, his delegation felt that it was difficult to justify the way in which some States still limited freedom of information and expression by relying on the provisions of article 19, paragraph 3. It was firmly convinced that the restrictions mentioned should be invoked only in particular circumstances and for the most compelling reasons. Any other restriction must be regarded as a falling away from the ideal since, without that freedom, democratic

society as his delegation understood it could not flourish. Moreover, the free interchange of ideas and information was an important element in reducing international tension. How could those who lived in a closed society be aware of events taking place outside that society, or view them rationally? A closed society was itself an indication of distrust. Distrust bred suspicion and suspicion led to xenophobia—and xenophobia was dangerous.

25. That was one of the reasons why his delegation attached such importance to the negotiations currently taking place in Geneva at the European Conference on Security and Co-operation. It hoped that it would be possible to make real progress, in a European context, towards creating a free flow of cultural and scientific exchanges. The United Kingdom already had a firmly rooted tradition of exchanges with its partners in the Common Market and with other countries in Europe, and it had established cultural links with the countries of eastern Europe. In the interests of security, the United Kingdom's aim was to strengthen those links still further.

26. There were those who believed that the item should not appear regularly on the agenda of the Third Committee. His delegation disagreed with that view. Even if the chances of negotiating an international instrument were not great—and the very nature of information was such that it could not easily be confined within a rigorous legal framework—his delegation believed it was important to be able to exchange views freely on the subject of freedom of information. For to do so demonstrated, in a small way, that information was indeed free.

27. Mr. WILSON (Liberia) said that the peace of the world depended on human understanding, which, in turn, depended on the free flow of ideas, unrestricted by church, State or the economic market. The President of the Republic of Liberia had said the previous year that the ruler of any country must know what the people he governed were thinking, and that every citizen of Liberia was free to express his views through any of the available mass media.

28. He drew attention to the comments of his Government on the draft Convention on Freedom of Information (see A/8340, annex III).

29. Mr. PAPADEMAS (Cyprus) said that in considering the question of freedom of information, the Committee should take into account two factors: the approach to the problem and its magnitude.

30. At the current session the Committee, in his view, had insufficient time to consider the item on freedom of information properly, and the item had not, in any case, been well presented. Although in principle all delegations acknowledged the importance of the question and had spoken in favour of the free flow of information, meaning as complete as possible a knowledge of the facts, some delegations had raised objections to the exchange of views. He cited Thomas Paine's dictum that every citizen might speak, write and publish freely, provided he was responsible for the abuse of that liberty, in cases determined by the law. He felt that the crux of the problem was precisely the question of restrictions imposed by the law on freedom of information. He pointed out that it was the responsibility of the Committee to decide whether it was willing to give

priority to thorough consideration of the item at the following session of the General Assembly.

31. Mr. BAROODY (Saudi Arabia) said that it was high time that the Committee completed consideration of the draft Convention on Freedom of Information, which had been before the General Assembly for 18 years and only four articles of which had been approved by the Committee, so that States could accede in the near future to an international instrument governing their rights and obligations in respect of information. The information situation had deteriorated since the 1950s, and laissez-faire policy was dangerous, since it enabled some journalists, under the pretext of freedom, to create international incidents liable to cause conflict, to engage in espionage and subversive activities or even bring about coups d'état and generally to interfere in the internal affairs of States, spreading false rumours with the sole aim of furthering certain national interests. Mass media in many cases served only to justify the policy of their respective States, and so-called freedom of information was only too often used for propaganda purposes. It was admittedly difficult to draw the line between propaganda and the expression of a sincere opinion, and that was why there was a pressing need to adopt an international convention on freedom of information and to draw up a code of journalistic ethics embodying certain obligations and restrictions.

32. Freedom of information should not, moreover, degenerate into licence, as had happened in Western countries, and censorship was justified when it set out to prevent pollution of the mind. There was no question, for example, of equating freedom with pornography. Freedom had to be subject to restrictions and limits, since a measure of puritanism was essential for the progress of society, as was shown by the recent history of China and the Soviet Union.

33. He regretted that no draft resolution on the item had been submitted to the Committee. He hoped that the Chairman would take into account the views of those delegations which wanted the item to be given priority at the twenty-ninth session of the General Assembly, in order to enable the Committee to adopt the draft convention and draw up guidelines for the preparation of a code of journalistic ethics.

34. Mr. BUCKLEY (United States of America), speaking in exercise of his right of reply to the Saudi Arabian representative's comments on limits to freedom of information, said that it was regrettable that that representative was unable to limit the length of his own statements. With regard to the priorities to be established for the consideration of the item on freedom of information, he suggested that priority consideration should be given to the draft Declaration on Freedom of Information, not the draft Convention, and requested the Chairman to take that suggestion into account.

35. Mr. BAROODY (Saudi Arabia), speaking in exercise of the right of reply, said that the sarcasm of the representative of the United States might be appropriate in the articles he wrote for the press, but was out of place in the Committee.

36. As for the matter of priority consideration of the draft convention, he said that a convention did not exclude a declaration and vice versa. A declaration, however, had no binding force, whereas a convention was a multilateral treaty to which States were free to accede or not. The United States had in 1950 proposed

the drafting of a Declaration on Freedom of Information for the purpose of preventing the adoption of a convention. By so doing, they had tried to limit propaganda against their Korean war. They had later used freedom of information to justify their intervention in the Middle East and Asia. Freedom of information for the United States had become synonymous with indoctrination by repetition of certain news items which were deliberately distorted by the mass media, while in other spheres there was a conspiracy of silence. He read, as an example of tendentious reporting and half-truths, the text of an interview on the oil crisis he had recently granted to an Associated Press reporter, the substance of which had been completely changed. It was essential to adopt a convention speedily in order to halt the deterioration of the information situation.

37. The CHAIRMAN said he understood that the Committee wished to recommend that the item on freedom of information should be included in the agenda of the General Assembly for the following session; he was not sure how the members of the Committee felt regarding the proposal to treat the question as a priority item. Since the Soviet delegation was not in agreement with that proposal, he suggested that the Committee should recommend that the General Assembly should include the item on the agenda for the twenty-ninth session.

It was so decided.

AGENDA ITEM 57

Creation of the post of United Nations High Commissioner for Human Rights (A/9074, A/C.3/L.2075, 2079/Rev.1, 2081, 2092, 2093/Rev.1)

38. Mr. SCHREIBER (Director, Human Rights Division) said that the item before the Committee had been placed on the agenda of the General Assembly at its twentieth session on the proposal of Costa Rica. However, since the Third Committee had had to consider other priority issues, it had not been able to study the proposal at that time. In resolution 2062 (XX) of 16 December 1965, the General Assembly had, however, requested the Economic and Social Council to transmit the proposal to the Commission on Human Rights for study of all aspects of the matter and for report, through the Council, to the General Assembly at its twenty-first session.

39. At its twenty-first session, the General Assembly had been informed by the Economic and Social Council that the Commission on Human Rights had considered the proposal at its twenty-second session and had decided to establish a working group to study all relevant questions concerning the creation of the post and to report to the Commission at its twenty-third session. The General Assembly had therefore decided to postpone consideration of the matter until its twenty-second session.

40. On the basis of recommendations made by the working group and, subsequently, by the Commission on Human Rights, the Economic and Social Council, in resolution 1237 (XLII) had recommended to the General Assembly the adoption at its twenty-second session, of a draft resolution by virtue of which it would decide to establish a United Nations High Commissioner's Office for Human Rights. The Council had also transmitted to the Assembly the amendments

to the draft resolution submitted by the United Republic of Tanzania. In resolution 1238 (XLII) the Council had requested the Secretary-General to bring resolution 1237 (XLII) and the amendments thereto, together with pertinent documentation representing the various points of view expressed, to the attention of Member States, to invite their views on the question concerning the implementation of human rights through a United Nations High Commissioner for Human Rights or some other appropriate international machinery, and to submit a report embodying the replies of Governments in time for consideration by the General Assembly during its twenty-second session. The Council had further requested the Secretary-General to invite the Director-General of the ILO and the Director-General of UNESCO to submit a report on their experience concerning the implementation of human rights in their spheres of competence.

41. At its twenty-second session, the General Assembly had considered the texts transmitted by the Economic and Social Council, together with replies from Governments and specialized agencies pursuant to Council resolution 1238 (XLII). However, the General Assembly had been unable to consider the question at its twenty-second and twenty-third sessions.

42. Following the discussions on the subject at its twenty-fourth session, the Assembly in resolution 2595 (XXIV), had requested the Secretary-General to provide it, at its twenty-fifth session, with an analytical study relating to Economic and Social Council resolution 1237 (XLII) and the amendments thereto, and Council resolution 1238 (XLII). The analytical study,¹ as well as the texts transmitted by the Economic and Social Council, had been before the General Assembly at its twenty-fifth session, but it had decided to defer consideration of the item, first, until the twenty-sixth and then until the twenty-eighth session.

43. At its twenty-sixth session, however, three other draft resolutions had been submitted to the General Assembly. The Secretary-General's note (A/9074), currently before the Committee, contained in annexes I to IV, all the texts submitted on the item.

44. Mr. LÖFGREN (Sweden) cited the Secretary-General's observation, in the introduction to his report on the work of the Organization (A/9001/Add.1), that the protection of human rights was an area where the credibility of the United Nations was especially at stake. While the United Nations had for many years actively sought to improve human rights and fundamental freedoms in some areas, it had proved unable to act in other cases, a fact which had provoked considerable criticism. At an important seminar on human rights, held in Dar es Salaam, the Minister for Foreign Affairs of the United Republic of Tanzania had said that if there were still so many injustices and violations of human rights throughout the world a quarter of a century after the adoption of the Universal Declaration of Human Rights, it was because, first, too many people and too many Governments paid only lip service to the cause of humanity, and, secondly, because States were reluctant to surrender any of their sovereignty, arguing that such matters were "internal affairs". The conclusions of the World Congress of Peace Forces, held in Moscow in October, had been similar in many respects to those of the Secretary-General and the Tan-

¹ A/8035.

zanian Minister for Foreign Affairs. The Congress had noted in its final communiqué that in many countries human rights were disregarded and that at the international level effective machinery must be provided for better protection of human rights. If the reality was so disappointing, it was not for lack of international instruments. It sufficed to mention the Charter—which called on Members of the United Nations to take joint and separate action in co-operation with the Organization for the achievement of universal respect for human rights—the Universal Declaration of Human Rights, the Declaration on the Granting of Independence to Colonial Countries and Peoples, the International Covenants on Human Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, and so on. Unfortunately, those texts were being implemented only partially.

45. It would take too long to review the whole history of the item under consideration. It should be pointed out, however, that as far back as resolution 1237 (XLII) the Economic and Social Council had recommended that the Assembly should adopt a resolution establishing the post of High Commissioner for Human Rights. Moreover, draft resolution A/C.3/L.2075, of which Uruguay had become a sponsor, was identical with that submitted by 10 delegations in 1971, which itself had been a modified version of the original proposal of the Economic and Social Council. Draft resolution A/C.3/L.2075 should meet most of the objections raised by delegations. The main objection related to Article 2, paragraph 7, of the Charter, which some delegations did not interpret in the same way as the sponsors of the draft resolution. But however that paragraph was interpreted, the provisions of the draft resolution did not violate it. They even contained safeguards against the risk of interference in the domestic affairs of a State. Operative paragraph 1, which provided for the establishment of a High Commissioner's Office for Human Rights, emphasized that the High Commissioner would operate under the authority of the General Assembly. The High Commissioner would have to report each year on his activities, and the Assembly would be in a position to check closely on those activities directing them along different lines, if necessary. There was therefore no possibility that the Office of High Commissioner should become a supranational authority engaged in activities which were not to the liking of the majority of Member States. Moreover, the words "at the request of that State" in operative paragraph 3 (c) provided a further safeguard. The emphasis in the mandate given to the High Commissioner in draft resolution A/C.3/L.2075 was on the provision of assistance to States. The sponsors had carefully avoided instituting any kind of accusatory process by means of which pressure could be brought to bear on a State. Instead, their point of departure had been the principle that Governments were interested in safeguarding human rights, and that they wished to receive international assistance for that purpose—they might wish, for example, to be assisted in the drafting of human rights legislation or in finding a solution to problems which had arisen elsewhere. Governments could at any time prevent the High Commissioner from dealing with any particular problem within their jurisdiction. Moreover, it was understood that the High Commissioner would have to take into account the general situation in a country—for example, the strength of its

administrative and legal structures. An alleged violation of human rights might be basically a symptom of under-development, and require a very different solution from that called for in a highly developed country. The High Commissioner's task would not therefore be to exert political pressures, but to provide genuine assistance to countries. Yet another important safeguard was found in paragraph 3 (d), which gave the High Commissioner the right to bring a case to the attention of the Government concerned, but did not authorize him to take further action if the Government did not wish to enter into a dialogue with him. Finally, paragraph 3 (f), concerning the reports of the High Commissioner to the General Assembly, and paragraph 5, on the panel of experts, were additional safeguards of the impartiality and objectivity of the High Commissioner.

46. It had been argued that the establishment of the post was unnecessary, since international machinery already existed, and since the International Covenants on Human Rights would shortly come into force. He pointed out that seven years after their adoption, only about 20 States out of 135 had ratified the Covenants. In any case, the role of the High Commissioner's Office would be quite different from that of the Committee to be established under the Covenants and that of the bodies already in operation. There would therefore be no risk of duplication. Intergovernmental bodies were by nature political bodies. Their task most often was to determine the political priorities for the United Nations in the human rights field and, especially in the case of bodies established by international conventions, to initiate conciliation procedures and facilitate the solution of specific problems. They did not, however, find a solution to every difficulty. Since he would be able to take discreet action, the High Commissioner might accomplish something where an intergovernmental body would be frustrated by political division, and win the co-operation of a country which wished to avoid publicity.

47. He regretted that owing to a lack of time it had not been possible to carry out the desired informal consultations. Some delegations might feel compelled, in the course of the discussion, to state positions on which a compromise might have been reached. He noted that some delegations which had opposed the idea of a high commissioner had at the current session decided to propose a specific decision, albeit a negative one. Several years had gone by since the issue was first raised, and delegations had surely had ample time to ponder it. He hoped, therefore, that members of the Committee would show that they were prepared to act without delay.

48. Mrs. DE BARISH (Costa Rica), referring to article 28 of the Universal Declaration of Human Rights, said that one of the principal goals of the United Nations was to ensure an international order in which the rights and liberties set forth in that instrument could be fully realized. The purpose of the draft resolution submitted by her delegation and that of Sweden (A/C.3/L.2075) was precisely to meet that need. The idea was not a new one, it had been launched 20 years earlier by the delegation of Uruguay, which had proposed the establishment of the post of General Commissioner, whose functions would have been to ensure the effective protection of human rights and fundamen-

tal freedoms. However, the unjustified fear of interference in the internal affairs of States had caused the proposal to be abandoned.

49. Her delegation had reintroduced the idea in 1965, first, because it believed that States had a collective responsibility towards all human beings to establish an impartial and independent "presence" enjoying the necessary prestige and moral authority to defend the cause of human rights and, secondly, because it was increasingly convinced that no country or people had a monopoly of truth, freedom and human dignity.

50. The conception of the High Commissioner's post had evolved over the years; for example, it was now proposed to establish the post by a General Assembly resolution and not by an international agreement. Her delegation regarded the High Commissioner as a promoter of human rights and a guarantor of their application rather than as a guardian of morality; he should have outstanding moral and intellectual qualities and enjoy an international reputation which conferred on him moral authority and dynamic strength.

51. It had often been said that the duties of the High Commissioner might duplicate those of the Secretary-General; however, draft resolution A/C.3/L.2075 defined those duties within the framework of the Charter in order to avoid problems of jurisdiction. The High Commissioner would be elected by the General Assembly—from which the authority stemmed and by which the authority could be withdrawn—on the recommendation of the Secretary-General. The Secretary-General would control the budget and appoint the staff of the High Commissioner's Office. Generally speaking, the Secretary-General's pre-eminence was well established—as could be seen from operative paragraphs 4 to 8 of the draft resolution—and the High Commissioner must conduct his office in close consultation with the Secretary-General, as stated in paragraph 6. Nor would the High Commissioner's functions duplicate those of the United Nations Division of Human Rights, which was essentially entrusted with administrative tasks such as the organization of the innumerable meetings and sessions of the various human rights organs, the preparation of the necessary documents, and so on.

52. So far, few States had ratified the International Covenants on Human Rights. Quite recently, the General Assembly itself had noted in resolution 3060 (XXVIII) that many objectives of the Universal Declaration of Human Rights had not yet been implemented. That state of affairs revealed once again the need to create an authority, like the Office of the High Commissioner, to ensure the effective protection of human rights and fundamental freedoms.

53. In introducing draft resolution A/C.3/L.2075, the representative of Sweden had explained in detail the operation of the High Commissioner's Office. He had described the new guarantees, which had not been included in Economic and Social Council resolution 1237 (XLII), and he had stated the reasons why the sponsors felt that an individual rather than a collective body could better fulfil the functions in question.

54. Convinced that the establishment of the post of United Nations High Commissioner for Human Rights would be an excellent way of celebrating the twenty-fifth anniversary of the adoption of the Universal De-

claration of Human Rights, her delegation would be ready to co-operate with all delegations sharing its own desire to help solve specific problems.

55. Mr. VAN WALSUM (Netherlands) said that his country had always advocated the establishment of the post of High Commissioner for Human Rights, a question which had been debated by the United Nations almost since its foundation. It could not conceal its deep disappointment with the attitude of some delegations who, from the beginning of the session, had made it clear that they were going to kill the proposal. Yet, whatever might happen to the proposal from a strictly procedural point of view, his delegation was convinced that the idea of the General Assembly's entrusting a person of the greatest integrity with the task of personifying its concern for human rights would remain very much alive as long as the Organization existed. It was disconcerting to find how much the real situation had been misrepresented during the debate.

56. His delegation continued to endorse wholeheartedly the text put forward by Costa Rica and Sweden. It was grateful to those two delegations for having taken the initiative of reintroducing a draft resolution which they had already submitted two years earlier.

57. Anyone who studied the proposal with an open mind was bound to arrive at the conclusion that the question of encroaching on the sovereignty of States had been blown up out of all proportion. In Article 2, paragraph 7, the Charter upheld the principle of domestic jurisdiction but at the same time in Articles 55 and 56 it stated that States had pledged themselves to take joint and separate action, in co-operation with the Organization. For a correct discharge of Charter obligations, therefore, a balance must be struck between respect for national sovereignty and the protection and promotion of human rights.

58. Draft resolution A/C.3/L.2075 did strike the proper balance. It contained so many guarantees for the observance of national sovereignty that future generations would wonder why it had ever given rise to such misgivings.

59. He would oppose any suggestion that the proposal to create a High Commissioner's Office should be killed or that the question of human rights implementation should be left pending for a few more years or even for a single session. If the Third Committee was to be prevented from discussing proposals to improve United Nations machinery for the universal implementation of human rights, it might well ask itself what it was really doing.

60. It was impossible to take seriously the argument that the proposal was in need of a cooling-off period. Delegations had had ample time to consider the matter because the item had not even been included in the agenda of the twenty-seventh session. Even supposing that it was possible to accept the idea of a cooling-off period for the proposal reintroduced by the Costa Rican and Swedish delegations, it was quite inadmissible to maintain that the general question, namely, the search for new ways to make the ideal of human rights a living reality, should be put on ice.

61. His delegation reserved the right to speak again in order to comment on the draft resolutions and amendments once they had been formally introduced.

62. Mr. ABSOLUM (New Zealand) said that his delegation favoured the establishment of the post of United Nations High Commissioner for Human Rights and was convinced that the High Commissioner could play a fundamental role in the promotion of respect for human rights and fundamental freedoms. While the international community now had a fairly clear idea of the standards to be applied in the field of human rights, much still remained to be done in ensuring the application of those standards because there was a gulf between theory and practice. Admittedly, there were a number of international agreements on the subject, but many of them had not yet entered into force for they had not been ratified by a sufficient number of States. Furthermore, most of them were hedged around with restrictions which considerably limited their scope. Moreover, communications received by the United Nations were given perfunctory treatment; few periodic reports were received and States were not very enthusiastic about the advisory services proposed by the United Nations in the field of human rights. Obviously, the existing machinery was inadequate and inefficient; consequently, the High Commissioner, through his independence, impartiality and prestige, would have an important role to play, for he could discreetly contact Governments and encourage the implementation of the pertinent instruments, as was done by the United Nations High Commissioner for Refugees in his field of competence. He stressed that often States failed to apply the provisions of a treaty not because of real objections but because certain problems arose, particularly from the viewpoint of compatibility with domestic legislation.

63. The High Commissioner could also emphasize the humanitarian aspects of the problems which might arise and review the communications received to see if they deserved closer study. All such activities would enable him at the same time to gather information not always available elsewhere. The High Commissioner could also conduct inquiries in certain cases, naturally with the consent of the country concerned. He would, so to speak, play the role of a catalyst with a view to the elaboration of international law in the field of human rights, since his views as a whole would constitute a uniform body of experience based on the standards proclaimed by the United Nations itself.

64. The objections raised by certain delegations resulted from a misunderstanding of the High Commissioner's functions. He would have only moral authority and in no case could he intervene in the domestic affairs of States. As for the divergence of views which existed within the Committee, it did not seem to be a real problem. He recalled that, when the Committee had studied many years earlier the question of establishing a post of United Nations High Commissioner for Refugees, many delegations had entertained doubts about it. Since then, the activities of the High Commissioner for Refugees had dispelled all those doubts and no one today would deny the importance of his work. Consequently, the New Zealand delegation appealed to the members of the Committee to consider objectively the proposal which had been made.

65. Of the draft resolutions before the Committee his delegation preferred the Costa Rican and Swedish text (A/C.3/L.2075) and reserved the right to revert to the matter in greater detail at a later stage.

66. The CHAIRMAN appealed to representatives to be as brief as possible and to limit their statements to 10 minutes. They should concentrate on the crux of the debate which was the draft resolutions before the Committee. Only in that way would it be possible to give all delegations wishing to do so the chance to express their views.

67. Mr. PETROV (Bulgaria) said that his delegation had always been opposed to the establishment of the post of United Nations High Commissioner for Human Rights and remained among those delegations who continued to view the proposal with disfavour. Many years had already passed since the proposal had been made and the arguments advanced for and against it had been put forward many times. However, since the debate had been reopened, he would again clarify his delegation's views.

68. In the first place, the proposal for the establishment of the post of High Commissioner was an attempt to replace the General Assembly, the Economic and Social Council and other United Nations organs which had proved their efficiency, by a single official, whose work would duplicate that of those organs and who, it appeared, would have to be endowed with magic powers. It might be asked, for example, how he would approach the tasks of compelling South Africa to renounce its *apartheid* policy, relieving the suffering of the millions of victims of Portuguese colonialism or ensuring the implementation of the pertinent international instruments. Moreover, if such a post was established, one could imagine the incalculable number of complaints that would be addressed to the High Commissioner and, even assuming that he had time to consider them all, it might be asked on the basis of what criteria he would do so. If he based his action on the provisions of the existing international instruments, such, for example, as the International Covenants on Human Rights, it was to be wondered how the States that were not yet parties to those instruments would accept the obligations arising from them, especially where, as in the case of the Covenants, they had not yet come into force. It might happen, moreover, that the High Commissioner would rely on the constitutional provisions of States, but it was difficult to see how a Government would be open to suggestions on how to apply its own constitution; the role of the High Commissioner in such a case would be completely superfluous. The High Commissioner might in the final analysis rely exclusively on his ideas and principles and the opinions of his advisers, but it was hard to see how that kind of arbitration between States could be of any use.

69. The entire activity of the High Commissioner would therefore be of value in theory only and would lack any real effectiveness. Furthermore, it would be in serious conflict with Article 2, paragraph 7, of the Charter. Regardless of the personal integrity of the High Commissioner and the intentions of the sponsors of the draft resolution providing for the creation of such a post, the very existence of that post involved the possibility of interference in the internal affairs of States. The fact that three completely different draft resolutions were before the Committee was evidence of the profound differences of opinion among the Committee members. In those conditions, no effective action could be taken because there were no signs of any feeling of unanimity or co-operation within the Com-

mittee. What was more, the heavy financial implications of the proposal were far from being a negligible factor.

70. Taking into account the preceding considerations, his delegation and that of Democratic Yemen had submitted a draft resolution (A/C.3/L.2092) which reflected the views of the overwhelming majority of members on that question. The considerations to which he had just referred were reflected in the preamble, which laid particular stress on the fact that international co-operation aimed at promoting respect for human rights should be conducted in accordance with the Charter. The operative paragraph was an appeal to the Committee to refrain from further consideration of the item. He thought that the considerations which had induced his delegation to submit that draft resolution had been set forth with sufficient clarity to prevent its action from being interpreted as an attempt to prevent the Committee from considering that question. It was obvious that the Committee could consider any items that were put before it and that delegations could at any time express their views or submit relevant documents to the Committee. His delegation's stand was not, moreover, devoid of all optimism, for his delegation firmly hoped that the International Covenants on Human Rights would come into force as speedily as possible and that the unceasing efforts of the United Nations in the field of human rights would render superfluous the search for other solutions. It might, on the other hand, be useful to develop certain kinds of international and regional co-operation in the human rights field in order to compare the experience acquired in the various countries, especially those with differing ideologies and social structures.

71. In a similar vein, the Bulgarian delegation, giving evidence of the constructive and realistic spirit characteristic of the socialist States, wished to express its gratification at the auspicious beginnings of the European Conference on Security and Co-operation.

72. Mr. BAROODY (Saudi Arabia) said he had thought that the item under consideration had been fully dealt with and the Committee had decided against any further consideration of it. Now, however, it was reappearing at the current session. He could not but remind the Committee that numerous instruments already existed for promoting and encouraging respect for human rights and fundamental freedoms, without, of course, forgetting the Universal Declaration of Human Rights from which many of the newer States had drawn their inspiration in drafting their own constitutions. Now, however, an attempt was again being made to entrust to one official the superhuman task of overseeing the application of all those instruments, taking into account all the economic, social and political aspects of their implementation in the various countries. He felt impelled to recall, in that same connexion, that the activities of the United Nations relating to the communications regarding violations of human rights had been a complete failure. It was known that the Secretary-General received approximately 16,000 communications each year; they were transmitted to the States concerned, which, for the most part, threw them in the wastebasket. In only a few hundred cases did the States take the trouble of replying, for the purpose, of course, of defending their point of view. The United Nations was thus spending more than \$1 million

a year to accomplish absolutely nothing at all. What reason was there to think that the efforts of a High Commissioner would be any more successful? Once the post was created, every individual who thought that his rights had been violated would send a letter to the High Commissioner, and campaigns would be organized for the sending of petitions. Computers would have to be purchased to process the millions of letters, and an army of staff members would have to be recruited to provide the necessary services.

73. It had already been several years since the Economic and Social Council had set up a working group to study the question of the creation of a post of United Nations High Commissioner for Human Rights or to seek alternative means for the same purpose, but no serious study had yet been made of any such alternative means.

74. As for the States of western Europe, including the Netherlands, which favoured the creation of a post of United Nations High Commissioner for Human Rights, they already had a regional body, namely, the Council of Europe, and instead of concerning themselves with what might be happening in Asia, Africa or Latin America, they would do better to devote themselves to the problems of their own region and, for example, to bring pressure to bear on Portugal or on the United Kingdom—of which Southern Rhodesia was still *de jure* a colony—to respect human rights in the territories under their administration. He stressed the importance of the regional and national bodies in that field. The Arab countries, for example, which could avail themselves of the good offices of the Council of the Arab League, could never allow themselves to be lectured to by anyone who was not familiar with Islamic law; those countries had their own traditions, customs and ideology and their own economic and social systems.

75. The delegation supporting the creation of the post of United Nations High Commissioner for Human Rights might have good intentions, but they had no idea of how the super-Powers could manipulate the person holding that post or of how their information media could distort whatever information the High Commissioner might be able to obtain. The creation of such a post must be forcefully rejected because it was impracticable and would duplicate existing agencies. Furthermore, the expenses involved would be considerable. Countries sincerely concerned with protecting human rights would do better to ask themselves what they could do in their own countries and consider, for example, the application of the sanctions already decided on against South Africa instead of ignoring them for purely economic reasons. Attention should also be given to studying what alternative means there might be for promoting the protection of human rights. One possibility, for example, was to hold a conference every three or four years which would be attended by the various regional councils active in the field of human rights.

76. He commended the representative of Bulgaria for the draft resolution which he had submitted (A/C.3/L.2092). The Saudi Arabian delegation would vote in favour of that draft resolution but against the draft resolution submitted by Costa Rica and Sweden (A/C.3/L.2075). As to the Irish draft resolution (A/C.3/L.2079/Rev.1), his delegation would be prepared to vote for the Iraqi amendments

(A/C.3/L.2093/Rev.1), but it would ask the representative of Iraq to be good enough to delete the words "and implementation" in the second amendment.

77. Mr. VAN WALSUM (Netherlands), speaking in the exercise of his right of reply, said he did not understand why the representative of Saudi Arabia had singled out the Netherlands delegation in proposing four arguments against the proposal, namely: that the creation of the post would be tantamount to interfering in the internal affairs of States and be contrary to their sovereignty; that it would be ineffective because the holder of the post would have no means of compelling Governments to do what they did not want to do; that it did not correspond to any need; and that the High Commissioner would have so many cases presented to him that a computer would be needed to process them. In the opinion of the Netherlands delegation, the problem consisted in achieving a necessary balance between the provisions of Article 2, paragraph 7, of the Charter and those of Articles 55 and 56. He pointed out that all the activities of the United Nations reduced themselves to a problem of balance and that if everyone held to extreme positions, no progress would be possible. The

Netherlands delegation believed that something could be accomplished.

78. Mr. BAROODY (Saudi Arabia), speaking in the exercise of his right of reply, said that the Netherlands representative's reasoning fell within the realm of dialectics, whereas the considerations which he himself had put forward were pragmatic and were based on the diversity of the existing ideologies and social systems. The first thing that must be done was to determine whether the proposal was practicable or whether it was Utopian. He could merely revert to the example which he had given of the communications relating to violations of human rights. There was, moreover, no common denominator in the matter of human rights, and laws differed from one civilization to the next and according to the historical evolution of countries. It was precisely because of the practical difficulties that he had insisted on the importance of the regional councils. He hoped that the representatives of Costa Rica, Sweden and the Netherlands would see the validity of his arguments and abandon their efforts on behalf of the creation of the post in question.

The meeting rose at 6.40 p.m.

2048th meeting

Tuesday, 4 December 1973, at 3.10 p.m.

Chairman: Mr. Yahya MAHMASSANI (Lebanon).

A/C.3/SR.2048

AGENDA ITEM 57

Creation of the post of United Nations High Commissioner for Human Rights (*continued*) (A/9074, A/C.3/L.2075, 2079/Rev.1, 2081, 2092, 2093/Rev.1)

1. Mr. ALFONSO (Cuba) observed that draft resolution A/C.3/L.2075 contained the same text as had appeared under the symbol A/C.3/L.1851 at the twenty-sixth session of the General Assembly, which had led his delegation at that time to set out in detail its strong reservations on the question. Over the intervening period, his delegation's opposition to the creation of the post had increased.

2. His delegation feared that the Office of the High Commissioner, if established, would be faced with a choice between a sense of futility and actions which would constitute interference in the internal affairs of States. If world public opinion and numerous United Nations resolutions had been ineffective in preventing genocide in Indo-China and the colonialist and racist madness in southern Africa, how could it be expected that the proposed Office would be successful in similar tasks? The granting to the High Commissioner of the powers indicated in operative paragraph 3 (a) of draft resolution A/C.3/L.2075 would so limit State sovereignty as to contravene the provisions of Article 2, paragraph 7 of the Charter. Member States should also give serious thought to the possibility that the establishment of the Office might be used for the most unjust ends. Moreover, the proposal, if adopted, would lead to overlapping with the functions of other

United Nations bodies, especially the Security Council. The proposal constituted a *de facto* amendment to the Charter—a step for which there were well-established procedures.

3. The United Nations had adopted a number of international instruments aimed at securing human rights; the claim that the establishment of the Office would be the only way to put Articles 55 and 56 of the Charter into effect was not well founded. The work of the High Commissioner for Refugees, which had been cited as a model for the proposed Office, was in complete contrast to the broad range of functions which were proposed for the High Commissioner for Human Rights.

4. Accordingly, his delegation would vote against draft resolution A/C.3/L.2075. He appealed to the sponsors of that draft not to insist on a proposal which, whenever it had been brought up, had led to confrontation in the Committee. His delegation likewise could not give its support to the Irish draft resolution (A/C.3/L.2079/Rev.1). However, it would be able to support draft resolution A/C.3/L.2092.

5. Mr. FØNS BUHL (Denmark) said that the appointment of a person of independence, prestige and integrity as United Nations High Commissioner for Human Rights would constitute a welcome addition to existing procedures within the United Nations aimed at promoting respect for human rights and fundamental freedom. While it was to be hoped that the International Covenants on Human Rights would soon come into force, and while the right of petition consolidated in