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Chairman: Mr. Hermod LANNUNG (Denmark).

AGENDA ITEM 31

Draft International Covenants on Human Rights (E/2573, annexes I, II and III, A/2907 and Add.1 and 2, A/2910 and Add.1 to 6, A/2929, A/3077, A/C.3/L.460, A/3149, A/C.3/L.528, A/C.3/L.532, A/C.3/L.547, A/C.3/L.550, A/C.3/L.552/Rev.1, A/C.3/L.553 to 555) (*continued*)

ARTICLE 8 OF THE DRAFT COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (E/2573, annex I A) (*continued*)

1. Mr. ÅMAN (Sweden) said that his delegation was in favour of the original text of article 8 of the draft Covenant (E/2573, annex I A). However, as amendments had been introduced, he had to comment on them.

2. The Canadian amendment (A/C.3/L.553) seemed to clarify the article, by eliminating the doubts that had been felt in connexion with the use of the phrase "trade unions of his choice", which might limit the rights of trade unions to control their internal organization, especially with regard to qualification for membership. The insertion of the words "subject to the rules of the organization concerned" would help to prevent misinterpretation.

3. The Swedish delegation would be unable to vote either for the revised three-Power amendments (A/C.3/L.552/Rev.1) or for the sub-amendments submitted by the Netherlands and the United Kingdom (A/C.3/L.555), because they contained limitations in two respects. One concerned the strike weapon and its relation to internal legislation, and the second the extent to which various categories of the population would be allowed to strike. In Sweden, the trade-union movement embraced nearly all employed persons; and with increasing membership the unions had shown an increasing sense of responsibility, for the advantages and disadvantages of trade-union action had to be weighed more carefully as an organization increased in size. Thirty years ago strikes had caused an average loss of eight working days per worker per year; the figure now was one and a half hours per worker per year. That happy development was undoubtedly due to the fact that the principle of the right to strike had never been disputed. In the early days of the movement there would have been much social unrest if the workers had not had the final recourse of the strike at their disposal; however, it would be a mistake to single out the right

to strike for mention in the Covenant, without mentioning all the other means by which organized labour could attain its ends.

4. Trade-union rights were encouraged in Sweden to such an extent that not only the State administration but the police and the armed forces were organized into trade unions. The only limitation of trade-union rights for persons in those categories was that top-ranking officials were not allowed to strike. In matters of national security, the functions of certain technicians and workers might be just as important as, if not more important than, those of the armed forces. The decisive factor must be that of the degree of danger to society; from that standpoint, a strike by power-station engineers might be more serious than a strike by the police. Furthermore, the rapid growth of mechanization might eventually lead to situations where a strike by a handful of key workers could paralyse the life of a nation. In view of those considerations, it seemed inadvisable to place any special restrictions on the trade-union rights of the State administration, the police or the armed forces.

5. Mr. BRATANOV (Bulgaria) said that the trade-union movement in Bulgaria had played an important part in the social and political life of the country, and that trade unions had supported all progressive national movements since the end of the Turkish domination. The pre-war régime had tried to impose official unions on the workers, but after the war absolute freedom of trade-union rights had been re-established, and the Bulgarian people were now organized into mass, non-party unions, which they joined voluntarily. The unions had considerable influence; they gave their views during the drafting of production plans, made direct proposals to the Government with regard to labour legislation and participated in various social measures.

6. Because of the importance of the trade unions and because the individual alone was powerless to defend his interests against his employer, his delegation considered that the inclusion of an article guaranteeing trade-union rights would increase the efficacy of all the other articles of the draft Covenant. However, it was not enough to guarantee the right of the individual to join trade unions for the protection of his economic and social interests; States must be required to guarantee the right of the trade unions themselves to operate without hindrance. The Bulgarian delegation would therefore support the text proposed in the revised three-Power amendments (A/C.3/L.552/Rev.1), which defined the obligations of States and the rights of trade unions more explicitly than did the original article. It was regrettable, however, that the obligation to ensure the exercise of those rights without reprisals against members or leaders of trade unions had been omitted from the revised text of the amendments. Moreover, the provision in paragraph 1 (c) of the proposed text that the right should be subject to no limitations other than those required in a democratic society for the pro-

tection of the rights and freedoms of others, although sound in principle, was out of place in a legal text. Its vagueness might provide a loop-hole for States wishing to evade their obligations; it needed clarification, and the matter could more appropriately be discussed in connexion with part II of the draft Covenant.

7. For the same reasons, the Bulgarian delegation could not support the sub-amendments submitted by the Netherlands and the United Kingdom (A/C.3/L.555). The United Kingdom representative had said that in such an important article States should undertake clearly-defined obligations; but the proposal to impose a series of restrictions, particularly restrictions of a somewhat ambiguous nature, did not answer that purpose. There was no justification for making an exception in the case of article 8 by inserting a number of restrictions which rightly belonged in part II of the draft Covenant. Furthermore, the Bulgarian delegation could not agree to the proposal that the exercise of trade-union rights by members of the State administration should be restricted.

8. The purpose of the Canadian amendment (A/C.3/L.553) was not quite clear. Since that amendment had no direct bearing on the substance of the article, and especially on the obligations of States, the Bulgarian delegation considered it unnecessary.

9. Mr. MASSOUD-ANSARI (Iran), referring to the USSR amendment (A/C.3/L.547), said that his delegation doubted the wisdom of incorporating a collective right in an article relating to an individual right. However, he would abide by the wishes of the majority in that connexion. A more serious criticism of the USSR amendment was that it set no limitations whatsoever on the exercise of trade-union rights. The USSR representative had argued that the point would be covered by the provisions of article 4; but article 4 had not yet been finally drafted, and article 8 was so important that the necessary limitations should be specified in the text of that article itself.

10. For those reasons, he would vote in favour of point 1 of the sub-amendments submitted by the Netherlands and the United Kingdom (A/C.3/L.555). However, it was inadvisable to enumerate the restrictions on trade-union rights in detail. The terms of the first paragraph of the text proposed in point 3 of the sub-amendments were controversial, and he would be obliged to abstain from voting on that paragraph. He would also abstain from voting on the second paragraph of the text proposed in point 3, since references to other international instruments should be avoided in the Covenants, which should eventually become the code on which international conventions on specific subjects would be based.

11. Turning to the revised three-Power amendments (A/C.3/552/Rev.1), he expressed his appreciation of the sponsors' efforts to conciliate widely divergent views. He would be able to vote in favour of the introductory paragraph and of sub-paragraphs (a) and (b) of the text proposed for paragraph 1, which reproduced the original article with some slight changes. He would also be able to support paragraph 1 (c), which represented a synthesis of the USSR amendment (A/C.3/L.547) with the text proposed in point 1 of the sub-amendments submitted by the Netherlands and the United Kingdom (A/C.3/L.555). He would not, however, vote in favour of paragraph (d), for he saw no reason why the right to strike should be mentioned specifically. Although it was recognized under most national legislations, it was generally regarded as the last resort

of workers seeking satisfaction of their claims. There was no justification for mentioning the right to strike to the exclusion of the many other means of settling labour disputes. Moreover, it was difficult to distinguish between strikes engineered by political intriguers and those started to promote the real economic and social interests of the workers. In under-developed countries, where industries and the trade-union movement were in their infancy, it was essential to protect those industries from the effects of irresponsible trade-union action. Both rights and duties must be taken into account. Indeed, it might be wise to draw up a covenant of duties and obligations on lines parallel with the Covenants on Human Rights. At all events, the Third Committee must exercise prudence, and avoid any mention of rights which lent themselves to abuse. Finally, while he had no objection to paragraph 2 of the text proposed in the three-Power amendments, he did not think it necessary and would abstain in the vote on it.

12. He would vote in favour of the Canadian amendment (A/C.3/L.553), but suggested that it might be improved by replacing the words "subject only to" by the words "in conformity with".

13. Mr. SERRANO (Philippines) reminded the Committee of the history of the draft Covenants and of the wealth of experience that had gone into their drafting. The Committee must bear in mind its terms of reference under General Assembly resolution 833 (IX), which instructed it to consider the draft Covenants article by article, but while authorizing it to consider amendments enjoined it to complete its consideration at the earliest possible date. The danger lay in trying to include as much as possible of the national experience of some countries, without due regard for the degree of development of others. It was essential to strike the golden mean and to take into consideration the need for signature by the largest possible number of States.

14. The amendments submitted to article 8 had revived some sharp divergences of opinion that had been manifested in the Commission on Human Rights. It had been stressed, on the one hand, that the Covenants must not become a second edition of the Universal Declaration of Human Rights, and on the other hand, that all the aspects of every right could not be enumerated. The Philippine delegation, for its part, had considered that the words "for the protection of his economic and social interests" were superfluous, since that was the objective of all the rights enumerated in the draft Covenant. However, it had refrained from pressing that view, as it considered that any further tampering with the existing article would throw the door open to large numbers of amendments and would thus impede the speedy adoption of the draft Covenants.

15. Turning to the revised three-Power amendments (A/C.3/L.552/Rev.1), he said that he was able to accept the changes suggested in points 1, 2 and 3 without any difficulty. The new sub-paragraphs contained in point 4, however, were a different matter. Sub-paragraph (b) dealt with a collective rather than an individual right, and while one article on a collective right—that of self-determination—had already been included in the draft Covenant, the Committee should not adopt the present provision without at least being aware of its nature. Sub-paragraph (c) imposed such restrictions on the right of trade unions to function freely as might be required "for the protection of the rights and freedoms of others". Since every right recognized by law in a civilized society must be so exercised as not to

infringe the rights and freedoms of others, that provision was totally unnecessary, and would only give rise to difficulties of interpretation and implementation. Before considering it at all, moreover, the Committee ought to decide whether it proposed to include limitations in every article, or would be content with a general limitation clause. The latter appeared to be by far the wiser course. Sub-paragraph (d) dealt with the right to strike; that right was such a natural corollary of the right to join and form trade unions that he was not sure it was necessary to mention it specifically; but if such mention was desired, reference should also be made to other and no less important rights of trade unions, such as the right to picket. The subject-matter of the new paragraph 2 of the text proposed in the revised three-Power amendments was already covered in article 5, paragraph 1; and there, too, moreover, a general clause applying to all the articles in the draft Covenant would be preferable to specific clauses in each article, which would make the Covenant unnecessarily voluminous.

16. The Canadian amendment (A/C.3/L.553) was superfluous, and might even be harmful. There was no reason to suppose that anyone would seek to join a trade union if he did not agree with its rules; or that a carpenter, for example, would try to join a musicians' union. On the other hand, the rules of some trade unions might be contrary to the general policies or laws of a particular country, and the draft Covenant should not give them special protection. He would abstain in the vote on that amendment.

17. He was unable to vote for the USSR amendment (A/C.3/L.547) because the trade-union functions whose exercise it was proposed to guarantee were nowhere defined.

18. He was also unable to accept the sub-amendments submitted by the Netherlands and the United Kingdom (A/C.3/L.555) to the revised three-Power amendments. A reference to one specific Convention would be invidious, because it would imply the exclusion of all others; moreover, the purpose sought was already achieved by article 5, paragraph 2. The proposal to allow the State to place special restrictions on the exercise of trade-union rights by members of the armed forces, the police and the administration of the State was dangerous. The only acceptable limitation of the rights of any trade union was the legitimate exercise of the police power of the State; he would approve of a restriction of that nature, provided it was placed in a general article.

19. Mr. AYALA MERCADO (Bolivia) said that while, in principle, amendments to the articles of the draft Covenants should be few and carefully considered, amendments designed to improve the original text were to be welcomed. The revised three-Power amendments (A/C.3/L.552/Rev.1), which his delegation had co-sponsored, had been drafted in that spirit; the text proposed in those amendments isolated the different elements of the text prepared by the Commission on Human Rights and set them forth in a clear and logical manner. It also introduced an element not to be found in the original text—the right to strike. That new idea had met with a favourable response in the Third Committee. One reason for introducing it had been the necessity to protect the workers in under-developed countries against the reactionary tendencies of the dictatorships to which they so frequently succumbed precisely because of the backwardness and instability of the economies of such countries. Another reason was that

the under-developed countries were the first to suffer in an economic crisis, and the workers in those countries were usually the hardest hit; it had therefore been felt that they should be guaranteed the right to strike so that they would be in a better position to defend their interests. The right to strike was generally recognized, but like the right of women to equality with men, it had to be mentioned specifically to make sure that it was implemented. He agreed with the Chilean and Netherlands representatives that it might be wise to add a passage to the sub-paragraph in question to the effect that the right to strike should be resorted to only after all efforts at conciliation had failed. The revised text of the three-Power amendments took into account some elements of the USSR amendment (A/C.3/L.547) and of the sub-amendments submitted by the Netherlands and the United Kingdom (A/C.3/L.555), and he hoped it would be acceptable to the majority of the Committee.

20. Mrs. MARZUKI (Indonesia) said that her delegation had been ready to accept article 8 of the draft Covenant as it stood, since it was in line with the Provisional Constitution of Indonesia. While she feared that spelling out certain aspects of the right concerned might weaken the article, she was prepared to accept the argument that the historical development of the trade-union movement made such an approach desirable. She would have no difficulty in voting for points 1, 2 and 3 of the revised three-Power amendments (A/C.3/L.552/Rev.1). On the other hand, the new paragraphs proposed in point 4 of the amendments might have the effect of prejudicing the general conception of trade-union rights; that did not apply to the provision on the right to strike, which was entirely acceptable, on the understanding that the right in question should be exercised only as a last resort.

21. Since a general limitation clause was already embodied in article 4, which dealt with the general provisions of the draft Covenant, point 1 of the sub-amendments submitted by the Netherlands and the United Kingdom (A/C.3/L.555) was superfluous. However, since the Committee had already adopted a specific provision in article 6, even though the same matter had already been covered in article 2, relating to general provisions, she would have no objection to the more broadly phrased restriction contained in paragraph 1 (c) of the three-Power text. She doubted the wisdom of introducing a reference to a specific Convention, as proposed by the Netherlands and the United Kingdom, and would prefer the new paragraph 2 of the text proposed in the three-Power amendments, which covered the same ground in a more general manner.

22. She was prepared to vote for the USSR amendment (A/C.3/L.547) and the Canadian amendment (A/C.3/L.553).

23. Mr. DELHAYE (Belgium) remarked that the trade-union movement was highly developed in his country, which was an active and progressive member of the International Labour Organisation (ILO).

24. He was in favour of the deletion of the phrase "for the promotion and protection of his economic and social interests" in paragraph 1 (a) of the text proposed in the three-Power amendments (A/C.3/L.552/Rev.1), because the original text apparently guaranteed the free exercise of the right to form or join a trade union only with a view to the protection of the economic and social interests of the person concerned. In the view of the Belgian delegation, the right to form and

join trade unions should be absolute, and independent of the purpose sought by the individual. On the other hand, he would, of course, have no objection to the right laid down in the new paragraph 1 (b) of the text proposed in the joint amendments considered on its merits, in isolation from its context; but he would abstain in the vote on the paragraph, because it dealt with groups, and was therefore out of place in a covenant on human rights, which dealt with the rights of the individual. He felt, however, that the term "trade unions", used in article 8, should be defined. The Chilean representative had asserted (720th meeting) that the article, since it spoke of "everyone", protected the right of both employes and employers to join and form trade unions; and he himself felt that that was desirable. However, it could be seen from the annotations on the text of the draft Covenants (A/2929, chap. XIII, para. 17) that the Commission on Human Rights had not intended article 8 to apply to employers; he expressed the hope that the Committee would decide otherwise, and would make it clear in article 8 that the term "trade unions" denoted any organization of workers or employers.

25. As he took the view that article 8 should accord as closely as possible with article 21 of the draft Covenant on Civil and Political Rights (E/2573, annex I B), he would vote for point 1 of the sub-amendments submitted by the Netherlands and the United Kingdom (A/C.3/L.555).

26. Mr. DIAZ CASANUEVA (Chile) said he wished to make some comments on the Belgian representative's observations regarding the scope of article 8. Although he had not been present when the matter had been discussed in the Commission on Human Rights, he assumed that the term "trade unions" applied to both employers and employees. The International Labour Convention of 1948 referred to trade unions not only of workers, but of employers as well. Accordingly, any reference to that Convention might give rise to confusion, if article 8 was to be taken to apply only to workers. The Committee should decide whether it wished the scope of article 8 to be wide or limited. The basic ambiguity lay in the word "everyone", which could apply to either workers or employers.

27. That point aside, the Chilean delegation was in favour of retaining the original text of article 8 (E/2573, annex I A), with the constructive amendments which had been submitted during the debate.

28. Mrs. SHOHAM-SHARON (Israel) said her delegation would have voted for article 8 in its original form, as that text represented a compromise achieved after long discussions in the Commission on Human Rights. A covenant designed to safeguard the minimum individual economic, social and cultural liberties could not include an enumeration of all the implications of such liberties for the collectivities within which they were to be exercised. The fact that there could be no freedom of the individual to join trade unions unless the trade unions themselves were free to function without undue restrictions was obvious.

29. Several fundamental points were involved in the discussion of the amendments. First, it could be argued that the rights of trade unions were not individual rights. Secondly, there was the question of the relation of the draft Covenant on Economic, Social and Cultural Rights to other legal instruments dealing with the same subject; a conflict of obligations could occur under the various international instruments. That was a problem which her delegation had raised in the discussion of

previous articles. The third point arose in connexion with paragraph 2 of the text proposed in the revised three-Power amendments (A/C.3/L.552/Rev.1), which was general in application. Obviously, every international agreement could be thwarted by national legislation; but in accepting obligations under an international covenant, a State renounced the right to enact conflicting national legislation. If that were not so, it would be questionable whether international agreements had any usefulness at all. Her delegation had no doubts as to the substance of the paragraph in question, but only as to its wording and location. The wording could be interpreted to mean that without such a paragraph, States would retain their freedom in relation to the rights dealt with in paragraph 1. And in view of its general nature, the provision would be better placed in the general part of the Covenant. To place it at the end of one article only could give rise to the interpretation that no such considerations applied to all the other articles.

30. She wished to explain how her delegation intended to vote on the amendments before the Committee. Since her Government was an enthusiastic supporter of the trade-union movement, it would not oppose the proposed expanded provisions on the rights of trade unions on technical grounds. Her delegation would vote for the second paragraph of the text proposed in point 3 of the sub-amendments submitted by the Netherlands and the United Kingdom (A/C.3/L.555), if it could be given the assurance that in the final text that paragraph would be placed with the transitional provisions. It would vote against paragraph 2 of the revised three-Power text (A/C.3/L.552/Rev.1). It had some misgivings with regard to the vague drafting of paragraph 1 (c) of that text, which would open the door to restrictions imposed on the basis of criteria that were subject to the most varied interpretations. Israel would therefore abstain in the vote on that sub-paragraph.

31. With respect to the first paragraph of the text proposed in point 3 of the sub-amendments submitted by the Netherlands and the United Kingdom (A/C.3/L.555), her delegation would vote for the first two categories mentioned, namely, "armed forces" and "police", but she saw no justification for imposing restrictions on the right of civil servants to join trade unions. In Israel, the civil service was organized in a trade union affiliated to the General Federation of Labour. She would therefore vote against the third category if, as had been requested by the representative of Greece (721st meeting), a separate vote was taken.

32. Mr. THIERRY (France) complimented the Bolivian, Peruvian and Uruguayan delegations for the conciliatory spirit they had shown in revising their amendments. He wished to suggest three drafting changes in the French text. First, in paragraph 1 (a) of the text proposed in the amendments (A/C.3/L.552/Rev.1) the word "*préférence*" was weak and ambiguous, and should be replaced by "*choix*". In the same phrase, he suggested that the word "*syndicat*" should be used in the singular, for the sake of consistency; the phrase would then read: "*au syndicat de son choix*". In the text of paragraph 1 (c), he suggested that the word "*restrictions*" should be replaced by "*limitations*". With respect to paragraph 2, the phrase "*ni d'applications de la loi*" was not specific; the phrase should read "... *de mesures législatives ou autres qui leur portent atteinte...*" or possibly "... *de mesures législatives ou administratives qui leur portent atteinte...*".

33. Mr. HOARE (United Kingdom) said that the Netherlands and the United Kingdom had tried, in their sub-amendments (A/C.3/L.555), to change the text proposed in the three-Power amendments (A/C.3/L.552/Rev.1) as little as possible. They had added to paragraph 1 (a) a reference to restrictions and a limitation on them in the terms of their amendment (A/C.3/L.550) to the original text (E/2573, annex I A). No amendment had been proposed to paragraph 1 (b) of the revised three-Power text because specific restrictions on that paragraph did not seem necessary, but that did not mean that the United Kingdom supported it. The amendments to paragraph 1 (c) were intended to bring the restrictions mentioned therein into the same terms as those proposed for paragraph 1 (a). He wished to amend the first of those amendments (A/C.3/L.555, point 2 (a)) to read: "Delete the word 'and'." The word "freely" used in paragraph 1 (c) was less open to objection than the word "unimpeded". The United Kingdom could not accept paragraph 1 (d) which, as the representative of the Philippines had rightly pointed out, made no mention of other aspects of trade-union rights, such as the right to picket. Paragraph 1 (d) should be deleted; but since it already contained a limitation, his delegation did not propose its amendment. That limitation, with the very wide reference to "the laws of the particular country" could, however, make the right inoperable. To those who had objected to the first paragraph of the text proposed in point 3 of the sub-amendments submitted by the Netherlands and the United Kingdom he pointed out that it did not necessarily imply the denial of all rights of the armed forces, or of the police or of the administration of the State, but merely provided for the possibility of lawful restrictions. Paragraph 2 of the revised three-Power text did not cover the same ground as the saving clause proposed by the Netherlands and the United Kingdom in the second paragraph of the text proposed in point 3 of their sub-amendments. He would vote against it, because it was a mere duplication of the undertaking at the beginning of the text; its only effect would be to cause doubt concerning the validity of that undertaking.

34. He thanked the representative of Greece for the lucid analysis of the amendments which he had given at the previous meeting. In the course of his statement the representative of Greece had conceded that the level of restrictions on trade-union rights proposed by the Netherlands and the United Kingdom might be necessary, but might be inserted in the final draft of article 4. That article might not be adopted, however, and if it was, its provisions would have to be quite general, and not as specific as those in the amendments submitted by the Netherlands and the United Kingdom.

35. He agreed with the Philippines representative that it would be undesirable to attach restrictions to every article. However, article 8 differed from most of the other provisions in that it imposed an immediate and binding obligation. It did so in precisely the same field as did article 21 of the draft Covenant on Civil and Political Rights (E/2573, annex I B) and should therefore be in the same terms. The words "protection of the rights and freedoms of others" in the amendments submitted by the Netherlands and the United Kingdom had been taken from article 21 of that draft Covenant; similar provisions appeared in articles 18 and 19.

36. The reference to the International Labour Convention of 1948 in the amendments submitted by the Netherlands and the United Kingdom had also been taken from article 21 of the draft Covenant on Civil and Political Rights. The Philippines representative had proposed the principle of non-interference with texts settled by the Commission; the amendments submitted by the Netherlands and the United Kingdom were practically all taken from the Commission's own text of article 21.

37. He would add that the restrictions proposed were not peculiar to trade unions; under article 21 of the draft Covenant on Civil and Political Rights they could be applied to all forms of association, and were clearly appropriate for the regulation of the relations between associations and society in general.

The meeting rose at 1 p.m.