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CONTENTS

Chairman: Mr. Jiří NOSEK (Czechoslovakia).

In the absence of the Chairman, Mr. Núñez (Costa Rica), Vice-Chairman, took the Chair.

AGENDA ITEM 58

Draft international covenants on human rights (A/2714, A/2686, chapter V, section I, E/2573, A/C.3/574, A/C.3/L.410/Rev.1 and Corr.2, A/C.3/L.410/Rev.2, A/C.3/L.412, A/C.3/L.413, A/C.3/L.414) (*continued*)

FIRST READING (SECOND PART) (*continued*)

1. Mr. DE BARROS (Brazil) said that he wished to submit alternatives to certain provisions of the draft covenants (E/2573, annex I). They were merely suggestions, which would not affect the substance greatly, and they were intended to enable a majority of States to find common ground.

2. Article 1 of both draft covenants had been the stumbling-block in the Committee's discussions since the sixth session of the General Assembly and seemed liable to cause a complete failure of the Committee's work by forcing some countries to withdraw from it. The principle of self-determination underlying the article was recognized by all, including the colonial countries, which had signed in the Charter a solemn covenant to grant independence to the subject peoples at the proper time. The principle implied two other principles: gradual development of the colonial peoples and their right to determine their future for themselves under suitable conditions. It followed that outside intervention could not be used to hasten their emancipation and that they could not be forced to proclaim that emancipation. The problem was to ensure self-determination and at the same time to prevent counter-measures on the part of the colonial Powers, as well as aggressive intervention by other States. To apply the principle, it was essential that the subject peoples should, in full awareness of their destiny, blaze their path through history by their own efforts.

3. The Latin-American countries knew the price of freedom, having fought for it in a very different world, where force and slavery had been the rule and international law had been in its infancy. The principle of self-determination was most important to them, and they wished to see it accepted, as in the United Nations Charter, not as a mere declaration but as a right.

4. The Brazilian delegation could not accept specious arguments against the principle of self-determination. There could be no comparison between Indian tribes in a sovereign State like Brazil, which was trying to speed their development, and savage tribes under colonial rule in Africa. The United Kingdom and other delegations had regarded the right of self-determination as a political right, thus confirming the Brazilian view that economic and political rights were closely intertwined. On the other hand, the Arab and Asian countries regarded article 1 as the most important article in the draft covenants. The Soviet Union had stated that it had solved the problem of the self-determination of its many nationalities. Other delegations, however, had stressed the need to apply the principle of self-determination to the Eastern European peoples which had lost some human rights with their independence, thus proving that self-determination was a prerequisite to the exercise of all other rights. Historically, nations had been able to secure respect for human rights only after they had achieved their independence.

5. There could be no retreat from the ground already conquered. However, in reaffirming the principle of self-determination in the two draft covenants, care should be taken not to confuse it with political and other human rights. It was a right of peoples and not of individuals, as several delegations had pointed out, an international right and not a private right. While it might not be impossible to include it in the draft covenants, a better way might be to request the Commission on Human Rights to prepare a protocol to the covenants embodying the principles relating to self-determination which were stated therein.

6. The Brazilian delegation had voted for article 1 of the draft covenants at the sixth session of the General Assembly and would do so again if no better place could be found for the principle of self-determination. It would, however, prefer that the principle should appear in the preamble to the covenants rather than in article 1, in order to indicate from the beginning that it was the source of all other rights. To that end, the Brazilian delegation had prepared certain proposals (A/C.3/L.412) designed to secure the support of the colonial Powers.

7. Article 2 of both draft covenants had caused difficulties for some countries, but Brazil would support it except for its application to language and to certain rights which foreigners, even if naturalized, were not permitted to exercise in Brazil.

8. Brazil, as an immigration country, attached great importance to the language question. Unity of language had been a determining factor in achieving political, social and cultural unity and had prevented the formation of unassimilated nuclei of immigrants unable to take part in the national life and liable to be used as bridge-heads for aggression. It had therefore been found necessary to restrict the rights of non-Portu-

guese-speaking aliens in Brazil. Besides, language rights for minorities were included in article 25 of the draft covenant on civil and political rights, although without the dangerous scope which the Soviet delegation had tried to give them during the discussion of the Universal Declaration of Human Rights.

9. The question of nationality, even in case of naturalization, entailed security considerations and sometimes such considerations prevented naturalized persons from exercising certain rights. It could not be expected that legislation to that effect would be amended. Article 23, for example, on the right to take part in public affairs, gave rise to serious difficulties which the drafters of the covenants had not sufficiently considered. It was idle to claim that no distinction should be made on the ground of national origin in respect of access to public service. Almost all countries made some kind of distinction in appointing the highest State officials. The Brazilian delegation therefore proposed certain amendments to article 23 (A/C.3/L.413, point 1).

10. Brazil had already done more than was required by articles 3 to 13 of the draft covenant on economic, social and cultural rights, but because such rights were restricted in the case of aliens, the Brazilian delegation was bound to bear in mind the word "progressively" in article 2, paragraph 1.

11. The principle of article 26 of the draft covenant on civil and political rights was already enshrined in the Brazilian Constitution, but it should be noted that it was not a right, but a restriction of rights, particularly the right of freedom of expression referred to in article 19. It was in that article, therefore, that the principle should appear. Furthermore, although national, racial or religious hostility had been mentioned, class hatred, the scourge of modern times, had been omitted. The Brazilian delegation offered some amendments to remedy those faults (A/C.3/L.413, points 2 and 3). The permissive form had been inserted in the amendment to paragraph 19 for the sake of consistency with article 5, and to avoid difficulties for States which were constitutionally unable to restrict freedom of expression in any way.

12. Although the federal clauses caused no difficulty for Brazil, where only the Union had an international personality, the Brazilian delegation thought that the relevant articles were unsatisfactory for some other federal States and hoped that they would be amended.

13. A large number of articles were irrelevant to Latin-American countries, since the rights recognized in them had long been a part of their heritage. Quite a number of articles had been badly drafted, for example article 14, paragraph 1, of the draft covenant on civil and political rights; the principle of article 24, "all persons are equal before the law", together with that of article 16, could very well be introduced at the beginning of article 14.

14. In general, the Brazilian delegation thought that the texts were too detailed. Excessive detail opened the door to difference of opinion, and the mention of specific examples implied the exclusion of others. That applied particularly to article 18 of the draft covenant on civil and political rights, where the force and solemnity of the initial statement of principle were reduced by the addition of three paragraphs of explanation.

15. Although there were eighty-three articles in the draft covenants, certain essential principles, such as the rights of property and of asylum, had been omitted.

16. Mr. ROY (Haiti) asked for an explanation of the Committee's procedure at that stage. A decision had been taken not to discuss the draft covenants article by article and the general debate had previously been concluded. It had also been agreed that new proposals should be submitted in writing and might be introduced, but not discussed. There would hardly be time for all delegations to introduce all their proposals in such detail as the Brazilian delegation had done.

17. The CHAIRMAN agreed with the Haitian representative's interpretation of the decision taken by the Committee at its 577th meeting, but added that it was for the Committee itself to decide its procedure. The Brazilian representative's method of introducing his proposal might, as the Haitian representative had suggested, open the way to prolonged discussion. Unless the Committee decided otherwise, delegations which had comments to make should do so without going into detail.

18. Mr. BARODDY (Saudi Arabia) said that he entirely agreed with the Chairman's interpretation of the Haitian representative's apposite question. If many delegations submitted amendments or new proposals and addressed themselves individually to each of them in detail, the Committee would not be able to complete its work on the draft covenants. A great deal depended on the importance of the proposal, however, and he was glad to have heard the Brazilian representative's explanation. On the other hand, little could be accomplished at the current session unless the Committee took a decision on the Costa Rican draft resolution (A/C.3/L.410/Rev.2), and the amendments thereto, especially the Afghan amendment (A/C.3/L.411). Not much could be accomplished by further discussion of the substance, as the Afghan and Yugoslav representatives had rightly pointed out. The Committee should therefore decide what to do at the next session rather than dwell further on what had already been done.

19. The Brazilian representative's introduction of his proposals had, however, been so important for its implications, its moderation and its understanding of the colonial Powers' problems that further discussion could not be precluded. It was fortunate that the Committee had decided that no immediate decision should be taken on such proposals. The dissenting view should be placed on record so that the views to be embodied in the compilation contemplated in the Costa Rican proposal should be well balanced.

20. He had understood the Brazilian representative to imply that, if his proposal for the deletion of article 1 did not command ample support, he would not press his suggestion that most of the substance should be transferred to the preambles, but would revert to advocating its inclusion in the operative part. That representative should remember that the inclusion of the article in the operative part had not been the achievement of the Arab and Asian delegations alone, but also of all, or almost all, the Latin-American delegations, including Brazil. Indeed, it was to the glory of the Latin-American delegations that they had obtained the inclusion of paragraph 3 of the article in question.

21. As a demonstration of the spirit of compromise the Brazilian proposal and statement had been commendable, but the transfer of the article from the operative part to the preamble would leave nothing but the hollow reiteration of a principle already stated in the Charter of the United Nations and the affirmation of a pious hope that the colonial Powers would be given

time to solve their economic problems at some future date. For economic problems they were, not to be camouflaged by legal quibbles about individual or collective rights. The situation was critical. The peoples in the Non-Self-Governing Territories were fighting and dying, no longer merely clamouring, for self-determination, while the Third Committee sat discussing the legalities of the matter. Mere declarations would be useless: peace could not be achieved by compromise with the colonial Powers. It was true that the administering Powers had assumed certain responsibilities under the Charter, but, despite the best intentions, they were not fulfilling them. Those Powers were not inhuman, but they reflected the policies of certain vested interests. The dependent peoples themselves — made up, it should be remembered, of individuals — were rebelling: nothing done in the United Nations had caused that situation.

22. For four years the United Nations had debated the question of including an article on self-determination in the draft covenants: for four years its competence had been challenged: the advocates of its inclusion had been confronted by the same legalistic arguments from the colonial Powers and had repeatedly begged them to face realities and see whether their responsibilities under the Charter were being fulfilled.

23. It had been implied that the Saudi Arabian delegation had spoken up for Tunisia and Morocco merely because their peoples were fellow Moslems. That was not so. It would speak up for the Cypriots, although only some 18 per cent of them were Moslems. It would speak up for non-self-governing peoples anywhere in the world.

24. The whole question was bound up with the relation between the individual and the State. To the objective observer the State was not an abstract entity, but represented the individual. Even tyrannies represented the individual, because he acquiesced in their rule. The State was not, in most cases, something against which the individual had to be protected, as had been contended all too often in the Third Committee, but the defender of individual rights. Those who opposed that view were those who spoke of collective, as distinct from individual, rights. That fact should be taken into account in drafting the new international law, which was no longer fossilized and static, but evolutionary. The colonial Powers should bear that in mind.

25. The Brazilian representative had alluded to the peoples in eastern Europe who did not enjoy the right of self-determination. He had apparently had the Baltic countries in mind. If he was so concerned about them, he and those who shared his concern should make use of diplomatic channels or other methods to try to do what they could to remedy any infringement of human rights they suspected in those countries. He should not, however, sacrifice to that concern the interests of the peoples in the colonial countries and the principle of the enforcement of the right of self-determination. The USSR, it should be remembered, had actively supported the Arab, Asian and Latin-American countries in pressing for the inclusion of that right in the covenants.

26. The Brazilian delegation had enthusiastically and effectively championed the principle of self-determination. The historical experience of Brazil and other Latin-American countries had shown that it was a right won in long and heroic struggle: the names of Bolivar and San Martin were universally cherished. It should be clear to the Brazilian representative from his country's history that compromise in such a matter was vain, however commendable. It was to be hoped that the Brazilian delegation would not press its proposal when it came to be considered at the next session. If it did so, the Committee would once more be confused by legal quibbles about what was essentially a fundamental right.

27. Mr. PAZHWAK (Afghanistan) agreed with the Haitian representative. The Committee should not at that stage be discussing the draft covenants article by article; yet the discussion under way seemed tantamount to that. Although the Brazilian representative had been in order in introducing his proposals, which were not draft resolutions and on which no vote would be taken, they would be included in the proposed compilation and therefore should not be discussed until the next session. He asked the Chairman whether discussion of the substance was in order. If it was, delegations should be given time to prepare for it. But he doubted whether the Committee had enough time.

28. The CHAIRMAN replied that, in accordance with the decision taken at the 577th meeting, delegations might submit amendments, additions or comments, in a single statement if possible.

29. Mr. ZUAZO CUENCA (Bolivia) agreed with the Saudi Arabian representative that the compilation proposed in the Costa Rican draft resolution would not be well balanced unless arguments favouring the inclusion of article 1 in both covenants were placed on record beside the arguments adduced by the Brazilian representative in support of his proposals. The underdeveloped countries were extremely anxious for article 1, especially paragraph 3, to remain in the operative part rather than become a mere declaration in the preambles. It would enable them to create the conditions required for the application of many of the articles on economic, social and cultural rights. If no method for recording that view was found, he would have to submit a proposal for the inclusion of article 1 in the operative part of the draft covenants and would have to explain his reasons at considerable length.

30. The CHAIRMAN said that the Bolivian delegation was free to submit such a proposal and introduce it, in a single statement if possible, in accordance with the decision taken at the 577th meeting.

31. Mr. RODRIGUEZ FABREGAT (Uruguay) asked that the vote on the Costa Rican draft resolution (A/C.3/L.410/Rev.2) should not be taken at once because the proposal might be improved in the course of the Committee's proceedings.

32. With regard to the procedure to be followed in connexion with the Brazilian proposals (A/C.3/L.412) he pointed out that their purpose was to delete article 1 from both of the draft covenants, state its principle in the preamble and request the Commission on Human Rights to prepare a draft protocol to the covenants, embodying the principles contained in the existing provisions relating to the right of self-determination. There could be no doubt that the views of the Brazilian delegation, which had proved itself to be a devoted champion of freedom, did not differ substantially from those of other delegations which had supported the inclusion of the article in the draft covenants. Nevertheless, it was essential to consider the procedural question when the proposed protocol should be drafted and whether a decision on the issue should be taken at once or at the next session. Unless that question were settled immediately, all the time that had ostensibly been saved by

holding a general discussion would in fact have been wasted. It should be borne in mind that the Commission had already referred the article on self-determination back to the Third Committee as an integral part of the draft covenants.

33. It had been suggested that the substance of the Brazilian proposals should not be discussed, but some speakers had already spoken on the substance. The Saudi Arabian representative, in particular, had referred, in connexion with the emancipation of the Latin-American republics, to principles for which the Brazilian nation had struggled. The fact that the Latin-American countries had championed the principle of self-determination as it was set forth in the draft covenants made it the more difficult to agree with the proposed transfer of the article. World public opinion would not be satisfied by the substitution of the vague hope that the principle would be inserted in an annex for the immediate proclamation of the right in both covenants. The long-awaited moment when the covenants would at last be signed and ratified seemed to be near, but it was now proposed to relegate one of their most important provisions to a protocol. Although it was true that the widest possible support of the covenants would enhance their prestige, the elimination of the article on self-determination would lead only to the omission of other key provisions, such as the territorial clause, and to the acceptance of the federal clause. It was essential to abide by the Charter of the United Nations, on which the whole idea of the covenants was based, and by the Universal Declaration of Human Rights. The achievements of the United Nations as a whole could not be jettisoned because of the legalistic objections of a minority. The many communities which would be in the position to invoke the right of self-determination should not be denied the opportunity of doing so. They had not been consulted when the yoke of alien government had been imposed upon them and were not being consulted then; the principle which had finally been included in the draft covenants constituted a basic innovation, which would transform the instruments into a true reflection of the modern era. The Committee should be enabled to take a responsible decision on the specific texts before it; the proposed protocol belonged to the remote future.

34. The CHAIRMAN stated that he did not intend to put the Costa Rican draft resolution (A/C.3/L.410/Rev.2) to the vote at once.

35. The Afghan proposal unanimously adopted by the Committee at its 577th meeting provided that a decision should be taken on the Costa Rican draft resolution after statements had been made in the second part of the first reading. Some discussion of the Costa Rican draft resolution had taken place only because there had been no speakers on articles of the draft covenants.

36. Mrs. TSALDARIS (Greece) asked whether she could speak on the Brazilian proposals.

37. Mr. FOMIN (Union of Soviet Socialist Republics), speaking on a point of order, questioned whether the Greek representative should be allowed to speak on the Brazilian proposals.

38. The CHAIRMAN said that, although statements on the Brazilian proposals might constitute a slight departure from the Committee's earlier decision, it was for the Committee to decide the matter. No objections had been raised to previous statements and it therefore seemed that the Chair could be liberal in interpreting the original decision.

39. Mr. PAZHWAK (Afghanistan), speaking on a point of order, asked the Chairman if the Committee had a Brazilian draft resolution before it. He also wanted to know whether the Brazilian representative would press his proposals, in view of the statements that had been made. He himself had refrained from speaking on those proposals, in spite of his interest in the subject, because he had thought that such a statement would not be in order; if that were not the case, he would be prepared to speak at length on the question.

40. Mr. FOMIN (Union of Soviet Socialist Republics), speaking on a point of order, recalled the procedural decision taken at the Committee's 577th meeting and observed that only the Costa Rican draft resolution could be discussed at that stage. Although he did not agree with the Brazilian proposals and considered them tendentious, the Brazilian representative's statement had been in order, as he had been explaining his proposal.

41. He would not dwell on the fact that the Brazilian representative's repetition of various fabrications about the Soviet Union, which were usually published in the yellow Press, had been out of place.

42. The Third Committee should discuss the draft covenants and should not be distracted from its serious consideration of those texts by the attempts of certain delegations to lower the level of the debate by concentrating it on those preposterous inventions. In view of the substantive comments that had been made on the Brazilian proposals, it should be made clear at once whether further remarks could be made on the subject. The Brazilian representative could reply to the Afghan representative's question, but any discussion of or vote on the Brazilian proposals was out of order, unless the Committee specifically decided to change the procedure agreed upon.

43. Mr. MATTHEW (India) moved the adjournment of the meeting.

The motion was adopted by 28 votes to 4, with 13 abstentions.

The meeting rose at 5.40 p.m.

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