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Chairman: Mr. Jiří NOSEK (Czechoslovakia).

AGENDA ITEM 58

**Draft international covenants on human rights
 (A/2714, A/2686, chapter V, section I, E/2573,
 A/C.3/574) (*continued*)**

GENERAL DEBATE (*continued*)

1. Miss LIONAES (Norway) said that from the time of the San Francisco Conference the Norwegian delegation had followed with keen interest and high hopes the efforts of the United Nations to formulate the Universal Declaration of Human Rights and at the third session of the General Assembly in 1948 it had voted in favour of the Declaration. Its hopes had not been disappointed, for in recent years the Declaration had on many occasions served as an inspiration for national constitutions, treaties of peace and international agreements. Nevertheless, the Universal Declaration was not enough to ensure the exercise of the rights it proclaimed: it had to be supplemented by legally binding international instruments. The adoption of the covenants—the result of the dogged efforts of the United Nations over the past six years—would make it possible for the first time in the history of the world to attain that objective.

2. The Norwegian delegation was deeply conscious of the importance of the instruments for future generations; it realized, however, that it was only natural that there should be differences of opinion among sixty countries with widely divergent philosophical, religious and political views. The adoption of the instruments would therefore require concessions on all sides.

3. It was that consideration that would guide the Norwegian delegation in its views on the two draft covenants (E/2573, annex I), and particularly on article 1 which was common to both. As it had said before, it was convinced that the realization of the principle of the right of peoples to self-determination was a matter of vital importance to the United Nations. Norway had always supported and would always support whole-heartedly the right of all nations freely to determine their own political, economic, social and cultural status. During the debate, several representatives had objected, for purely formalistic reasons, to the inclusion

of article 1. The Norwegian delegation regretted that it had proved impossible to overcome those difficulties. In the struggle for peace and freedom it was of vital importance that the United Nations should arrive at a generally acceptable formulation of the principle of self-determination. If the inclusion of article 1 in the covenants made it impossible for a large number of States to ratify them, her delegation would vote in favour of deleting that article.

4. With regard to article 52 of the draft covenant on civil and political rights and article 27 of the draft covenant on economic, social and cultural rights, not only did these articles fail to meet the requirements of General Assembly resolution 421 C (V), but they made it almost impossible for federal States to ratify the draft covenants. The Norwegian delegation could not, therefore, vote in favour of the articles as they stood.

5. She fully supported the United Kingdom delegation's views concerning article 53 of the covenant on civil and political rights. If the inclusion of the article as it stood would make it impossible on constitutional grounds for States responsible for dependent territories to accept the convention, it would be unrealistic to vote in favour of the article.

6. The Norwegian delegation had hoped that the Commission on Human Rights would be able to carry out the General Assembly's request that it should formulate an article on the right of reservation. As it had not done so, she was prepared to support the main elements of the United Kingdom proposal.

7. Subject to those reservations, the Norwegian delegation found the drafts satisfactory and acceptable but it reserved the right to make further comments on some articles when they were examined one by one.

8. In conclusion, she expressed the hope that the Committee would be able to bridge the differences which still existed, so that the draft covenants might receive the support of all countries of goodwill. The States Members of the United Nations would fail in their duty if they did not make every effort to contribute to the accomplishment of that historic task.

9. Mr. PAVLICEK (Czechoslovakia) said that, although the Commission on Human Rights had not succeeded in preparing texts that were perfect in every respect, it had nevertheless done praiseworthy work, which would go far towards solving the problem of drawing up draft covenants on human rights. Nevertheless, his delegation wished to reiterate that economic, social and cultural rights were closely linked to civil and political rights and that the two categories of rights should be put into effect simultaneously and, consequently, should be included in one single draft covenant.

10. The Czechoslovak delegation had studied the two draft covenants very closely, and had noted that they contained a number of provisions the implementation

of which would help to improve the living conditions of millions of human beings. It was particularly pleased that a clause on the right of peoples to self-determination had been included. The Administering Authorities had opposed the inclusion of the clause on the ground that it related to a collective, rather than an individual, right. That argument could not hold good in the face of the historical events of recent years, which showed that the struggle for the right of peoples to self-determination was inextricably linked to the struggle for basic individual rights. By ensuring respect for the right of peoples to self-determination the United Nations would strengthen the principles of the Charter and avoid future conflict in cases where Administering Powers were eager to prevent the peoples of colonial territories from achieving political and economic independence.

11. The Czechoslovak delegation attached great importance also to the provisions of the draft covenants which concerned the equal rights of men and women in the political, economic and cultural fields. At first glance, those provisions seemed a matter of course, but it should be borne in mind that there were still States in which the principle of equal pay for equal work was not applied and where women did not enjoy the same political rights as men. In Czechoslovakia, men and women were guaranteed equal rights by law: men and women had access to all professions, to all offices and to all honours.

12. His delegation was glad to note the inclusion of article 7 in part III of the draft covenant on civil and political rights. Anyone who remembered the atrocities committed by Nazi criminals in concentration camps during the Second World War would read those provisions with a feeling of gratitude. The same remark applied to article 8, which prohibited slavery, an institution contrary to human dignity. Articles 9 and 18, too, met with his delegation's approval.

13. There were some articles, however, which would not provide a guarantee of the rights to which they referred until they were redrafted or supplemented. That was particularly true of article 13, which ought to declare the principle that the right of asylum should be granted to all persons who were persecuted because of their scientific work, their activities in defence of democratic rights or their participation in the struggle for national liberation.

14. Similarly, his delegation found the text of article 19, paragraph 2, incomplete. As it stood, the text would allow of abuses of freedom of expression at any time for the purpose of inciting nations to hatred, propagating racial discrimination and disseminating calumnious and false information. The restrictions laid down in paragraph 3 of the article were not such as could in any way prevent abuses of freedom of speech and of the Press. The Czechoslovak delegation attached particular importance to that part of article 19, for it had been a Czechoslovak proposal that had prompted the General Assembly to include in the agenda of its ninth session the question of the prohibition of propaganda in favour of a new war. It was imperative that article 19 should be redrafted, the more so since certain statesmen were devoting all their efforts to war propaganda, even at that very moment, when nations were endeavouring to improve their relations and when the cessation of hostilities in Korea and Indo-China had considerably

reduced international tension. In his speech of 5 October 1954, Mr. David, the Minister of Foreign Affairs of the Czechoslovak Republic, had urged the necessity of doing away with all forms of propaganda designed to unleash a new war and to mislead public opinion by creating doubts about the possibility of the peaceful coexistence of States with differing social systems. In its resolution 110 (II), the General Assembly had itself condemned propaganda in favour of war and the inciters of war. Those facts showed how necessary it was that there should be an explicit prohibition of such propaganda in an international instrument. All mankind had waited long for such an instrument. An article prohibiting propaganda in favour of a new war would be just as important as article 26, which provided for the prohibition of any advocacy of national, racial or religious hostility.

15. The Czechoslovak delegation thought that article 20 on the right of assembly should be supplemented by a clause providing that all associations, unions, corporations or organizations of a fascist or anti-democratic nature and all activities of such organizations should be forbidden by law and subject to penal sanctions. It was the duty of all to combat the rebirth of any organization inspired by the fascist ideology. The prohibition of such activities was all the more urgent since the world was witnessing the rebirth of fascism in Germany, barely ten years after the Second World War.

16. If revised along the lines he had suggested the articles on civil and political rights would be much more forceful and would contribute to the effective safeguarding of respect for human rights and fundamental freedoms.

17. Turning to the draft covenant on economic, social and cultural rights (E/2573, annex I), he expressed his delegation's satisfaction at the inclusion of article 10 on the protection of motherhood and particularly of women in childbirth, children and young persons. For several years now the application of those principles had been guaranteed by law in Czechoslovakia and experience had shown that the healthy development of the entire nation depended on their observance. The Czechoslovak delegation also supported articles 12 and 14.

18. Article 6, which related to the right to work, needed supplementing. It should include a provision that the right to work should be guaranteed by the State, as was now the case in Czechoslovakia, the Soviet Union and the other peoples' democracies. The right to work could not be guaranteed merely by the State's recognition of the right of everyone to the opportunity to earn his living by work which he freely accepted. To be effective, it should be ensured by a systematic organization, guaranteed by the State, of employment opportunities. Similarly, articles 9 and 11 should include a provision to the effect that the rights they covered would be guaranteed direct by the States parties to the covenant.

19. It was not enough to proclaim the various rights of the citizen in draft covenants; such rights and their implementation should also be guaranteed by the State. To that end the Commission on Human Rights proposed that a human rights committee should be set up for civil and political rights and an artificial system of periodic reports established for economic, social and cultural rights. His delegation considered that the estab-

lishment of such a committee would entail serious risks: first, States might take advantage of the system to intervene in the domestic affairs of other countries and, secondly, the adoption of such a system was likely to be detrimental to good relations between the nations. Moreover, some States might refuse to accede to the draft covenants and to ratify them, for fear of intervention in their domestic affairs. His delegation reserved the right to make a further statement when the Committee began the discussion of measures of implementation, during the first reading of the draft covenants.

20. In conclusion, he pointed out that the defects to which he had drawn attention could be eliminated. The Committee would undoubtedly manage to do so if all its members showed themselves willing to co-operate in the preparation of the covenants on human rights, which millions of human beings were waiting to see put into effect.

21. Mr. MATTHEW (India) said that the completion of the draft covenants by the Human Rights Commission was a milestone in the history of the United Nations. Their preparation had required a great deal of time. While such slow progress might have given rise to impatience at times, it should not be forgotten that there had been serious difficulties to overcome and that there were still many obstacles ahead. It was a formidable and a delicate task; the two draft covenants dealt with virtually every aspect of the individual's life in society. The problem was to prepare international instruments of binding legal effect that would codify a complex structure of relationships between the individual and the State. A number of differing legal, economic and social doctrines had to be reconciled; the task of achieving such a synthesis demanded understanding, historical imagination, the ability to compromise and, above all, great patience. His delegation would do its utmost to ensure the success of the undertaking.

22. India, which was represented on the Commission on Human Rights, had participated at every stage in the evolution of the draft covenants. Like every other delegation, his delegation still had reservations about some of the draft articles that had been recommended. Nevertheless, the text represented the highest degree of agreement that could be reached in the Commission on Human Rights and might well represent the highest common factor of agreement in the international community. One of the risks of undertaking its revision was that it might lose that character. The problem was not simply whether the recommended provisions went too far or not far enough; the real effectiveness of the covenants would depend as much on their acceptability as on their content. What was needed was neither a theoretically ideal covenant which no country would be prepared to ratify nor a covenant so devoid of content that all countries would accept it. The drafts before the Committee represented to a large extent the middle course between those two extremes.

23. His delegation would for the time being confine itself to general observations. One question before the Third Committee was whether there should be one covenant or two. India considered that there should be two covenants, but that did not mean that it saw any difference in the importance of the two categories of rights; both were equally important. The preference for two covenants in no way implied that one category

should be given priority over the other: all that it implied was a recognition of the fact that the two sets of rights were distinct in the manner in which they could be guaranteed. The implementation of civil rights should be absolute and immediate; that required no more than good and responsible government. The same condition was necessary for economic and social rights but it was not in itself sufficient, since the economic resources of each nation were also a factor to be reckoned with. The implementation of economic rights was always relative; it always to some extent implied a choice between alternatives; it was inherently progressive. Those differences, which were recognized in the Constitution of India, justified the preparation of two covenants. Moreover, article 2 of the covenant on economic, social and cultural rights stated that the realization by States of the rights in question would be achieved "progressively"; that wording was an accurate reflection of the true facts. At the same time, as the General Assembly had rightly stated that the two covenants should contain as many identical provisions as possible, thereby emphasizing their common and complementary nature, the solution adopted appeared to be excellent in every respect.

24. Each year there was a discussion in the Third Committee on the inclusion in the two covenants of an article concerning the right of peoples and nations to self-determination. The objection generally voiced to it was that it was not a right but a principle and that in any case it would be a collective and not an individual right. Article 1 of the Charter declared the Purposes and Principles of the United Nations; thus it naturally referred to principles only, but that did not mean that principles did not engender rights. Principles and rights were not mutually exclusive; a principle on which the Charter was based should be universally accepted if it was to be applied effectively. With regard to the "collective" character of that right, the title of the draft covenants did not specify that they concerned individual or personal rights only. Moreover, the total effect of the individual rights enumerated was to make the human person free to be himself and to order his own life, in accordance with his inherent dignity; the right of self-determination could not be accorded to individuals and then denied to the society to which they belonged. Those two facts appeared to be closely linked; the individual could not enjoy his full rights unless he was a member of a self-determined society. That was why the right affirmed in article 1 of both draft covenants was in a very real sense the source from which all the other rights proceeded.

25. The Third Committee was also keenly interested in the measures of implementation. The Indian delegation was in favour of the establishment of a human rights committee and considered that the machinery envisaged in articles 40 to 47 of the draft covenant on civil and political rights would undoubtedly prove valuable; nevertheless, it felt that the proposed provisions were inadequate. The rights enumerated in the two draft covenants were based on the inherent dignity of the human person; the individual was the basis of those rights and it was therefore for him to protest against their violation. It followed, inevitably, that the covenants should recognize the right of individual petition. The difficulties which arose in that connexion did not seem insurmountable. It would be sufficient, for example, to provide for an adequate sifting process whereby inconsequential, unjustified or propagandist peti-

tions could be rejected. Experience in the Trust Territories, moreover, did not suggest that the volume of complaints received would be unmanageable. On the other hand, to restrict the right of petition to States parties to the covenants would have serious disadvantages. A State would be reluctant to complain so long as the violations did not take place on a large scale; even then, it would be afraid of prejudicing its relations with the other State involved. The individuals whom the United Nations was seeking to protect would in fact be all but silenced if they could not be heard as objects of an international dispute. A covenant which did not extend the right of petition to non-governmental organizations and individuals would therefore be an imperfect instrument, deficient in one of its most important attributes. It might perhaps be necessary for the moment to agree to the existing limited implementation provisions in order to ensure the support of the greatest possible number of countries, but it should be borne in mind that those restrictions weakened the value of the covenants and there should be continued efforts to find ways and means to extend the right of petition. In that respect, the Uruguayan proposal for the establishment of an Office of the United Nations High Commissioner (Attorney-General) for Human Rights' (E/2573, annex III) would merit serious consideration at a later stage of the debate.

26. The question of measures of implementation had an immediate bearing on the drafting of the covenants. There were two opposing schools of thought on the subject: one held that the text should be extremely precise and that all the accepted limitations to the proclaimed rights should be enumerated; the other school thought that such an exhaustive enumeration was impossible and that, to avoid giving a false impression, it would be better to leave a certain margin for interpretation. The second school hoped that the very process of application of the covenants would give them the appropriate precision. The Indian delegation subscribed to that view; indeed, it thought that those rights could only be defined by tradition and history, in the light of the experience acquired in their application. The purpose of the covenants was merely to draw an outline of such a definition; the case history of the various petitions would complete the structure. If no appropriate system of petitions was established, the advocates of a precise wording would have a much stronger case.

27. With regard to the federal clause, the text proposed by Australia and India (E/2573, para. 246) seemed preferable to article 52 of the draft covenant

on civil and political rights (E/2573, annex I). India was not directly concerned in that question; its Constitution expressly guaranteed throughout the country respect for the majority of civil and political rights mentioned in the draft covenant. It did not need a federal clause and had only proposed one in recognition of the needs of other countries. With regard to article 53, it was a matter of basic importance that the covenant should be applied in all the Non-Self-Governing, Trust and colonial Territories. Under Article 76 c of the United Nations Charter, one of the objectives of the Trusteeship system was to encourage respect for human rights; moreover, Articles 55 and 56 of the Charter imposed on Member States the obligation to promote "universal" respect for those rights. The Indian delegation could not, therefore, accept any modification of the text of the article on territorial application. Should problems of competence actually arise, appropriate reservations could be considered, but even then, only in respect of genuine indigenous authorities, representing a majority chosen by universal suffrage. With regard to reservations in general, India agreed with Chile and Uruguay that, ideally, no reservations should be permitted. Nevertheless certain practical difficulties made it necessary to admit a few reservations but those should constitute the minimum practicable in the existing circumstances.

28. The United Kingdom representative had referred to the provisions of article 2 of the draft covenant on economic, social and cultural rights, which dealt with non-discrimination. Under article 23 of the draft covenant on civil and political rights the exercise of political rights was restricted to citizens of the country concerned. There did not appear to be any insuperable objection to the granting of civil rights to both citizens and residents. Certain distinctions might, however, be considered with regard both to the right of property and to economic and social rights. Appropriate wording would have to be found.

29. The Indian delegation reserved its right to speak again during the detailed examination of the draft covenants. The Third Committee had undertaken a complex and delicate task which might take several more years to complete, but its completion would usher in a new era for the international community. The two draft covenants testified to a momentous evolution in the international conscience; it might seem a slow and unspectacular evolution, but it was inevitable and all those who had helped to bring it about could take humble satisfaction in their work.

The meeting rose at 4.15 p.m.