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Chairman: Mrs. Lina P. TSALDARIS (Greece).

In the absence of the Chairman, Mr. Calamari
(Panama), Vice-Chairman, took the Chair.

AGENDA ITEM 32

**Draft International Covenants on Human Rights (E/
2573, annexes I, II and III, A/2907 and Add.1-2, A/
2910 and Add.1-6, A/2929, A/3077, A/3525, A/3764
and Add.1, A/3824) (continued)**

**ARTICLE 7 OF THE DRAFT COVENANT ON CIVIL
AND POLITICAL RIGHTS (E/2573, ANNEX I B)
(continued)**

1. Mr. MORIN (Canada) agreed with the United States representative that the first sentence of article 7 of the draft Covenant on Civil and Political Rights (E/2573, annex I B) covered the particular case referred to in the second, which could accordingly be deleted. Nevertheless, if the majority of the Committee considered that the sentence should be retained, the Canadian delegation would defer. He did however think that the text would be improved if after the words "without his free consent" the words "or the consent of a properly authorized person acting in loco parentis or on his behalf" were added. It would also be desirable to preclude too subjective an interpretation of the article, and for that purpose to replace the words "by his state of physical or mental health", at the end of the sentence, by the words "for the purpose of saving life".

2. His delegation would vote in favour of the article as a whole, provided that its essential meaning was not modified by any future amendments, and on the express condition that a federal State clause was incorporated in the Covenants. The Canadian Government would be unable to undertake the application of the article should it be interpreted by any non-Canadian tribunal or arbitral body as having application to procedures in force in Canadian penal institutions not under the direct jurisdiction of the federal government.

3. He would like to hear the views of the other delegations on the suggestions he had made before deciding whether or not to submit them as formal amendments.

4. Mrs. KHADDURI (Iraq) thought that the two sentences of article 7 were completely independent of

each other. The first was based on purely humanitarian considerations, while the second related to well-defined scientific experiments. Her delegation could therefore not agree with the United States proposal. It would vote in favour of article 7 in its existing form.

5. Mr. BOULOS (Lebanon) said that article 7 was, above all, a legal text, which was to remain valid for many years. Care should therefore be taken to preserve its dynamic flexibility; there should be no reference to specific cases. His delegation strongly supported the United States proposal.

6. Mr. TORRES LAZO (Nicaragua) said that he had no criticism to make of article 7 as it stood; but the Mexican representative had made an excellent suggestion, which should be taken up. The first sentence was legal, and was designed to ensure respect for the most sacred rights of the individual, his freedom and his physical and moral inviolability; the second was purely scientific and might be covered in a separate article.

7. Miss ADDISON (Ghana), citing chapter I, paragraph 5, and chapter II, paragraph 18, of the annotations on the text of the draft Covenants (A/2929); argued that both sentences of article 7 should be retained. If the article was reduced to its first sentence it would simply repeat article 5 of the Universal Declaration of Human Rights verbatim; but the purpose of the Covenants was to specify clearly the obligations deriving from the Declaration.

8. Mr. YAPOU (Israel) said that in considering article 7 the Committee should bear in mind the desire of all countries to prevent any recurrence of the atrocities committed in Nazi concentration camps during the Second World War. The subject of the discussion was neither theoretical nor hypothetical: article 7 was based on a tragic reality recently brought back to memory in a report by the Secretary-General on the plight of survivors of Nazi concentration camps (E/3069).

9. His delegation attached too much importance to the article to be able to support the United States proposal, based though it was on a desire for conciseness and clarity. The second sentence was indispensable, because it completed and reinforced the first part of the article. The article might, for the sake of clarity, be usefully split into two separate paragraphs. It would also be well to delete the words "In particular". The value put by legislation in numerous countries upon the right of a person to determine for himself what should be done to him was greater than the value the law put on his health. The words "involving risk" should also be deleted. It was obviously a violation of human rights to subject anyone to such an experiment without his consent, irrespective of risk.

10. His delegation did not think that the end of the second sentence should be deleted, as had been

proposed by the Netherlands delegation (A/2910/Add. 3). It would perhaps at a later stage give its views on the Thai amendment (A/2910/Add.2), on the meaning of which it was not yet very clear.

11. Mr. MASSOUD-ANSARI (Iran) said he would prefer article 7 to begin with the affirmation of a right rather than the prohibition of an act. The first sentence might, for example, be drafted to read:

"Every individual shall have the right to respect for the inviolability and dignity of his person and hence no one shall be subjected to torture"

12. His delegation felt that the second sentence should be retained, because it emphasized the importance to be attached to certain aspects of the question to which there was no reference in the first. If, indeed, medical or scientific experimentation was not expressly mentioned, article 7 would not be applicable to it. The text submitted by the Commission on Human Rights (A/2573, annex I B) was entirely satisfactory, and the Iranian delegation would support it. However, the Canadian representative's suggestions merited the Committee's consideration.

13. Mr. MAKIEDO (Yugoslavia) said that he would be very glad to vote in favour of article 7. The purpose of the second sentence was to prevent any recurrence of atrocities such as had been committed in Nazi concentration camps; his delegation regarded it as too important to be able to accept its deletion, as proposed by the United States. In view of the excuses made by the Nazi criminals, no room should be left for doubt. He was grateful to the United States delegation for not having submitted a formal amendment. He would state his views on the suggestions made by other delegations at a later time.

14. Miss HORNSBY-SMITH (United Kingdom) said that while she found the text of article 7 acceptable as it stood, she thought that to introduce references to particular cases into any article weakened its effect. Her delegation could not but endorse the purpose of the second sentence, which was to ban revolting experiments. It feared, however, that in some quarters, including the medical world, the text might be interpreted differently, and might be viewed as an obstacle to legitimate and valuable experiments. It should not be forgotten, moreover, that in some cases it was impossible to obtain the consent of the person concerned or even of his next of kin. She asked whether a doctor should, in order to comply with the provisions of the article, give up any attempt to save his patient's life because his intervention involved a risk and the required consent had not been obtained. She supported the United States proposal: it would be better not to adopt a provision which might prevent doctors from doing their duty. The words "involving risk" were not very clear, and it would be better to delete them, as had been proposed by the delegations of Ireland and Israel.

15. Mr. MANTILLA ORTEGA (Ecuador) thought that the text submitted by the Commission on Human Rights was acceptable. To strengthen the second sentence, however, it would perhaps be better to delete the words "involving risk". The article would then contain a general prohibition too precise to permit any evasion.

16. Mr. SHALIZI (Afghanistan) said he would support the text of article 7 as it stood; but he wondered whether the adjective "inhuman" should not be replaced

by a stronger term. If the possibility of misconstruction was to be avoided, the article must not be drafted in excessively vague or general terms.

17. Mr. BONDEVIK (Norway) pointed out that the second sentence of the article clarified an essential element of the first. The article was too important to allow of any merely general formulation. It would not be easy to find any more satisfactory language than that proposed by the Commission on Human Rights, and his delegation would therefore support the text of article 7 as it stood.

18. Mr. BRISSET (France) associated himself with the expressions of gratitude to the United States representative, thanks to whose suggestion the Third Committee had been able to open the debate in a constructive manner.

19. Article 7 was acceptable to the French delegation as it stood; to delete the second sentence and leave only the text of article 5 of the Universal Declaration of Human Rights would not be satisfactory. The purpose of the Covenants was to bring out the meaning of the Declaration, to extend it and fill in its details. Moreover, while the first sentence covered most of the cases contemplated, it might not cover all of them. The second part of the article complemented the first sentence, and it would be unfortunate to spread such closely related ideas over two separate articles. Furthermore, the second sentence was based on a tragic reality, the memory of which was still very vivid in France and other European countries. The French delegation, while willing to accept the changes suggested by the Canadian delegation, therefore attached very great importance to the sentence in question.

20. Mr. MAHMUD (Ceylon) said he would support article 7 as it stood.

21. Mr. LISSIDINI (Uruguay) said he found article 7 acceptable, but shared the opinion of the Ecuadorian representative with regard to the second sentence. He also thought that the words "in particular" should be deleted.

22. Mr. KETRZYNSKI (Poland) agreed with the Iranian representative that article 7 should begin with an affirmation. To divide it into two separate parts would make the text clearer without changing its meaning. He agreed also that the words "in particular" should be deleted. On the other hand, the words "involving risk" should be retained, for there was no reason for prohibiting medical experiments which did not expose sick persons to danger. The words "without his free consent" introduced a subjective idea into the text, but they were absolutely necessary. He shared the fear of the United Kingdom representative that the end of the second sentence, beginning with the words "where such ...", might lead to misunderstanding. Experiments required by the state of the patient's health were not experiments in the true sense but medical or surgical treatment, and they should not be dealt with in article 7. It would therefore be preferable to delete that phrase.

23. The Marquis de VALDE IGLESIAS (Spain) pointed out that it was customary in a legal instrument for each article to be in the proper place, to contain no superfluous words, and to relate to a single idea which was as clear and precise as possible. The article under consideration contained two statements

of totally different nature. The first sentence, as most speakers had recognized, laid down a completely general principle. The second, on the other hand, singled out a particular form of cruel, inhuman or degrading treatment from the many forms which might be imagined. There was no question but that medical and scientific experimentation had been specifically referred to because the events of the last war were still alive in everyone's memory, and the desire was felt to condemn certain atrocities once again, regardless of whether they were really likely to be repeated in the future. In point of fact there might have been more justification for citing certain methods of police interrogation or "brain-washing" which were unfortunately all too widespread at the current time. The conclusion was unavoidable that in an article of the type in question one should either list all the cases contemplated—and they should be cases of contemporary relevance—or else mention none. Otherwise there could be neither clarity nor logic.

24. Mr. MEZINCESCU (Romania) said that the second sentence in the article was essential, since it made the valuable point that any experimentation not necessitated by the sick person's state of health constituted one of the types of inhuman treatment covered by the first sentence. It was clear from the text itself that emergency and medical or surgical treatment was in no way referred to. The fears expressed in that regard were the less justified in that the medical profession applied very strict rules on the subject. Finally, the disputed sentence in no way prohibited legitimate scientific experimentation. In that connexion, too, it should be pointed out that most countries did not permit the use of new medicines or methods of treatment until the proper authorities had given the required permission.

25. As for the meaning of "free consent", the laws of each country provided a sufficiently precise definition, to which members of the medical profession were required to refer in doubtful cases. It was therefore unnecessary to use the language suggested by the Canadian representative.

26. Mr. EL-AMIN (Sudan) felt that in view of present-day scientific progress and all the abuses which might result from it, the second sentence of article 7 was essential. His delegation would therefore vote accordingly.

27. Mr. SAPOZHNIKOV (Ukrainian Soviet Socialist Republic) said he would support article 7 as it stood or with such drafting improvements as might be made. However, he could not agree to the deletion of the second sentence, as suggested by the United States representative. It had been said—and that had been the only solid argument advanced in favour of the deletion—that the case referred to in the second sentence was covered by the general prohibition laid down in the first sentence. But there was no single sacrosanct way to draft a legal instrument. An article could be drafted in general terms, or in such a way as to specify the cases contemplated; or the two methods could be combined. Articles 6 and 7 of the draft Covenant on Economic, Social and Cultural Rights (E/2573, annex I A), which had already been adopted, were sufficient illustration of that. The second sentence of the article under discussion was designed to prohibit certain types of atrocities which, statements to the contrary notwithstanding, might very

well be repeated in the future. Moreover, the misgivings expressed by the United Kingdom representative were not valid, since it was clear from the text that it did not apply to emergency medical care. The proposal that the article should be divided into two separate articles was particularly unsuitable because the two sentences were closely related, the second merely serving to amplify the first. He hoped therefore that article 7 would be adopted as it stood.

28. Mr. HOOD (Australia) felt that there was some confusion in the minds of certain representatives. The disputed sentence did not relate to the treatment of wounded or sick persons but to certain types of inhuman experiments which were condemned by everyone. Moreover, the explanatory text on article 7 specifically stated that the object was to prevent the recurrence of atrocities like those committed in the concentration camps during the Second World War (A/2929, chap. VI, para. 14). He saw no reason why that idea should not be retained, particularly since without the second sentence article 7 would merely repeat article 5 of the Universal Declaration of Human Rights. Nevertheless, certain improvements could be made: the words "involving risk" could well be deleted, since the essential point was whether or not free consent had been given; furthermore, the last phrase was unnecessary, since it was clear that cases involving medical treatment were not meant.

29. Mr. TOSCANO (Italy) said that the question was whether the second sentence was designed to provide an example of the practices prohibited by article 7. If so, it would be better deleted. On the other hand, if, as some representatives had said and as the annotation of the text seemed to indicate, the idea was to add something to the general prohibition laid down in the first sentence, it would be advisable to divide the article into two separate paragraphs, deleting the words "in particular" at the beginning of the second paragraph. The wording might even be changed completely to provide simply that no medical or scientific treatment could be given without the consent of the person concerned.

30. Mr. DEHLAVI (Pakistan) thought that the two sentences in article 7 were closely related, since, taken together, they expressed the idea that no one could be subjected to cruel, inhuman or degrading treatment or to the use of force even for purposes of scientific research. In order to bring out that interdependence, the two sentences could be joined in the following way:

"No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment, or even to medical or scientific experimentation. . ."

31. Mr. ROSSIDES (Greece) was inclined to agree with the Italian representative that the ideas expressed in the two sentences in paragraph 7 were somewhat different and should therefore appear as two separate paragraphs. He suggested that the words "for whatever purpose" should be added at the end of the first sentence. As to the second sentence, it seemed preferable to retain the original wording, which made it clear that emergency medical treatment was in no sense prohibited.

32. Mr. COX (Peru) said that all delegations seemed to be in favour of the first sentence of article 7. The

Committee could therefore adopt it without further delay and defer its decision on the second sentence until such time as it had before it specific proposals taking into account the various suggestions that had been made. That mode of procedure would unquestionably save time.

33. Mr. MOROZOV (Union of Soviet Socialist Republics) said that a division of the text of the article into two parts might be done in two different ways: the purpose of the division might be to improve the presentation of the provision by accentuating it within the meaning of article 7 or, on the contrary, the two provisions might be completely separated. He was opposed to any decision of that kind. The question on which opinions differed was one of principle: it was necessary to decide whether the biological experiments alluded to came within the definition of inhuman treatment referred to in the first part of the article or whether they constituted a separate category. If the provision was embodied in a separate text, the second point of view would prevail. That would be a regrettable decision, for the stigma of torture attaching to those experiments in the existing text would be removed. The possible political effect of such a decision should be kept in mind.

34. Some persons who considered that the wording of the provision was not entirely satisfactory were of the opinion that it should simply be deleted. He warned them against such a solution; the purposes of the provision should be remembered and everything possible done to attain them. He himself was in favour of maintaining article 7 in its existing form.

35. It did not seem advisable to postpone a decision on the second part of the article, as the Peruvian representative had proposed, for that would lead to a regrettable delay. On the contrary, an effort should be made to reach a positive decision as quickly as possible.

36. Mr. COX (Peru) explained that he had restricted himself to making a suggestion and had no wish to hinder the inclusion in article 7 of a guarantee against the monstrous crimes committed in the guise of scientific experiments. His only desire was to give members of the Committee enough time to work out a perfect text, which would faithfully reflect the Universal Declaration of Human Rights and be worthy of posterity.

37. Mr. KASLIWAL (India) considered that the two sentences of the article were closely linked and that they should not be divided into separate paragraphs or separate articles. The Canadian representative's suggestion to expand the clause "without his free consent" should not be retained. The existing wording was a perfectly clear and easily understood legal expression; free consent was consent which had not been obtained by fraud. The Greek representative had already given an explanation which should dispel the fears expressed by the United Kingdom representative. Moreover, the words "required by his state of physical or mental health" had been added in order to ensure that failure to obtain the consent of sick and sometimes unconscious persons should not make a dangerous treatment illegal.

38. Mr. CUNHA MELLO (Brazil) supported the suggestion to make a separate paragraph of the second sentence of the article and to delete the words "In

particular". He also supported the Canadian representative's suggestion that the expression "without his free consent" should be expanded; it was important to specify that when, for example, a person was unable to signify his consent, because of his state of health, another person duly qualified would give the consent. It should also be understood that the second part of the provision could not be interpreted as authorizing experiments other than those undertaken in order to serve the interests of the individual or the community.

39. Miss MacENTEE (Ireland) thought that the separation of article 7 into two parts might involve the risk of raising, in the second part, the delicate question of the rules of conduct of the medical profession. She would like members of the Committee to reflect seriously on that question.

40. Her delegation was not entirely satisfied with the wording of the second sentence; if it accepted the sentence in spite of its doubts it was because it was sufficiently clear that in its present place the word "experimentation" did not refer to experimental methods of medical treatment of which the purpose was to heal the sick.

41. Mr. ELMANDJRA (Morocco) pointed out that the objection of the United States representative to the second sentence was based solely on the desire to be precise and to avoid repetition. The Commission on Human Rights, for its part, had considered that the question was so important that it should be embodied in a separate provision, even at the risk of repetition. Obviously, therefore, the clause was intended to illustrate the principle set forth in the first sentence, as the words "In particular" made clear.

42. His delegation considered that the text of article 7 proposed by the Commission on Human Rights (E/2573, annex I B) was satisfactory. The Greek representative's suggestion regarding the first sentence seemed interesting, but he still preferred the existing wording, which was that of the Universal Declaration of Human Rights.

43. As he had just pointed out, the nature of the second sentence was made clear by presentation of the two sentences in a single paragraph; however, if a majority of the Committee decided in favour of two separate paragraphs, he would accept that solution.

44. Mr. BAROODY (Saudi Arabia) said he had no doubt that the word "experimentation" did not refer to medical treatment. Two entirely distinct ideas were involved and the clarification supplied by the words "required by his state of physical or mental health" precluded any risk of confusion. The fears of the United Kingdom representative were therefore unjustified, as were those of the Irish representative, since the rules of conduct of the medical profession were in no way involved in the question. Several members of the Committee thought that the words "In particular" were unnecessary; that was a question of form rather than substance. The words did at least serve to make clear that what followed was one example among others.

45. Many suggestions had been submitted; it was urgent to embody them in formal proposals, so that the Committee could take a decision quickly.

46. Mr. BOULOS (Lebanon) wished to make a suggestion concerning the second sentence, which he

would submit as an amendment if the Committee decided to retain that part of the article. The suggestion was that the words "involving risk" should be deleted. To subject a person, without his free consent, to medical or scientific experimentation not required by his state of physical or mental health was a penal offence in most countries. The addition of the words "involving risk" might leave the impression that if the subject of the experiment ran no risk the experiment could be undertaken without his consent.

47. Mrs. LORD (United States of America) noted that most delegations were in favour of retaining the second sentence of the article. She herself had serious doubts concerning several of the expressions used in it. In particular, although all members of the Committee knew that the word "experimentation" referred to the degrading treatment inflicted on human beings during the Second World War, it should not be forgotten that the Covenant was being made for the future. A more precise definition was therefore necessary and she hoped that a satisfactory proposal would be made.

48. The Marquis de VALDE IGLESIAS (Spain) considered that the question of the presentation of the second sentence was not merely one of form. The first sentence, taken in isolation, was a statement of principle applying to many cases; the second sentence, by accentuating one particular case, diverted attention from all the other cases, although they were just as important. In itself, however, the second sentence was perfectly valid, and if the two provisions of article 7 were presented separately he would be able to support both of them.

49. The CHAIRMAN proposed that 4 p.m. on Monday, 13 October, should be fixed as the time limit for the submission of amendments to article 7.

It was so decided.

50. The CHAIRMAN called attention to the drawbacks inherent in the practice of proposing oral amendments in the course of the discussions. During the consideration of the draft Covenants at the last session representatives had at times made so many suggestions or proposals which they had not maintained that the other speakers had not even taken them into account, and it had sometimes been necessary to refer to the summary records to establish their existence. As a result, difficulties had often arisen at the time of the vote, in particular during the consideration of article 14 of the draft Covenant on Economic, Social and Cultural Rights (E/2573, annex I A). To avoid a recurrence of that situation, he proposed that all amendments for submission to the Committee should be given in writing to the Secretariat. If suggestions concerning changes in the amendments proposed were made during the debate he would, at the end of each meeting, ask the sponsors of the amendments whether they accepted the suggested changes. If they did, the changes would be incorporated in the text of the amendments; if not, they could not be maintained unless their authors submitted them in writing in the regular way.

The meeting rose at 5.55 p.m.