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CONTENTS

| | Page |
|---|------|
| Agenda item 32: | |
| Draft International Covenants on Human Rights (<u>con-</u> <u>tinued</u>) | |
| Article 7 of the draft Covenant on Civil and Political Rights (<u>continued</u>) | 77 |

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

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, A/C.3/L.673) (continued)

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

1. Mr. BEAUFORT (Netherlands) said that he would vote for article 7 of the draft Covenant on Civil and Political Rights (E/2573, annex I B), which was intended to protect the dignity of the human person and was justifiably meeting with great interest and general approval. It would be noted that only the provision contained in the first sentence was indispensable, covering as it did not only inhuman acts committed in the past, but those which were at the present time being committed and those that might in the future be committed. Nevertheless, many members of the Committee wished the second sentence to be retained, and their desire was understandable. In order to avoid any confusion about the exact meaning of the article, an amendment seemed necessary. The article expressed two different intentions of the Commission on Human Rights. On the one hand, the Commission had wished the individual to be protected against cruel and inhuman treatment in general, and against criminal medical or scientific experiments in particular; on the other hand, it had sought at the same time not to hinder the progress of medical science. The attempt to combine the two ideas in one short text had been the cause of the ambiguity of the article. Accordingly, all references to normal and legitimate medical practices should be deleted, in particular the expression "required by his state of physical or mental health". The phrase "involving risk" should also be eliminated, since a criminal experiment, even if it did not endanger life or health, violated the dignity of the individual. Consequently, his delegation proposed the deletion of the end of the article, after the words "medical or scientific experimentation".

2. Mr. BRONNIKOV (Byelorussian Soviet Socialist Republic) said he was glad to see that the majority of members of the Committee were in favour of the text of article 7 as drafted by the Commission on Human Rights. The United States representative had proposed,

at the beginning of the general discussion (848th meeting), that the second sentence of that article should be deleted. But the Committee should bear in mind the historical reasons for the inclusion of the provision in question, and its great moral and humanitarian value. The reasons for which some representatives advocated its deletion were reasons of form and conciseness. But it would be unfortunate to sacrifice sense for brevity. A possible compromise would be to make the sentence a separate article. He was opposed to such a solution; it had already been ruled out by the Commission on Human Rights and should be rejected both because of the close link which bound the two sentences and because of the fact that the words "cruel" and "inhuman" in the first sentence had to apply also to the experiments mentioned in the second. There was, to say the least, some illogicality in the attitude of those who, having in the first place wished, like the United States representative, to have the second sentence deleted on the ground of redundancy, now conceded it a certain independence and asked for it to be incorporated in a separate article. In either case the final result would be to weaken article 7 considerably. The Committee could of course try to improve the second sentence of the article; his own delegation was ready to support it without alteration.

3. Mr. SAMY (United Arab Republic) said that he appreciated the motives behind the Greek representative's proposal to put a time limit on speeches; for himself, he would do all he could to respect the rules of personal discipline which members of the Committee had felt to be necessary.

4. The deletion of the second sentence in article 7, which the United States representative had suggested with a view to simplification, would be a pity and would make the article a mere repetition of article 5 of the Universal Declaration of Human Rights. The sentence did not in any way detract from the primacy of the first sentence in the article; in addition, to delete it would reduce the illustrative force of the provision in its existing form. In connexion with article 7, as also in general, a tribute should be paid to the efforts of the Commission on Human Rights to facilitate the signature and ratification of the Covenants and to ensure that their provisions should not be felt to necessitate any material reservations.

5. The representative of Iran had expressed regret that the article began with a negative element. But it might on the contrary be argued that in its negative form the text brought out the intention of the provision more effectively and gave the article unlimited scope, excluding the possibility of exceptions or misinterpretations. It might be noted that in the legal principle "No one is deemed to be ignorant of the law" the very words "No one" with which it began gave the maxim a character of irrevocability which was its whole strength. In any event, the second sentence of article

7, far from being redundant, was undoubtedly an essential part of the article; there could be no question of deleting it. The two sentences of article 7 were too important to be eliminated, or for either to be subordinated to the other; on the contrary, each of them had to be given separate stress.

6. The United Nations had already devoted long and occasionally futile efforts to the question of human rights; he warned the members of the Committee against the consequences of a prolonged delay. When the principles stated in the draft Covenant had finally been embodied in international law and national legislation, it might perhaps be too late.

7. Miss FUJITA (Japan) said she had first thought that it would be better to delete the second sentence of article 7, the provisions of which were implicit in the first part of the article; however, in view of the importance which many delegations attached to it, she would not vote against the sentence, but would abstain. The article should not be divided into two separate paragraphs; the second sentence simply stated a particular case; accordingly, the words "in particular" should be retained. She had some doubts about the expression "involving risk"; if those words were to appear in the article, it should be understood that the risk to which the subject of the experiment would be exposed must be kept within medically and socially acceptable limits. The clause "where such is not required by his state of physical or mental health" should be deleted, since, in so far as it implied that some experiments held to be beneficial could be undertaken even without the consent of the patient, it might give rise to abuses.

8. Mrs. LORD (United States of America), replying to the representative of the Byelorussian SSR, said that, while her delegation did not consider the second sentence of article 7 necessary, it had not submitted a proposal to the effect that the sentence should be deleted or made into a separate article. It had deferred to the opinion of the majority, which was in favour of maintaining the provision, and had suggested that it might be advisable to improve the wording, so as to make it clearer; in that respect it shared the views of the representatives of the Netherlands and Japan. Her delegation would be able to accept the amendment proposed by the Netherlands.

9. Mr. ALVARADO (Venezuela) said the discussion had made it clear that all members of the Committee were agreed on the fundamental meaning of article 7, and indeed on the text of the first sentence. While opinions regarding the second sentence certainly differed, the differences were actually comparatively slight. Most members of the Committee thought that there was a close connexion between the two parts of the article. Some went on to argue that no change should be made in the text submitted by the Commission on Human Rights. Others thought that its meaning might be clarified and its form improved, so as to avoid any possibility of misinterpretation. The Mexican and Nicaraguan delegations disagreed with the majority view and held that the two parts of the article were absolutely separate. His delegation agreed with them. The first sentence related only to the penal system, and was in no way relevant to the subject of scientific and medical experimentation dealt with in the second sentence. The representatives of France and Ghana had pointed out that if the article was reduced to only its

first part it would simply be a repetition of article 5 of the Universal Declaration of Human Rights. The Commission on Human Rights did not appear to have paid any attention to that consideration, for article 23 of the draft Covenant on Civil and Political Rights was very similar to article 21 of the Declaration. It would be unfortunate if the attempt to avoid repeating the text of article 5 of the Declaration were to result in destroying the inner consistency of article 7 of the draft Covenant. As it stood, article 7 was open to misunderstanding. As the first sentence covered every aspect of torture and cruel, inhuman or degrading treatment, it might be maintained that the second authorized such treatment where the individual concerned in one way or another consented to submit to it. It was also questionable whether anyone could be subjected to cruel and inhuman treatment without risk. Far from strengthening the first part of the article, the second sentence weakened it. If, on the other hand, the article were divided, the result would be two strong texts, each having clearly defined meaning and scope.

10. In its existing form article 7 lacked juridical elegance, but his delegation would none the less support it, since it found each of the two parts acceptable.

11. Mr. RIOSECO (Chile) said that his delegation had always studied with great interest any suggestions designed to improve the draft Covenants or to facilitate their adoption by the largest possible number of countries, without distorting their meaning.

12. As the Netherlands delegation had pointed out (A/2910/Add.3), the word "experimentation" could not cover experimental methods of medical treatment having the welfare of the patient in view. It would therefore be preferable to delete the words "involving risk"; and there would then be no point in adding the words "or physical suffering or pain", as the Government of Thailand had suggested (A/2910/Add.2).

13. It might be worth recalling briefly, during the current debate, the work which had been done by the Western Hemisphere seminar on the protection of human rights in criminal law and procedure, held at Santiago, Chile, in May 1958.^{1/} One of the topics discussed had been the "Rights and guarantees of the accused, arrested or detained person as regards harassment, treatment or threats tending to impair his freedom of decision and action, his memory, his intelligence or his judgement (for example, bodily harm, insults, fatigue, administration of drugs, narco-analysis, torture, deceit, hypnosis)". The seminar had concerned itself particularly with methods used to obtain confessions, and all the participants had condemned not only bodily and mental torture but also methods of investigating the subconscious. Such methods, they had pointed out, were not infallible, and they prevented the subject from reasoning normally. From the principle that no one should be obliged to give evidence against himself it followed that confessions must be free and spontaneous. In addition, any confession must come from the accused himself, and not from some expert interpreting the movements of the unconscious. Some participants had stated that all such methods should be prohibited, even if in the future they were found to be absolutely infallible and even if the

^{1/} See Official Records of the Economic and Social Council, Twenty-sixth Session, Annexes, agenda item 12, document E/AC.7/L.306.

subject agreed to submit to them, for to use them would still involve a violation of human rights. Evidence given by an individual not in the full possession of his faculties could not be used. Proceeding from the premise of a juridical ideal which should be applied in every country, the participants in the seminar had adopted six principles and recommendations on the subject; Mr. Rioseco read them out.^{2/}

14. Mr. ZAMORA ELIZONDO (Costa Rica) said that his delegation was prepared, in principle, to support anything which protected and strengthened human rights; but at the same time it wished the wording of the draft Covenants to be coherent and logical. Article 7 raised a problem in that respect, in that the two sentences of which it consisted, as several speakers had pointed out, actually related to different questions. The best solution seemed to be that advocated by the representatives of Mexico, Nicaragua and Venezuela, namely, to split the text of the article into two separate provisions.

15. Miss FAROUK (Tunisia) did not think that the second sentence of article 7 was redundant, or was illustrative of the first. It introduced a different, although complementary, concept: that the individual was to be protected even against experimentation which might appear to be justified by scientific curiosity. Thus, the idea brought out was that even in science the end did not justify the means. She was therefore prepared to support the text of article 7 as it stood, although she was not against improvements in its form. For example, she would have no objection to the deletion of the words "In particular" at the beginning of the second sentence.

16. The CHAIRMAN recalled that at the end of the 849th meeting the representative of Panama, who had been in the Chair, had proposed that the Committee should follow certain rules with regard to oral suggestions. She asked the members of the Committee to express their views on the subject.

17. Mr. BARODY (Saudi Arabia) pointed out that the rules proposed by the representative of Panama were substantially the same as those the Committee had

^{2/} *Ibid.*, topic V.

always followed. It was natural that a distinction should be drawn between amendments and suggestions, which were generally thrown out as mere possibilities during a discussion. However, it might not be absolutely necessary to require that changes should always be proposed in writing. When they merely introduced clarifications or improvements of limited scope, it was probably sufficient for the Chairman to ask the Committee whether it considered them acceptable.

18. In any event, since the only amendment before the Committee was that of the Netherlands (A/C.3/L.673), it might be a good thing for representatives to consider that text without awaiting the time limit fixed at the 849th meeting for the submission of amendments.

19. Mr. MEZINCESCU (Romania) and Mr. DEHLAVI (Pakistan) thought it would be better to adjourn the debate and consider all amendments together at the following meeting. Moreover, the Pakistan delegation intended to submit an amendment.

20. Mr. BRILLANTES (Philippines) said that his delegation too proposed to introduce an amendment.

21. Mr. SAMY (United Arab Republic) and Mr. BARODY (Saudi Arabia) having requested clarification, Mr. BEAUFORT (Netherlands) explained that in its observations on the draft Covenants (A/2910/Add.3), the Government of the Netherlands, on the assumption that the word "experimentation" in the second sentence of article 7 did not cover experimental methods of medical treatment having the welfare of the patient in view, had suggested the deletion of the words following "involving risk" as redundant. Since it now appeared that the meaning of the second sentence was still giving rise to some confusion, the Netherlands delegation proposed the deletion not only of those words but also of the words "involving risk" (A/C.3/L.673).

22. Miss MacENTEE (Ireland) supported the Netherlands amendment and noted that various delegations had expressed support of the solution it suggested.

The meeting rose at 12.10 p.m.