

GENERAL ASSEMBLY

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CONTENTS

	Page
Agenda item 33:	
Draft International Covenants on Human Rights (continued)	
Article 6 of the draft Covenant on Civil and Political Rights (continued)	283

Chairman: Mrs. Aase LIONAES (Norway).

AGENDA ITEM 33

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/C.3/L.460, A/3525, A/3588, A/3621, A/C.3/L.644, A/C.3/L.648, A/C.3/L.651, A/C.3/L.654, A/C.3/L.655 and Corr.1, A/C.3/L.656-658) (continued)

ARTICLE 6 OF THE DRAFT COVENANT ON CIVIL AND POLITICAL RIGHTS (E/2573, ANNEX I B, A/C.3/L.655 AND CORR.1) (continued)

1. Miss FUJITA (Japan) agreed with the view expressed by the Guatemalan representative at the preceding meeting that the United Kingdom amendment (A/C.3/L.656) whereby the words "for crimes committed by children and young persons" would be replaced by the words "on children and young persons", would tend to weaken the text proposed by the Japanese delegation for paragraph 4 of article 6 of the draft Covenant (E/2573, annex I B) in that it would obscure the distinction between the time of the crime and the time of the sentence. Accordingly, she could not support that amendment and hoped that United Kingdom legislation might be amended and brought into line with the paragraph of the draft Covenant concerned.

2. Recalling that the use of the word "minors" had provoked lengthy discussion and that the Japanese delegation had finally agreed (815th meeting) to replace it by the expression "children and young persons" as used in article 10 of the draft Covenant on Economic, Social and Cultural Rights, she said that she would nevertheless prefer the words "persons under eighteen" if the majority would be willing to agree to that suggestion.

3. Mr. POLYANICHKO (Ukrainian Soviet Socialist Republic) said that inasmuch as the right to life was a sacred right and the Covenant on Civil and Political Rights was an international instrument which was to come into effect without delay, it was imperative that the article under discussion should embody concrete provisions about whose meaning and scope there could not be the slightest doubt.

4. While appreciating the weight of the arguments in support of the amendment submitted by Colombia and Uruguay (A/C.3/L.644), his delegation would be unable

to vote in favour of it. Nor would it be able to vote for the Costa Rican amendment (A/C.3/L.648). The death penalty still existed in his country, although it was reserved for the most serious crimes and the penal code stipulated that it was retained only temporarily as an exceptional measure for the protection of society.

5. He said he would vote against the Netherlands amendment (A/C.3/L.651), for in the first place it was virtually impossible to list the cases in which a person could lawfully be deprived of his life and, secondly, it was not the Committee's business to do so.

6. His delegation found the text of paragraph 1 as drawn up by the Commission on Human Rights (E/2573, annex I B) entirely acceptable. It would not, however, object to the wording suggested by Colombia and Uruguay for the first sentence (A/C.3/L.644) if it was acceptable to the majority of the Committee. On the other hand, it would vote against the proposal (A/C.3/L.654) for the addition of the sentence "From the moment of conception, this right shall be protected by law" because in law the provision was too vague.

7. So far as the new paragraph 3 (A/C.3/L.655 and Corr.1) was concerned, he said he would vote for the text proposed by Brazil, Panama, Peru and Poland and against the oral amendment proposed by the Australian representative.

8. He added that he would vote for the text submitted by Japan for paragraph 4 (A/C.3/L.650) and also for the new final paragraph proposed by the Working Party (A/C.3/L.655 and Corr.1).

9. Mrs. LEIVO-LARSSON (Finland) thanked the Working Party for the way in which it had discharged its task.

10. She said that her delegation would vote in favour of the amendment submitted by Colombia and Uruguay (A/C.3/L.644). Should that amendment not be adopted, then the Finnish delegation would vote for the revised Japanese amendment to paragraph 4 (A/C.3/L.655 and Corr.1), but hoped that the words "children and young persons" would be replaced by the words "persons under eighteen", which were used in the Geneva Convention relative to the Protection of Civilian Persons in Time of War.

11. She had noted with keen interest the suggestion made by the Swedish representative at the 813th meeting that a comparative study should be undertaken of the frequency of crimes punishable by death in countries where the death penalty was still in force and in those where it had been abolished. Her delegation hoped that all States without exception would soon abolish capital punishment.

12. Miss AMMUNDSEN (Denmark) said that on the whole she found the original text of article 6 (E/2573, annex I B) satisfactory and would not vote for the

amendments unless they constituted a definite improvement.

13. She appreciated the noble motives underlying the Colombian and Uruguayan amendment (A/C.3/L.644), but inasmuch as the adoption of that text would mean that a large number of countries would not ratify the draft Covenant she would be obliged to vote against it.

14. She announced that she would support the Netherlands amendment to paragraph 1 (A/C.3/L.651), because it was sensible and, in addition, had the advantage of being identical with the corresponding provision in the Convention for the Protection of Human Rights and Fundamental Freedoms adopted by the Council of Europe, which Denmark had ratified. She would vote against the other amendments to paragraph 1, which were all, in varying degrees, mere statements of principle less satisfactory than the provisions of the original text.

15. In the text of paragraph 2 as submitted by the Working Party (A/C.3/L.655 and Corr.1) she would suggest that the words "in accordance with law which is in force at the time of the commission of the crime" should be omitted because the question of the non-retroactivity of penal laws was specifically dealt with in article 15 of the draft Covenant. Furthermore, the text did not provide for the possibility that a new law, less severe than its predecessor, might have been enacted since the date of the crime.

16. While in sympathy with the ideas behind the new text of paragraph 3 and the new final paragraph, her delegation did not think that they added substantially to the text and would therefore be unable to vote for them.

17. While, naturally, neither minors nor pregnant women should be executed, there were certainly other classes of persons, the insane, for example, for whom measures of clemency should likewise be recommended. As it was not possible to mention all the classes of persons to whom the provision should extend, her delegation would prefer paragraph 4 to stand as drafted by the Commission on Human Rights, which specified only the case of pregnant women, unquestionably a very particular case.

18. She wished to make it clear that she would not support certain amendments not because she objected to the motives of their sponsors but because she thought that article 6 would be more generally acceptable if its provisions did not reflect ideals which might be too liberal under prevailing conditions.

19. Mr. CALAMARI (Panama) said that, as he had announced previously, he would vote for the amendment submitted by Colombia and Uruguay (A/C.3/L.644), the death penalty having been abolished in Panama. He would not support the Costa Rican amendment (A/C.3/L.648), a mere declaration which was hardly conducive to the abolition of capital punishment and which would jeopardize the chances of adoption of other texts limiting the application of the death penalty in the countries where it still existed.

20. The Panamanian delegation would vote against the Netherlands amendment (A/C.3/L.651); paragraph 1 of the text proposed in it was weaker than the three clauses agreed on by the Working Party for paragraph 1 (A/C.3/L.655 and Corr.1), and paragraph 2 enumer-

ated, and so in a way sanctioned in the Covenant, the cases in which deprivation of life would be lawful.

21. His delegation would vote in favour of the new paragraph 2 (A/C.3/L.655 and Corr.1), which reproduced the amendments submitted by France and the Philippines. It was essential not to construe as a crime any act which was not a crime under the penal law in force at the time when the act was committed and not to set up special courts to deal with an act after its commission; on the other hand, there was no reason to fear that that provision of paragraph 2 would prejudice the universally accepted principle of the retroactivity of penal laws when they were favourable to the accused person. That principle was laid down in article 44 of the Panamanian Constitution.

22. With reference to the new paragraph 3 (A/C.3/L.655 and Corr.1), he said that at the previous meeting the representative of Brazil had announced that the sponsors of the four-Power amendment (A/C.3/L.649/Rev.1), among which was the Panamanian delegation, intended to combine the text of their amendment with that of the Australian amendment. He proposed that the new text should be drafted as follows:

"When deprivation of life constitutes the crime of genocide, it is understood that no provision of this article shall entitle any State Party to nullify any of the obligations assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide."

23. The Panamanian delegation would support the revised amendment to paragraph 4 proposed by Japan (A/C.3/L.655 and Corr.1), which restated and improved the text originally proposed by Guatemala (A/C.3/L.647). It preferred the word "minors" to any other expression intended to convey the same meaning.

24. The Working Party had suggested a new paragraph (A/C.3/L.655 and Corr.1) as a substitute for the text submitted by the Panamanian delegation (A/C.3/L.653), which the latter had agreed to withdraw. He still thought, nevertheless, that the Panamanian amendment would have been more satisfactory, for its wording had been more positive, without, however, imposing any further obligation on the signatory States than to recognize "the propriety of promoting the abolition of the death penalty", the word "promoting" being understood to mean the carrying out of studies with a view to the progressive abolition of capital punishment and the adoption of measures gradually restricting its application. Since it would not be possible, apparently, for the Committee to keep that formula in the draft Covenant, States in which the death penalty still existed should at least make provision for concrete measures designed to promote the gradual abolition of the death penalty. He recalled that a number of representatives had expressed their regret at the withdrawal of the Panamanian amendment; and in that regard he mentioned the suggestion offered by the representative of El Salvador, who had referred to the possibility of organizing a seminar to discuss the best means of securing the abolition of the death penalty, as a procedure which would be in accordance with the Panamanian amendment.

25. Mr. PYMAN (Australia) said that, as a conciliatory gesture, he was withdrawing his delegation's amendment (A/C.3/L.655 and Corr.1) to the new paragraph 3 proposed by the four Powers; the new version

(A/C.3/L.657) was actually very close to the text of that amendment. He pointed out, however, that the initial phrase "When deprivation of life constitutes the crime of genocide," was unnecessary and perhaps even restrictive.

26. The text of paragraph 2 as proposed by the Working Party (A/C.3/L.655 and Corr.1) would be more satisfactory if it omitted the words "in accordance with law which is in force at the time of the commission of the crime", which were open to misconstruction. Furthermore, the situation which that provision was intended to cover was in any case dealt with in article 15. He would accordingly vote against the phrase in question.

27. Mr. COX (Peru) said that in the new paragraph 3 (A/C.3/L.657) the words "it is understood that" were unnecessary and out of place in so important a legal instrument as the Covenant.

28. Miss ADDAE (Ghana) said that, instead of attempting to bring the text of the draft Covenant into line with the provisions of national law, the Committee should select the rules and principles that would constitute a sort of moral code which the States would subscribe to and apply internally and in their relations with other States. She acknowledged that a new nation such as Ghana, whose customary law was being revised and which could base its law on one of the most flexible juridical systems, the common law, probably had an advantage over other States in that respect.

29. She said that her delegation would vote against the amendments proposed by Colombia and Uruguay (A/C.3/L.644) and Costa Rica (A/C.3/L.648), although it appreciated the noble ideal underlying them. It was of course desirable to study the possibility of limiting, and ultimately abolishing, the death penalty; in that connexion, she wished to associate herself with the suggestion offered by the representative of Sweden at the 813th meeting. The delegation of Ghana would likewise vote against the Netherlands amendment (A/C.3/L.651), for not only was it impossible to give an exhaustive enumeration but it was dangerous to omit the provision that capital punishment could be imposed for the most serious crimes only. She would vote for the three provisions in paragraph 1 as proposed by the Working Party (A/C.3/L.655 and Corr.1), which complemented each other most successfully. With respect to the word "arbitrarily" in the third of those provisions, the meaning of which had been so well explained by the representative of Ireland (813th meeting), she said that any legal system, including the common law, could and should admit of flexible notions. Secondly, the presence of that word introduced essential guarantees into article 6 and made any reference to other provisions of the Covenant unnecessary. Its presence was accounted for by reflexions analogous to those which had prompted the authors of paragraph 2 to mention, instead of the Universal Declaration of Human Rights, the provisions of the Covenant itself (A/C.3/L.655 and Corr.1). She would vote for the text of paragraph 2 proposed by the Commission on Human Rights, subject to the Australian amendment. She would vote against the phrase "in accordance with law which is in force at the time of the commission of the crime". On the other hand, she would vote for the new paragraph 3, (A/C.3/L.655 and Corr.1); in that connexion she regretted that all the States had not yet ratified the Genocide Convention. She would also vote for the text of para-

graph 3 proposed by the Commission on Human Rights (E/2573, annex I B). In paragraph 4, she would support the words "children and young persons" which would allow a certain latitude to the signatories of the Covenant. Finally, she said that she would vote for the new final paragraph proposed by the Working Party.

30. Mr. DE SILVA (Ceylon) said the argument that the Covenant should not differentiate between two categories of States applied to the new version of paragraph 3 proposed by the four Powers (A/C.3/L.657) just as it had applied to the earlier version. Instead of referring, as it should, to all the States parties to the Covenant, the clause in question actually did no more than provide for the reaffirmation of the obligations of the States which had ratified the Genocide Convention. The negative formula employed was open to the criticisms which had been expressed concerning the first sentence in paragraph 1. His delegation had therefore decided to propose a new text (A/C.3/L.658), which, though not completely satisfactory, might at least be acceptable to all the signatories of the Covenant, for even if they had not ratified the Genocide Convention, it was improbable that they opposed the purposes and principles of that Convention.

31. He suggested that the new final paragraph proposed by the Working Party (A/C.3/L.655 and Corr.1) should be revised to read:

"Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the Covenant."

It was so decided.

32. Mrs. SHOHAM-SHARON (Israel) said she could not agree with the view expressed by the representative of Pakistan (818th meeting) that it was unnecessary to mention the Genocide Convention in paragraph 2 for the reason that the new paragraph 3 was entirely concerned with that instrument. Paragraph 2 dealt only with capital punishment and was applicable to all States, whether they had ratified the Convention or not. The new paragraph 3 dealt with a much wider issue, that of the extermination of groups of peoples, and as drafted was binding only on the States parties to the Convention. The Israel delegation was therefore not in favour of deleting the reference to the Convention from paragraph 2.

33. With reference to the revised text of paragraph 4 (A/C.3/L.655 and Corr.1), she said that the authors of the original text had specified that sentence of death should not be carried out on a pregnant woman principally in order to save the life of an innocent unborn child. If, for humanitarian reasons, the Committee wished to broaden the scope of that paragraph, it would not be sufficient to speak simply of children and young persons. Other classes of persons should be mentioned as well, for example, persons of unsound mind and old people. The Israel delegation considered that it was the function of States, not of the Third Committee, to specify the classes of persons not liable to the death penalty.

34. Mr. ROSSIDES (Greece) said that his delegation had no objection to any of the three formulae proposed for article 6, paragraph 1 (A/C.3/L.655 and Corr.1). However, if the third formula was not adopted, he would vote against the amendments and in favour of the original text of the paragraph.

35. As the new text of paragraph 2 (A/C.3/L.655 and

Corr.1) differed only slightly from the original, (E/2573, annex I B), he would vote in favour of the original, to which the following sentence might, however, be added: "No law imposing the death penalty shall have retroactive effect." In addition, the text should reflect the Committee's desire for the gradual abolition of the death penalty in all States. For example, if the original text were amended to read "In countries where capital punishment still exists...", or if the Working Party's text were revised to read "In countries which have not yet abolished the death penalty...", then the clause could not be misconstrued as an attempt to delay the abolition of the death penalty.

36. It was very important that the Genocide Convention should be mentioned in article 6; he would therefore support the new paragraph 3.

37. With regard to paragraph 4, he agreed that sentence of death should not be imposed on minors and not passed on pregnant women.

38. Mr. IRARRAZAVAL (Chile) congratulated the Working Party on its excellent work. The order of voting it had proposed would be of great help to the Committee.

39. The death penalty still existed in Chile and his delegation could not, for that reason, accept the amendment sponsored by Colombia and Uruguay. In view of the modern trend in favour of the abolition of the death penalty, he would be happy to vote for the new final paragraph proposed by the Working Party (A/C.3/L.655 and Corr.1).

40. The various versions proposed for paragraph 1 (A/C.3/L.655 and Corr.1) were no improvement on the original text, which his delegation would support. It would also support the revised text of the new paragraph 3 (A/C.3/L.657).

41. In consequence of the Japanese amendment, the wording of paragraph 4 (A/C.3/L.655 and Corr.1) was entirely satisfactory and he would vote in favour of it. The word "minors" or the expression "persons under eighteen" was preferable to the other terms proposed.

42. Mrs. RÖSSEL (Sweden) said that her delegation would vote in favour of the Netherlands amendment (A/C.3/L.651), that being the only entirely satisfactory text. The Swedish delegation would also vote for the first two sentences proposed by the Working Party for paragraph 1 (A/C.3/L.655 and Corr.1) and for paragraph 3 as submitted by the Commission on Human Rights (E/2573, annex I B).

43. Sweden fully recognized the importance of the Genocide Convention, which it had in fact ratified. But the provisions of the new paragraph 3 (A/C.3/L.655 and Corr.1) were self-evident and therefore unnecessary; accordingly, she would vote against that text. She would also vote against the five-Power amendment (A/C.3/L.654).

44. The death penalty had been abolished in Sweden in 1921. Accordingly, the fact that the Swedish delegation would abstain from voting on most of the amendments and wording proposed by the Working Party should certainly not be taken as reflecting a negative attitude towards the principle underlying article 6. The discussion had demonstrated that a legal text could not be drafted in haste or by so large and heterogeneous a group as the Third Committee.

The language of the various amendments was often so vague and ambiguous that it was impossible for the Committee to know exactly what it was voting on. The best course would be to refer the whole problem and all relevant records to a committee of experts who would work out different variants or, better still, a single compromise text.

45. In conclusion, she suggested that the Third Committee, when discussing measures of implementation, should perhaps provide for a system of registering with the United Nations both sentences of death actually carried out and those which had been pronounced.

46. Sir Samuel HOARE (United Kingdom) said that the first part of his amendment (A/C.3/L.656) did not call for a vote, since it related purely to drafting changes affecting the English text only.

47. The United Kingdom delegation failed to see the value of the new article 3 and would vote against it. The Genocide Convention was in any case mentioned in paragraph 2. Besides, the provisions of paragraph 1, whatever the final text, could not by any stretch of the imagination be interpreted as authorizing genocide. The criticism of the representative of Ceylon was very pertinent: the new paragraph 3 submitted by the Working Party would be applicable solely to States parties to the Convention. But the remedy proposed by that representative (A/C.3/L.658) was somewhat unorthodox in that it would mean that States not parties would be asked to pay due regard to the principles and purposes of the Convention. That would be an undesirable innovation. The compromise formula proposed by the representative of Brazil, Panama, Peru and Poland (A/C.3/L.657) was no more satisfactory than the two earlier texts as it gave the impression that genocide was to be considered as a special case of deprivation of life. The implication would be that deprivation of life might occur despite the other paragraphs of article 6.

48. He thanked the representative of Ceylon for having proposed, for the new paragraph in article 6 (A/C.3/L.655 and Corr.1), a text far superior to that submitted by the Working Party.

49. Mr. EFFENDI NUR (Indonesia) said that, while he appreciated the sentiments inspiring the amendment of Colombia and Uruguay (A/C.3/L.644), he would be unable to vote for the amendment, for two reasons. First, although Indonesian legislation was developing rapidly in order to keep pace with the dynamic changes in the political and social fields, his delegation could not place itself in the position of predicting or prescribing any possible legislative reform in the direction of the abolition of capital punishment because that was within the authority of the appropriate legislative bodies within his country. Secondly, in the drafting of an international instrument, the realities of municipal law could not be ignored. He would, however, gladly vote for the additional paragraph proposed by the Working Party (A/C.3/L.655 and Corr.1) as that paragraph did not bind States to abolish the death penalty immediately but rather held out an ideal to aspire to. The Costa Rican amendment (A/C.3/L.648) was a bare declaration which imposed no obligation on States. Consequently, it was out of keeping with the general purport of the Covenant and could not receive the support of the Indonesian delegation, which preferred the original

text of the article (E/2573, annex I B). As it was impossible to enumerate all the cases in which death was not regarded as inflicted in contravention of article 6, he would vote against the Netherlands amendment (A/C.3/L.651). If paragraph 1 was to begin with the first of the sentences listed by the Working Party (A/C.3/L.655 and Corr.1), it should logically continue with the words "No one shall be arbitrarily deprived of his life"; in that context the sentence was perfectly acceptable to the Indonesian delegation.

50. If, in paragraph 2, as drafted by the Working Party, the phrase "which is in force at the time of the commission of the crime" was deleted, he would vote in favour of that paragraph.

51. Though Indonesia had not yet acceded to the Genocide Convention, it recognized the full importance of that instrument. He would therefore support the revised text of the new paragraph 3 (A/C.3/L.657).

52. Paragraph 4 as modified by the Japanese amendment (A/C.3/L.655 and Corr.1) was acceptable to his delegation. He thought the term "minor" preferable to the other expressions suggested by the Working Party because, first, each State would be free to interpret it in the light of its own legislation and, secondly, it was the term used in the Indonesian penal code.

The meeting rose at 12.45 p.m.