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Chairman: Mrs. Aase LIONAES (Norway).

**Tribute to the memory of Mr. Antonin Zapotocky,
President of the Czechoslovak Republic**

1. The CHAIRMAN said that she had been deeply distressed to learn of the death of Mr. Antonin Zapotocky, President of the Czechoslovak Republic. She felt sure that she expressed the sentiments of all the members of the Committee in extending their very sincere condolences to the delegation, the Government and the people of Czechoslovakia.

The Committee observed one minute's silence in tribute to the memory of Mr. Antonin Zapotocky.

2. Mrs. LEFLEROVA (Czechoslovakia) thanked the Chairman and all the members of the Committee for their expressions of sympathy at the death of President Antonin Zapotocky. In him, Czechoslovakia had lost a fighter who had striven for the rights and the happiness of the people, a man who had actively worked to secure peaceful co-operation among all nations. His memory would remain forever in the hearts of the Czechoslovak people.

AGENDA ITEMS 30 AND 31

Report of the United Nations High Commissioner for Refugees (A/3585/Rev.1 and Add.1, A/3613, chap. VI, sect. IV) (concluded)

Review of the arrangements for the Office of the United Nations High Commissioner for Refugees (concluded)

3. Mr. TAY (Federation of Malaya) explained that his delegation gave its unqualified support to the principles of the draft resolutions (A/C.3/L.638 and A/C.3/L.639/Rev.1) on which the Committee had voted at the preceding meeting and had accordingly voted in favour of both texts.

4. The work accomplished by the Office of the United Nations High Commissioner for Refugees was so important that it was essential to extend the mandate of that body and give it as much financial assistance as possible. Subject to parliamentary approval, the Government of the Federation of Malaya was ready to make a token contribution to the United Nations Refugee Fund (UNREF) to help the High Commissioner in that great humanitarian work.

5. Mr. PETER (Hungary) said that his Government was in favour of any resolution designed to extend or prolong the mandate of the Office of the United Nations High Commissioner for Refugees. Accordingly he had voted for the Netherlands draft resolution (A/C.3/L.638) and the thirteen-Power draft resolution (A/C.3/L.639/Rev.1). The latter text had the great merit of giving equal prominence to the various permanent solutions and more particularly of enabling the High Commissioner to facilitate voluntary repatriation, which was the best solution for the refugee problem, in particular the problem of Hungarian refugees. The thirteen-Power draft resolution was therefore more in conformity with the Statute of the Office of the High Commissioner (General Assembly resolution 428 (V), annex) than General Assembly resolution 1129 (XI), which was too narrow in scope and had therefore been unacceptable to the Hungarian delegation. Thanks to the new resolution, the High Commissioner would be in a better position to protect those refugees who did not wish to return to their homes and at the same time would be able to help more effectively those who wished to be repatriated. In addition, the High Commissioner would be able to take practical steps to restore to their parents the thousands of Hungarian children separated from their families. In that connexion, he was happy to inform the Committee that he had been in touch with the representative of Austria, who had agreed to ask his Government to draw up a list of the children then in Austrian territory and send the list either to the Office of the High Commissioner or to the International Red Cross.

6. The Hungarian delegation, not wishing to delay the adoption of the thirteen-Power draft resolution, had not drawn attention to the imperfections of the draft earlier. It took the view, however, that the General Assembly should reconsider in plenary meeting, certain provisions of the text in question. For example, under the terms of the draft resolution, the Executive Committee of the High Commissioner's Programme, which it was proposed should be established, would be elected by the Economic and Social Council. In other words, eighteen Member States would give the responsibility for dealing with the delicate refugee problem to representatives of from twenty to twenty-five Governments; such a procedure was hardly desirable from any point of view.

7. The considerations which had impelled the Hun-

garian delegation to support the Netherlands and thirteen-Power draft resolutions had caused it to vote against the draft resolution relating to the Chinese refugees in Hong Kong (A/C.3/L.643). That text was not in accordance with the Statute of the Office of the High Commissioner, for the intentions it reflected were as much political as humanitarian.

8. He thanked the delegations which had supported his requests (801st meeting) in the course of the general debate. In their concerted efforts to find a constructive solution to the refugee problem, they were serving the cause of international co-operation instead of using that tragic problem as a weapon in the "cold war".

9. Mr. MAKIEDO (Yugoslavia) said he had voted in favour of the Netherlands draft resolution (A/C.3/L.638) and that of the thirteen Powers (A/C.3/L.639/Rev.1) because he believed the refugee problem could be solved only by, or with the help of, the United Nations. He hoped that the thirteen-Power draft resolution, in spite of its defects, would make it possible to find an effective solution.

10. The United Nations should concern itself with all refugees, whatever their origin, provided they came within the terms of reference of the High Commissioner. Many delegations had said that the Chinese refugees at Hong Kong did not come within that category. Before that question could be settled, it would be necessary to ascertain the views of the party principally concerned, the Government of the People's Republic of China. Since that had not been possible, the Yugoslav delegation had abstained from voting on the three-Power draft resolution (A/C.3/L.643).

11. Mr. CARSALES (Argentina) said that the decisions to be taken by the High Commissioner pursuant to the provisions of operative paragraph 5 (c) of the thirteen-Power draft resolution (A/C.3/L.639/Rev.1) might often encroach on political questions. The High Commissioner, who had invariably displayed the greatest tact, was certainly capable of assuming that responsibility. But he already had a heavy responsibility, which should if anything be lightened and not aggravated. Besides, it would have been more logical to place the responsibility for making such decisions on a body composed of representatives of the Member States than on an international official. That was why the Argentine delegation had supported the Greek amendment, which would have replaced the words "to advise" in operative paragraph 5 (c) by the words "to give directives to".

12. Mr. PYMAN (Australia) said he had been particularly happy to vote for the thirteen-Power draft resolution (A/C.3/L.639/Rev.1) because it had dispelled the apprehension his delegation had felt regarding the suggestions made during the debate that special emphasis should be given to voluntary repatriation amongst the three modes of permanent solution. As the High Commissioner had rightly stated, the refugees themselves should be free to choose either repatriation or resettlement in another country. The High Commissioner should in no case promote or encourage one permanent solution in preference to another. His delegation had welcomed the decision of the sponsors of the thirteen-Power draft resolution to take into their proposal the precise wording of the basic Statute as it affected the role of the High Commissioner in relation to the matter of permanent solu-

tions. In the view of his delegation, the sponsors had acted correctly in rejecting (808th meeting) the proposal that the word "facilitate" should be replaced by the word "promote" in the description of the High Commissioner's function. The word "promote" had been used in other resolutions and in the Statute, but never referring to the High Commissioner's direct relationship with the individual refugee in the context of permanent solutions. The thirteen-Power draft resolution maintained the position that had always existed under the High Commissioner's Statute.

13. Mr. ROSSIDES (Greece) said that he thoroughly approved of the principles contained in the thirteen-Power draft resolution (A/C.3/L.639/Rev.1) but that he had abstained in the vote because there was, in his opinion, a serious imbalance with respect to the functions assigned to the Executive Committee of the High Commissioner's Programme. As a consequence, the High Commissioner would be expected to make very delicate decisions which might cost him the support of several States, whereas he needed the co-operation of all States. Furthermore, an illogical situation had been created by the provisions of the draft in that the High Commissioner, who needed the Executive Committee's consent for certain projects, had the power, on the other hand, to discontinue or terminate the projects without any special authorization.

14. The Greek delegation hoped that the sponsors of the draft would reconsider those various points before the question was discussed in a plenary meeting of the General Assembly.

15. Mr. LINDT (United Nations High Commissioner for Refugees) thanked the members of the Committee for their words of praise for the work accomplished by his Office. He was particularly grateful to them for their understanding of the magnitude and seriousness of the problems which he had to solve. The Office of the High Commissioner would now be able to make appeals for the funds that would make it possible to close the refugee camps still in existence. He said he would be at pains to fashion his policy according to an objective interpretation of the Assembly's resolutions and of the Statute of the Office of the High Commissioner, under which the Office performed a mission of a strictly social and humanitarian nature.

16. The CHAIRMAN thanked the High Commissioner for his contribution to the Committee's work.

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) (continued) 1/

ARTICLE 6 OF THE DRAFT COVENANT ON CIVIL AND POLITICAL RIGHTS (E/2573, ANNEX I B)

17. The CHAIRMAN said that the Committee would consider article 6 of the draft covenant on Civil and Political Rights (E/2573, annex I B).

18. In reply to Mr. CHAUDHURI (Pakistan), the CHAIRMAN said that the Committee still had seventeen meetings in which to examine the draft International Covenants on Human Rights during the current session.

1/ Resumed from the 799th meeting.

19. Sir Samuel HOARE (United Kingdom) said that the draft Covenant on Civil and Political Rights (E/2573, annex I B), unlike the draft Covenant on Economic, Social and Cultural Rights (E/2573, annex I A) under which States would undertake to attain various objectives progressively, imposed definite and immediate obligations. Moreover, it contained special implementation provisions including the establishment of a nine-member committee to examine complaints of violations which one State party to the Covenant might bring against another. Accordingly, it was most important that the signatories should know the exact scope of the obligations entered into.

20. Article 6 was concerned with a most important right, but its formulation in paragraph 1 did not seem particularly happy. The first sentence suggested that a person might be deprived of his life so long as he was not deprived of it "arbitrarily" and that negative approach seemed unfortunate. In any event, the meaning of the word was uncertain. An accidental death might well be regarded as arbitrary in nature, but States could not protect their nationals against all and every accident. In the debates in the Commission on Human Rights one could find two interpretations of the word "arbitrarily" in relation to intentional deprivation of life. For some it meant "in a manner contrary to law". That interpretation was well known in some systems of jurisprudence but not in all and not in British jurisprudence in particular. If that interpretation was adopted, moreover, then the first sentence of paragraph 1 said little more than was said in the second sentence. Some delegations held, on the contrary, that the word "arbitrarily" was not intended solely to require observance of the laws but also to require that the law should itself be in conformity with what was called "natural justice". He could understand and sympathize with the aim of preventing abuses under colour of law; but there was no accepted criterion in that field and the conception of the justice or injustice of laws was extremely subjective. He did not see how States could be asked to consent to having the justice of their laws decided upon, in the last analysis, by the Human Rights Committee to be set up under the Covenant. Such a task had never been envisaged by those, like his delegation, who supported the setting up of the Committee.

21. The idea originally mooted in the Commission had been that the cases in which the taking of life was lawful and would not be deemed a violation of the general obligation to protect life should be spelt out specifically. The United Kingdom delegation had been in favour of that procedure. The members of the Commission, however, had not been able to agree on the number or nature of the proposed exceptions or on the question whether the article should be presented in that form. The Commission had then adopted a French suggestion that an exception should be affirmed for "légitime défense"; that term covered all that was required in French jurisprudence but unfortunately had no equivalent meaning in some other systems of law. It was in those circumstances that the present text of paragraph 1 had been adopted, though many members of the Commission were dissatisfied with it.

22. As the Commission had in effect failed to find a satisfactory wording for the first sentence of paragraph 1, it would seem that the only solution that would be both satisfactory and practicable would be to delete

that sentence. It was the second sentence which embodied the fundamental idea, in a positive form rather than in the negative form of a prohibition; the obligation placed on contracting parties was intelligible and acceptable; and in that, as in other articles, it would be wise to be content with what was attainable.

23. His delegation considered the other paragraphs of article 6 acceptable as they stood, though they might be open to minor amendments.

24. Mrs. STOFFELS (Netherlands) said that in the view of her delegation recognition of the right to life, collectively and individually, was the corner-stone of better understanding and greater mutual respect. The need to provide for the protection of that right by law was equally fundamental.

25. Her Government was not entirely satisfied with the text proposed by the Commission on Human Rights (E/2573, annex I B). In its opinion, it would be preferable to delete the first sentence of paragraph 1. In paragraph 2 it would be better not to mention the Universal Declaration of Human Rights, since such a reference would not suffice if the intention was to transform certain of the principles laid down in the Declaration into legal obligations. The same was true of the reference to the Convention on the Prevention and Punishment of the Crime of Genocide. With regard to paragraph 3, she said that the provision to the effect that amnesty, pardon or commutation of the sentence of death might be granted in all cases was probably out of place in an instrument setting forth the rights of the individual in relation to the State. The right in question was vested exclusively in the State.

26. Her Government would like the exceptional cases in which the State might be authorized to deprive an individual of his life to be more precisely stated. For that purpose, the existing text should be brought into line with article 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms adopted by the Council of Europe in 1950. She read out the draft of article 6 proposed by her delegation (A/2910/Add.3). She hoped that other delegations would comment on that text and, in particular, would state whether they agreed with her delegation that the article should first stipulate that the right to life should be protected by law and then itemize the exceptions to the rule.

27. Mr. TSAO (China) said that his delegation, while approving the text of article 6 as a whole, would like to receive some clarification concerning paragraph 4, which was open to two interpretations. On the one hand it might mean that a sentence of death pronounced against a pregnant woman should never be carried out; on the other, it might mean that the applicability of the clause was limited to the period preceding the birth of the child. If the first interpretation was upheld—and that seemed to be the construction intended by the authors of the text, which was based on humanitarian considerations—his delegation would have difficulty in accepting the paragraph, since its provisions would not be in conformity with his country's laws. He would not submit an amendment clarifying the meaning of the provision unless it became necessary in the light of the subsequent discussion.

28. Mr. PYMAN (Australia) said that the Covenant should be drafted with the utmost care, in view of the formal obligations to be entered into by the signatories;

that observation was particularly pertinent in the case of article 6, which was of fundamental importance. Paragraph 1 consisted of two elements: first, the expression of the commandment traditional in all civilized societies, "Thou shalt not kill", and, secondly, a positive provision concerning the right to life. In the first sentence the word "arbitrarily" limited the possibility of depriving a person of his life. Unfortunately, the term was extremely vague and the members of the Commission on Human Rights had not been able to reach agreement on its meaning, some holding that it meant "illegally", while others interpreted it to mean "unjustly" and still others understood it to have both meanings. In the circumstances, the Human Rights Committee provided for in article 27 and the following articles would have an almost impossible task, and the signatory States would be strongly tempted to bring complaints against other States for purely political reasons. No other provision in article 6 enumerated exhaustively the cases in which death could be inflicted; paragraph 2 simply stipulated certain conditions which had to be fulfilled if the application of capital punishment was to be lawful. The idea meant to be conveyed would become clearer if it was expressed affirmatively. In view of the difficulty of finding a satisfactory alternative, however, he thought that it would be better to omit the sentence altogether.

29. He did not wish for the moment to examine paragraph 2 in detail. He wished to explain, however, that his Government's preference for the omission of any mention of the Convention on Genocide was not attributable to any desire to minimize the importance of the Convention—which had in fact been signed and ratified by Australia—but rather to the view that the reference was unnecessary.

30. Mrs. SHOHAM-SHARON (Israel) shared the apprehensions expressed by several other representatives with regard to the use of the word "arbitrarily" in article 6, paragraph 1. In her opinion, the first sentence of the paragraph should be redrafted in affirmative terms, but it should not be omitted altogether. The provision in the second sentence might be interpreted to mean that the other rights enunciated in the Covenant which were not the subject of an analogous provision should not be protected by law. The question of the protection of the law was a general one, and should be dealt with in article 2 of the draft Covenant. Paragraph 1 should, rather, be drafted positively in the simplest possible wording, such as that of article 3 of the Universal Declaration of Human Rights, and might read "Everyone had the right to life".

The meeting rose at 12.25 p.m.