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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.644-648, A/C.3/L.649/Rev.1, A/C.3/L.650-654) (continued)

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

1. Speaking on behalf of the Committee, the CHAIRMAN expressed her sympathy with the USSR delegation at the sudden illness of Mr. Morozov.

2. Mr. FOMIN (Union of Soviet Socialist Republics) thanked the Committee.

3. Miss CASTELLO BRANCO (Brazil), speaking as one of the sponsors of the four-Power amendment (A/C.3/L.649/Rev.1), said that it was imperative for article 6 of the draft Covenant (E/2573, annex I B) to contain a reference to the Convention on the Prevention and Punishment of the Crime of Genocide, since an individual's right to life could not be safeguarded if the group to which he belonged was threatened with extinction. Brazil had ratified the Convention on Genocide in 1956 and enacted legislation which defined the offences to be considered as genocide and prescribed penalties ranging from one to thirty years' imprisonment.

4. The two sub-amendments proposed orally by Poland (814th meeting), namely the inclusion of the word "fully" at the end of the new text and the insertion of the text as paragraph 3 instead of paragraph 5, had been accepted and she was glad to be able to welcome Poland as a co-sponsor of the amendment. She wished however to make it clear that her delegation interpreted the word "fully" as meaning that the Convention on Genocide was to be fully applied, and not as implying any obligation that that Convention only should be applied. The latter interpretation would be quite unacceptable to her Government, which had its own law on genocide.

5. Her delegation had also co-sponsored the five-Power amendment (A/C.3/L.654), which combined the substance of the first sentence of the Uruguayan-Colombian amendment (A/C.3/L.644) and the oral amendment to it proposed by Belgium (813th meeting).

As there was very little hope that the Colombian-Uruguayan amendment would be adopted, in view of the objections to the second sentence, the sponsors of the five-Power amendment had felt that the first sentence could be included of the five-Power amendment had felt that the first sentence could be included in their own amendment. There were many precedents of long standing for the protection of life from the moment of conception and she did not think that there could be much disagreement on the principle. The method, however, must be left to the legislatures of the different countries to decide.

6. Paragraph 2 of the original text (E/2573, annex I B) might be more acceptable with a slight change of wording; she proposed that it should be amended to read: "In countries in which it has not been possible as yet to abolish capital punishment, sentence of death..."

7. Mr. BRILLANTES (Philippines) said that although objections to the expression "right to life" had been made by the representatives of France and El Salvador, the notion was already enshrined in the Universal Declaration of Human Rights.

8. The general principles underlying article 6 were acceptable to his delegation. The first sentence of paragraph 1, prohibiting arbitrary deprivation of life, was in harmony with the first section of the Bill of Rights of the Philippine Constitution. The conditions for the imposition of the death penalty laid down in paragraph 2 and the provisions of paragraphs 3 and 4 were all in harmony with Philippine legislation.

9. There had been some criticism of the form of the article. Some delegations, for instance, had objected to the negative statement of the principle in the first sentence of paragraph 1, but he could not agree with them. The terms "deprivation" and "protection" of life had well-defined meanings in the various legal systems. Whereas deprivation of life was definitive, there could be various degrees of protection. If there was no life to protect, then protection was meaningless; therefore the present order and wording of the two sentences were logical and satisfactory. There could be no real objection to a negative wording; there were several negative injunctions in the ten commandments.

10. With regard to the substance of paragraph 1, many divergent views had been expressed concerning the word "arbitrarily". Although some delegations had objected to it on grounds of vagueness, it was obvious that its real meaning was "without due process of law". It was in the latter form that the notion was expressed in the Philippine Bill of Rights and it was on the understanding that the two terms were virtually synonymous that the Philippine representative on the Commission on Human Rights had voted for the present text of paragraph 1. Furthermore, it was used in several different articles of the Universal Declaration of Human Rights. There could be no doubt, therefore, that it had acquired a definite legal meaning.

11. The purpose of paragraph 1 was to protect the individual from arbitrary action by the State; as it was only the State which could lawfully deprive an individual of his life, the State was also the only authority which could do so arbitrarily. The drafting, however, was not entirely satisfactory; his delegation would have preferred the wording "No person shall be deprived of his life without due process of law", but it would not press the point. The alternative wordings for the first sentence proposed by Colombia and Uruguay (A/C.3/L.644) and Costa Rica (A/C.3/L.648) were unexceptionable.

12. Paragraph 2, concerning capital punishment, was a suitable affirmation of a principle which was entirely acceptable to his delegation. In the Philippines, the death penalty was imposed only for the most serious crimes and a death sentence by a lower court had to be confirmed by the unanimous vote of the Supreme Court. If there was one dissenting vote, the sentence was commuted to one of imprisonment. The death sentence was never imposed on persons over seventy years of age.

13. The Philippine people shared the sentiments which had led Uruguay and Colombia to plead for the prohibition of the death penalty. However, as the second part of the Colombian-Uruguayan amendment would be incompatible with existing Philippine legislation, he would be obliged to vote against it.

14. Countries which did not impose the death penalty were in a happy position with regard to paragraph 2. If they voted against it, they were acting in harmony with their own legislation; if they voted for it, their vote would not imply any modification of their national legislation. The representatives of countries in which capital punishment existed were not so fortunately placed; they could not vote for the abolition of capital punishment without contravening their own laws; nor could they commit their Governments to modify or repeal the laws affecting capital punishment. If the Committee could force Governments to bring their legislation into line with its decisions, it would be easy to adopt such amendments as the one proposed by Colombia and Uruguay, but all that could now be done was to hope that the situation would change for the better. However strong the views with regard to capital punishment, no one would wish to press his own to a point where they could not be accepted without infringing national legislations. The attitude of the Dominican representative set a wise example of tolerance.

15. The amendment to paragraph 2 submitted by his delegation (A/C.3/L.646) should be amended to read "In countries where capital punishment still exists, sentence of death...". The principle that a sentence should be imposed only "in accordance with law in force at the time of the commission of the crime" was already accepted by most legal systems. The Polish representative had maintained (814th meeting) that it was unnecessary to insert those words, as the point was covered in article 15, paragraph 1. Their insertion would, on the contrary, strengthen both article 6 and article 15, and thus the Covenant as a whole.

16. Referring to the French amendments (A/C.3/L.645), he said that the proposed text of paragraph 2 not only left the door open for the imposition of capital punishment but could be used to justify the enactment of new legislation for the same purpose. Furthermore, the Convention on Genocide did not authorize the imposition of the death penalty. He therefore preferred

the original text, as amended by his own delegation (A/C.3/L.646).

17. The list of exceptions in paragraph 2 of the text proposed in the Netherlands amendment (A/C.3/L.651) was not exhaustive; death inflicted in defence of property, for instance, was omitted. The amendment was not, therefore, entirely satisfactory.

18. He supported the Australian amendment (A/C.3/L.652) but was unable to give full support to the four-Power amendment (A/C.3/L.649/Rev.1). The inclusion of a reference to the Convention on Genocide would have to be considered in the light of the provisions contained in the different instruments of ratification, which were not uniform. He wondered how the reservations made in the instruments of ratification of the Convention on Genocide could be compatible with the statement in the text proposed in the four-Power amendment that the Convention should "apply fully".

19. He would vote for the French amendment to paragraph 3 (A/C.3/L.645). If it was rejected, he would vote for paragraph 3 of the original text (E/2573, annex I B).

20. Paragraph 4 was not so comprehensive as the Philippine legislation on the point but he would not propose any amendments at that stage.

21. Referring to the Guatemalan amendment (A/C.3/L.647), he said that in his country, the word "minors" applied to persons under the age of eighteen but he agreed with the statement made by the Australian representative (812th meeting) that the word was open to many different interpretations. He had no strong feelings with regard to the amendment but was not unsympathetic to it.

22. Mr. ALDUNATE (Chile) said that the records of the debates in the Commission on Human Rights during the drafting of article 6 should be studied in connexion with the current discussion. The word "arbitrarily", for instance, had been accepted in a spirit of compromise after much discussion in order to meet the position of those countries which could not accept the first sentence of paragraph 1 without qualification. Those debates should also be borne in mind when the amendments were being discussed. The Working Party would certainly be able to achieve satisfactory results, but it was imperative that the Committee should be able to vote on the original text.

23. In dealing with an article of such importance as article 6, there could be no question of big or little Powers; the matter must be dealt with by all on a footing of equality. The work might be slow, but the responsibility was very great. The Committee could not afford to bungle its work.

24. The amendment proposed by Colombia and Uruguay (A/C.3/L.644) was fundamental and far-reaching and worth careful consideration. He hoped that, in time, capital punishment would be entirely abolished, as it had been in many Latin American countries, but he understood the difficulties of the countries which could not yet take such a step. The views expressed by representatives from all parts of the world had been most enlightening. He hoped that the result of the common effort would be a perfect article.

25. Mr. WOLTE (Austria) observed that the debate on such an important provision as article 6 had cleared

up many obscure points. In its examination of the article, the Austrian delegation had taken three fundamental criteria: first, whether it did full justice to the principle, secondly, whether it took existing legal and political realities into account and, thirdly, how Austrian legislation would measure against the article. The Austrian legal system corresponded on the whole to the intentions and terms of the article, particularly since the death penalty had been abolished a number of years previously. With regard to the drafting, the Austrian delegation agreed with the representatives who had favoured a positive statement in the first sentence and would support such a statement as the first sentence of the Colombian-Uruguayan amendment, which not only laid down the principle strongly and affirmatively, but also expressed the spirit in which the whole article should be understood.

26. The whole question should be studied in that spirit. If a State considered the death penalty necessary, then it should be maintained only under limited and well-defined conditions. He would therefore support the Netherlands amendment (A/C.3/L.651) and, if it were rejected, he would vote for the existing paragraph 2, taking into account all useful suggestions, such as the Australian amendment (A/C.3/L.652). The Austrian delegation hoped that the Committee would continue to keep an open mind with regard to the existing legal realities and to further improvements and clarifications.

27. Mr. COLOMA (Ecuador) said that his delegation had followed the debate with much concern. In its opinion, article 6 should, in the light of article 3 of the Universal Declaration of Human Rights, be limited to the expression of a promise to guarantee the right to life. The present text of article 6 emphasized the negative aspect of the question, however, since it dealt chiefly with the pronouncing of the death sentence by a State under the law, rather than with safeguards for the right to life.

28. It was now a generally accepted fact that the commission of a crime was a psychosomatic phenomenon and that a criminal was a sick person, in need of treatment; it was not logical that such treatment should consist in the elimination of the sick person, by passing sentence of death on him. The Constitution of his country forbade the death penalty. His delegation therefore could not vote for article 6 as it stood. Various delegations, hoping to soften the negative aspect of the article, had introduced restrictions on the penalty. His delegation would support the five-Power amendment (A/C.3/L.654) since it conformed most closely to Ecuadorian legislation and placed importance upon the right to life from the moment of conception. His delegation also agreed with both sentences of the amendment submitted by Colombia and Uruguay (A/C.3/L.644), but pointed out that the principle contained in the second sentence would be unacceptable to many States. It would therefore be advisable, if the five-Power amendment was adopted as the first part of paragraph 1 of article 6, to include as its second part the first sentence of paragraph 1 of the original text of the article. In that way there would be a guarantee that in countries where the death penalty still existed, such penalty would be subject to legal restrictions and not pronounced "arbitrarily", that is, not in a way that was contrary to justice, reason or law. Lastly, the second sentence of the amendment sub-

mitted by Panama (A/C.3/L.653), recommending that States parties to the Covenant should recognize the propriety of promoting the abolition of the death penalty, should become the third party of paragraph 1 of article 6. Thus the paragraph would contain a guarantee of the right to life, a restriction on passing the death penalty in countries where it still existed, and a recommendation for the abolition of the death penalty.

29. His delegation would vote in accordance with the principles he had just set forth.

30. Sir Samuel HOARE (United Kingdom) said he wished to comment on some of the arguments adduced in the debate since he had made his earlier remarks.

31. With regard to the use of the word "arbitrarily" in the first sentence of paragraph 1, the Syrian representative had said (813th meeting) that there was no point in complaining of the uncertainty of the term, because all laws contained terms which were disputed by lawyers. That view which had also been upheld by the Irish representative, seemed to him to be utterly fallacious. The fact that there was an aura of uncertainty round any communication, reasoning or proposition did not eliminate the difference between clarity and obscurity and did not absolve anyone from the duty of trying to make all discourse as clear as possible; the mere fact that dispute and doubt existed should not lead anyone deliberately to create more work for those who would subsequently interpret a text. The first purpose of lawyers who drafted national statutes was to limit dispute and doubt as far as possible; in drafting internationally binding obligations, the Committee should be guided by the same principle.

32. The Irish representative had stated (813th meeting) that the word "arbitrarily" meant "at least" "without due process of law", and some Latin American representatives had claimed that in their domestic legislation the word had the same meaning. From the point of view of general concern, however, it was not really of final importance what terms had accepted usage in the domestic law of individual States. In the last analysis, the interpretation would depend upon the decision of the Human Rights Committee of nine members. Interpretation in accordance with national law would be correct only if there was evidence that such interpretation was the accepted interpretation according to the records of the Third Committee, or if nothing in the Covenants indicated that it was not the intended meaning.

33. If the interpretation of the word "arbitrary" in the usage of some Latin American countries and also in the Philippine Constitution was in effect "without due process of law", or "except on such grounds and in accordance with such procedure as are established by law", the term used in article 9 of the draft Covenant, there could surely be no objection to the use of some such phrase instead of the word "arbitrarily" in order to clarify the matter. The Irish representative's statement that the term meant "at least" "without due process of law" implied, however, that it meant something else besides; if more was meant, the exact meaning should be specified. The Romanian and Polish representatives had argued (814th meeting) that the word constituted a kind of saving clause for paragraph 2; if "arbitrarily" meant "without due process of law", however, there was no need to use it for that purpose, since that idea was already included in paragraph 2.

34. Although the Irish representative had stated that

"arbitrarily" could not be deemed to be synonymous with "unjustly", some of the arguments in her statement led to the opposite conclusion. The use of the words "arbitrary arrest" in article 9 had been invoked by several representatives; but it should be remembered that that term was used in addition to the phrase "except on such grounds and in accordance with such procedure as are established by law". Arbitrary arrest, therefore, must have some other and additional meaning. His delegation believed that the meaning intended was the essential justice of the law. To summarize, if the defenders of the word "arbitrarily" considered that it meant "without due process of law", they should say so and introduce an amendment to that effect, but should not insist on the inclusion of the word when its meaning was in doubt.

35. The Syrian representative had also defended the word on the grounds that arbitrary arrest was referred to in the Universal Declaration of Human Rights and that States had had no difficulty in sending material to the Committee of the Commission on Human Rights which was making a study of arbitrary arrest, detention and exile. The provisions of the Declaration were however declaratory and not binding; and, in complying with a request for material, Governments had merely provided information on their national legislation and practice in the matter, which it was for the Third Committee or the Commission to consider.

36. He agreed with the Chilean representative that the Committee's first concern was to pool its efforts to prepare the best possible and the most generally acceptable text without prejudicing the right concerned. In such a crucial matter as the article on the right to life, the views of many countries whose adherence to the Covenant was important should be taken into account. When difficulties were encountered, therefore, it was wise to consider an alternative wording. In that spirit, his delegation was prepared to support the first sentence of the Colombian-Uruguayan amendment (A/C.3/L.644), which, together with the second sentence of the original article (E/2573, annex I B), would represent a satisfactory paragraph 1.

37. His delegation felt serious misgivings about the five-Power amendment (A/C.3/L.654) because the phrase "from the moment of conception" had been included in the second sentence. In the first place, the phrase extended the scope of the article to embrace antenatal life, whereas all the other provisions of the Covenants related to post-natal life only. Secondly, since his delegation regarded paragraph 1 as binding and not merely declaratory, it considered that the delicate question of the rights and duties of the medical profession was involved. Legislation on the subject was devised on different principles in different countries and it was therefore inappropriate to include such a provision in an international instrument.

38. Turning to paragraph 2 of article 6, he said that the French representative's amendment (A/C.3/L.645), though prompted by praiseworthy motives, applied only to the French text.

39. The Israel representative had cited (814th meeting) two specific cases in which his criticism of the inclusion of the reference to the Convention on the Prevention and Punishment of the Crime of Genocide would not apply. She had averred, in the first place, that without that provision a certain group could be discriminated against in the sense that the treatment

of that group in law might be different from the treatment of other groups by reason of the imposition of the capital sentence upon the first group. That objection, however, was met by article 5, paragraph 2, of the draft Covenant, which prohibited restriction upon or derogation from existing instruments on human rights and by article 2, paragraph 1, which prohibited discrimination in the application of the Covenants. Secondly, the Israel representative had suggested that pardon and commutation of sentence might not be granted to certain groups. While he did not underestimate the ingenuity of persons determined to commit genocide, he did not consider that the commutation of sentences, which entailed the exercise of prerogative powers of mercy, could be covered by the provision proposed.

40. His delegation would not make an issue of the reference to the Convention on Genocide, but it would prefer the inclusion of a provision similar to that in the four-Power amendment (A/C.3/L.649/Rev.1). If such a new paragraph were adopted, however, it would be advisable to delete the reference from paragraph 2. It was, moreover, against all international practice for a convention to be applied through a much broader instrument. The objection to such application was based not only on formal considerations, but also on the difficulty encountered by States which might adhere to the Covenants, but had not yet ratified the Genocide Convention. His delegation considered that the paragraph should be drafted so as to apply only to States parties to that Convention.

41. With regard to the Philippine amendment to paragraph 2 (A/C.3/L.646), he agreed with the view expressed by the Polish representative (814th meeting) that the matter was fully covered by the last sentence of article 15, paragraph 1. The Philippine representative's argument that the importance of article 6 warranted a restatement of those provisions in a new form was invalid; on the contrary, article 15 would be weakened by the implication that the provision was important in article 6 and less important elsewhere in the Covenant.

42. His delegation considered that the right to seek pardon or commutation of sentence was an important element of paragraph 3, and he therefore could not support the French proposal (A/C.3/L.645) for the deletion of that provision.

43. With regard to the Japanese amendment (A/C.3/L.650) to paragraph 4, he pointed out that the question of the use of the word "minors" as against the phrase "children and young persons" had been debated at length in connexion with article 10 of the draft Covenant on Economic, Social and Cultural Rights.^{1/} The latter term had been adopted because it was more flexible and because the meaning of the word "minors" was not the same in all countries. He considered that the distinction drawn between the imposition and the carrying out of a sentence was desirable, but that, in view of differing national laws on the subject, the amendment might be redrafted to say that sentence of death should not be passed upon children and young persons or carried out on pregnant women.

44. In conclusion, he expressed his full agreement with the Philippine representative's remarks at the

^{1/}See Official Records of the General Assembly, Eleventh Session, Third Committee, 730th to 738th meetings.

previous meeting concerning the undesirability of setting up working parties.

45. Mr. THIERRY (France) observed that the purpose of his delegation's amendment (A/C.3/L.645) to paragraph 2 was to exclude mention of "punishment" as opposed to "penalty"; that applied to the English text as well as to the French.

46. He had been convinced by the United Kingdom representative's arguments with regard to the first sentence of paragraph 3 and withdrew his delegation's amendment to that paragraph.

47. Mr. SZTUCKI (Poland) regretted that the Philippine representative had misunderstood his delegation's criticism of his amendment (A/C.3/L.646), which was obviously prompted by humanitarian considerations. The matter was, however, fully covered by article 15, paragraph 1, which had the further advantage of stating both the negative and the positive aspects. The Philippine amendment in its existing form, moreover, might be construed in the opposite sense, that of preventing the application of the right if legislation mitigating the penalty were introduced subsequently.

48. Mr. TEJERA (Uruguay) said that the debate showed that the article was thought to be the most important in the Covenant and that it should take precedence over all ideological or doctrinaire considerations. The right to life came before all other rights; no person, law or Government should take away what could not be restored. Although many of the amendments would reduce the negative aspect of the original text, the amendment submitted by the Netherlands (A/C.3/L.651) would neither improve the text nor facilitate its adoption. Paragraph 1 of the amendment provided that a person might be intentionally deprived of his life upon the sentence of a court, but since the type of court was not specified, the text might give rise to many kinds of abuse; the amendment also provided that a prisoner trying to escape might be deprived of his life, a situation that might also give rise to abuse.

49. Uruguay had recently ratified the Convention on the Prevention and Punishment of the Crime of Genocide, and would support the four-Power amendment (A/C.3/L.649/Rev.1).

50. The purpose of the amendment submitted by Colombia and Uruguay (A/C.3/L.644), recommending that the death penalty should not be imposed on any person, was not to impose national views, but to obtain recognition in the Covenant of the fact that the right to life was inherent in every person, in the hope that that notion would eventually be embodied in the national legislation of every country.

51. It had been said that provisions likely to make ratification difficult should not be included in the Covenant. If countries where the death penalty still existed could not accept a text which did not recognize that penalty, then in like manner his country would be justified in resisting the adoption of a text that recognized a penalty which did not exist under Uruguayan law. His delegation had been obliged to refuse to be a member of the Working Party because it was of the opinion that the fundamental difference of views regarding the death penalty would preclude the drafting of a compromise text. It was to be hoped, however, that since many new ideas seemed unacceptable at first but were adopted in time, agreement on the principle in question would be reached in the not too distant future.

52. Mr. FOMIN (Union of Soviet Socialist Republics) expressed regret that the Uruguayan representative had not confined his statement to a discussion of the text of article 6.

53. Mr. TACHIBANA (Japan) said that in view of the specific connotation which the word "minor" had in English-speaking countries, his delegation accepted the suggestion that in its amendment (A/C.3/L.650) to paragraph 4 the word "minors" should be replaced by "children and young persons". However, he opposed the United Kingdom suggestion that, in the same paragraph, the words "for crimes committed by" should be replaced by "on", since the present wording of its amendment was intended to prevent the imposition of the death penalty on a person who had committed a crime while still a minor, but whose arrest or conviction did not take place until after he had attained his majority.

54. Mr. LOPEZ (Philippines), speaking as Chairman of the Working Party, said that the Working Party would take the original text of article 6 as its main working document in drafting a consolidated text; with regard to irreconcilable amendments, the Working Party would suggest the order of voting with regard to each section of the original text. The Working Party would also take into account the statements and oral amendments made during the current meeting.

55. Mr. VAKIL (Secretariat) said, in reply to a question of Mr. BARODY (Saudi Arabia), that no amendment recommending the inclusion of the phrase "due process of law" had been submitted in written form.

The meeting rose at 1.5 p.m.