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**Chairman: Mrs. Aase LIONAES (Norway).**

In the absence of the Chairman, Mr. López (Philippines), Vice-Chairman, took the Chair.

**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.650-655) (continued)**

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

1. Mr. EL-FARRA (Syria) said that contrary to the statement made by the United Kingdom representative at the 815th meeting, he had made no remarks regarding the use of the word "arbitrarily" in the Universal Declaration of Human Rights. The United Kingdom representative had raised several questions regarding article 6 of the draft Covenant (E/2573, annex I B) and had first asked what exactly the authors of the article meant by the word "arbitrarily". In the view of the Syrian delegation that word was simply intended to prevent the authorities from acting illegally and according to their own good pleasure, for history could show many examples of excesses of that kind. The United Kingdom representative had then stated that every effort should be made to avoid terms which might give rise to discussion. That was exactly what the Commission on Human Rights had sought to do when it had decided as the result of a compromise to adopt the word "arbitrarily". That word was a legal term used both in common law and legal practice in Latin countries. The sense of the word was clear and should not give rise to discussion. Several representatives, amongst others the Mexican, Irish and United States representatives, had already stated that the term gave rise to no difficulties as far as they were concerned. There was therefore no real cause for concern regarding the interpretation of the first sentence of article 6. Articles 55 and 56 of the United

Nations Charter, the debates of the Commission on Human Rights and the current debate had thrown sufficient light on the meaning of the provision. Even if the term "arbitrarily" had not yet been defined accurately, it would without a doubt quickly acquire a specific meaning, for as society progressed the law developed to meet new needs. Lastly, the United Kingdom representative had said that the four-Power amendment (A/C.3/L.649/Rev.1) was useless as paragraph 2 of article 5 of the draft Covenant fulfilled the same purpose. The Syrian delegation did not share that view. Article 5 stipulated that there should be no restriction upon or derogation from any of the fundamental human rights recognized pursuant to law, conventions, regulations or custom on the pretext that the Covenant did not recognize such rights or that it recognized them to a lesser extent. The notion of the right to life, as defined in article 6, was wider than that implicit in the provisions of the Convention on Genocide. In so far as article 5 was concerned only with conventions dealing with rights that the Covenant did not recognize or recognized to a lesser extent, it was not applicable to the Convention on Genocide. The reaffirmation proposed by the four Powers was therefore indispensable.

2. Sir Samuel HOARE (United Kingdom) said that the French representative seemed to have misunderstood his speech at the preceding meeting. He recognized that the word "punir" employed in the French text was not satisfactory; in the English text, the word "penalty" was used.

3. In defending the wording of his amendment (A/C.3/L.650), the Japanese representative had said (814th meeting) that the possibility of condemning a person of full age to death if he had committed a crime before reaching full age must be avoided. If the text was to be interpreted in that manner the United Kingdom delegation would be unable to support it. In the United Kingdom the law provided that persons under the age of eighteen years at the time of conviction could not be condemned to death. That did not mean that persons under eighteen when the crime was committed would be executed, as the Crown would ordinarily use its power to commute the sentence. He did not believe that English law could be modified in that respect, as the age at the time of conviction was the criterion for many other provisions of the law. It might be difficult to determine the exact date on which a crime had been committed and therefore to be certain whether the accused had or had not reached full age at the time of committing the crime; that problem did not arise if consideration was given simply to the age of the accused at the time of his conviction. The United Kingdom representative would therefore be unable to support the Japanese amendment unless the words "imposed for crimes committed by children and young persons" were replaced by the words "imposed on children and young persons".

4. He apologized for having attributed to the Syrian representative the words of another speaker. As the Syrian representative had said (813th meeting), most countries had lived through times when either the sovereign or the Head of the State had assumed powers for which he was responsible before no authority. Those times were now past, and in most countries the conception of arbitrary action could refer only to the decisions of judges or officials. In most countries there existed means of recourse against the possibility that such decisions might be capricious, but the State alone was responsible for determining what such means of recourse were and on what occasion their use was required. If the word "arbitrarily" appeared in article 6, an international control body would by implication have the right to intervene in a sphere in which each State exercised full powers. The Commission on Human Rights had decided to include the adverb "arbitrarily" in article 6 in order to find a way out of a difficulty. The adoption of that term was therefore in a certain sense a compromise solution, but not in the sense that all delegations had accepted it, and the United Kingdom delegation had not. In refusing to accept that word at the current stage, the United Kingdom delegation was not contradicting itself but on the contrary was faithful to the line of conduct that it had always followed.

5. Mrs. QUAN (Guatemala) wished to clarify the allusion that the United Kingdom representative had made to her country. Guatemala had ratified the Convention on the Prevention and Punishment of the Crime of Genocide on 30 January 1950, barely a month after that instrument had been opened for signature by States. She saw no reason why the Convention should not be mentioned in article 6.

6. Mr. ROJAS (Venezuela) said that his delegation had already stated that it was in favour of the amendment sponsored by Colombia and Uruguay (A/C.3/L.644). Some had qualified that attitude as being not entirely realist. However, the word "realist" had only relative value; States which had abolished the death penalty were realist in voting in favour of the amendment sponsored by Colombia and Uruguay. Account must be taken not only of the reality of the day but also of what, it was hoped, might be the reality of the morrow. Incontestably, there was currently a movement of opinion which would finally bring about the abolition of the death penalty.

7. For those reasons the Venezuelan delegation had noted with interest the suggestion made during the debate by the French representative (811th meeting), which had been taken up by the delegation of Panama in a formal amendment (A/C.3/L.653). He was prepared to support that amendment.

8. He would also vote in favour of amendments such as those proposed by Guatemala (A/C.3/L.647) and by five Powers (A/C.3/L.654), which would provide greater protection for human life.

9. Mr. BAROODY (Saudi Arabia) asked the United Kingdom representative to give further details regarding the reservations he wished to make about the word "arbitrarily". He was also anxious to hear the opinion of other delegations which had made the same reservations and also the views of the Office of Legal Affairs of the Secretariat. For his part, he entertained certain doubts about the meaning which should be attached to the word "law" in the second sentence of paragraph 1.

In a territory which was not self-governing there might be some doubt whether the law of the Administering Power or that of the metropolitan country or that embodied in specific provisions regarding the particular territory would be applicable. It was important that the point should be made clear since, if the first sentence was deleted, as the French delegation had proposed (A/C.3/L.645), it was essential to know what legislation would protect the right to life in Non-Self-Governing Territories.

10. The CHAIRMAN said that France had withdrawn the part of its amendments (A/C.3/L.645) that related to the deletion of the first sentence in paragraph 1.

11. Mr. BAROODY (Saudi Arabia) considered that even if the first sentence were deleted it would not affect the important question of the interpretation of the word "law".

12. Mr. CHENG Paonan (China) pointed out that article 53 of the draft Covenant on Civil and Political Rights (E/2573, annex I B) provided at least a partial answer to the question asked by the representative of Saudi Arabia.

13. Sir Samuel HOARE (United Kingdom) considered that the question what law applied was a mere question of fact. In any case the important question was whether or not the law effectively protected human life, or in other words whether the law complied with the obligations imposed by the Covenant.

14. Mr. BAROODY (Saudi Arabia) said that in every country there were special provisions for dealing with exceptional situations such as rebellion or civil war, and such provisions could be extremely harsh. In territories which were not self-governing the right to take those emergency measures was sometimes delegated to a governor, who was thus entrusted with very broad special powers. It could happen, and it often did happen, that the measures taken by the governor were different from those that would be employed in the metropolitan territory in a similar situation. It was thus particularly important to know exactly what law was referred to in the second sentence of paragraph 1.

15. Mr. Francisco LIMA (El Salvador) considered that the problem raised by the representative of Saudi Arabia was outside the competence of the Third Committee, which could not decide who had the right to legislate for a particular territory. The law referred to in the second sentence of paragraph 1 was plainly the law of the metropolitan territory, adopted in conformity with its constitution. He hoped that the representative of Saudi Arabia would not insist on objections which could only delay the vote on the text under discussion.

16. Sir Samuel HOARE (United Kingdom) pointed out that under article 4 of the draft Covenant on Civil and Political Rights as drafted by the Commission (E/2573, annex I B) it was proposed that there should be no power to derogate from article 6 in time of emergency.

17. Miss FUJITA (Japan), replying to the comments made at the beginning of the meeting by the representative of the United Kingdom on the amendment to paragraph 4 of article 6 proposed by her delegation (A/C.3/L.650), said that it would not be logical if a crime committed by a child or young person could be punished by death if the sentence was passed after the accused had reached the age of eighteen. Moreover it would be

very strange if a sentence of death could be passed at the end of a trial which had failed to determine the exact date of the crime.

18. It was clear that paragraph 4 would have to be drafted so as to conform with legislation that provided for different ages for the assumption of full criminal responsibility. For that reason, her delegation was prepared to replace the word "minors" by the words "children and young persons" in the text of its amendment.

19. The CHAIRMAN, speaking as Chairman of the Working Party, drew the attention of the Committee to the report of the Working Party on Article 6 (A/C.3/L.655) that had just been distributed. The Working Party had co-ordinated the various amendments relating to paragraph 2 and the new paragraph to be added at the end of the article, and the texts agreed upon were given in the report. As to the other paragraphs of article 6, a number of suggestions were made on the voting procedure that might be followed. With reference to the text of paragraph 2 proposed by the Working Party, it was interesting to note that the expression "in countries which have not abolished the death penalty" was intended to show the direction in which the drafters of the Covenant hoped that the situation would develop. The rest of the paragraph was based on the Philippine amendment (A/C.3/L.646). With regard to the addition of a new paragraph 3 to article 6, the Working Party had provided two very similar texts for the Committee to choose between. It should also be noted that France

had withdrawn its amendment (A/C.3/L.645) to the text of paragraph 3 as drafted by the Commission on Human Rights, and that Guatemala had also withdrawn its amendment (A/C.3/L.647) relating to paragraph 4.

#### AGENDA ITEMS 30 AND 31

#### Report of the United Nations High Commissioner for Refugees

#### Review of the arrangements for the Office of the United Nations High Commissioner for Refugees

#### COMMENTS ON THE REPORT OF THE THIRD COMMITTEE ON AGENDA ITEMS 30 AND 31 (A/3737)

20. Mr. BAROODY (Saudi Arabia) said that there was no reference in the report of the Third Committee on agenda items 30 and 31 (A/3737) to the children among the Hungarian refugees, although he had spoken on that subject several times during the debate and other representatives had also mentioned it. Furthermore, since the report had raised the question of repatriation as a solution to the refugee problem it would be advisable to make it clear that what was meant was repatriation freely consented to.

21. Mr. COX (Peru), Rapporteur, thanked the representative of Saudi Arabia for pointing out those omissions and said that the necessary corrections would be made to the text of the report.

The meeting rose at 4.55 p.m.