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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.684/Rev.1, A/C.3/L.690, A/C.3/L.691/Rev.1, A/C.3/L.692/Rev.2, A/C.3/L.693/Rev.2, A/C.3/L.700) (continued)

ARTICLE 10 OF THE DRAFT COVENANT ON CIVIL
AND POLITICAL RIGHTS (E/2573, ANNEX I B)
(continued)

1. Mr. THIERRY (France), speaking for the sponsors, introduced the revised text of the five-Power amendment (A/C.3/L.693/Rev.2) to article 10 of the draft Covenant on Civil and Political Rights (E/2573, annex I B). The substance of the original amendment had not been changed, but its wording had been modified so as to ensure that the equivalents in the various languages should be satisfactory. The purpose of the amendment was to ensure that the entire prison system, including buildings, discipline and the organization of work, should be directed towards the reformation and rehabilitation of the prisoner, not towards retribution.

2. He thanked delegations which had supported his suggestion that some link should be indicated between article 10 and the Standard Minimum Rules for the Treatment of Prisoners.^{1/} He proposed that the passage to that effect to be inserted in the Committee's report on the item might read as follows:

"The Third Committee considered that article 10 of the draft Covenant on Civil and Political Rights should be applied taking into account the Standard Minimum Rules for the Treatment of Prisoners adopted on 30 August 1955 by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders and approved by the Economic and Social Council in its resolution 663 C I (XXIV)."

3. It had been objected that by the time the Covenants were adopted the Rules might be out of date; but that

^{1/} First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Geneva, 22 August-3 September 1955, Report prepared by the Secretariat (United Nations publication, Sales No.: 1956. IV.4), annex I A.

was not really an objection: in the future, it would probably prove necessary to revise the texts both of the Covenants and of the Rules. It had also been objected that Member States could not be bound by the Rules, since they had been adopted at a conference at which not all Member States had been represented. That was no doubt true, but it should be remembered that the Economic and Social Council, an authoritative organ of the United Nations, had approved the Rules.

4. Miss FAROUK (Tunisia) said that there was no difference of substance between the revised text of her amendment (A/C.3/L.692/Rev.2) and the original text of paragraph 1, as the word "humanity" was now retained in her text. She felt that there could be no objection to that, or to the revised second part of the amendment, which merely repeated the wording of the second paragraph of the preamble to the draft Covenant.

5. Mr. ROSSIDES (Greece) said that as the word "humanity", which had not appeared in the first revision of the Tunisian amendment, had been restored to the second revision, the sponsors of the three-Power amendment (A/C.3/L.700) had decided to withdraw it.

6. Mrs. REFSLUND THOMSEN (Denmark) said that article 10 was acceptable to her delegation in its original form. The Tunisian amendment (A/C.3/L.692/Rev.2) was in her view redundant, and she could not support it. She supported the Netherlands amendment (A/C.3/L.691/Rev.1) to paragraph 2, as it would give the article greater flexibility.

7. She subscribed to the principles underlying the Ceylonese amendments (A/C.3/L.584/Rev.1) and had no objection to the first part of the text proposed for paragraph 2; under Danish law all juveniles charged with delinquency were segregated from adults. She had some difficulty, however, in accepting the second part of that sentence, which seemed unnecessary, since article 9, paragraph 3, specified that anyone arrested or detained on a criminal charge should be brought promptly before a judge. Indeed, the Ceylonese proposal in that respect might even be definitely harmful, as it would tend to give priority to one category of offenders, juveniles, in the matter of speedy adjudication.

8. She had no difficulty in accepting paragraph 3 of the original text, as Danish criminal law and the Danish penitentiary system were extremely progressive and had been based for many years on the most modern principles, including social rehabilitation and classification, which involved the individual evaluation of each offender. Men were segregated from women and, on principle, juveniles from adults.

9. Although she was in full agreement with the principle of segregating juveniles, she had some doubts about the Ceylonese amendment to paragraph 3. In providing that all juvenile offenders must be segregated

from adults, regardless of the type of offence committed or the character of the offender, it was out of line with modern methods of individual treatment. The Committee should think very carefully before adopting a rule which might possibly hamper the development and extension of such methods. Although she sympathized with the Ceylonese representative's laudable desire to provide for the fullest possible protection of young offenders, she was not convinced that what he proposed was the best way to do it.

Mr. Calamari (Panama), Vice-Chairman, took the Chair.

10. Mr. SAARI (Finland) felt that the draft Covenant should contain specific provisions regarding the treatment of juvenile delinquents, either in a separate paragraph of article 10 or in a new article. He was therefore fully in sympathy, as a matter of principle, with the Ceylonese amendments (A/C.3/L.684/Rev.1). However, he feared that where the authorities had to deal with juveniles accused of offences in remote and sparsely populated areas, absolute segregation might not always be possible. He was therefore unable to vote for the amendment to paragraph 2 as it stood. However, he would be able to support it if the words "save in exceptional cases" were inserted after the words "Accused juvenile persons shall". Similarly, the Ceylonese amendment to paragraph 3 might prevent juveniles from being placed with adults for purposes of rehabilitation, which did occur in exceptional circumstances in his own country; accordingly, he would be unable to vote for it unless the words "save in exceptional cases" were inserted after the words "Juvenile offenders shall.". He supported the Netherlands amendment (A/C.3/L.691/Rev.1).

11. Mr. MONACO (Italy) said that article 10 was logical and well-constructed and laid down clear rules, with which his delegation was in full agreement, for the treatment of prisoners. There would, of course, be some difficulties of interpretation when the article came to be applied, and the Committee should strive to reduce them to a minimum by avoiding complicated references to special cases. He was therefore opposed to all amendments which would introduce into the text such phrases as "to the fullest extent possible" or "save in exceptional cases". For that reason, he could not support the Netherlands amendment (A/C.3/L.691/Rev.1).

12. He was not, however, opposed to constructive amendments. He supported the Tunisian amendment (A/C.3/L.692/Rev.2) because it attempted to clarify the somewhat nebulous concept of "humanity".

13. He would also be able to support the Ceylonese amendments (A/C.3/L.684/Rev.1) subject to one minor modification, as the principles set forth in them were entirely in harmony with Italian theory and practice regarding the treatment of juveniles. The modification he proposed was the deletion of the words "and brought as speedily as possible for adjudication" from the text proposed for paragraph 2. As had already been pointed out, those words would only weaken the more general rule laid down in article 9, paragraph 3.

14. He supported the five-Power amendment (A/C.3/L.693/Rev.2), which greatly improved the original text by eliminating the words "to the fullest possible extent", and made clear the essential purpose of treatment, namely the reformation and social rehabilitation of prisoners.

15. He supported the French representative's proposal that a reference to the Standard Minimum Rules for the Treatment of Prisoners should be included in the Committee's report on the item. The Committee might wish to include some such reference in the final articles; but as those articles had not yet been considered, the French proposal offered an acceptable interim solution.

16. Mr. LISSIDINI (Uruguay) said that his delegation's general policy was to oppose amendments to the text of the draft Covenants approved by the Commission on Human Rights, with very few exceptions. In the case of article 10, he would be able to vote for the five-Power amendment (A/C.3/L.693/Rev.2).

17. So far, relatively little progress had been made in carrying into effect the principles of the Universal Declaration of Human Rights by adopting the draft Covenants. The problems the Covenants raised were both procedural and conceptual. From the procedural point of view, the delicacy of the subject-matter on which the Covenants sought to legislate made it necessary to maintain a certain logical harmony between the articles. Accordingly, after the exhaustive work carried out by the Commission on Human Rights, amendments should be the exception, not the rule, since they were likely only to impair the balance that had been established. It should be borne in mind that national legislation, once drafted, was seldom subjected to point-by-point examination. The views expressed in the Committee would undoubtedly constitute a useful body of information for the subsequent interpretation of the Covenants; but the texts should not be altered lightly.

18. From the conceptual point of view, two different approaches were possible: to draft the Covenants in the form of general principles which would be left for legislators to interpret according to national laws, or, on the other hand, to attempt to provide for all possible contingencies. Unfortunately, the Committee had tended to use the latter approach, and amendments had been introduced to meet the special circumstances of some countries. The Uruguayan delegation believed that in view of the different stages of development reached by the States Members of the United Nations it was impossible to cover all contingencies in general international instruments; for example, it was easier for young countries to adopt new provisions than for countries with old legislative traditions. The Committee should therefore endeavour to keep the draft Covenants as broad and general as possible; that, moreover, would help it to make more rapid progress.

19. Mr. FOMIN (Union of Soviet Socialist Republics) said that his delegation had taken a prominent part in the drafting of article 10 in the Commission on Human Rights, and had been prepared to vote for the article as it stood. However, it considered that the Ceylonese amendments (A/C.3/L.684/Rev.1) improved the text, and would vote for them. It regretted that objections had been raised to the inclusion of the words "and brought as speedily as possible for adjudication", since they would not weaken the general principles stated in article 9, paragraph 3, which, in any case, did not preclude the special mention of specific cases. Moreover, there was a precedent for the special mention of juvenile offenders in article 14, paragraph 3.

20. With regard to the other amendments, he agreed with the Uruguayan representative that the Committee should avoid going into unnecessary detail. He could not vote for the Tunisian amendment (A/C.3/L.692/Rev.2), because he believed that in most languages the word "humanity" embraced the idea of respect for the inherent dignity of the human person. Moreover, it could be argued that the words "inherent dignity of the human person" needed as much explanation as did the word "humanity".

21. The five-Power amendment (A/C.3/L.693/Rev.2) seemed to involve a considerable change of substance. In fact, the Russian text of the revised amendment could be interpreted as meaning that the penitentiary system should be only partially directed towards the reformation and social rehabilitation of prisoners. It was therefore considerably weaker than the Commission's draft, and he could not support the change.

22. He could not vote for the Netherlands amendment (A/C.3/L.691/Rev.1), because the draft Covenants should set general standards for all countries. That did not mean that there could be no exceptions; indeed, some were expressly set forth in certain articles; however, the wording of the Netherlands amendment was unduly loose and would allow unlimited exceptions.

23. Turning to the French representative's suggestion that explicit reference should be made in the Committee's report to the Standard Minimum Rules for the Treatment of Prisoners, he observed that the Committee had not studied the Rules in detail and that a cursory perusal of them revealed some provisions which were contrary to the spirit and letter of the draft Covenants. For example, rule 8 (c) referred to persons imprisoned for debt, whereas article 11 of the draft Covenant under consideration provided that no one should be imprisoned merely on the ground of inability to fulfil a contractual obligation. A flat statement that article 10 should be studied in conjunction with the Rules would therefore be undesirable.

24. Mr. THIERRY (France), referring to the five-Power amendment (A/C.3/L.693/Rev.2), said that the original text, which had been drafted in French, provided clearly that the entire penitentiary régime must be directed towards the reformation and social rehabilitation of all prisoners.

25. Mr. Tulio ALVARADO (Venezuela) said that his delegation would support the revised Ceylonese amendments (A/C.3/L.684/Rev.1) because, although the wording proposed in them still left something to be desired, they set forth the fundamental principle that juveniles should be segregated from adults in places of detention and should be given special treatment.

26. He could also support the revised Netherlands amendment (A/C.3/L.691/Rev.1), since in its present wording it seemed to provide adequately for exceptional cases, such as the outbreak of infectious disease, in which the segregation of accused persons from convicted persons could not be maintained. It had been suggested that a similar provision might be inserted in the text proposed in the Ceylonese amendments to apply to juvenile offenders; but the absence of such a provision in that particular case would serve to emphasize the need for the absolute segregation of juvenile prisoners from adult prisoners.

27. Although his delegation had been more inclined to support the Tunisian amendment (A/C.3/L.692/

Rev.2) after the Afghan representative's comment (881st meeting) on the distinction made between the words "inhuman" and "degrading" in article 7, it still considered that the word "humanity" included "respect for the inherent dignity of the human person", and would therefore abstain from voting on the amendment.

28. The text of paragraph 3 proposed in the five-Power amendment (A/C.3/L.693/Rev.2) was more emphatic in Spanish than the Commission's draft, and he would vote for it, although he would have preferred the word "essential" to be omitted.

29. Mr. SUTANTO (Indonesia) said that he had been prepared to accept the text of article 10 submitted by the Commission on Human Rights, but would support the Ceylonese amendments (A/C.3/L.684/Rev.1). Although his delegation appreciated the motives underlying the Tunisian representative's amendment (A/C.3/L.692/Rev.2), it considered that the word "humanity" had a broad enough meaning to cover the purposes desired, and would be unable to vote for the Tunisian draft. The revised text of the Netherlands amendment (A/C.3/L.691/Rev.1) was an improvement on the original, but it still seemed to open the door to abuse, and he could not vote for it. The words "essential purpose" in the five-Power amendment (A/C.3/L.693/Rev.2) improved the text, and he would vote for the amendment.

30. Sir Samuel HOARE (United Kingdom), replying to representatives who had questioned his interpretation of the word "humanity", said that his view represented the consensus of opinion of the English-speaking representatives on the Committee, who considered that it was impossible to treat a person deprived of liberty at the same time with humanity and in a manner incompatible with respect for his inherent dignity as a human being. He would accordingly be unable to vote for the Tunisian amendment (A/C.3/L.692/Rev.2).

31. The motives that had prompted the five-Power amendment (A/C.3/L.693/Rev.2) were in fact linguistic, since it seemed to be difficult to render into French and Spanish the full meaning of the English words "to the fullest possible extent", which connoted both a recognition of human imperfections and the intention of making the greatest possible efforts in any given circumstances. In view of those difficulties of translation, he would support the amendment; however, he thought that a better English wording would be: "The penitentiary system shall comprise treatment of prisoners of which the essential aim shall be ...".

32. He hoped that the Ceylonese representative would give consideration to the comments made by the Danish and Finnish representatives; it would be a pity to introduce unduly stringent provisions unacceptable to countries with advanced penal systems. With regard to the Ceylonese amendment (A/C.3/L.684/Rev.1) to paragraph 3, he pointed out that the term "juvenile" was defined differently in different countries, and that cases might arise where, for example, it might be wiser to allow an eighteen-year-old to associate with slightly older first offenders than with hardened delinquents of his own age. The Ceylonese representative might perhaps consider making his amendment more flexible in that respect.

33. He did not think that the USSR representative had refuted his own and other delegations' criticisms

of the phrase "and brought as speedily as possible for adjudication" in the Ceylonese amendment. Article 14, paragraph 3, related to trial procedure, and not to the treatment before trial of accused persons, which was amply covered for all cases by the general provisions of article 9, paragraph 3. Article 14 might be cited as a precedent for the other parts of the Ceylonese amendment, but not for the phrase in question.

34. Finally, he had not been convinced by the USSR representative's remarks about the Standard Minimum Rules for the Treatment of Prisoners. Rule 8 (c) quite properly provided for lenient treatment of certain classes of prisoners including persons imprisoned for debt in countries where that practice was still allowed. It was to be hoped that those countries would amend their relevant legislation in the light of article 11 of the draft Covenant and if all did so, that particular case would not arise; but the fact remained that the Standard Minimum Rules were drafted in broad enough terms to allow them to be taken into account, as the French representative had proposed, in applying article 10.

35. Mr. MASSOUD-ANSARI (Iran) remarked that the Tunisian representative had misunderstood his attitude towards her original amendment (A/C.3/L.692). He had in fact questioned whether convicted persons could in all circumstances be treated with respect for their dignity, when their very situation indicated that they had committed acts incompatible with human dignity. Furthermore, the original text of the amendment might have invited discrimination in that it appeared to provide that each individual should be treated in accordance with the dignity he possessed. The revised Tunisian amendment (A/C.3/L.692/Rev.2) was more happily worded, in that it demanded equal respect for all. Consequently, although he did not regard the text as strictly necessary, he was prepared to support it.

36. He had opposed the original Netherlands amendment (A/C.3/L.691), and still had some misgivings concerning the revised text (A/C.3/L.691/Rev.1). He would therefore abstain on it.

37. He would vote for the Ceylonese amendments (A/C.3/L.684/Rev.1) and for the five-Power amendments (A/C.3/L.693/Rev.2).

38. Mr. MAHMUD (Ceylon), commenting on a point raised by the Australian representative at the preceding meeting, said that his amendments would not preclude each country from defining the word "juvenile" in accordance with its national legislation. He had endeavoured in his amendments to make it clear that juvenile offenders should be treated as delinquents—a legal status preferable to that of convicted persons, since it did not carry with it such consequences as the loss of civil rights.

39. The provision in his amendment calling for the speedy adjudication of juvenile cases had been criticized as redundant. However, as the USSR representative had pointed out, special provision for the trial of juveniles was to be found in article 14, and it seemed equally logical to include in article 10 similar provisions regarding their pre-trial detention and post-trial treatment. Moreover, he did not agree that the provision would weaken article 9, paragraph 3. It was common knowledge that accused persons generally had to wait a long time for trial; and in the case of juven-

iles prolonged detention could be harmful and even dangerous. It was therefore entirely proper to emphasize the need for the prompt adjudication of juvenile cases.

40. He expressed gratitude to the many delegations which had supported his amendments, and appealed to the United Kingdom representative to accept them.

41. The CHAIRMAN invited the Committee to vote on article 10 and the amendments to it.

The Tunisian amendment (A/C.3/L.692/Rev.2) was adopted by 28 votes to 11, with 29 abstentions.

Article 10, paragraph 1, as amended, was adopted by 63 votes to 1, with 5 abstentions.

The Netherlands amendment (A/C.3/L.691/Rev.1) was adopted by 27 votes to 25, with 16 abstentions.

42. Sir Samuel HOARE (United Kingdom) requested a separate vote on the two parts of the Ceylonese amendment (A/C.3/L.684/Rev.1) to paragraph 2.

The words "(b) Accused juvenile persons shall be separated from adults" were adopted by 65 votes to none, with 4 abstentions.

The words "and brought as speedily as possible for adjudication" were adopted by 45 votes to 8, with 16 abstentions.

Article 10, paragraph 2, as amended, was adopted by 66 votes to none, with 2 abstentions.

43. Mr. BAROODY (Saudi Arabia), speaking on a point of order, asked whether the word "purpose" in the five-Power amendment (A/C.3/L.693/Rev.2) would be retained, or would be replaced by the word "aim" suggested by the United Kingdom representative. For his part, he preferred "aim".

44. Mr. BRILLANTES (Philippines) expressed preference for the word "purpose", which was used in the Charter of the United Nations.

45. Mr. ROSSIDES (Greece) and Mr. YAPOU (Israel) thought the word "objective" would be a better rendering of the French "but".

46. After a brief discussion, the CHAIRMAN said that, since the original language of the five-Power amendment was French, the final English translation would be supplied by the Secretariat.

The five-Power amendment (A/C.3/L.692/Rev.2) was adopted by 44 votes to 1, with 23 abstentions.

The Ceylonese amendment (A/C.3/L.684/Rev.1) to paragraph 3 was adopted by 63 votes to none, with 5 abstentions.

Article 10, paragraph 3, as amended, was adopted by 67 votes to none, with 2 abstentions.

Article 10 as a whole, as amended, was adopted by 67 votes to none, with 2 abstentions.

47. The CHAIRMAN asked whether the Committee wished to vote on the French proposal that the Committee's report on the agenda item should contain a statement to the effect that, in the Committee's view, article 10 should be applied taking into account the Standard Minimum Rules for the Treatment of Prisoners.

48. Mr. BAROODY (Saudi Arabia) remarked that it was not the Committee's practice to vote on such

proposals. The report on the item was supposed to be a faithful account of the Committee's deliberations; the Rapporteur would therefore in any event mention in the report that the proposal in question had been made by the French delegation, supported by a number of other delegations, and opposed by some others. He hoped that the French representative would be satisfied with that.

49. Sir Samuel HOARE (United Kingdom) expressed the hope that the Rapporteur would be able to find an expression of the view of the Committee which would

satisfy both the French and other delegations. He supported the Saudi Arabian representative's remarks.

50. Mr. FOMIN (Union of Soviet Socialist Republics) also supported the remarks of the Saudi Arabian representative.

51. Mr. THIERRY (France) said that his delegation would leave it to the Rapporteur to express the feeling of the Committee.

The meeting rose at 6 p.m.