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CONTENTS

Chairman: Mrs. Lina P. TSALDARIS (Greece).

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) (continued)

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

1. The CHAIRMAN invited explanations of vote on article 10 of the draft Covenant on Civil and Political Rights and the amendments to it.

2. Mr. KETRZYNSKI (Poland) said that his delegation had been prepared to vote for article 10, which was in full agreement with the laws and penal practices of his country, in the form in which it had been submitted by the Commission on Human Rights (E/2573, annex I B). He had voted for the Ceylonese amendments (A/C.3/L.684/Rev.1), because they introduced a valuable new element into the article. Feeling, however, that excessively detailed amendments made for lack of clarity, he had abstained on the five-Power amendment (A/C.3/L.693/Rev.2) and on the Tunisian amendment (A/C.3/L.692/Rev.2). In particular, he feared that in adopting the Tunisian amendment the Committee might have detracted from the comprehensiveness of the provision that prisoners should be treated with humanity.

3. He had voted against the Netherlands amendment (A/C.3/L.691/Rev.1) because it weakened the original provision unnecessarily.

4. The Standard Minimum Rules for the Treatment of Prisoners were essentially practical and therefore temporary measures, and he did not think they should be linked to the permanent principles set forth in article 10. He trusted that his view would be indicated in the Committee's report on the item.

5. Mrs. REFSLUND THOMSEN (Denmark) said that while she had voted against the second part of the Ceylonese amendment (A/C.3/L.684/Rev.1) to paragraph 2 of article 10, and had abstained on the Ceylonese amendment to paragraph 3, she had voted for article 10 as amended, because it contained important principles to which her delegation subscribed. However, she reserved her Government's position with regard to the provisions she had mentioned, which might represent a retrograde step for the Scandinavian countries.

6. Mr. KASLIWAL (India) said he had voted against the final text of the Tunisian amendment (A/C.3/L.692/Rev.2) because it was a mere repetition of a phrase in the preamble to the draft Covenant, and therefore redundant.

7. He had opposed the Netherlands amendment (A/C.3/L.691/Rev.1) because it weakened the text.

8. Mr. CALAMARI (Panama) recalled that he had been in the Chair during the voting on article 10 and had been precluded, under rule 106 of the rules of procedure, from taking part in the vote. He therefore wished to explain his position on the various texts which had been before the Committee.

9. He had opposed the original Tunisian amendment (A/C.3/L.692) on the ground that the requirement that prisoners must be treated with humanity covered everything the Tunisian representative had appeared to have in mind. The ensuing debate, however, had shown that the Tunisian representative's intention had been to ensure respect for the dignity inherent in every human being at all times. The final text of the Tunisian amendment (A/C.3/L.692/Rev.2) had therefore been acceptable to him.

10. He had been in favour of the Ceylonese amendments (A/C.3/L.684/Rev.1); the segregation of juvenile offenders was the rule in his own country. He had also been in favour of the five-Power amendment (A/C.3/L.693/Rev.2).

11. Although he understood the motives behind the Netherlands amendment (A/C.3/L.691/Rev.1), he would have abstained on it; to draft the Covenants so as to allow for temporary failings might tend to perpetuate those failings.

ARTICLE 11 OF THE DRAFT COVENANT ON CIVIL AND POLITICAL RIGHTS (E/2573, ANNEX I B)

12. Mr. ARAUJO GRAU (Colombia) agreed with the principle set forth in article 11 of the draft Covenant (E/2573, annex I B), since it constituted an essential safeguard for the effective enjoyment of human rights. So-called imprisonment for debt, which, it appeared, unfortunately persisted in some countries, was often in practice a means of infringing those rights. The Colombian delegation also supported the principle in question because it was in keeping with Latin American tradition and with the Colombian Constitution, article 23 of which prohibited imprisonment for purely civil debts or obligations.

13. The Commission on Human Rights had at first considered drafting the article so as to make it appli-

cable only to contractual debts, but had then decided to broaden it to apply not only to inability to pay money owed, but also to inability to fulfil other obligations to act or not to act. Accordingly, the text of the article used the term "contractual obligation".

14. However, he had certain doubts regarding the wording of the article. Assuming that its object was to prohibit any person from being deprived of his liberty merely for inability to comply with a private legal obligation, that is, one not related to public law, it should be noted that such obligations did not always arise out of contracts, and, in addition, that private persons entered into contracts with the State which were contracts not under civil law but under administrative law, and failure to fulfil which might properly, in view of the serious consequences to society that could ensue, be punishable with imprisonment. That was the case with contracts to supply the armed forces in time of war.

15. Civil obligations could have their origin not only in contracts, but also in the law, as was the case, for example, in so-called quasi-contracts or quasi-delicts. In other words, there were many purely civil obligations not originating in freedom of contract—for example, the obligation of the employer to make good damage which might have been caused through negligence or lack of foresight on the part of his employee. It would be wrong if imprisonment could be imposed in cases such as that and many similar ones. In such cases, he stressed, there were no contractual obligations. He therefore thought that the word "contractual" might usefully be replaced by "civil", a word which was at once broader and more precise. All civil obligations, regardless of their origin, would then be covered by the prohibition, while all obligations which related to the State, whether contractual or not, would be left out. However, he was afraid that the word "civil" might cause certain difficulties of interpretation in some countries, or that it might be understood in others as excluding certain branches of private law, such as commercial and labour law. Accordingly he thought that it might be possible to replace the expression "contractual obligation" by "obligation under private law". That formula would establish a sufficiently clear distinction between that type of obligation and obligations under public law, which would be those originating in criminal law, administrative law, constitutional law, and so forth.

16. If his doubts regarding the wording of the article were shared by other delegations, he would consider submitting an amendment.

17. Apart from the point to which he had drawn attention, he thought that the wording of article 11 was extremely clear and precise and made it quite plain that the article was not meant to apply to cases which came within the orbit of criminal law.

18. Mr. Tulio ALVARADO (Venezuela) remarked that if indeed article 11 was not meant to cover cases of fraud, that should be stated explicitly in the text, so as to leave no doubt on the point, as was done in the relevant provision in the Venezuelan Constitution.

19. The Marquis DE VALDEIGLESIAS (Spain) said that the purpose of article 11 was to ensure that no one should be imprisoned merely for non-compliance with a civil obligation. That was made perfectly clear by two words in the text: the word "merely", which ensured that no other aspect of the offence should be taken into consideration, and the word "inability", which meant that the person concerned should be unable, not unwilling, to fulfil his contractual obligation. The article was therefore worded in precise legal terms.

20. There were, of course, cases in which a person failing to carry out a contractual obligation had a criminal or fraudulent intent; but he could not agree with the Venezuelan representative that such cases should be explicitly excluded from article 11. Cases of failure to fulfil a contractual obligation might range from instances of simple negligence to fraudulent bankruptcies and non-fulfilment of government contracts. In each case, the element of fraud could be established only by a court.

21. In Spain, failure to fulfil government contracts was not punishable by imprisonment but only by the disqualification of the supplier from receiving further contracts. He agreed with the Colombian representative that the article would be improved if the word "contractual" was replaced by the word "civil".

22. Mr. DEHLAVI (Pakistan) said that he would be obliged to abstain on article 11 in its existing form, as it conflicted with some of the provisions of the Pakistan Code of Civil Procedure. It was true that that Code had been taken over from the United Kingdom administration when Pakistan had achieved independence and that it was currently under revision, but as it stood its provisions were clearly at variance with article 11. Under section 55 of the Code, for instance, a judgement debtor could be arrested and brought before a court, which decided whether he had been guilty of bad faith, and if so ordered his detention in a civil prison or elsewhere, subject to certain conditions. Women, however, could not be imprisoned for the non-payment of money.

23. Mr. ARAUJO GRAU (Colombia) drew the Venezuelan representative's attention to a passage in the annotations on the text of the draft International Covenants on Human Rights (A/2929, chap. VI, para. 47) which showed that cases of fraud were definitely excluded from the scope of article 11.

24. In Colombia, as in Spain, failure to fulfil a government contract was not punishable by imprisonment. However, failure to supply foodstuffs in war time, for instance, was so grave an offence that it might well in some countries justify imprisonment. He felt that that penalty could be imposed in such cases without violating article 11.

25. Sir Samuel HOARE (United Kingdom) said that his delegation regarded the article as intended to prevent two things: first, imprisonment for debt without the order of a court at the mere discretion of the creditor and, secondly, imprisonment, even by order of a court, on the ground of mere inability to pay; the words "merely" and "inability", as the Spanish representative had pointed out, were crucial. Many civil and quasi-civil suits were brought before the courts in the United Kingdom every day—for example, by wives seeking the enforcement of maintenance orders. In each case, the court carefully considered whether the defendant was in a position to pay and was wilfully neglecting to do so before it made its order. In the case of a judgement debt, referred to by the representative of Pakistan, judgement for the debt was

given only if the court was satisfied that the defendant had, or had had at the material time, the means to pay. It was only if the person concerned refused to comply with the order made by the Court that he laid himself open to a sentence of imprisonment; he was therefore sentenced, not for inability to pay, but for wilful refusal to obey the court. Such cases were obviously outside the scope of article 11.

26. He had some doubts about the Colombian representative's proposal to replace the word "contractual" by the word "civil". The term "civil obligation" was much wider than "contractual obligation", and might cover tax cases or even cases of non-compliance with a court order, which would be most undesirable. He wished to study the question before making a final statement on the point; in the meantime, he supported the article as it stood.

27. Mr. Tulio ALVARADO (Venezuela) said that he was now convinced that cases of fraud were outside the scope of article 11. However, the United Kingdom representative's statement had raised new doubts in his mind. If it was not explicitly provided that offences against the penal code were excluded from the scope of article 11, the article might be interpreted in such a way as to frustrate the drafters' intention. According to the United Kingdom representative's explanation, a debtor who was able to pay but, without any fraudulent intent, neglected to do so, could be sentenced to imprisonment without any violation of article 11.

28. Mr. BAROODY (Saudi Arabia) considered that article 11 in its existing form was perfectly straightforward and clear. The Colombian representative's analysis had been enlightening, but it seemed obvious that for some countries the use of the word "civil" might entail consequences which were outside the scope of the article. The history of the circumstances in which the article had been adopted by the Commission on Human Rights (A/2929, chap. VI, paras. 45-49) made the limitations of the text quite clear; it could not be improved without an exhaustive enumeration of exceptions, which, as experience had shown, gave rise to the danger of omissions. Accordingly, if there were no formal amendments, the Committee would do well to take a decision as soon as possible on the simple text before it.

29. Mr. THIERRY (France) said that as French law did not allow imprisonment for debt in commercial and civil cases and limited imprisonment to criminal cases, his delegation could accept the Colombian representative's suggestion. Moreover, the word "contractual" was contrasted with the word "delictual", whereas the word "civil" would rightly make it clear that no penal proceedings were involved.

30. Mr. YAPOU (Israel) and Miss BERNARDINO (Dominican Republic) thought that the Committee should have more time to consider the implications of the Colombian suggestion. The fact that the article was a short one did not make it any less necessary to give it thorough consideration.

31. Mr. SIMPSON (Liberia) felt that the Committee should be in a position to vote on article 11 at the next meeting. There had been ample time to prepare statements and amendments on the subject.

32. In reply to questions from Mr. BAROODY (Saudi Arabia), Mr. THIERRY (France) and Miss MacENTEE (Ireland), Mr. VAKIL (Secretary of the Committee) said that in accordance with the Committee's previous decision eight more meetings should be held on the draft Covenants and ten each on the items on self-determination and freedom of information. However, if it held seven meetings per week, the Committee could hold only twenty more meetings before its target date of 5 December. But if it were to adopt the suggestion of the representative of Saudi Arabia that the number of meetings to be devoted to the Covenants should be decreased by three and the number for the items on self-determination and freedom of information by two each, it would need only twenty-two more. That number could quite easily be achieved simply by adding two meetings on 8 December; that would give the Rapporteur time to prepare her report. The Committee's decision to hold seventy-five meetings during the session instead of the seventy suggested by the officers of the Committee implied that it was willing to hold Saturday and night meetings. The decision had been a formal one, and would have to be reversed if any changes were to be made.

33. Mr. FOMIN (Union of Soviet Socialist Republics) thought that the Committee should take a formal decision to complete articles 11 and 12 at the current session. If article 12 was not completed, the time devoted to it would be wasted, as the whole discussion would have to be recapitulated at the fourteenth session.

34. Mr. BAROODY (Saudi Arabia) did not consider that the debate on the draft Covenants should be prolonged at the expense of the other items on the Committee's agenda.

The meeting rose at 1 p.m.

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